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REAL ESTATE FINANCE BUREAU

M E M O R A N D U M

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**Re: Effectiveness Affidavits  
For Part 20 Plans**

**Date: February 2, 2015**

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This memorandum clarifies the position of the Department of Law (“DOL”) with regard to 13 N.Y.C.R.R. §§ 20.5(e)(5) and 20.5(e)(6)(ii) (“Sections”) requiring sponsors to submit affidavits in support of an amendment declaring the plan effective.

Historically, the DOL has required sponsors to submit two separate affidavits to comply with these Sections. The first affidavit complying with 13 N.Y.C.R.R. § 20.5(e)(5) (“First Affidavit”) is included as an exhibit to the amendment and is available to the public as a part of the offering plan. The First Affidavit discloses the following information:

- (i) the date the plan was accepted for filing by the DOL;
- (ii) a representation that all purchasers who are counted for purposes of declaring the plan effective:
  - (a) are bona fide purchasers;
  - (b) are not purchasing as an accommodation to, or for the account or benefit of the sponsor or principals of sponsor; and
  - (c) have duly executed purchase agreements and have paid the down payment as required in the offering plan or an amendment thereto;
- (iii) a representation that there are no material changes to the budget for the first year’s operation that have not been disclosed in a duly filed amendment to the offering plan;
- (iv) the following information with respect to any purchaser who is the sponsor, the selling agent, or the managing agent or is a principal of the sponsor, the selling agent, or the managing agent or who is related to the sponsor, the selling agent or the managing agent or to any principal of the sponsor, the selling agent or the managing agent by blood, marriage or adoption, or as a business associate, an employee, a shareholder or a limited partner:
  - (a) the identity of the purchaser;
  - (b) the identity of the unit to be purchased;

- (c) the nature of the relationship;
- (d) a representation that no purchaser counted for purposes of declaring the plan effective is the sponsor, the selling agent or the managing agent, or is a principal of the sponsor, the selling agent, or the managing agent or is related to the sponsor, the selling agent or the managing agent or any principal of the sponsor, the selling agent or the managing agent by blood, marriage, or adoption, or as a business associate, an employee, a shareholder, or a limited partner. Such a purchaser, other than the sponsor or a principal of the sponsor, may be excepted from the foregoing representation and included in the count only if the sponsor has submitted proof satisfactory to the DOL establishing that the purchaser is a bona fide purchaser.
- (v) a list of the units that are being counted to meet the minimum percentage that are needed under the terms of the plan to declare the plan effective. For each unit state the date of the purchase agreement.

The second affidavit complying with 13 N.Y.C.R.R. § 20.5(e)(6)(ii) (“Second Affidavit”) is not included as an exhibit to the amendment and is not made available to the public as part of the offering plan. The Second Affidavit discloses the following information:

- (a) the identity of the unit purchased;
- (b) the purchase price;
- (c) the date of the purchase agreement;
- (d) the amount of the deposit paid if for any reason it is less than the amount or percentage stated in the offering plan, and an explanation of the difference;
- (e) the date that the deposit was paid if the date is different from the date of the purchase agreement; and
- (f) a list of the purchasers counted to meet the minimum percentage of units sold that are needed under the terms of the plan to declare the plan effective.

The DOL will accept, at sponsor’s option, either separate affidavits, as set forth above, or one combined affidavit that discloses information required by both. If sponsor chooses to submit this combined affidavit, it shall be an exhibit to the amendment and therefore, all information contained in it will be available to the public as part of the offering plan. If sponsor chooses to submit separate affidavits, only the First Affidavit will become a part of the offering plan. The Second Affidavit will be part of the DOL’s back-up file only and will not be available as an amendment to the offering plan.