

## MHDC Application Site Control Memorandum

(From Exhibit 2, 2010 Developer's Guide: NOFA Application)

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A key component of the application process is establishing appropriate site control. For FY2010 MHDC is requiring evidence of buyer site control, evidence that the seller has ownership of the site, and, in certain contractual situations, documentation of the sales price. MHDC has requested site control documentation with two types of land and/or building purchase/lease transactions in mind: Arm's Length and Identity of Interest.

Arm's Length transactions are those for which the current owner contemplates selling, leasing or donating the site(s) to an entity in which they have no legal, business (other than the transaction itself) or other affiliation that creates, in the sole opinion of MHDC, an identity of interest between the parties.

Identity of Interest transactions are those in which the current owner of the site(s) has, in MHDC's sole opinion, a relationship with the applicant and/or proposed ownership entity which disqualifies the transaction from being considered Arm's Length.

<b>Requested documentation for Arm's Length Transactions:</b>
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### **Buyer/Applicant**

The buyer/applicant must evidence that they have control of at least 50% of the sites listed in the FIN-100 through at least the expected commission approval date. It is highly recommended that site control extend through a time period beyond the commission approval date. MHDC encourages the acquisition closing to take place simultaneously with construction loan and partnership closings. The practice of purchasing sites or buildings after approval, but prior to construction and partnership closings, is frowned upon and may impact future funding decisions. For the purposes of the application the ownership entity, any general partner of the ownership entity, the developer or any individual of each that is listed as a principal may enter into the agreements listed below to show valid buyer/applicant site control:

- a. Executed purchase option agreement;
- b. Executed purchase contract;
- c. Executed long-term land lease or option on a long-term land lease; or
- d. Other commitments/agreements approved by staff prior to application.

In order to be considered valid, all options and agreements must be fully executed and include all pages and exhibits referenced in the document. Only the items described above or an alternative

form of documentation approved by staff prior to the application deadline will satisfy the buyer/applicant site control requirement for Arm's Length transactions.

If a buyer has valid site control as defined above for less than 100% of the sites listed in the FIN-100, the applicant must provide a thorough description of the process and timing for acquisition of the remaining sites.

## **Seller**

The applicant must provide evidence that the seller who has entered into one of the approved forms of buyer/applicant site control is the current owner of the site(s) in question.

There are two and only two acceptable forms of seller site control:

- a. A warranty deed, quit claim deed, sheriff's deed or like recorded vesting document with the seller listed as grantee; or
- b. A title commitment or title policy that states who the current owner is.

Deeds of trust, redeveloper agreements, website print-outs, etc. do not qualify as either buyer and/or seller site control. Applicants must provide one of the two forms of seller control above with the application, to satisfy the seller site control requirement for Arm's Length transactions.

<b>Requested Documentation for Identity of Interest Transactions:</b>
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## **Buyer/Applicant:**

The buyer/applicant must evidence that they have control of at least 50% of the sites listed in the FIN-100 through at least the expected commission approval date. For the purposes of the application the ownership entity, any general partner of the ownership entity, the developer or any individual of each that is listed as a principal may enter into the agreements listed below to show valid buyer/applicant site control:

- a. Executed purchase option agreement;
- b. Executed purchase contract;
- c. Executed long-term land lease or option on a long-term land lease;
- d. Recorded warranty deed, quit claim deed, sheriff's deed or like recorded vesting document; or
- e. Other commitments/agreements approved by staff prior to application.

In order to be considered valid, all options and agreements must be fully executed and include all pages and exhibits referenced in the document. Only the items described above or an alternative form of documentation approved by staff prior to the application deadline will satisfy the buyer/applicant site control requirement for Identity of Interest transactions.

If a buyer has valid site control as defined above for less than 100% of the sites listed in the FIN-100, the applicant must provide a thorough description of the process and timing of acquisition for the remaining sites.

**Seller:**

The applicant must provide evidence that the seller who has entered into one of the approved forms of buyer/applicant site control is the current owner of the site(s) in question.

There are two and only two acceptable forms of seller site control:

- a. A warranty deed, quit claim deed, sheriff's deed or like recorded vesting document with the seller listed as grantee; or
- b. A title commitment or title policy that states who the current owner is.

If the buyer/applicant already has a warranty deed (or like instrument), it has demonstrated both buyer/applicant and seller site control. Regardless of who the grantor is on the deed, MHDC will consider this type of situation an identity of interest transaction and the identity of interest documentation below is required.

As part of seller site control for identity of interest transactions, the documentation listed below is required for each transfer of the property from the time the seller acquired it back to the last arm's length transaction:

- a. Copy of the executed contract; or
- b. Settlement statement for the transaction.

In order to be considered valid, all buyer/applicant, seller and identity of interest documents must be executed and must include all exhibits referenced in the document and all pages from the body of the document.

There are two exceptions for providing the identity of interest documentation with seller site control in identity of interest transactions:

1. When the last arm's length transaction took place prior to December 31st, 1958; and
2. The total purchase price or annual lease payment, as evidenced in the documents and the Fin-100, is less than \$100.00.

Any questions comments or concerns regarding site control and/or site control documentation should be directed to Janell Thome at 816.759.6862 or [jthome@mhdc.com](mailto:jthome@mhdc.com) prior to the application deadline.