

MORTGAGE

THIS MORTGAGE (this “Mortgage”) is made as the ___ day of _____, 20___, between [BUYER] having a notice address at the Premises described below (the “Mortgagor”), and the Massachusetts Housing Finance Agency acting as Subsidizing Agency (the “Subsidizing Agency”) on behalf of the Department of Housing and Community Development (“DHCD”), with offices located at One Beacon Street, Boston, Massachusetts 02108 (the “Mortgagee”).

WHEREAS, pursuant to the _____, a program to assist the construction of low and moderate income housing, Mortgagee has made it possible for the Mortgagor to acquire the real property with the improvements thereon now known and numbered as _____, _____ MA, as more particularly described in Exhibit A attached hereto (the “Premises”), at a cost that is less than fair market value; and

WHEREAS, the Mortgagor, for valuable consideration, has taken title to the Premises subject to an affordable housing Deed Rider (the “Restriction”), recorded as a rider to a deed to the Mortgagor, dated as of _____, 20___, recorded concurrently herewith. The Restriction imposes certain restrictions and requirements relating to the Mortgagor’s use and occupancy, refinancing and re-sale of the Premises, which restrictions and requirements run with the land and are binding on the Mortgagor’s successors and assigns, all as more fully set forth in the Restriction.

NOW, THEREFORE, to secure the performance of the covenants, restrictions and agreements of the Mortgage as set forth or referenced in the Restriction, the Mortgagor hereby GRANTS AND CONVEYS to the Mortgagee, WITH MORTGAGE COVENANTS, the Premises, together with all improvements now or hereafter erected on the property of which the Premises are a part, and all easements; rights; appurtenances; rents; royalties; mineral, oil and gas rights and profits; water, water rights and water stock; and all fixtures of whatever kind or nature, now or hereafter attached to the property of which the Premises are a part, all of which, including replacements and additions thereto shall be deemed to be and remain a part of the Premises. All the foregoing to the extent of the Mortgagor’s interest therein together with the Premises hereinafter

are referred to as the “Property.”

The Mortgagor covenants that the Mortgagor is lawfully seized of the estate hereby conveyed and has the right to mortgage, grant and convey the Property; that the Property is unencumbered except for the mortgage(s) listed in Exhibit B attached hereto (the “Permitted Mortgage(s)”); and that the Mortgagor will warrant and defend generally the title to the Property against all claims and demands, subject to any declarations, easements or restrictions of record. The Mortgagee hereby acknowledges and agrees that the Permitted Mortgage(s) shall be prior in right, title and interest to this Mortgage.

1. The Mortgagor’s Covenants. The Mortgagor, for himself/herself/themselves and his/her/their heirs, devisees, administrators, executors, legal representatives, successors and assigns, covenants and agree as follows:

- a. To perform and observe all of the covenants, restrictions and conditions contained or referenced in this Mortgage and the Restriction, the terms of which are expressly incorporated herein;
- b. That in the event the ownership of the Property, or any part thereof, becomes vested in a person other than the Mortgagor, the Mortgagee may, without notice to the Mortgagor, deal with such successor or successors in interest with reference to this Mortgage and the obligations hereby secured, in the same manner as with the Mortgagor, without in any way vitiating or discharging the Mortgagor’s liability hereunder or upon the obligations hereby secured.

Except as expressly set forth herein, no sale or other transfer of the Property, and no forbearance on the part of the Mortgagee, and no extension whether oral or in writing of the time for the performance of the obligations hereby secured given by the Mortgagee shall operate to release, discharge, modify, change or affect the original liability of the Mortgagor hereunder, either in whole or in part.

2. Events of Default. At the sole option of the Mortgagee, the following shall constitute an Event of Default for which the Mortgagee shall have the STATUTORY POWER OF SALE upon fifteen (15) days’ notice to the Mortgagor and to the holder of the Permitted Mortgages without demand or further notice upon such an event:

- a. the Mortgagor shall default in the performance of or breach any of the covenants and agreements contained or referenced in this Mortgage or in the Restriction;
- b. the ownership of the Property, or any part thereof, shall become vested in any other person or entity in violation of any of the covenants or agreements contained herein and without the prior written consent of the Mortgagee.

3. Forbearance by the Mortgagee Not a Waiver. Any forbearance by the Mortgagee in exercising any right or remedy hereunder, or otherwise afforded by law or equity, shall not be construed as a waiver of or preclude the exercise of any such right or remedy.
4. Remedies Cumulative. All remedies provided in this Mortgage are distinct and cumulative to any other right or remedy under this Mortgage or afforded by law or equity, and may be exercised concurrently, independently or successively.
5. Severability. In the event that any one or more of the terms or provisions of this Mortgage or the application thereof to any person or circumstance shall, to any extent, be held by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Mortgage or the application of such term and provision to persons or circumstances other than those to which it is held invalid or unenforceable, shall not be affected thereby and each term and provision of this Mortgage shall be valid and enforced to the fullest extent permitted by law.
6. Waiver; Amendment. No term or provision of this Mortgage may be waived or amended except by an instrument in writing signed by the party against whom enforcement is sought.
7. Assignment; Assumption. This Mortgage and the Mortgagor's obligations hereunder may be assigned to and assumed by a successive owner of the Property only upon the express prior written consent of the Mortgagee.
8. Discharge. Upon the sale of the Property by the Mortgagor in compliance with the covenants, restrictions and agreements contained or referenced in the Restriction, the Mortgagee shall execute and deliver a discharge of this Mortgage. Such discharge shall be provided without cost to the Mortgagor; provided, however, the Mortgagor shall pay all costs of recording of the discharge, if any.
9. Notices. Whenever notice under this Mortgage may be properly given to the Mortgagee or the Mortgagor, the same shall be in writing and shall be deemed delivered if mailed, postage prepaid, by registered or certified United States Mail, return receipt requested, addressed to the Mortgagee at the address first above written, to the Mortgagor at the address first set forth above, and to the Monitoring Agent at the address set forth in the Restriction.
10. Construction of Agreement. This instrument and incorporated documents are to be construed as a Massachusetts contract, are to take effect as a sealed instrument, are to set forth the entire contract between the parties, are binding upon, and inure to the benefit of the parties hereto and their respective heirs, devisees, executors, legal representatives, administrators, successors and assigns.

In the event the Mortgagor is composed of more than one party, all covenants and agreements of the Mortgagor contained herein as well as the obligations arising therefrom shall be joint and several as to each party. Whenever used, the singular number shall include the plural, the plural the singular, and the use of any gender shall include all genders.

FOR MORTGAGOR'S TITLE, SEE DEED RECORDED HERewith.

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SAMPLE

IN WITNESS WHEREOF, the undersigned has executed this instrument as of the day and year first set forth above.

MORTGAGOR:

Name (Print):

COMMONWEALTH OF MASSACHUSETTS

County of _____, ss _____, 20__

Then personally appeared before me _____, the _____ of _____, proved to me through satisfactory evidence of identification, which was [] a current driver's license, [] a current U.S. passport, [] my personal knowledge, 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 as his/her free act and deed, in such capacity, before me

Notary Public:
My Commission Expires:

After recording return to:
[Monitoring Agent]

Exhibit A - Legal Description
Exhibit B – Permitted Mortgage(s)

EXHIBIT A

Legal Description

SAMPLE

EXHIBIT B

Permitted Mortgage(s)

Lender

Date

Principal Amount

SAMPLE