

HOME INVESTMENT PARTNERSHIPS PROGRAM

AFFORDABLE HOUSING RESTRICTION

(Property Address: _____, Massachusetts)

_____, a Massachusetts _____, having an address at _____, Massachusetts _____ (the "Borrower") grants with quitclaim covenants, to BARNSTABLE COUNTY, a Massachusetts body politic (together with its successors and assigns, the "Lender"), acting by and through the Cape Cod Commission (the "Commission"), having a mailing address of 3225 Main Street, P.O. Box 226, Barnstable, Massachusetts 02630, exclusively for the purpose of ensuring retention of housing for occupancy by low income persons and families, the following described Affordable Housing Restriction on the Borrower's interest in and to a parcel of land, together with all the buildings and improvements now or hereafter situated thereon, located at _____, Massachusetts, said parcel being described in Exhibit A, attached herewith and made a part hereof (the "Premises").

The terms of this Affordable Housing Restriction, authorized by G.L. c. 184, §§31-33 and otherwise by law, are as follows:

1. Purpose. The purpose of this Affordable Housing Restriction is to assure that the Premises will be retained as affordable housing for occupancy by low and very low income families.

2. Scope. The Borrower intends, declares and covenants, on behalf of itself and its successors and assigns, that the covenants and restrictions set forth in this Affordable Housing Restriction regulating and restricting the use, occupancy and transfer of the Premises (i) shall be and are covenants running with the Premises, encumbering the Premises for a term of _____ (____) years following completion of the Project (as defined below), which shall in no event occur later than _____ (____) months from the date hereof, binding upon the Borrower's successors in title and all subsequent owners of the Premises, (ii) are not merely personal covenants of the Borrower, and (iii) shall bind the Borrower and its successors and assigns (and the benefits shall inure to the Lender and to any past, present or prospective tenant of the Premises). The Borrower acknowledges that it has received assistance from the Lender in developing the Premises as affordable rental housing, which assistance includes a loan from the lender under the HOME Investment Partnerships Program (the "HOME Program"). This Affordable Housing Restriction shall continue in force for its stated term regardless of the prior repayment of such loan.

3. Duration Not Limited. This _____ (____) year Affordable Housing Restriction is intended to be construed as an affordable housing restriction as defined in Section

Please return to:

*Affordable Housing Specialist
Cape Cod Commission
3225 Main Street, P.O. Box 226
Barnstable, MA 02630*

31 of Chapter 184 of the Massachusetts General Laws which has the benefit of Section 32 of said Chapter 184, such that the restrictions contained herein shall not be limited in duration by any rule or operation of law. The Borrower hereby agrees that any and all requirements of the laws of the Commonwealth of Massachusetts to be satisfied in order for this Affordable Housing Restriction to constitute deed restrictions and covenants running with the land shall be deemed to be satisfied in full and that any requirements of privity of estate are intended to be satisfied, or in the alternative, that an equitable servitude has been created to insure that this Affordable Housing Restriction runs with the land.

4. Subsequent Conveyances. Each and every contract, deed or other instrument hereafter executed conveying the Borrower's interest in and to the Premises or portion thereof shall expressly provide that such conveyance is subject to this Affordable Housing Restriction, provided, however, that the covenants contained herein shall survive and be effective regardless of whether such contract, deed or other instrument hereafter executed conveying the Premises or portion thereof provides that such conveyance is subject to this Affordable Housing Restriction.

5. Permitted Use. The Premises shall be used for _____ (____) rental housing units (the "Project"). _____ (____) of the rental housing units comprising the Project (collectively, the "HOME Assisted Units") will be considered assisted under the HOME Program. The HOME Assisted Units shall be let to Low-Income and Very Low-Income Families (as defined below). Each unit in the Project shall contain complete facilities for sleeping, cooking, eating and sanitation which are to be used on other than a transient basis. Each Home Assisted Unit in the Project shall meet the housing quality standards set forth in the regulation of the Department of Housing and Urban Development as 24. C.F. R. §982.401 or any successor thereto, the accessibility requirements at 24 C.F.R. Part 8 or any successor thereto (which implement Section 504 of the Rehabilitation Act of 1973) and, if applicable, the design and construction requirement of 24 C.F.R. §100.205 or any successor thereto (which implement the Fair Housing Act). The rehabilitation of the Project shall meet all applicable codes, regulations, statutes and zoning ordinances of the Town of _____ and all applicable codes, regulations and statutes of the Commonwealth of Massachusetts.

6. Tenant Selection.

(a) Nondiscrimination. The Borrower shall not discriminate on the basis of race, creed, color, sex, age, handicap, marital status, sexual preference, nation and origin or any other basis prohibited by law in the lease, use and occupancy of the Project or in connection with the employment or application for employment of persons for the operation and management of the Project. The Borrower shall not discriminate against, or refuse to lease, rent or otherwise make available units in the Project to a holder of a federal or state rental certificate or voucher.

(b) Selection Policies. Subject to the provisions of the rules and regulations pertaining to Section 8 Moderate Rehabilitation Regulations, the Borrower shall adopt and submit to Lender for approval resident selection policies and criteria acceptable to lender that:

- (i) Are consistent with the purpose of providing housing for Low-Income Families and Very Low-Income Families, as defined below and required herein;
- (ii) Are reasonably related to HOME Program eligibility of prospective tenants and to the prospective tenants' ability to perform the obligation of the Borrower's form lease;
- (iii) Are consistent with 24 CFR §92.350 (equal opportunity and fair housing) and 24 CFR §92.351 (affirmative marketing); and
- (iv) Provide for (i) the selection of residents from a written waiting list in the chronological order of their application, insofar as practicable and (ii) the prompt written notification to any rejected applicant of the grounds for any rejection.

The Borrower shall also provide the Lender with an affirmative marketing plan reasonably acceptable to the Lender. The affirmative marketing plan must comply with all applicable statutes, regulations and executive orders and with DHCD directives reflecting the agreement between DHCD and the U.S. Department of Housing and Urban Development in the case of NAACP, Boston Chapter v. Kemp. The approved marketing plan and the approved resident selection policies and criteria shall be adhered to in every respect.

7. Income and Rent Restrictions.

(a) During the term of this Affordable Housing Restriction, at least _____ (___%) of the HOME Assisted Units in the Project (i.e. at least _____ (___) units) shall be leased exclusively to Families (as defined below) whose annual incomes are less than fifty percent (50%) of the median income for the Area (as defined below) ("Very Low-Income Families") based on family size as determined by the U.S. Department of Housing and Urban Development ("HUD"). In addition, the remaining _____ (___%) of the HOME Assisted Units in the Project (i.e. the remaining _____ (___) units) shall be leased exclusively to Families whose annual incomes are less than sixty percent (60%) of the median income for the Area ("Low Income Families") based on family size as determined by HUD. A "Family" is defined as one or more individuals occupying a unit and satisfying the standards adopted by HUD for the so-called Section 8 Program under the United States Housing Act of 1937 and promulgated at 24.C.F.R. Part 5. The "Area" is defined as Barnstable County. A Family's annual income shall be the anticipated total income from all sources received by the Family head and spouse (even if temporarily absent) and by each additional member of the Family (other than children under the age of 18 years), including all net income derived from assets for the 12-month period following the effective date of certification of income. Annual Income specifically includes and excludes certain types of income as set forth in, and shall be determined in accordance with, 24 C.F. R. § 5.609 (or any successor regulations).

