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Strategies for dealing with expiring use properties

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Northeastern University's Center for Urban and Regional Policy ("CURP") estimates that up to one third of Massachusetts' total affordable housing supply of 130,000 units is in jeopardy of losing its affordable status. Accordingly production of new and preservation of old affordable housing units will be necessary to at least maintain the current inventory. Preservation transactions are market driven solutions meant to create a profitable alternative to the conversion of affordable units to market-rate uses. The 2006 Massachusetts Qualified Allocation Plan ("QAP"), which details the criteria for annual low income housing tax credit ("LIHTC") allocations, recognizes that replacement cost far outweighs the cost of preserving existing affordable housing, and currently sets aside 35% of its annual allocation for large-scale projects and preservation projects. CURP also reports that Massachusetts currently has in excess of 172,300 renter households needing units priced below \$500 per month, but a total affordable housing stock of only 130,000 units.

Rental complexes built in the mid 1960's with federal/state subsidy contracts or financing are now nearing the end of their affordability restrictions, subsidy contracts, and subsidized mortgage terms. Owners of other projects are invoking prepayment/opt-out provisions. Between now and 2010, more than 18,000 affordable units in 42 Greater Boston communities are at risk of conversion to market-rate. Unless steps are taken to preserve their current status, these properties will very likely be converted to market-rate housing. In addition, much of the region's public housing stock requires additional investment to allow it to preserve its functionality and extend its life.

Having made progress to create affordable housing units over the years, communities now may find themselves needing to work closely with developers to create incentives to preserve the affordability of many units. Preservation transactions may take a number of forms, e.g., through the use of developer-directed financing tools, such as LIHTC's and tax-exempt bond financing, or through property-based government assistance tools, such as Section 8 tenant and project based vouchers, National Housing Act Section 236 and 221(d)(3) programs¹, and HUD 202 refinancings.

Developer-Directed Programs include the acquisition or

resyndication of tax credits. In order to qualify for these programs:

1. The project must be purchased from an unrelated (less than 10%) owner of the units being acquired;

2. The project must satisfy a 10-year hold period (i.e. the period between the date of acquisition of the project by the taxpayer and the later of (a) the date the project was last placed-in-service or (b) the date of the most recent nonqualified substantial improvement of the project; and

3. The project must be "substantially rehabilitated" (i.e. incurring rehabilitation expenditures with respect to the project which exceed the greater of (i) \$3,000 per unit² or (ii) 10% of the project's adjusted basis (calculated before any rehabilitation expenditures are made).

Four Project-Directed Programs of interest are:

1. Section 8 Project based Voucher Programs: (a) Mark-up-to-Market (For-Profit owners receive incentives to mark-up below-market rents to market rates to remain in the Section 8 Program); and (b) Mark-up-to-Budget (Non-Profit owners mark up below-market rents to market rents for acquisition/rehabilitation purposes).

2. Section 236 Programs: (a) Retention/Decoupling (refinances an original HUD issued mortgage while continuing IRP payments in consideration for extended affordability); and (b) Pooling (recaptures IRP subsidies from pre-

payments and recycles them into grants/ loans).

3. Section 221 (d)(3) Program, a Below Market Interest Rate ("BMIR") program for affordable housing developers.

4. Section 8 Tenant Based Voucher Program, in which enhanced vouchers pay an owner the increased market rent if the tenant remains in the unit.

Affordable housing advocates make the case that these programs not only provide benefits to some of the most important but traditionally lower compensated segments of our populace (e.g., first responders, teachers, medical support professionals, and the elderly), but that they also provide a stimulus to the general real estate market. The redevelopment of Maverick's Landing in Boston (an old public housing project), which is now stimulating market-rate housing development, is but one example.

(Footnotes)

¹Enacted in the Kennedy/Johnson era, Section 236 provided for an Interest Reduction Payment ("IRP") to subsidize affordable housing construction. 236 loans that are prepaid, can have the IRP decoupled and attached to a new loan (per Section 236(e)), or retained per Section 236(b).

² \$35,000 per unit in Massachusetts.

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