

THE USINGER LAW PRACTICE PLLC

UGP

NYSAFAH 2022 NYC Summer Conference

# Construction Lender/ Letter of Credit Issuer Considerations

- Have the parties agreed to the structure?
  - Permanent Lender (HDC, HPD, NYCERS Lender, Fannie/Freddie Lender, etc.)
  - LIHTC Investor
  - LIHTC Investor counsel
  - Non-Profit Partner Concerns
- What are the permanent lender's conversion requirements?
- Construction Lender milestone schedule (loan document covenants)



NEW YORK CITY  
HOUSING DEVELOPMENT  
CORPORATION

## **CONSTRUCTION AND PERMANENT FINANCING COMMITMENT AND AGREEMENT**

3. Subsequent to the Construction Loan Closing but prior to the date that the building is "placed in service" for purposes of Section 42 of the Code, (i) the Project shall be subject to a condominium declaration and by-laws establishing a condominium under Article 9-B of the New York Real Property Law (the "Condominium Documents") and the Condominium shall be effective (ii) the beneficial ownership of the LIHTC Condo Unit will be conveyed to the LIHTC Borrower, as beneficial owner, and the HDC, as leasehold owner (as provided for in the Nominee Agreement), ii) the beneficial ownership of the Middle-Income Condo Unit will be conveyed to the Non-LIHTC Borrower, as beneficial owner, and the HDC, as leasehold owner (as provided for in the Nominee Agreement) and iii) the LIHTC Master Lease will be terminated of record.

4. The Condominium Documents shall establish two condominium units (the "Condo Units") in the building: (i) a condominium unit containing the Tax Code Units (the "LIHTC Condo Unit" and (ii) a condominium unit containing the Non-Tax Code Income-Restricted Units and appurtenant interests (the "Middle Income Unit" and together with the LIHTC Unit "the Condominium"). The Condominium Documents shall be satisfactory in form and content to HDC and the Construction Servicer and shall be submitted to HDC and the Construction Servicer for review and approval prior to their execution and recording. The Condominium Documents must provide, among other provisions, that the Mortgage, the Additional Mortgage and the HDC City Participation Mortgage shall control as to insurance, condemnation, and damage and restoration matters with respect to the Project, and as to any other matters requiring mortgagee consent. HDC will not unreasonably withhold or delay its approval of the Condominium Documents. The Borrower shall be permitted to amend, modify and/or restate the Condominium Documents so long as (i) the Condominium Documents require and the Borrower obtains the prior written approval of HDC, which (subject to clause (ii) which follows) shall not be unreasonably withheld, and (ii) the amendment, modification or restatement does not, in HDC's sole judgment, materially adversely affect the Bonds or HDC's rights under the Condominium Documents or the Loan Documents. The Borrower agrees to pay all costs and expenses of HDC with respect to the Condominium Documents. The Condominium Declaration must be declared effective as a condition for the LOC Release. HDC will subordinate the Mortgage and Additional Mortgages to the Condominium Declaration (but the Mortgage and Additional Mortgages will retain their priority as encumbrances against the Condo Units).

**Condominium.** Prior to the receipt of a certificate of occupancy, it is required that Borrower's and Nominee's leasehold interest in the Premises be subjected to the condominium form of ownership, such condominium to consist of the Low Income Unit and the Middle Income Unit, and which condominium shall be validly formed and existing under the Condominium Act. Borrower shall:

