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The benefits for a developer obtaining OneSource construction and permanent financing

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In arranging financing for construction or renovation projects, a developer is sometimes able to obtain a commitment for both construction and permanent financing from a single lender. More frequently, however, separate lenders make the construction and permanent loans. Among other reasons, a construction lender may need to recycle the loan funds for other projects, and a permanent lender may be unwilling to take construction risk.

The construction lender generally is (and should be) keenly interested in the permanent lender's pre-conditions for making its loan, since the permanent loan repays all or most of the construction loan. Most construction lenders will not rely on the permanent lender's commitment alone, since commitment letters often contain numerous qualifications which the developer cannot negotiate. Accordingly, the construction lender typically requires the permanent lender to enter into a tri-party agreement with the construction lender and developer, wherein the permanent lender confirms its approval of enumerated due diligence items and preapproves forms of permanent loan documents. This process creates two potential problems for the developer. First, there can be extensive negotiations between the construction and permanent lenders over the tri-party agreement which the developer cannot control. Second, because the permanent lender is being asked to approve due diligence matters at the construction loan stage, the developer and its counsel must respond to two sets of comments, one from each of the construction and permanent lenders. This task can be especially burdensome in affordable housing transactions which typically already involve multiple loan and equity sources due to the economics of affordable housing development.

Massachusetts Housing Partnership (MHP), a major quasi-public affordable housing lender in the state, developed an innovative response to the construction lender/permanent lender conundrum. Under MHP's OneSource program, a single set of loan documents sets forth the terms of both construction and permanent loans. In OneSource transactions, MHP acts as permanent lender and another institution acts as construction lender. A single law firm represents the construction and permanent lenders, thereby avoiding the possibility of multiple or conflicting due diligence requirements. Instead of a tri-party agreement, a standardized exhibit to the loan agreement lists the preconditions to MHP making the permanent loan. The coordinated closing process results in lower costs, fewer delays, and less aggravation for the developer.

Bank of America (BofA) has proven to be an extremely effective OneSource lender. BofA has a strong community development banking division with a longstanding relationship with MHP.

MHP's and BofA's collaboration as OneSource lenders was very much in evidence in the recent Ames Shovel financing in Easton. Our firm, Krokidas & Bluestein, was privileged to serve as joint counsel to BofA and MHP in this transaction. In a nutshell, the project entails the conversion of the former Ames Shovel factory, named by the National Trust for Historic Preservation as one of the

nation's most endangered historic places, into a 113-unit mixed affordable/market housing development. The project's developer, Beacon Communities LLC, has a well-deserved stellar reputation for affordable housing development and preservation. The development program necessitated multiple debt and equity financing vehicles including soft state loans, federal and state tax credits (purchased by BofA) and critical assistance from the town of Easton; tiered condominiums; a master lease for historic tax credit purposes; regulatory agreements; conservation and preservation restrictions; the town's construction of a wastewater treatment plant on-site; and bifurcated ownership and financing for the affordable and market components upon condominium creation. As senior construction/permanent financing, the OneSource loan provided some welcome streamlining in an otherwise extremely complex - albeit tremendously worthwhile and interesting - transaction.

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