

Model Deed Restrictions for Workers and Year-Round Residents on Cape Cod

The following documents were prepared by Outwith Studio; Utile; and attorneys Blatman, Bobrowski, Haverty & Silverstein for the Cape Cod Commission, and constitute a set of model deed restrictions for Cape Cod, intended to preserve housing on the Cape for people working on the Cape and other year-round residents. As written, these deed restrictions assume a program set up by individual towns, through which the towns pay individual property owners a one-time sum in exchange for placing a deed restriction on their property.

There are two policy goals, which are expressed in the definitions of “Qualified Resident” within the draft documents:

1. Workers on Cape Cod, including retired or disabled workers, people working full-time jobs, people working multiple part-time jobs equivalent to a full-time job, and part-time public employees.
2. Year-round residents generally.

The set of model documents includes a deed restriction (the document that would be recorded with the Register of Deeds), a purchase agreement for the deed restriction, and an optional subordination agreement, wherein existing lenders would subordinate their position to the Town, given the deed restriction.

These drafts have been assembled using precedent documents from (a) Massachusetts affordability restrictions, and (b) similar deed restriction programs set up in similar vacation-oriented communities across the US.

[PINK] text indicates parameters to be decided by individual towns or within individual transactions. Towns should consult with town counsel before using this model deed restriction.

Deed Restriction

This Deed Restriction is made as of this [DATE] day of [month], [year] (the "Effective Date").

WITNESSETH

WHEREAS, [OWNERS NAME(S)] ("Grantor") of [FULL ADDRESS] is the owner of [PROPERTY ADDRESS(ES)] in [TOWN], MA (the "Property"). The Property is shown on plan entitled "Subdivision of Land in [TOWN] MA, Property of [], et al, duly recorded in Barnstable County Registry of Deeds in Plan Book [BOOK], Page [PAGE]; Or on Land Court Plan Number [NUMBER].

WHEREAS, the Town of [TOWN NAME] ("Town"), a municipal corporation in Barnstable County, Massachusetts, having a mailing address [TOWN MAILING ADDRESS], acting through its [ADMINISTERING AGENCY], wishes to preserve a portion of its housing stock for qualified residents as defined below.

WHEREAS, in exchange for compensation as set forth in a Deed Restriction Purchase Agreement, Grantor has agreed to place certain restrictions on the use of the Property for the benefit of the Town by requiring occupancy of the Property by at least one qualified resident, as defined below.

NOW, THEREFORE, for and in consideration of the mutual promises and covenants contained herein, the sufficiency of which is mutually acknowledged, the Grantor does hereby place the following restrictions on the Property, which restrictions shall run with the land and be binding upon all successors in title:

1. **Definitions.** For purposes of this Agreement, the following terms shall have the following meanings:
 - a. Owner shall mean the Grantor or any and all successors in title.
 - b. Person means a natural person, and excludes any type of entity.
 - c. Principal Place of Residence means the home or place in which one's habitation is fixed and to which one has a present intention of returning after a departure or absence therefrom.

- d. Qualified Household means one Qualified Resident or a group of persons that contains at least one Qualified Resident. A Qualified Household may have occupants that are not Qualified Residents as long as at least one occupant is a Qualified Resident.

[The two types of deed restrictions diverge only here, in the definition of Qualified Resident.]

[Option 1: For workers on the Cape]

- e. Qualified Resident means any of the following:
 - i. A person who works an annual average of [30] hours or more per week at a business or organization in Barnstable County, Massachusetts, or who works an average [30] hours combined per week at more than one business or organization Barnstable County, Massachusetts. Such businesses or organizations must hold a valid and current business license, or pay sales or payroll taxes, or otherwise be generally recognized as a legitimate business or organization.
 - ii. A person who works an annual average of 15 hours or more per week for the County of Barnstable, a municipal corporation within Barnstable County, any other local or regional government entity within Barnstable County, such as a school district or local housing authority, or any agency or instrumentality of the Commonwealth where the Qualified Resident's work takes place primarily within Barnstable County.
 - iii. A retired person 60 years or older or disabled person who, for at least 4 of the 8 years prior to the Effective Date, worked an average of 30 hours or more per week at a business in Barnstable County, Massachusetts that holds a valid and current business license, or pays sales taxes, or is otherwise generally recognized as a legitimate business.