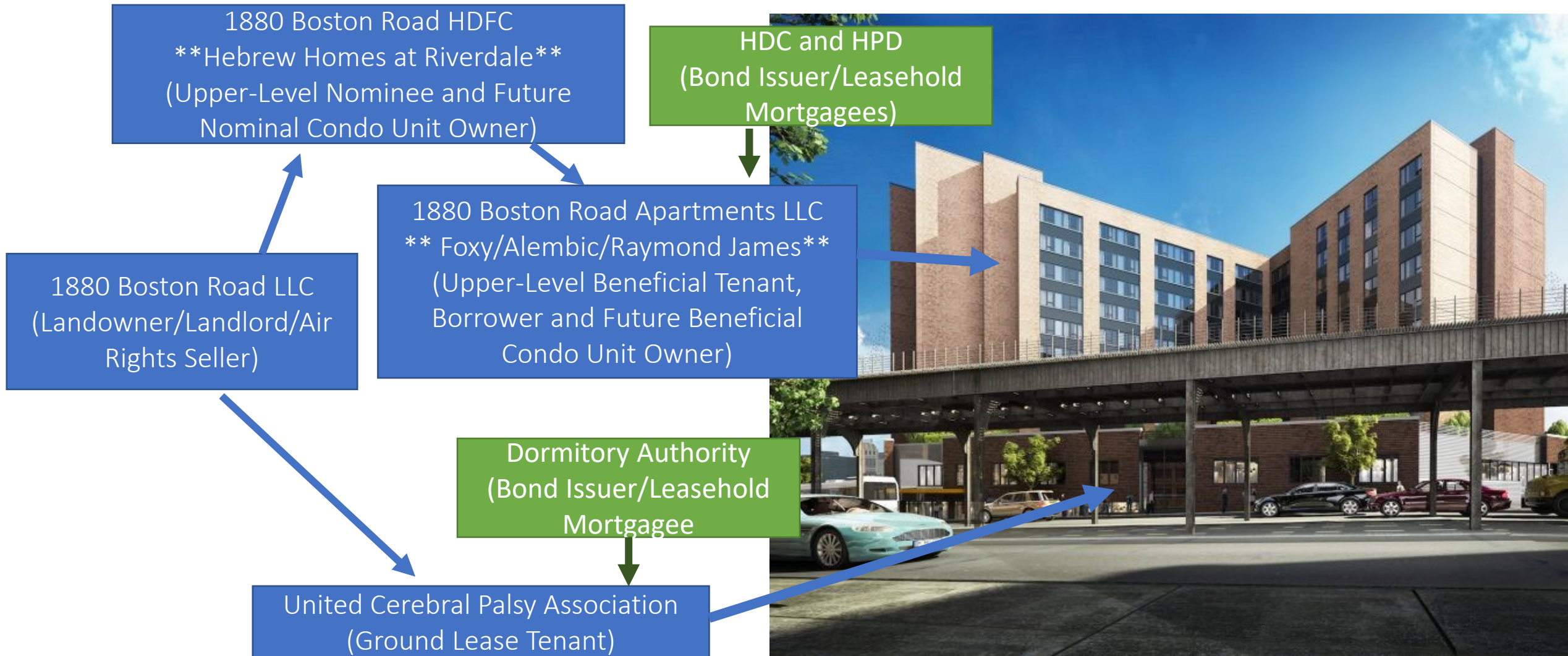
- (i) within six (6) months following the date hereof, obtain a "No Action Letter" with respect to the condominium from the office of the Attorney General of the State of New York.
- (ii) within six (6) months following the date hereof, provide drafts of the Condominium Documents to Lender, Servicer and Lender's counsel to review and approval.
- (iii) within twelve (12) months following the date hereof, Borrower and Lender shall finalize the Condominium Documents, provided that Lender shall respond promptly and in good faith to all draft Condominium Documents.
- (iv) within twenty-four (24) months following the date hereof, and in no event later than the date that Borrower submits its application for the issuance of a temporary or permanent certificate of occupancy for the Improvements, subject the Premises to the condominium form of ownership, record the Condominium Documents and convey beneficial interest in the Low Income Unit to the Low Income Unit Owner.

The Condominium Documents shall contain all of the required provisions set forth in the HDC Commitment. Once approved by Lender, Servicer and Lender's Counsel, the Condominium Documents may not be materially amended, modified or changed without Lender's consent which consent shall not be unreasonably withheld, conditioned or delayed (to the extent not inconsistent with the HDC Commitment).

**"Condominium Documents"** – Collectively, a declaration of condominium and by-laws for the leasehold interest in the Premises, to be effective and recorded, as the case may be, prior to the date upon which Borrower shall apply for a temporary or permanent certificate of occupancy for the Premises, which will convert the leasehold interest in the Premises into two condominium units consisting of the Middle Income Unit and the Low Income Unit and appurtenant common areas and amenities.

