



MEMORANDUM

TO: Ms. Lisa Wong, Town Manager, Winchester, MA
FROM: Lynne D. Sweet, Principal, LDS Consulting Group, LLC
RE: Peer Review of Financial Pro-Forma
DATE: September 27, 2021

At the September 20, 2021 task force meeting I went through my September 13, 2021 memo, listened to comments and questions from the task force, and outlined a number of follow up items related to my review for the development team to address. The results are below:

- 1) How are the year 15 recapitalization proceeds calculated? It is essentially a two-step process. The first step is to determine the amount of money that is due to the investor and the second step is to determine the refinance proceeds. I have provided a sample illustration below based on a year 15 refinance and the 20-market rate/40 LIHTC model:

Step 1:

Value Calculation for Investor Exit	
Year 15 NOI	\$ 1,171,225
Cap Rate	6.50%
Project Value	\$ 18,018,846
Outstanding Debt	
Winchester Debt	579,776
State Subordinate Debt	5,021,973
Senior Debt	8,250,425
Total Outstanding Debt	\$ 13,852,174
Net Value	\$ 4,166,672
Less Asset Management Fee	
Less Investor Member Contribution*	
Less Deferred Developer Fee	
Less Company management fee*	
Less Operating Expense Loans Outstanding	
Less Replenishing Operating Reserve/Repairs	1,800,000
Balance:	2,366,672
10% to Investor Member	236,667
Remaining Balance to Managing Member	

**** Assumes asset management fee and company management fee is paid yearly from cash flow, if it can't be paid from cash flow, it would be paid at recapitalization***

This is the calculation for the tax credit investor to exit the deal. It is totally dependent on who the tax credit investor is, and what is negotiated. The agreement between the tax credit investor and the developer is documented in the partnership agreement. I have attached provisions from 3 separate partnership agreements to illustrate not only how different each agreement is, but how complicated determining these numbers can be.

Step 2:

Refinance Proceeds		
New Loan		\$14,675,349
New Loan Interest Rate		4.50%
Use of Loan Proceeds		
Repay Senior Debt		8,250,425
Fund Replacement Reserve/Repairs		1,800,000
Payoff Investor Member		236,667
Pay fees (see to the left)		-
Remaining		4,388,257
50% to repayment of Public Loans		2,194,128
Remaining		2,194,128
85% to Civico		1,865,009
15% to Town per LDA		329,119
Public Debt Repayment (from above)		
75% to State		1,645,596
25% to AHT		548,532

In this scenario, the developer has maximized debt service. In other words, based on NOI, the developer has borrowed as much as new lender will allow. The balance due on the old loan will be paid off, and the developer will enter into a new loan for 15-20 years. It will be a negotiation with the state as to how much of their subordinate debt they will agree can be paid off. In this case, we have estimated that 50% of the soft debt will be paid off. In addition, almost all of the Winchester Affordable Housing Trust Funds will be paid off. Prior to the refinance, the lender will perform a capital needs assessment. In most cases, the accumulated reserves are not enough to make the

necessary repairs, therefore the reserves will be depleted and will need to be recapitalized.

- 2) What is potential revenue to the Town and to Civico years 1-15?
 a. Based on 20 Market Units and 40 Units at or Below 60% of AMI and the waterfall/refinance describe previously:

Year 15
 20 Market/40 LIHCT

CIVICO

Asset Management Fee	\$	287,984
Return on Parking Investment	\$	606,761
Developer Fee and Overhead*	\$	2,670,000
Cash flow**	\$	1,371,079
Refinance	\$	1,865,009
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Total Year 1-15	\$	6,800,833

Town

Initial Lease Payment	\$	1,000,000
One Time Building Permit Fees	\$	204,298
40 Space Parking Garage	\$	2,800,000
Real Estate Taxes	\$	3,066,742
Supplemental Base Rate	\$	304,684
Refinance	\$	329,119
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Total Year 1-15	\$	7,704,843

500,000 @5% Interest

AHTF Loan Payback annually	\$	342,770
Repayment at Refinance	\$	548,532
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Total Repayment	\$	891,302

*This assumed the project delivers on time and on budget

**This is the maximum potential number, there will be many parties competing for this money including the state and tax credit investors, so it is a negotiation.