[Option 2: For year-round residents]

- e. Qualified Resident means the following:
 - i. A person who has their principal residence at the Property on a year-round basis.
2. **Occupancy Restrictions.** The following occupancy restrictions will apply to the Property.
- a. At least one Qualified Resident shall continuously occupy the Property as his or her principal place of residence.
 - b. Owner may rent the Property as long as the Property is continuously occupied by a Qualified Household.
 - c. A Qualified Resident may lease a room or rooms in the Property to one or more persons, provided that the Qualified Resident still occupies the Property as his or her principal place of residence.
 - d. The property is not used as a short-term rental, as defined in the Code of Massachusetts Regulations (830 CMR 64G.1.1).
 - e. No business activity shall occur on or in the Property other than as permitted within the zone district applicable to the Property.
3. **Annual Verification.** No later than February 1st of each year, beginning in the year following the first year of occupancy of the Property, Owner shall submit a written statement to the Town including the following information and stating that such information is true and correct to the best of Owner's knowledge and belief:
- a. Evidence to establish that the Property was occupied by a Qualified Household during all of the prior calendar year;
 - b. If applicable, a copy of the lease form currently used for the Property; and
 - c. If applicable, a list of tenants who occupied the Property in the prior calendar year and the evidence submitted by each tenant to establish that they were a Qualified Resident, as set forth in the Qualification Guidelines.

4. Town's First Right of Refusal

- a. The Town shall have the first option to purchase the Property. If the Owner receives a bona fide offer for such transfer that the Grantor desires to accept (each, an "Offer"), the Grantor shall promptly deliver to the Town written notice of the same, together with a copy of such Offer (the "Offer Notice"). The Grantor shall provide the Town with such reasonable evidence as the Town may require to satisfy the Town as to the bona fide nature of the Offer.
- b. The Town shall have the right to purchase the Property at the same price and on the same terms set forth in such Offer (the "First Refusal Right"), by delivering to the Grantor and recording with the Registry of Deeds written notice of its election to exercise such First Refusal Right, in accordance with the terms set forth below (the "Exercise Notice"), by or before the date that is forty-five (45) days after the Town's receipt of such Offer Notice (such 45-day period, the "First Refusal Period"). If the Town does not intend to exercise the First Refusal Right, the Town may, but shall have no obligation to, notify the Grantor in writing that the First Refusal Right will not be exercised (a "Waiver Notice").
- c. The Town shall have the right at any time to assign its rights under the First Refusal Right to a qualified nonprofit organization selected by the Town, effective as of any such assignment, the rights and obligations of the Town with respect to such First Refusal Right shall automatically be deemed to apply to such assignee, and all references to "the Town" in this Section shall automatically be deemed to refer to such assignee (except to the extent a provision explicitly provides otherwise). The Town shall provide written notice of any such assignment to the Grantor.

5. Breach.

- a. It is a breach of this Agreement for Owner to violate any provision of this Agreement, or to default in payment or other obligations due to be performed under a promissory note secured by a first deed of trust encumbering the Property. Owner shall notify the Town, in writing, of any notification received from any lender of past due payments or defaults in

payments or other obligations within 5 days of receipt.

- b. If the Town has reasonable cause to believe the Owner is violating this Agreement, the Town may inspect the Property between the hours of 8:00 a.m. and 5:00 p.m., Monday through Friday, after providing the Owner with 24 hours written notice. This Agreement shall constitute the Owner's permission to enter the Property during such times upon such notice.
 - c. If Owner is more than one individual, each shall be jointly and severally liable for compliance with this Agreement and any breach of this Agreement.
6. **Remedies.** The Town shall have any and all remedies provided by law and in equity for a violation of this Deed Restriction, including without limitation: (i) damages; (ii) specific performance; and (iii) injunctions, including without limitation an injunction requiring eviction of the occupant(s) and an injunction to prohibit the occupancy of the Property in violation of this Deed Restriction. All remedies shall be cumulative.
7. The cost to the Town of any activity taken in response to any violation of this Deed Restriction, including reasonable attorney fees, shall be paid promptly by Owner.
8. **Foreclosure.**
- a. In the event of a foreclosure, acceptance of a deed-in-lieu of foreclosure, or assignment, this Agreement shall remain in full force and effect.
 - b. Owner shall give immediate notice to the Town: of any notice of foreclosure under the first deed of trust or any other subordinate security interest in the Property; or when any payment on any indebtedness encumbering the Property is required to avoid foreclosure of the first deed of trust or other subordinate security interest in the Property.
 - c. Within 60 days after receipt of any notice described herein, the Town may (but shall not be obligated to) proceed to make any payment required to avoid foreclosure. Upon making any such payment, the Town may place a lien on the Property in the amount paid to cure the default and avoid foreclosure, including all fees and costs resulting from such foreclosure.

- d. The Town shall have 30 days after issuance of the public trustee's deed or the acceptance of a deed in lieu of foreclosure by the holder in which to purchase by tendering to the holder, in cash or certified funds, an amount equal to the redemption price which would have been required of the borrower or any person who might be liable upon a deficiency on the last day of the statutory redemption period(s) and any additional reasonable costs incurred by the holder related to the foreclosure.

9. Miscellaneous

- a. **Modification.** This Agreement may only be modified by subsequent written agreement of the Parties.
- b. **Integration.** This Agreement and any attached exhibits constitute the entire agreement between Owner and the Town, superseding all prior oral or written communications.
- c. **Subsequent Conveyances.** Each and every contract, deed or other instrument hereafter executed conveying the Property or portion thereof shall expressly provide that such conveyance is subject to this 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 Property or portion thereof provides that such conveyance is subject to this Restriction.
- d. **Runs with the Land.** The benefits and obligations of the Parties under this Agreement shall run with the land, and Owner's obligations hereunder shall be binding on any subsequent holder of any ownership interest in the Property.
- e. **Severability.** If any provision of this Agreement is determined to be void by a court of competent jurisdiction, such determination shall not affect any other provision hereof, and all of the other provisions shall remain in full force and effect.
- f. **Governing Law and Venue.** This Agreement shall be governed by the laws of the Commonwealth of Massachusetts, and any legal action concerning the

provisions hereof shall be brought in Barnstable County, Massachusetts.

- g. **Agreement Binding; Assignment.** This Agreement, and the terms, covenants, and conditions herein contained, shall inure to the benefit of and be binding upon the heirs, personal representatives, successors, and assigns of the Parties.
- h. **Third Parties.** There are no intended third-party beneficiaries to this Agreement.
- i. **No Joint Venture.** Notwithstanding any provision hereof, the Town shall never be a joint venture in any private entity or activity which participates in this Agreement, and the Town shall never be liable or responsible for any debt or obligation of any participant in this Agreement.
- j. **Notice.** Any notice under this Agreement shall be in writing, and shall be deemed sufficient when directly presented or sent pre-paid, first class United States Mail to the Party at the address set forth on the first page of this Agreement.
- k. **Recording.** This Agreement shall be recorded with the Barnstable County Register of Deeds.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date.

[TOWN'S SIGNER'S NAME]
Town of [TOWN NAME], Massachusetts

Date

[GRANTOR'S SIGNER NAME]

Date

_____ County, ss.

On [EFFECTIVE DATE], before me, the undersigned notary public, personally appeared [TOWN'S AND GRANTOR'S SIGNERS' NAMES], proved to me through satisfactory evidence of identification, which was (a current driver's license) (a current U.S. passport) (my personal knowledge of the identity of the principal), to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he/she signed it voluntarily, in such capacity, for its stated purpose.

_____ Notary Public

My commission expires:

DRAFT

Deed Restriction Purchase Agreement

This Deed Restriction Purchase (the "Purchase Agreement") is entered into this [DATE] day of [MONTH], [YEAR] (the "Effective Date") by and between the Town of [TOWN NAME] ("Town"), a municipal corporation in Barnstable County, Massachusetts, having a mailing address [TOWN MAILING ADDRESS], acting through its [ADMINISTERING AGENCY] and [OWNERS NAME(S)] ("Grantor") of [FULL ADDRESS].

WHEREAS, Grantor is the owner of [PROPERTY ADDRESS(ES)] in [TOWN], MA (the "Property").

WHEREAS, the Town wishes to preserve a portion of its housing stock for [YEAR-ROUND RESIDENTS / WORKERS] in Barnstable County.

WHEREAS, in exchange for compensation in the amount of [PAYMENT AMOUNT], Grantor agrees to place certain restrictions on the use of the Property for the benefit of the Town by requiring occupancy of the Property by at least one qualified resident, as defined in the Deed Restriction provided in Exhibit A [ATTACH DEED RESTRICTION].

NOW, THEREFORE, for and in consideration of the mutual promises and covenants contained herein, the sufficiency of which is mutually acknowledged, the Parties agree as follows:

1. The Deed Restriction provided in Exhibit A shall be placed on the Property and recorded with the Barnstable County Register of Deeds.
2. The Grantor and Town shall abide by all covenants agreed to within the Deed Restriction.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date.

