

LIMITED DIVIDEND MONITORING SERVICES AGREEMENT

***For Comprehensive Permit Projects in Which Funding is Provided
Through Other than a State Entity***

This Monitoring Services Agreement (this "Agreement") is made as of September 24, 2012, by and between the Massachusetts Housing Finance Agency acting as Subsidizing Agency as defined under the provisions of 760 CMR 56.02 (the "Subsidizing Agency"), and Kimloch Farm, LLC, a Massachusetts limited liability company, having an address at 390 Goodrich Street, Lunenburg, MA 01462, and its successors and assigns ("Developer").

RECITALS

WHEREAS, the Developer intends to construct a housing development known as Kimloch Farms (the "Project") consisting of 8 for-sale condominium units at a 6-acre site located at 120 Goldsmith Street in the Town of Littleton (the "Municipality"); and

WHEREAS, the Project is being financed with a \$812,500 construction loan (the "Loan") by a non-governmental entity for which the Massachusetts Housing Finance Agency acts as Subsidizing Agent pursuant to Massachusetts General Laws Chapter 40B, and the regulations at 760 CMR 56.00 and the Comprehensive Permit Guidelines issued pursuant thereto (the "Comprehensive Permit Rules"), and is subject to a Regulatory Agreement between the Subsidizing Agency and the Developer (the "Regulatory Agreement"); and

WHEREAS, the Developer has received a comprehensive permit (the "Comprehensive Permit") from the Zoning Board of Appeals of the Municipality in accordance with Chapter 40B, Sections 20-23, of the Massachusetts General Laws (the "Act"), which permit is recorded at the Middlesex South County Registry of Deeds ("Registry") in Book 59734, Page 499, as amended; and

WHEREAS, pursuant to the requirements of the Comprehensive Permit Rules and the Regulatory Agreement, the Developer may not receive profit in excess of twenty percent (20%) of Total Development Costs (as defined in the Regulatory Agreement) or must distribute the excess as required by the Regulatory Agreement (the "Limited Dividend Requirement"); and

WHEREAS, the Developer has agreed that the Subsidizing Agency will perform certain administration, monitoring and enforcement services regarding compliance of the Project with the Guidelines.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto, intending to be legally bound, hereby agree as follows:

1. Monitoring Services. Subsidizing Agency shall monitor the compliance of the Developer with the Limited Dividend Requirement, as more fully described herein.

(a) Limited Dividend Requirement. In accordance with Section 4 of the Regulatory Agreement, the Developer agrees to deliver to the Subsidizing Agency the Cost Examination, as defined in the Regulatory Agreement, at the times required thereunder. The Subsidizing Agency agrees to review the adequacy and completeness of the Cost Examination and determine the Developer's substantive compliance with the Limited Dividend Requirement in accordance with the rules of the Subsidizing Agency. If all of the units in the Project have not been sold at the time the Developer is required to deliver the initial Cost Examination to the Subsidizing Agency, the Subsidizing Agency shall continue to review the subsequent Cost Examinations delivered pursuant to the Regulatory Agreement until all of the units are sold and compliance with the Limited Dividend Requirement can be determined. If units are sold prior to approval of the initial Cost Examination, the provisions of Section 4(d) of the Regulatory Agreement shall apply. The Subsidizing Agency shall make the final determination as to whether the Limited Dividend Requirement has been met and shall notify the Municipality of its determination.

2. Monitoring Services Fee. The Subsidizing Agency shall receive a fee of \$5,000 from the Developer at the time of execution of this Agreement. Such fee shall constitute payment for the services of the Subsidizing Agency with respect to determination of compliance by the Developer with the Limited Dividend Requirement.

3. Enforcement Services. In the event of serious or repeated violations of the substantive or reporting requirements of the Regulatory Agreement or a failure by the Developer to take appropriate actions to cure a default under the Regulatory Agreement, the Subsidizing Agency shall have the right to take appropriate enforcement action against the Developer, including, without limitation, legal action to compel the Developer to comply with the requirements of the Regulatory Agreement. The Regulatory Agreement provides for payment by the Developer of fees and expenses (including legal fees) of the Subsidizing Agency in the event enforcement action is taken against the Developer thereunder and grants to the Subsidizing Agency a lien on the Project, junior to the lien securing the Loan, to secure payment of such fees and expenses. The Subsidizing Agency shall be entitled to seek recovery of its fees and expenses incurred in enforcing the Regulatory Agreement against the Developer and to assert a lien on the Project to secure payment by the Developer of such fees and expenses.

4. Term. The monitoring services are to be provided until the Subsidizing Agency has made a determination as to whether the Limited Dividend Requirement has been met.

5. Responsibility of Subsidizing Agency. The Subsidizing Agency shall not be held liable for any action taken or omitted under this Agreement so long as it shall have acted in good faith and without gross negligence.

6. Successor Acting Subsidizing Agency. The acting Subsidizing Agency shall have the right to appoint a successor to monitor compliance with the Limited Dividend Requirement for the remaining term of this Agreement.

7. Indemnity. The Developer agrees to indemnify and hold harmless the Subsidizing Agency and the Municipality against all damages, costs and liabilities, including reasonable attorney's fees, asserted against the Subsidizing Agency or the Municipality by reason of its relationship with the Project under this Agreement and not involving the Subsidizing Agency or the Municipality acting in bad faith and with gross negligence.

8. Applicable Law. This Agreement, and the application or interpretation hereof, shall be governed by the laws of The Commonwealth of Massachusetts.

9. Binding Agreement. This Agreement shall be binding on the parties hereto, their heirs, executors, personal representatives, successors and assigns.

10. Headings. All paragraph headings in this Agreement are for the convenience of reference only and are not intended to qualify the meaning of the paragraph.


11. Third-Party Beneficiaries. The Subsidizing Agency, the holder of the mortgage securing the Loan (for so long as the Loan is outstanding) and the Municipality shall be entitled to enforce this Agreement and may rely on the benefits of this Agreement.

12. Entire Agreement. This Agreement supersedes all prior agreements between the parties with respect to the limited dividend monitoring of the Project, whether oral or written, including without limitation, all correspondence between the parties and between counsel for their respective parties. This Agreement constitutes the sole and entire agreement between the parties hereto with respect to the subject transaction, and the rights, duties, and obligations of the parties with respect thereto.

13. Definitions. Any capitalized term used and not defined herein shall have the same meaning as set forth in the Regulatory Agreement.

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

KIMLOCH FARM, LLC, as Developer as aforesaid

By: 
Name: William D. Chisholm
Title: Manager

MASSACHUSETTS HOUSING FINANCE AGENCY, as
Subsidizing Agency aforesaid

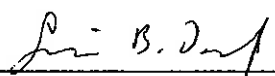
By: 
Gina B. Dailey, Director of Comprehensive Permit
Programs

EXHIBIT D

Affordability Monitoring Services Agreement

(see attached)