# Title Insurance Considerations

# 1880 Boston Road



# Issues: lots of them

- How will the building be constructed?
- Who gets to sign off on the plans?
- When and at what times will construction work take place?
- What rights has the owner granted to the developer to obtain permits and mortgage the property?
- Who will maintain insurance?
- Who gets insurance proceeds if there is a casualty?
- Against what property can the regulatory agreement be recorded?
- What rights does the ground floor tenant's lender (DASNY) have?
- When will the condominium be formed?
- What rights do all of these parties have after the lease is formed?



## OMNIBUS MULTIPARTY AGREEMENT

This OMNIBUS MULTIPARTY AGREEMENT (this "Agreement"), dated as of [redacted], is made by and among 1880 BOSTON ROAD LLC, a New York limited liability company, having an address at 1100 E. 156<sup>th</sup> Street, Bronx, New York 10474 ("Owner"), DORMANT AUTHORITY OF THE STATE OF NEW YORK, a body corporate and politic of the State of New York, constituting a public benefit corporation created pursuant to Title 4 of Article 8 and Title 4B of the Public Authorities Law of the State of New York, as amended, having an office at 515 Broadway, New York, NY 12207 (as more fully defined below, "DASNY"), UNITED CEREBRAL PALSY ASSOCIATIONS OF NEW YORK STATE, INC., a New York not-for-profit corporation having an address at 330 W. 34<sup>th</sup> St., New York, NY 10001 (as more fully defined below, "UCP"), TD BANK, N.A., a national association having an address at 125 Park Ave., New York, NY 10017 (as more fully defined below, "Bondholder"), 1880 BOSTON ROAD APARTMENTS LLC, a New York limited liability company having an address c/o Foxy Management, Ltd., 500 Trinity Avenue, Suite 1B, Bronx, New York 10455 (as more fully defined below, "Developer"), 1880 BOSTON ROAD HOUSING DEVELOPMENT FUND CORPORATION, a New York not-for-profit housing development fund corporation having an address c/o The Hebrew Home for the Aged at Riverdale, 5901 Palisade Avenue, Riverdale, New York 10471 (as more fully defined below, "Nominee"), NEW YORK CITY HOUSING DEVELOPMENT CORPORATION, a corporate governmental agency constituting a public benefit corporation of the State of New York, having its principal office at 110 William Street, New York, New York 10038 (as more fully defined below, "HDC"), TD BANK, N.A., a national association having an address at 125 Park Ave., New York, NY 10017 (as more fully defined below, "Bank"), and THE CITY OF NEW YORK ACTING BY AND THROUGH ITS DEPARTMENT OF HOUSING, PLANNING AND PRESERVATION AND DEVELOPMENT, having an address at 100 Gold Street, New York, New York 10038 (as more fully defined below, "HPD").

## BACKGROUND

1. The Owner is the owner of the Premises upon which the portion of which has been leased to UCP pursuant to [redacted]

## **2. CONTINUATION OF INSURANCE**

The coverage of this policy shall continue in force as of Date of Policy in favor of an Insured, but only so long as the Insured retains an estate or interest in the Land, or holds an obligation secured by a purchase money Mortgage given by a purchaser from the Insured, or only so long as the Insured shall have liability by reason of warranties in any transfer or conveyance of the Title. This policy shall not continue in force in favor of any purchaser from the Insured of either (i) an estate or interest in the Land, or (ii) an obligation secured by a purchase money Mortgage given to the Insured.

3. Title to the estate or interest in the land is vested by:

A. As to the Fee Interest:

1880 Boston Road LLC, a New York limited liability company

By DEED made by Boston Rd. Realty Corp. dated October 14, 2009 and recorded October 23, 2009 in CRFN: 2009000346875 in the Office of the City Register of the City of New York, Bronx County.

B. As to the Nominal Leasehold Interest:

1880 Boston Road Housing Development Fund Corporation, a New York not-for-profit housing development fund corporation

By virtue of the certain Lease dated as of December 30, 2016 and entered into by and among 1880 Boston Road LLC, as Landlord, and 1880 Boston Road Housing Development Fund Corporation and 1880 Boston Road Apartments LLC, as Tenants, as evidenced by that certain Memorandum of Lease dated as of December 30, 2016, as the same is to be duly recorded in the Office of the City Register of the City of New York, Bronx County (the "Ground Lease").

C. As to the Equitable and Beneficial Leasehold Interest:

1880 Boston Road Apartments LLC, a New York limited liability company

By virtue of that certain Declaration of Interest and Nominee Agreement dated as of December 30, 2016 and entered into by and between 1880 Boston Road Housing Development Fund Corporation and 1880 Boston Road Apartments LLC and to be duly recorded in the Office of the City Register of the City of New York, Bronx County (the "Nominee Agreement").

D. As to a Contingent Fee Interest in a Condominium Unit:

1880 Boston Road Housing Development Fund Corporation, a New York not-for-profit housing development fund corporation.

By virtue of Section 29 of the Ground Lease.

E. As to a Contingent Equitable and Beneficial Interest in a Condominium Unit:

1880 Boston Road Apartments LLC, a New York limited liability company

By virtue of Section 29 of the Ground Lease and the terms of the Nominee Agreement.

F. As to a Fee Interest in a Condominium Unit:

1880 Boston Road Housing Development Fund Corporation, a New York not-for-profit housing development fund corporation.

Such Fee Interest in a Condominium Unit being by virtue of, and commencing upon the recordation of, (i) a declaration establishing a plan pursuant to Article 9-B of the Real Property Law of the State of New York for condominium ownership and (ii) deed given by 1880 Boston Road LLC to 1880 Boston Road Housing Development Fund Corporation, such insured interest to be evidenced by the insurer's issuance of a Condominium Endorsement (ALTA 4).

G. As to an Equitable and Beneficial Interest in a Condominium Unit:

1880 Boston Road Apartments LLC, a New York limited liability company

Such Equitable and Beneficial Interest in a Condominium Unit being by virtue of the Nominee Agreement by and between 1880 Boston Road Housing Development Fund Corporation and 1880 Boston Road Apartments LLC, and commencing upon the recordation of, (i) a declaration establishing a plan pursuant to Article 9-B of the Real Property Law of the State of New York for condominium ownership and (ii) deed given by 1880 Boston Road LLC to 1880 Boston Road Housing Development Fund Corporation, such insured interest to be evidenced by the insurer's issuance of a Condominium Endorsement (ALTA 4).

29. **CONDOMINIUM; COOPERATION.** Prior to placement in service of the Improvements, the Tenant and the Landlord intend to subject the Premises (including the portions of the Premises subject to the Current Leases and this Lease) to the condominium form of ownership (the "**Condominium Conversion**"). Upon recording of the Condominium Documents (as hereinafter defined), the Premises shall consist of (A) Commercial Unit, (B) Community Facility Unit and (C) Residential Unit ((A)-(C), as each are defined in the Condominium Documents, are each, individually, a "**Condominium Unit**"). In connection therewith, the Parties hereby acknowledge, consent and agree to: (a) the execution and recordation of the following documents: (i) a declaration of condominium and by-laws for the condominium association (collectively, the "**Condominium Documents**"), (ii) a subordination of the DASNY Mortgages to the foregoing declaration of condominium, (iii) a subordination of the HDC Mortgages to the foregoing declaration of condominium, (b) the filing of floor plans of the Building showing the layout, location, approximate dimensions, and designation of each Condominium Unit and all necessary filings in connection with the tax lot subdivision to reflect that each such Condominium Unit consists of a single tax lot, (c) the submission to the Investment Protection Bureau of the New York State Office of the Attorney General of that certain no action application, and (d) the submission to the New York City Department of Finance of an RP-602 Tax Lot Apportionment Form. In the event Landlord cannot or does not for any or no reason cause the Condominium Conversion, the Landlord hereby grants a power of attorney to the Tenant to act on Landlord's behalf to cause the Condominium Conversion. Upon the Condominium Conversion, this Lease shall terminate and fee interest in the Residential Unit shall immediately transfer from Landlord to Tenant and the leasehold security interest in the Financing Documents shall transfer immediately from the leasehold estate described herein to the fee interest estate in the Residential Unit. Additionally, Landlord agrees to cooperate with Tenant in effectuating the Condominium Conversion as Tenant may reasonably require including, without limitation, paying all real estate taxes when due and executing applications for the Condominium Conversion if the signature of the Landlord is required.

For more information:

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