[TOWN'S SIGNER'S NAME]
Town of [TOWN NAME], Massachusetts

Date

[GRANTOR'S SIGNER NAME]

Date

_____ County, ss.

On [EFFECTIVE DATE], before me, the undersigned notary public, personally appeared [TOWN'S AND GRANTOR'S SIGNERS' NAMES], proved to me through satisfactory evidence of identification, which was (a current driver's license) (a current U.S. passport) (my personal knowledge of the identity of the principal), to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he/she signed it voluntarily, in such capacity, for its stated purpose.

_____ Notary Public

My commission expires:

Subordination Agreement

This Subordination Agreement is made as of this [DATE] day of [MONTH], [YEAR] by and between the Town of [TOWN NAME] ("Town"), a municipal corporation in Barnstable County, Massachusetts, having a mailing address [TOWN MAILING ADDRESS], acting through its [ADMINISTERING AGENCY], and [LENDER NAME], a financial institution with an address of [LENDER ADDRESS] ("Lender") (each a "Party" and collectively the "Parties"). This agreement is

WHEREAS, the Deed Restriction Agreement dated [DEED RESTRICTION DATE], duly recorded in Barnstable County Registry of Deeds in Plan Book [BOOK], Page [PAGE]; Or on Land Court Plan Number [NUMBER] burdens the real property more particularly described as [PROPERTY ADDRESS AND/OR MAP-LOT REFERENCE] (the "Property") with a deed restriction limiting the use of the Property (the "Deed Restriction");

WHEREAS, the owner of the Property has requested Lender to issue a loan secured by a deed of trust encumbering the Property; and

WHEREAS, Lender is willing to subordinate the loan to the Deed Restriction under the terms of this Agreement.

NOW, THEREFORE, for and in consideration of the mutual promises and covenants contained herein, the sufficiency of which is mutually acknowledged, the Parties agree as follows :

1. **Subordination.** Lender unconditionally subordinates its lien under the deed of trust on the Property issued by Lender on [DEED OF TRUST DATE] (the "Deed of Trust") to the Deed Restriction. Lender agrees that its lien on and all other rights and interests in the title to the Property resulting from the Deed of Trust will remain subordinate to all rights and interests in the title to the Property resulting from the Deed Restriction, regardless of any renewal, extension or further modification of the Deed of Trust.
2. **Notice.** If Lender accepts a deed in lieu of foreclosure of the Deed of Trust, Lender shall give the Town written notice within 20 days after the deed is recorded with the Barnstable County Register of Deeds.
3. **Miscellaneous.**

- a. **Modification.** This Agreement may only be modified by subsequent written agreement of the Parties.
- b. **Integration.** This Agreement and any attached exhibits constitute the entire agreement between the Parties, superseding all prior oral or written communications.
- c. **Severability.** If any provision of this Agreement is determined to be void by a court of competent jurisdiction, such determination shall not affect any other provision hereof, and all of the other provisions shall remain in full force and effect.
- d. **Governing Law and Venue.** This Agreement shall be governed by the laws of the Commonwealth of Massachusetts, and any legal action concerning the provisions hereof shall be brought in Barnstable County, Massachusetts.
- e. **Agreement Binding; Assignment.** This Agreement, and the terms, covenants, and conditions herein contained, shall inure to the benefit of and be binding upon the heirs, personal representatives, successors, and assigns of the Parties.
- f. **Third Parties.** There are no intended third-party beneficiaries to this Agreement.
- g. **No Joint Venture.** Notwithstanding any provision hereof, the Town shall never be a joint venture in any private entity or activity which participates in this Agreement, and the Town shall never be liable or responsible for any debt or obligation of any participant in this Agreement.
- h. **Notice.** Any notice under this Agreement shall be in writing, and shall be deemed sufficient when directly presented or sent pre-paid, first class United States Mail to the Party at the address set forth on the first page of this Agreement.
- i. **Recording.** This Agreement shall be recorded with the Barnstable County Register of Deeds.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date.

[TOWN'S SIGNER NAME]

Date

Town of [TOWN NAME], Massachusetts

[LENDER'S SIGNER NAME]

Date

[FINANCIAL INSTITUTION NAME]

_____ County, ss.

On [EFFECTIVE DATE], before me, the undersigned notary public, personally appeared [TOWN'S SIGNER'S AND LENDER'S SIGNER'S NAMES], proved to me through satisfactory evidence of identification, which was (a current driver's license) (a current U.S. passport) (my personal knowledge of the identity of the principal), to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he/she signed it voluntarily, in such capacity, for its stated purpose.

_____ Notary Public

My commission expires: