

## NON-DISCLOSURE AGREEMENT

AGREEMENT, made as of the \_\_\_ day of \_\_\_\_\_, 202\_ by and between \_\_\_\_\_ (“Company”), and Massachusetts Housing Finance Agency (“MassHousing”).

WHEREAS, the Company and MassHousing (each as applicable, a “Discloser” and “Recipient”) will be participating in discussions regarding a potential business transaction (the “Transaction”), and in connection with these discussions, each party may disclose to the other certain “Confidential Information” (as defined below);

NOW, THEREFORE, the parties hereto hereby agree as follows:

1. Non-Disclosure and Limited Use. Recipient shall hold all Confidential Information in strict confidence and shall not disclose any Confidential Information to any third party; provided, however, that Recipient may disclose Confidential Information to its affiliates, directors, officers, employees, professional consultants (including accountants and attorneys) and agents of the Recipient who need to know such information to evaluate the Transaction and who have been informed of the confidential nature of the Confidential Information. Recipient shall not use any Confidential Information for its own benefit or for any purpose except to evaluate a potential business transaction. Recipient will exercise the same degree of care in maintaining the confidentiality of Confidential Information that it exercises with respect to its own confidential information of similar sensitivity.
2. Disclosure Required by Legal Process. In the event that either party is legally compelled to disclose any Confidential Information (by oral questions, interrogatories, requests for information or documents, subpoena, civil investigative demand or similar process), the party under such compulsion shall promptly give notice to the Discloser so that the Discloser may seek to quash such compulsion or to obtain an appropriate protective order. In the event the Discloser does not quash such compulsion, and whether or not a protective order is obtained, the party under compulsion shall disclose only such limited portion of the Confidential Information of the other party as, in the written opinion of counsel for the party under compulsion, is required to avoid sanction by the court having jurisdiction in such matter.
3. Description of Confidential Information. “Confidential Information” means all information disclosed by the Discloser to the Recipient relating to the Transaction, including but not limited to financial statements disclosed for the Transaction, provided that such materials are provided in written form and prominently marked “Confidential,” unless (a) the information is or becomes publicly known without breach of this agreement; (b) the information was rightfully in Recipient’s possession or part of Recipient’s general knowledge prior to exploring the possibility of a Transaction; (c) the information is disclosed to Recipient without confidential restriction known by Recipient by a third party who, to Recipient’s knowledge, rightfully possesses the information without confidential restriction and did not learn of it, directly or indirectly, from Recipient; (d) the information is required to be disclosed under applicable law, such as the Massachusetts public records law, or by a governmental order, decree, regulation or rule, or pursuant to an audit, examination or regulatory request by a regulator with jurisdiction over the Recipient; or (e) is independently developed by Recipient without use of or reference to Confidential Information. Confidential Information shall also include certain personal information related to individuals who are customers, business partners, vendors, or employees of MassHousing, in any and all forms, protected by federal or state law and provisions of MassHousing’s Information Security Program as described in Section 7 of this

Agreement.

4. Term. The confidentiality and non-disclosure obligations set forth in this Agreement shall terminate one (1) year after the date of this Agreement unless this Agreement is superseded by the terms of an agreement relating to the Transaction entered into between the Company and MassHousing (the “Term”).

5. Continuing Obligation and Return or Destruction of Materials. Whether or not the Transaction is consummated, the covenants contained herein pertaining to nondisclosure shall remain in full force for the Term, unless Discloser specifically and in writing agrees to release all or part of Confidential Information from the nondisclosure restrictions imposed herein. Upon conclusion or termination of discussions between the Recipient and Discloser, Recipient shall return immediately to Discloser all materials provided to Recipient by Discloser and constituting Confidential Information except that Recipient shall be permitted to retain one (1) copy of any Confidential Information, which includes but is not limited to emails and/or electronic communication, which copy shall remain Confidential Information and shall not be disclosed by the Recipient unless it is required to do so pursuant to applicable law or by a governmental order, decree, regulation or rule, or pursuant to an audit, examination or regulatory request by a regulator with jurisdiction over the Recipient. Notwithstanding the foregoing, Company acknowledges that as a body politic and corporate, constituting a public instrumentality of The Commonwealth of Massachusetts, MassHousing is required to maintain records in accordance with the Massachusetts Statewide Records Retention Schedule promulgated under the provisions of M.G.L. c. 4, § 42 and c. 66, §§ 1, 8 and 9 and public records as defined in M.G.L. c 4. § 7 and its related regulations.

6. Confidentiality of Discussions. Neither party shall disclose the existence of discussions between the parties or the nature or substance of those discussions unless required to be disclosed under applicable law or by a governmental order, decree, regulation or rule, or pursuant to an audit, examination or regulatory request by a regulator with jurisdiction over the Recipient.

7. Information Security Program. Federal and state laws require that MassHousing maintain an information security program to protect certain personal information related to individuals who are customers, business partners, vendors, or employees of MassHousing. This information includes the following: (1) Personal Information protected by Massachusetts General Law 93H and Code of Massachusetts Regulations 201 CMR 17; (2) nonpublic personal information protected by the Safeguards Rule of the Gramm-Leach-Bliley Act (15 U.S.C. § 6801 et. seq.) and implementing regulations (16 C.F.R. Part 314); (3) consumer reports protected under the federal Fair Credit Reporting Act, as amended by the 2004 FACT Act (15 U.S.C. § 1681 et. seq.); and any other information pertaining to individuals subject to data security, data security breach notification, and identity theft prevention laws. If MassHousing grants the Company access to its networks or otherwise allows the Company to view personal information related to individuals who are customers, business partners, vendors, or employees of MassHousing, the Company shall comply with all federal and state laws protecting such information while working at MassHousing’s facility, while using MassHousing’s protected information, and while connected to MassHousing’s network. The Company acknowledges that it is MassHousing’s policy to employ the services of outside investigative agencies to conduct background checks on individuals with access to its networks and agrees to submit to such background checks of its impacted employees at MassHousing’s request. MassHousing maintains the strict confidentiality of all reports and records related to such investigations. The Company shall comply with MassHousing’s information security program by (i) implementing and maintaining measures designed to meet the information security objectives of federal and state laws; (ii) using and disclosing customer information solely for the purposes of performing this Agreement; and (iii) providing

MassHousing with copies of the results of any internal and external audits or tests of the effectiveness of its information security measures upon MassHousing's request.

8. Injunctive Relief. Recipient acknowledges that the unauthorized disclosure of any part or portion of the Confidential Information or any breach of the provisions hereof may give rise to irreparable injury to Discloser inadequately compensable in damages. Accordingly, Recipient agrees that Discloser may seek and obtain injunctive relief against the breach or threatened breach of the undertakings set forth herein in addition to any other legal or equitable remedies which may be available. Recipient acknowledges and agrees that the covenants and undertakings contained herein are necessary for the protection of Discloser's legitimate business interests and are reasonable in scope and content.

9. Enforceable. The provisions of this Agreement shall be enforceable notwithstanding the existence of any claim or cause of action by either party against the other, whether predicated on this Agreement or otherwise.

10. No Commitments. Neither this Agreement nor the disclosure or receipt of any Confidential Information shall constitute or imply any promise or intention to enter into any particular transaction by either party hereto or its affiliates.

11. No License. No license to any party under any trademark, patent, copyright, or any other intellectual property right is either granted or implied by the disclosure of the Confidential Information.

12. No Waiver. No failure or delay in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise thereof include any other or further exercise thereof or the exercise of any right, power or privilege hereunder. The waiver by any party of any other party's non-compliance with any obligation or responsibility shall be ineffective unless given in writing and shall not be deemed a waiver of other instances of non-compliance or of any party's remedies for such non-compliance.

13. Law and Jurisdiction. This Agreement will be construed in accordance with the substantive law of the Commonwealth of Massachusetts, excluding choice-of-law provisions that would result in the law of any other state being applied.

14. Successors and Assigns. This Agreement shall be binding upon the parties and their respective successors and assigns. No party hereto shall assign or transfer any of its rights or obligations hereunder without the prior written consent of the other party, which may be granted or withheld in the sole discretion of such other party.

15. Counterparts. For the convenience of the parties hereto, this Agreement may be executed in one or more counterparts (including facsimile transmissions), and by different parties on different counterparts with the same effect as if the signatures thereto were on the same original instrument. This Agreement shall be effective and binding upon all parties hereto when all parties have executed a counterpart of this Agreement.

16. Notices. All notices, requests, demands, and other communications (other than routine operational communications) required or permitted hereunder shall be in writing and shall be deemed to have been received by a party (a) when actually received in the case of hand delivery against a signed receipt, (b) two (2) business days after being given to a reputable overnight courier, or (c) upon receipt,

when mailed by first class mail, postage prepaid, and addressed to such party at its address set forth herein (or to such other address as such party may designate in writing).

17. General. This Agreement contains the entire understanding of the parties relating to the subject matter hereof. This Agreement may be modified only by an instrument in writing signed by the parties hereto. This Agreement shall survive the termination of the evaluation of any transaction and the return of the Confidential Information. If any part or portion of this Agreement shall be deemed unenforceable for any reason, the remaining parts or portions of this Agreement shall nonetheless remain enforceable to the maximum extent possible and in any event in any jurisdiction where the enforceability of this Agreement has not been adjudicated.

18. Electronic Signatures. This Agreement may be executed by electronic signature, which shall be considered as an original signature for all purposes, shall be binding on the parties and shall have the same force and effect, for all purposes, as an original signature. Without limitation, in addition to electronically produced signatures, "electronic signature" shall include faxed versions of an original signature or electronically scanned and transmitted versions (e.g., via pdf) of an original signature.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the date written above.

\_\_\_\_\_  
[Company]

**Massachusetts Housing Finance Agency**

By: \_\_\_\_\_  
Name:  
Title:

By: \_\_\_\_\_  
Name:  
Title: