

Affected Premises:

**TOWN OF LEVERETT**  
**DECLARATION OF AFFORDABLE HOUSING COVENANTS**

I, \_\_\_\_\_, hereinafter the “Initial Owner”, being the owner of certain real estate located at \_\_\_\_\_, Leverett, Massachusetts, hereinafter the “Property,” and further described in Exhibit A and incorporated specifically by reference hereto.

**RECITALS**

WHEREAS, the Town of Leverett desires to increase the amount of its affordable housing units;

WHEREAS, the Town of Leverett has structured a homebuyer program to encourage the acquisition of affordable homes by eligible homebuyers by providing mortgage buydown, downpayment and/or closing costs assistance;

WHEREAS, eligible purchasers such as the Initial Owner are given the opportunity to purchase certain property at less than fair market value provided the Initial Owner agrees to certain use and transfer restrictions, including the agreement to occupy the Property as a principal residence and to convey the Property on resale to an Eligible Purchaser, or to the Municipality, for an amount not greater than a Maximum Resale Price, all as more fully provided herein;

WHEREAS, the Town of Leverett, acting by and through its Affordable Housing Trust Committee (“Municipality”), may retain an authorized designee of either of them to monitor compliance with and to enforce the terms of this Declaration (“Monitoring Agent”), and shall require eligible purchasers such as Initial Owner and subsequent Owners (collectively “Owner”) to pay to the Municipality a small percentage of the resale price upon Owner’s conveyance of the property to partially reimburse the Municipality for its expenses paid to the Monitoring Agent or otherwise incurred to provide Owner with financial assistance to enable Owner to afford to purchase the Property more particularly described in Exhibit A at a price which is less than the fair market value of the Property; and

WHEREAS, in order to make it most likely that an income-eligible purchaser who can afford to buy the Property can be located when the Initial Owner desires to sell, the Maximum Resale Price is limited by the percentage change in median income, as more fully provided herein;

NOW, THEREFORE, as further consideration for the conveyance of the Property at less than fair market value, the Initial Owner, including his/her/their heirs, successors and assigns, hereby agrees that the Property shall be subject to the following rights and restrictions which are hereby imposed for the benefit of, and shall be enforceable by the Municipality (as herein defined).

1. **Definitions.** In this Declaration, in addition to the terms defined above, the following words and phrases shall have the following meanings:

Form: April 15, 2014 (5)

Affordable Housing Fund shall mean that fund established by the Municipality for the creation, development, and preservation of affordable housing in the Town of Leverett.

Applicable Foreclosure Price shall have the meaning set forth in Section 10(b) hereof.

Appropriate Size Household means a household containing a number of members equal to the number of bedrooms on the Property plus one.

Approved Improvements means work performed to the interior or exterior of the Property which adds to the value of the Property, prolongs its useful life, or adapts it to new uses, all as more specifically set forth in the Guidelines; provided that the Monitoring Agent shall have given written authorization for incurring such cost prior to the cost being incurred and that the original cost of such improvements shall be discounted over the course of their useful life.

Buydown Assistance shall mean the dollar amount of financial assistance loaned, if any, provided by Municipality to Initial Owner in order to enable Initial Owner to purchase the Property.

Closing shall have the meaning set forth in Section 4(d) hereof.

Compliance Certificate shall have the meaning set forth in Section 4(i) hereof.

Conveyance Notice shall have the meaning set forth in Section 4(a) hereof.

Eligible Purchaser means an individual(s) or household earning at or less than one hundred percent (100%) of the Franklin County HUD Metropolitan FMR Area Income and, if applicable, owning assets not in excess of the limit set forth in the Guidelines, as amended from time to time. If HUD discontinues publication of median income statistics, then the Municipality shall designate another measure of eligible income. To be considered an Eligible Purchaser, the individual(s) or household must meet all qualifications set forth in the Guidelines, as amended from time to time; intend to occupy and thereafter occupy the Property as his, her or their principal residence understanding that any use of the Property or activity thereon which is inconsistent with such exclusive residential use is expressly prohibited; and must provide to the Municipality such certifications as to residency, income and, if applicable, assets as the Municipality may require to justify designation as an Eligible Purchaser.

Eligible Purchaser Certificate shall have the meaning set forth in Section 6(a) hereof.

Foreclosure Notice shall have the meaning set forth in Section 10(a) hereof.

Guidelines mean the Guidelines of the Leverett Homebuyer Program, as the same may be amended from time to time.

HUD means the United States Department of Housing and Urban Development.

Ineligible Purchaser means an individual or household not meeting the requirements to be eligible as an Eligible Purchaser.

Form: April 15, 2014 (5)

Initial Sales Price means the price at which the Property is sold to the first Eligible Purchaser less the amount of Buydown Assistance, if any. For example, if the price agreed upon by seller and such first Eligible Purchaser in the Purchase and Sale Agreement is \$220,000 and the Eligible Purchaser receives \$40,000 in Buydown Assistance, then the Initial Sales Price for purposes of this example equals \$180,000. If the Eligible Purchaser receives no Buydown Assistance, then the Initial Sales Price shall be the price agreed upon by seller and such Eligible Purchaser and the Initial Sales Price for this Property is \$220,000.

Initial Owner means the original signatory(ies) hereunder and any subsequent Eligible Purchaser.

Maximum Resale Price means the Initial Sales Price multiplied by a fraction, the numerator of which is 100% of Franklin County HUD Metropolitan FMR Area Income as of the date of receipt of the Conveyance Notice and the denominator of which is 100% of Franklin County HUD Metropolitan FMR Area Income as of the date of the Closing, plus Approved Improvements as more fully described herein. Subject to the review and approval of Municipality, in its sole discretion, documented out-of-pocket costs for Improvements completed by the Initial Owner may be added to the Maximum Resale Price; provided, however, that total adjustment for such Improvements shall be limited to one (1%) percent of the Initial Sales Price per year of ownership. Improvements that are funded by Federal, state or local grant programs are not eligible to increase the Maximum Resale Price. For purposes of determining Maximum Resale Price, the Closing shall mean the date the deed to the Initial Owner currently holding title was recorded with the Registry of Deeds.

Mortgage Satisfaction Amount shall have the meaning set forth in Section 10(b) hereof.

Mortgagee Compliance Certificate shall have the meaning set forth in Section 10(g) hereof.

Municipal Purchaser Certificate shall have the meaning set forth in Section 6(a) hereof.

Municipality shall mean the Town of Leverett, acting by and through its Affordable Housing Trust Committee, or the authorized designee of either of them.

Franklin County HUD Metropolitan FMR AREA Income means the median household income for the area that includes Leverett as established by HUD or any successor agency thereto to determine household income, or in the absence thereof such other comparable standard established by the Municipality, the Commonwealth of Massachusetts or the Federal government, as the case may be (and if more than one such standard exists, the one selected by the Municipality and approved by DHCD) during the term of this Agreement. When used for establishing the Maximum Resale Price, the referent household is a family of four. When used for establishing whether a household is an Eligible Purchaser, the referent household is as adjusted based on household size of the household in question.

Registry means the Franklin County Registry of Deeds or the Franklin County District of the Land Court if the Property is registered land.

Resale Fee means a fee of 1% of Maximum Resale Price, to be paid to the Municipality by Owner at time of conveyance as compensation for its payment, or its payment to the Monitoring Agent, for monitoring and enforcing compliance with the terms of this Restriction, including the supervision of the resale process.

Term means in perpetuity, and unless terminated earlier according to Section 4, Section 6 and Section 10 hereof, the period from the date hereof until the earliest to occur of: (i) the recording of a Compliance Certificate according to Section 4(i); (ii) the recording of an Eligible Purchaser Certificate and a new Declaration executed by the Eligible Purchaser referenced in the Eligible Purchaser Certificate, which new Declaration the Eligible Purchaser Certificate certifies is in form and substance satisfactory to the Municipality; (iii) the conveyance of the Property to the Municipality and the recording of a Municipal Purchaser Certificate as set forth herein; (iv) the Mortgagor/Mortgagee sale or conveyance in compliance with Section 10 hereof. . or (v) the expiration of the term of affordability pursuant to Section 11(b).

## **2. Initial Owner's Warranties and Representations.**

(a) Initial Owner covenants and represents that at the time of purchase of the Property, Owner's household gross income is less than one hundred percent (100%) of the Franklin County HUD Metropolitan FMR Area Income, or such other low- and moderate-income household limits as amended from time to time.

(b) Initial Owner covenants and agrees that at all times during the term of this Agreement that Owner will occupy the Property as the Owner's principal residence. Rental of the property is not permitted without the approval of the Municipality, which approval will not be unreasonably withheld. Absence from the Property for a period exceeding three (3) months shall require a written explanation to the Municipality, who in its sole discretion, shall determine whether such absence constitutes violation of the principal residency requirement and requires transfer of the Property.

(c) Initial Owner covenants and agrees to maintain the Property in good order, repair, and condition and in compliance with all laws, regulations, ordinances, codes, orders or other laws, now existing or hereafter enacted, regarding the habitability of the Property as housing and also in full compliance with all other federal and state requirements related to affordable housing.

(d) Initial Owner covenants and agrees to comply with conditions imposed by the U.S. Department of Housing and Urban Development, if a first time homebuyer with the Municipality's First Time Homebuyer Program Guidelines, and applicable requirements of the Lead-Based Paint Poisoning Prevention Act, 42 U.S.C. §4821 et seq., Residential Lead-Based Paint Hazard Reduction Act of 1992, and the Massachusetts Lead Paint Statute, M.G.L. c. 111, §§190-199A, as the same may be amended from time to time.

(e) Initial Owner covenants and agrees to not at any time make, nor allow to be made, any alteration or addition which affects an existing structure on the premises unless the Initial Owner obtains the prior written consent of the Municipality. The initial Owner shall not at any time make, nor allow to be made, any alteration or addition which disturbs or affects the improvements unless the Initial Owner obtains the prior written consent of the Authority.

**3. Restrictions Against Leasing, Refinancing, and Junior Encumbrances.** The Property shall not be leased, rented, refinanced, encumbered (voluntarily or otherwise) or mortgaged without the prior written consent of the Municipality; provided, however, that this provision shall not apply to mortgages granted on the date hereof in order to purchase the Property. Without the prior written consent of the Municipality, any rents, profits, or proceeds from any transaction shall be recoverable by the Municipality, together with all costs of collection, including attorneys' fees. Such recovery shall be deposited to the Municipality's Affordable Housing Fund.

**4. Provisions of Resale.** (a) When the Initial Owner as either the original or any successor in title to the Initial Owner shall desire to sell, dispose of or otherwise convey the Property, or any portion thereof, the Initial Owner shall notify the Municipality in writing of the Initial Owner's intention to so convey the Property (the "Conveyance Notice"). The Municipality shall promptly notify Initial Owner of the Maximum Resale Price using the formula set forth in Section 1, and the Resale Fee as defined in Section 1. Upon receipt of the Conveyance Notice, the Municipality shall use reasonable efforts to locate an Eligible Purchaser. The Initial Owner shall fully cooperate with the Municipality's efforts to locate an Eligible Purchaser and shall, at a minimum, use reasonable efforts to make the property available for open houses, if necessary, and may be required to hire a licensed real estate agent to facilitate the sale of the property to an Eligible Purchaser, if so requested by the Municipality. The Initial Owner shall be responsible for paying the fees of such agent. The Eligible Purchaser located by the Municipality shall execute a standard purchase and sales agreement with the Initial Owner and purchase the Property at the Maximum Resale Price within one hundred twenty (120) days after the Municipality receives the Conveyance Notice, or such further time as necessary to arrange for details of closing. If the Eligible Purchaser initially located fails to close for any reason within this time period, the Municipality shall have an additional sixty (60) days in which to locate another Eligible Purchaser and to close on the Property, or such further time as necessary to arrange for details of closing. Any lack of cooperation or delay caused by the Initial Owner shall extend this time period for the length of the delay caused by such lack of cooperation. The Municipality shall retain the right to purchase the Property at the Maximum Resale Price, in which event the purchase shall occur within one hundred twenty (120) days after the Municipality receives the Conveyance Notice, or such further time as reasonably requested to arrange for details of closing, or as extended due to Initial Owner's lack of cooperation.

(b) The Municipality shall devote reasonable marketing efforts to locate an Eligible Purchaser ready, willing and able to purchase the Property at the Maximum Resale Price within the time period provided in subsection (a) above. If more than one Eligible Purchaser is located through reasonable marketing efforts of the Municipality, it shall conduct a lottery or other like procedure to determine which Eligible Purchaser shall be entitled to the conveyance of the Property.

(c) If an Eligible Purchaser is selected to purchase the Property, or if the Municipality elects to purchase the Property, the Property shall be conveyed by the Initial Owner to such Eligible Purchaser or to the Municipality as the case may be, by a good and sufficient quitclaim deed conveying a good and clear record and marketable title to the Property free from all encumbrances except (i) such taxes for the then current year as are not due and payable on the date of delivery of the deed, (ii) any lien for municipal betterments assessed after the date of the Conveyance Notice, (iii) provisions of local building and zoning laws, (iv) all easements, restrictions, covenants and agreements of record specified in the deed from the Initial Owner to Eligible Purchaser, (v) such additional easements, restrictions, covenants and agreements of record as the Eligible Purchaser or the Municipality, as applicable, consents to, such consent not to be unreasonably withheld or delayed.