(b) The monthly rent charged to tenants of HOME Assisted Units shall not exceed the lesser of:

- (i) The fair market rent for existing housing for comparable units in the Area as established by HUD under regulations promulgated at 24 C.F.R. §888.111 (or successor regulations), less the monthly allowance for the utilities and services (excluding telephone) to be paid by the tenant; or
- (ii) An amount equal to thirty percent (30%) of the monthly adjusted income of a Family whose gross income equals sixty-five percent (65%) (or such higher or lower percentage as may be established by HUD pursuant to applicable regulations under the HOME Program) of the median income for the Area, as determined by HUD, with adjustment for the number of bedrooms in the unit, as provided by HUD. In determining the maximum monthly rent that may be charged for a unit under this clause (ii), the Borrower shall subtract from the above amount an allowance for any utilities and services (excluding telephone) to be paid by the resident. Monthly adjusted income shall equal one-twelfth of an adjusted income. Adjusted income shall be as defined in 24 C.F.R. Part 5 using assumptions provided by HUD.

(c) Furthermore, with respect to the _____ (___%) of the HOME Assisted Units required to be occupied by Very Low Income Families:

- (i) The Families occupying such units shall pay as a contribution toward monthly rent (excluding any project-based federal or state rental subsidy provided on behalf of a unit) not more than 30 percent of the Family's monthly adjusted income. The maximum monthly contribution that may be paid by a Family under this clause shall be determined by (x) multiplying the annual adjusted income of the Family (determined under 24 C.F.R. Part 5) by 30 percent and dividing by 12 and (y) if applicable, subtracting a monthly allowance for any utilities and services (excluding telephone) to be paid by the Family. The monthly rent charged for units receiving project-based rental subsidy shall not be greater than the rent allowable under the federal or state project-based rental subsidy program; or
- (ii) The monthly rent charged for such units shall not be greater than thirty percent (30%) of the monthly income of a theoretical Family whose income equals fifty percent (50%) (or such higher or lower percentage as may be established by HUD pursuant to applicable regulations under the HOME Program) of the median income for the Area, as determined by HUD, with adjustment for size of the theoretical Family using average occupancy per unit assumptions provided by HUD. In determining the maximum monthly rent that may be charged for a unit under this clause, there shall be subtracted from the amount computed under the prior sentence a monthly allowance for any utilities and services (excluding telephone) to be paid by the occupants of the unit.

(d) If at any time less than the required number of units in the Project are leased, rented or occupied by Very Low Income Families, the next available units shall all be leased, rented or otherwise made available to Very Low Income Families until the required number of units occupied by Very Low Income Families is again obtained. The foregoing provisions shall be applied so as to maintain a mix of HOME Assisted Units that are comparable in size, features and number of bedrooms to the originally designated HOME Assisted Units (i.e., a unit will not be considered an available unit for purpose of this Subsection 7(d) if classification of such unit as a HOME Assisted Unit would cause the then current mix of HOME Assisted Units to no longer be comparable to the original mix of HOME Assisted Units described in Section 5 above.

8. Income Certifications. The Borrower represents, warrants and covenants that the determination of whether a Family meets the income requirements set forth herein shall be made by Borrower at the time of leasing of a Unit in the Project and thereafter at least annually on the basis of the current income of such Family. Borrower shall maintain as part of its Project records copies of all leases of units in the Project and all initial and annual income certifications by tenants of the Project. Within 60 days after the end of each calendar year of occupancy of any portion of the Project, the Borrower shall provide to the Lender annual reports consisting of certifications regarding the annual and monthly gross and adjusted income of each Family occupying a unit at the Project. With respect to Families who moved to the Project in the prior year, the annual report shall also include certification of such Families at the time of their initial occupancy at the Project. The annual reports shall be in a form approved by the Lender and shall contain such supporting documentation as the Lender shall reasonably require. In addition to the foregoing, Borrower shall keep such additional records and prepare and submit to Lender such additional reports as Lender may reasonably deem necessary to ensure compliance with the requirements of this Affordable Housing Restriction and of the HOME Program.

9. Rent Schedules. Prior to initial occupancy of the Project and annually thereafter as part of the annual reports required under Section 8 above, Borrower shall submit to Lender a proposed schedule of monthly rents and monthly allowances for utilities and services for all units in the Project. The rent schedule shall include both the maximum rents applicable to units under Subsection 7(b) above as well as the actual rents to be charged to over-income Families under Subsection 7(c) above. Such schedule shall be subject to the approval of Lender for compliance with the requirements of Section 7 above. After approval of a schedule of rents and allowances by Lender, rents shall not be increased without the Lender's prior written approval not to be unreasonably withheld, delayed or conditioned of either (x) a specific request by Borrower for a rent increase of (y) the next annual schedule of rents and allowances. Notwithstanding the foregoing, rent increases shall be subject to the provisions of outstanding leases and shall not be implemented without at least thirty (30) days' prior written notice by Borrower to all affected tenants.

10. Lease Form. The Borrower shall not include in any lease for a unit in the Project any of the following provisions:

- (i) Agreement by the tenant to be sued, to admit guilt or to a judgment in favor of the Borrower in a lawsuit brought in connection with the lease.

- (ii) Agreement by the tenant that the Borrower may take, hold, or sell personal property of household members without notice to the tenant and a court decision on the rights of the parties. This prohibition, however, does not apply to an agreement by the tenant concerning disposition of personal property remaining in the unit after the tenant has moved out of the unit. The Borrower may dispose of such personal property in accordance with state law.
- (iii) Agreement by the tenant not to hold the Borrower or the Borrower's agents legally responsible for any action or failure to act, whether intentional or negligent.
- (iv) Agreement of the tenant that the Borrower may institute a lawsuit without notice to the tenant.
- (v) Agreement by the tenant that the Borrower may evict the tenant or household members without instituting a civil court proceeding in which the tenant has the opportunity to present a defense, or before a court decision on the rights of the parties.
- (vi) Agreement by the tenant to waive any right to a trial by jury.
- (vii) Agreement by the tenant to waive the tenant's right to appeal, or to otherwise challenge in court, a court decision in connection with the lease.
- (viii) Agreement by the tenant to pay attorney's fees or other legal costs even if the tenant wins in a court proceeding by the Borrower against the tenant. The tenant, however, may be obligated to pay costs if the tenant loses.

All leases or subleases for units in the Project shall be for terms of not less than one (1) year, unless by mutual agreement between the tenant/subtenant and Borrower, and shall require tenants/subtenants to provide information required for the Borrower to meet its reporting requirements hereunder. Borrower may not terminate the tenancy or refuse to renew the lease of an occupant of the Project except (i) for serious or repeated violation of the terms and conditions of the lease; (ii) for violations of applicable federal, state or local law; or (iii) for other good cause. Any termination or refusal to renew must be preceded by not less than thirty (30) days notice by Borrower's service on the tenant/subtenant of a written notice specifying the grounds for the action.

11. Transfer Restriction. The Borrower may not sell, transfer or exchange all or any portion of the Project without the Lender's prior written consent.

12. No Demolition. The Borrower shall not demolish any part of the Project or substantially subtract from any real or personal property of the Project except in conjunction with renovation or rehabilitation of the Project or construction of a new project on the Premises, in either case subject to the prior written consent of the Lender, which consent may be granted or

withheld in the Lender's sole judgment. The Borrower shall not permit the use of any residential unit for any purpose other than rental housing.

13. Casualty. The Borrower represents, warrants and agrees that if the Project, or any part thereof, shall be damaged or destroyed, the Borrower (subject to the approval of the lender(s) which will provide the financing) will use its best efforts to repair and restore the Project to substantially the same condition as existed prior to the event causing such damage or destruction, and the Borrower represents, warrants and agrees that the Project shall thereafter continue to operate in accordance with the terms of this Affordable Housing Restriction.

14. Other Federal Requirements, Inspection. Any use of the Premises or activity thereon which is inconsistent with the purpose of this Affordable Housing Restriction is expressly prohibited. Borrower shall carry out each activity provided for in this Affordable Housing Restriction in compliance with all applicable federal laws and regulations described in 24 CFR §92.350 (equal opportunity and fair housing), §92.351 (affirmative marketing), §92-353 (displacement, relocation, and acquisition), §92.355 (lead based paint), §92.356 (conflict of interest), §92.357 (debarment and suspension) and §92.358 (flood insurance). Borrower hereby grants to Lender and its duly authorized representatives the right to enter the Premises (a) at reasonable times and in a reasonable manner for the purpose of inspecting the Premises to determine compliance with this Affordable Housing Restriction or any other agreement between Borrower and Lender and (b) after 30 days prior written notice, to take any reasonable and appropriate action under the circumstances to cure any violation of the provisions of this Affordable Housing Restriction. The notice referred to in clause (b) shall include a clear description of the course and approximate cost of the proposed cure.

15. Enforcement. The rights hereby granted shall include the right of Lender to enforce this Affordable Housing Restriction by appropriate legal proceedings and to obtain injunctive and other equitable relief against any violations, including without limitation relief requiring restoration of the Premises to its condition prior to any such violation (it being agreed that the Lender will have no adequate remedy at law), and shall be in addition to, and not in limitation of, any other rights and remedies available to the Lender. Borrower covenants and agrees to reimburse Lender all reasonable costs and expenses (including without limitation reasonable counsel fees) incurred in enforcing this Affordable Housing Restriction or in taking reasonable measures to cure any violation hereof, provided that a violation of this Affordable Housing Restriction is acknowledged by Borrower or determined by a court of competent jurisdiction to have occurred. By its acceptance of this Affordable Housing Restriction, Lender does not undertake any liability or obligation relating to the condition of the Premises. If any provision of this Affordable Housing Restriction shall to any extent be held invalid, the remainder shall not be affected.

16. Further Assurances. The Borrower and its successors and assigns agrees to execute any notices or instruments appropriate to assuring the enforceability of this Affordable Housing Restriction upon Lender's reasonable request; and the Borrower on behalf of itself and its successors and assigns appoints the Lender its attorney-in-fact to execute, acknowledge and deliver any such instruments on its behalf. If in the Lender's reasonable opinion the Borrower has wrongfully refused or unreasonably delayed in so doing, the Lender is authorized to record

or file any such notices or instruments. The benefits of this Affordable Housing Restriction shall be in gross and shall be assignable by the Lender. The Borrower and the Lender intend that the restrictions arising hereunder take effect upon the date hereof, and to the extent enforceability by any person ever depends upon the approval of governmental officials, such approval when given shall relate back to the date hereof regardless of the date of actual approval of the date of filing or recording of any instrument evidencing such approval.

17. Notice. Any notice, request or other communication which either party hereto may be required or may desire to give hereunder shall be made in writing, and shall be deemed to have been properly given if hand delivered or if mailed by United States registered or certified mail, postage prepaid, return receipt request, to the parties at their respective addresses set forth above or such other address as the party to be served with notice may have furnished in writing to the party seeking or desiring to serve notice as a place for the service of notice. A notice sent by first class mail shall be deemed given two (2) days after mailing; a notice delivered by hand shall be deemed given upon receipt.

18. Amendment, Waiver. This Affordable Housing Restriction may not be amended, nor may any obligation hereunder be waived or released, without first obtaining the written consent of the Lender, which consent shall not be unreasonably withheld or delayed.