- 3) **What would happen if you made the 80% units market?** You essentially lose the contribution to build the unit that the tax credit brings in if you keep the same size unit. The only way this might help the pro-forma would be to make them larger units, for example, change a studio unit to a three-bedroom unit. This would take up more physical space, make the building taller and then require more parking. The developer arrived at the bedroom mix to be responsive to the requirements in the towns RFP.

We have asked the developer to provide pro-formas as follows:

- 1) 20 Market/40 LIHTC
- 2) 51% Affordable/49% Market
- 3) 100% Affordable

Sample Partnership Provisions:

Sample 1:

Distributions: Capital Transactions and Liquidation of Partnership. Except as may be required under Section 12.02(b), the proceeds resulting from the liquidation of the Partnership assets pursuant to Section 12.02, and the net proceeds resulting from any Capital Transaction, as the case may be, shall be distributed and applied in the following order of priority:

to the payment of all matured debts and liabilities of the Partnership (including amounts due pursuant to any Project Loan and all expenses of the Partnership incident to any such sale or refinancing), excluding (1) debts and liabilities of the Partnership to Partners or any Affiliates that are not Project Loans, and (2) all unpaid fees owing to the General Partner under this Agreement;

to the setting up of any reserves which the Liquidator (or the General Partner if the distribution is not pursuant to the liquidation of the Partnership) deems reasonably necessary for contingent, unmatured or unforeseen liabilities or obligations of the Partnership;

to the payment of any debts and liabilities (including unpaid fees) owed to the Partners or any Affiliates by the Partnership for Partnership obligations (to extent not previously paid under Section 11.04(a)); provided, however, that the foregoing debts and liabilities owed to Partners and their Affiliates shall be paid or repaid, as applicable, in the following order of priority, if and to the extent applicable: (i) to the Limited Partner, an amount equal to (A) any Unpaid Tax Credit Shortfall (applied first to accrued but unpaid interest (at the Default Rate) and then principal) or (B) LP Loans; (ii) to the payment of any outstanding accrued and unpaid Asset Management Fees; (iii) to the Limited Partner, an amount equal to any Special Additional Capital Contribution; (iv) to the payment of any outstanding GP Loans; (v) to the payment of amounts due under the Development Agreement; (vi) to repayment of the ACHC Loan; (vii) to the payment of any outstanding accrued and unpaid CG Asset Management Fees; (viii) to amounts due with respect to Operating Deficit Loans, if any; and (ix) any other such debts and liabilities;

to the Special Limited Partner or its assignee, a Capital Transaction administrative fee equal to the lesser of (i) \$20,000 or (ii) one percent (1%) of the gross proceeds of the Capital Transaction;

to the Limited Partners in proportion to the relative amounts of Net Projected Tax Liabilities of the Limited Partner's partners or members and their respective partners or members until they each have received, cumulatively, an amount equal to their respective Net Projected Tax Liabilities; and

the balance, 90% to the General Partner, 9.99% to the Limited Partner, and .01% to the Special Limited Partner.

Written determination of the proposed distributions of proceeds of Capital Transactions, showing all relevant calculations and assumptions, shall be delivered to the Limited Partner and Special Limited Partner not later than 20 days prior to the Partnership entering into any agreement for a Capital Transaction, and written confirmation or any revision thereof shall be delivered to the

Limited Partner and Special Limited Partner not later than 20 days prior to the making of any such distribution.

Sample 2:

Distributions of other than Cash Flow

Prior to dissolution, if the General Partners shall determine from time to time that cash is available for distribution from a Capital Transaction, such cash shall be applied or distributed as follows:

First, to the payment of all matured debts and liabilities of the Partnership (including, but not limited to, all expenses of the Partnership incident to the Capital Transaction), excluding (i) debts and liabilities of the Partnership to Partners or their Affiliates and (ii) all unpaid fees owing to the General Partners or their Affiliates; and to the establishment of any reserves which the General Partners and the Auditors shall deem reasonably necessary for contingent, unmatured or unforeseen liabilities or obligations of the Partnership;

Second, to the payment to the Investment Limited Partner of the full amount (including interest) of any unpaid Adjuster Amounts;

Third, to the payment of any accrued and unpaid Asset Management Fees;

Fourth, to the repayment of any then-unpaid debts and liabilities owed to Partners or Affiliates thereof by the Partnership for Partnership obligations (exclusive of Operating Deficit Loans) to any of them, including, but not limited to, any unpaid Deferred Development Fee and the Partnership Administration Fee for the fiscal year of the Capital Transaction; provided, however, that any debts or obligations to be repaid to any Limited Partner or Affiliate thereof pursuant to this Clause Fourth shall be repaid prior to the repayment of any such debts or obligations to any General Partner or Affiliate thereof;

Fifth, to the repayment of any Operating Deficit Loans;

Sixth, any balance 9.999% to the Investment Limited Partner, 0.001% to the Special Limited Partner and 90% to the General Partners.