19. Foreclosure. Notwithstanding anything herein to the contrary, but subject to the next succeeding paragraph hereof, if the holder of record of a first mortgage granted to a state or national bank, state or federal savings and loan association, cooperative bank, mortgage company, trust company, insurance company or other institutional or governmental lender (any of the foregoing, a "Senior Lender"), shall acquire the Premises or sell the Premises to a third party by reason of foreclosure or similar remedial action under the provisions of such mortgage or upon conveyance of the Premises in lieu of foreclosure, and provided that the holder of such mortgage has given Lender not less than sixty (60) days' prior written notice of its intention to foreclose upon its mortgage or to accept a conveyance of the Premises in lieu of foreclosure, then the rights and restrictions herein contained shall lapse and shall not apply to such holder upon such acquisition of the Premises or to any purchaser of the Premises from such holder, and such Premises shall, subject to the next two succeeding sentences, thereafter be free from all such rights and restrictions. The rights and restrictions contained herein shall not lapse if the Premises is acquired through foreclosure or deed in lieu of foreclosure by (i) Borrower, (ii) any person with a direct or indirect financial interest in Borrower, (iii) any person related to a person described in clause (ii) by blood, adoption or marriage, (iv) any person who is or at any time was a business associate of a person described in clause (ii), and (v) any entity in which any of the foregoing have a direct or indirect financial interest (each a "Related Party"). For the purposes of this paragraph, an affidavit, duly recorded and executed under the penalties of perjury, by any purchaser from a Senior Lender at a foreclosure sale or by deed in lieu of foreclosure, stating that (x) such purchaser has notified the Lender in writing at the address first set forth above, of the identity of such purchaser, including an affirmative representation that the purchaser is not a Related Party, and its organizational structure and ultimate beneficial owners on HUD Form 2530 or its equivalent, if applicable, (y) a period of at least thirty (30) days has elapsed since such notice was given, and (z) the Senior Lender has not received written notice from the Lender that it has actual knowledge such purchaser is a Related Party, shall be conclusive evidence that

such purchaser is not a Related Party. Furthermore, if the Premises are subsequently acquired by a Related Party during the period in which this Affordable Housing Restriction would have remained in effect but for the provisions of this Section, or if it is determined that the affirmative representation given in accordance with clause (x) above is a misstatement of fact, this Affordable Housing Restriction shall be revived and shall apply to the Premises as though it had never lapsed.

In the event a Senior Lender conducts a foreclosure or other proceeding enforcing its rights under such mortgage and the Premises is sold for a price in excess of the sum of the outstanding principal balances of all notes and any other obligations secured by a mortgage of the Premises including, without limitation, all future advances, accrued interest and all reasonable costs and expenses which the Senior Lender is entitled to recover pursuant to the terms of such mortgage, such excess shall be paid to the Lender in consideration of the loss of the value and benefit of the rights and restrictions herein contained and released by the Lender pursuant to this Section in connection with such proceeding (provided, that in the event that such excess shall be so paid to the Lender by such Senior Lender, upon receipt of such payment, the Lender shall indemnify such Senior Lender against loss or damage to such Senior Lender, resulting thereafter from any claim to the extent that such claim is based upon payment of such excess by such Senior Lender to the Lender in accordance herewith, provided that such Senior Lender shall give prompt notice of any such claim and shall not object to intervention by the Lender in any proceeding relating thereto). To the extent the Borrower possesses any interest in any amount which would otherwise be payable to the Lender under this paragraph, to the fullest extent permissible by law, the Borrower hereby assigns its interest in such amount to said Senior Lender for payment to the Lender.

20. Documentary Stamps. No documentary stamps are required as this Affordable Housing Restriction is not being purchased by the Lender.

This Affordable Housing Restriction is executed under seal this ____ day of _____, 20 .

BORROWER:

By: _____
Name:
Title:
Hereunto duly authorized

COMMONWEALTH OF MASSACHUSETTS

Barnstable,ss

On this ___ day of _____, 20 , before me, the undersigned Notary Public, personally appeared _____, _____ of _____, who proved to me through satisfactory evidence of identification, which were _____ to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he/she signed it voluntarily for its stated purpose.

(Official Signature and Seal of Notary)

ACCEPTANCE OF GRANT BY LENDER

The above Affordable Housing Restriction is accepted this ____ day of _____, 20

BARNSTABLE COUNTY

By: _____

By: _____

By: _____
As County Commissioners

COMMONWEALTH OF MASSACHUSETTS

Barnstable,ss

On this ___ day of _____, 20 , before me, the undersigned Notary Public, personally appeared _____, who proved to me through satisfactory evidence of identification, which were _____ to be the persons whose names are signed on the preceding or attached document, and acknowledged to me that they signed it voluntarily for its stated purpose.

(Official Signature and Seal of Notary)

Exhibit A

Legal Description