The foregoing Clauses Second and Sixth of this Section 10.3(b) are the “Capital Distribution Clauses”.

Sample 3:

LOANS; MORTGAGE REFINANCING; PROPERTY DISPOSITION

Section 9.1 General

A. The Company shall be authorized to obtain the Mortgage Loans to finance the acquisition, development and construction of the Property and (to the extent permitted by the Lender) shall secure the same by the Mortgages. Except as set forth in the Project Documents as they exist on the date of Investment Closing, each Mortgage shall provide that no Member or Related Person shall bear the Economic Risk of Loss for all or any part of such Mortgage Loans. Notwithstanding anything to the contrary herein, the Managing Members shall have no authority to enter into the Permanent Loan without the Consent of the Special Member to the extent the amount thereof exceeds \$2,100,000. All material Mortgage Loan Documents not approved by the Investor Member as of Investment Closing shall be submitted to and approved by the Investor Member prior to execution and delivery thereof.

B. Subject to Section 6.1, the Managing Members are specifically authorized, for and on behalf of the Company, to execute the Project Documents and any permitted amendments thereto and, subject to the limitations set forth herein, such other documents as they deem necessary or appropriate in connection with the acquisition, development, operation and financing of the Property.

C. All Company borrowings shall be subject to Section 6.1, this Article, the Project Documents and the Regulations. To the extent borrowings are permitted, they may be made from any source, including Members and Affiliates. The Company may accept Development Advances as and when permitted pursuant to the Development Agreement, and may issue instruments evidencing Operating Expense Loans.

D. If any Member shall lend any monies to the Company, any such loan shall be unsecured and the amount of any such additional loan shall not be an increase of its Capital Contribution. Until such time as the Managing Members and the Developer shall have performed fully their obligations to make Operating Expense Loans and Development Advances, any loan from a Managing Member or an Affiliate of a Managing Member shall be an obligation of the Company to the Member or Affiliate only if it constitutes an Operating Expense Loan or Development Advance in accordance with the provisions of this Agreement or the Development Agreement, as applicable, and shall be repayable as therein provided. Subject to the preceding sentence, any loans to the Company by a Managing Member or an Affiliate of a Managing Member may be made on such terms and conditions as may be agreed on by the Company, consistent with good business practices.

E. Subject to the provisions of this Agreement with respect to related party loans, the Investor Member or an Affiliate thereof (the Investor Member or its Affiliate being referred to herein as a "Mortgagee Non-Managing Member") at any time may make, guarantee, own, acquire or otherwise credit enhance, in whole or in part, a loan secured by a mortgage, deed of trust, trust deed, or other security instrument encumbering the Property owned by the Company (any such loan being referred to as a "Related Mortgage Loan"). Under no circumstances will a Mortgagee Non-Managing Member be considered to be acting on behalf or as an agent or the

alter ego of the Investor Member. A Mortgagee Non-Managing Member may take any actions that the Mortgagee Non-Managing Member, in its discretion, determines to be advisable in connection with its Related Mortgage Loan (including in connection with the enforcement of its Related Mortgage Loan). Each Member agrees, to the extent permitted by applicable law, that no Mortgagee Non-Managing Member owes the Company or any Member any fiduciary duty or other duty or obligation whatsoever by virtue of such Mortgagee Non-Managing Member being a Non-Managing Member or member in the Investor Member. Neither the Company nor any Member will make any claim against a Mortgagee Non-Managing Member, or against the Investor Member in which the Mortgagee Non-Managing Member is a partner or member, relating to a Related Mortgage Loan and alleging any breach of any fiduciary duty, duty of care, or other duty whatsoever to the Company or to any Member based in any way upon the Mortgagee Non-Managing Member's status as a Non-Managing Member or member of the Investor Member. Notwithstanding any provision to the contrary in this Section 9.1E, the Managing Members shall not obtain or consent to any Related Mortgage Loan unless (i) they have obtained the prior Consent of the Investor Member and (ii) they have determined, based on the financial projections prepared at the time of requesting such Consent and the advice of Investor Tax Counsel, that the Related Mortgage Loan will not result in any reallocation of Tax Credits or other tax benefits among the Members.

Section 9.2 Refinancing and Sale

The Company may not increase the amount of or otherwise materially modify any Mortgage Loan, obtain any new Mortgage Loan or refinance any Mortgage Loan (other than pursuant to and substantially in accordance with a Commitment in existence at Investment Closing) including any required Transfer of Company assets for security or mortgage purposes, and may not sell, lease, exchange or otherwise Transfer all or substantially all the assets of the Company without the Consent of the Investor Member. In the event that an Affiliate of Bank of America shall be ready, willing and able to furnish financing on substantially equivalent terms, the Consent of the Investor Member to any proposed refinancing of a Mortgage Loan may be conditioned upon the substitution of such Affiliate as the maker of such refinanced Mortgage Loan. Notwithstanding the foregoing, no such Consent shall be required for the leasing of apartments to tenants in the normal course of operations; *provided, however*, unless such Consent is obtained the Company shall lease the Project in such a manner as to qualify as a "qualified low-income housing project" under Section 42(g)(1) of the Code, and shall lease all of the Low Income Units to Qualified Tenants.

Section 9.3 Sales Commissions

In connection with the sale of the Property by the Company, no Person may receive real estate commissions in excess of that which is reasonable, customary, and competitive with those paid in similar transactions in the same geographic area. Real estate commissions may be paid to an Affiliate of a Managing Member.

ARTICLE X

PROFITS, LOSSES AND DISTRIBUTIONS

Section 10.1 Distributions Prior to Dissolution

A. Distribution of Cash Flow.

Subject to any Requisite Approvals, (i) net rental income generated through the

Completion Date shall be includable in Designated Proceeds and shall be available to the Managing Members for the purposes and subject to the conditions set forth in Section 6.8 hereof, and (ii) subject to the terms of the Mortgage Loan Documents, Cash Flow for each Fiscal Year (or fractional portion thereof) from and after the Completion Date and any Designated Proceeds remaining after payment of all Development Costs (including the Development Amount and the Deferred Development Fee) shall be distributed within ninety (90) days after the end of each Fiscal Year, in the following order of priority:

First, to pay the Asset Management Fee to the Special Member;

Second, to the Investor Member an amount equal to any amounts contributed by the Investor Member pursuant to Section 6.4O(iii)(if any);

Third, to the payment of any Deferred Development Fee and any accrued interest thereon;

Fourth, to the payment of the Company Management Fee;

Fifth, to the repayment of any Operating Expense Loans then outstanding;

Sixth, to the replenishment of the Operating Reserve;

Seventh, 10% of the balance remaining to the Investor Member;

Eighth, to the Managing Member as payment of the Supervisory Management Fee; and

Ninth, any balance remaining shall be distributed to the Managing Member.

B. Distributions of Capital Transaction Proceeds

Prior to dissolution, if the Managing Members shall determine that there are proceeds available for distribution from a Capital Transaction, such proceeds shall be applied and distributed as follows:

First, to discharge, to the extent required by any lender or creditor, the debts and obligations of the Company (other than items listed in the ensuing clauses of this Section 10.1B);

Second, to fund reserves for contingent liabilities to the extent deemed reasonable by the Managing Members (other than items listed in the ensuing clauses of this Section 10.1B);

Third, to the Non-Managing Members in an amount equal to, on an After-Tax Basis, the taxes (if any) owed by it (or them) as a result of any income allocation arising out of the Capital Transaction plus any amounts contributed by the Investor Member pursuant to Section 6.4O(iii) and not yet repaid (if any);

Fourth, to the Special Member, any unpaid Asset Management Fee;

Fifth, to the Investor Member an amount equal to any theretofore unpaid Tax Credit Shortfall Payments;

Sixth, to the repayment of any outstanding Deferred Development Fee and any accrued interest thereon;

Seventh, to the payment of any unpaid Company Management Fee;

Eighth, to the payment of any outstanding Operating Expense Loans;

Ninth, the balance of such proceeds shall be distributed 90% to the Managing

Members and 10% to the Investor Member.

C. Sharing of Distributions

All distributions to the respective classes of the Members shall be shared by the members of such classes in accordance with the percentages set forth opposite their respective names on the Schedule, except as otherwise provided in this Agreement.

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