(d) Said deed shall be delivered and the purchase price paid (the "Closing") at the Registry, or at the option of the Eligible Purchaser (or the Municipality, if the Municipality is purchasing the Property), exercised by written notice to the Initial Owner at least five (5) days prior to the delivery of the deed, at such other place as the Eligible Purchaser (or the Municipality, if the Municipality is purchasing the Property) may designate in said notice. The Closing shall occur at such time and on such date as shall be specified in a written notice from the Initial Owner (or the Municipality if the Municipality is purchasing

Form: April 15, 2014 (5)

the Property) to the Eligible Purchaser, which date shall be at least five (5) days after the date on which such notice is given, and no later than the end of the time period specified in subsection (a) above.

(e) To enable Initial Owner to make conveyance as herein provided, Initial Owner may, if so desired at the time of delivery of the deed, use the purchase money or any portion thereof to clear the title of any or all encumbrances or interests, all instruments with respect thereto to be recorded simultaneously with the delivery of said deed, or within a reasonable amount of time thereafter in accordance with customary conveyancing practice. Nothing contained herein as to the Initial Owner's obligation to remove defects in title or to make conveyance or to deliver possession of the Property in accordance with the terms hereof, as to use of proceeds to clear title or as to the election of the Eligible Purchaser or the Municipality to take title, nor anything else in this Declaration shall be deemed to waive, impair or otherwise affect the priority of the Municipality's rights herein over matters appearing of record, or occurring, at any time after the recording of this Declaration, all such matters so appearing or occurring being subject and subordinate in all events to the Municipality's rights herein.

(f) Water and sewer charges and taxes for the then current tax period shall be apportioned and fuel value shall be adjusted as of the date of Closing and the net amount thereof shall be added to or deducted from, as the case may be, the purchase price payable by the Eligible Purchaser or by the Municipality.

(g) Full possession of the Property free from all occupants is to be delivered at the time of the Closing, the Property to be then in the same condition as it is in on the date of execution of the purchase and sales agreement, reasonable wear and tear only excepted.

(h) If Initial Owner shall be unable to give title or to make conveyance as above stipulated, or if any change of condition in the Property not included in the above exception shall occur, then Initial Owner shall be given a reasonable time not to exceed thirty (30) days after the date on which the Closing was to have occurred in which to remove any defect in title or to restore the Property to the condition hereby provided for. The Initial Owner shall use best efforts to remove any such defects in the title and to restore the Property to the extent permitted by insurance proceeds or condemnation award. The Closing shall occur fifteen (15) days after notice by Initial Owner that such defect has been cured or that the Property has been so restored. The Eligible Purchaser (or the Municipality, if the Municipality is purchasing the Property) shall have the election, at either the original or any extended time for performance, to accept such title as the Initial Owner can deliver to the Property in its then condition and to pay therefor the purchase price without deduction, in which case the Initial Owner shall convey such title, except that in the event of such conveyance in accordance with the provisions of this Section 4.(h), if the Property shall have been damaged by fire or casualty insured against or if a portion of the Property shall have been taken by a public authority, then the Initial Owner shall, unless the Initial Owner has previously restored the Property to its former condition, either:

- (1) pay over or assign to the Eligible Purchaser or the Municipality, on delivery of the deed, all amounts recovered or recoverable on account of such insurance or condemnation award less any amounts reasonably expended by the Initial Owner for the partial restoration, or
- (2) if a holder of a mortgage on the Property shall not permit the insurance proceeds or the condemnation award or part thereof to be used to restore the Property to its former condition or to be so paid over or assigned, give to the Eligible Purchaser or

to the Municipality a credit against the purchase price, on delivery of the deed, equal to said amounts so retained by the holder of the said mortgage less any amounts reasonably expended by the Initial Owner for any partial restoration.

(i) If the Municipality fails to locate an Eligible Purchaser who purchases the Property within one hundred twenty (120) days (with any requested additional time for closing details or lack of cooperation) after receipt of the Conveyance Notice (or within the supplemental sixty (60)-day period pursuant to Section 4.(a)), and the Municipality does not purchase the Property during said period, no later than six (6) months following expiration of such period, the Initial Owner may convey the Property to any third party at no less than fair market value free and clear of all rights and restrictions contained herein, including, but not limited to the Maximum Resale Price, provided, however, all consideration and payments of any kind received by the Initial Owner for the conveyance of the Property to the third party which exceeds the Maximum Resale Price shall be immediately and directly paid to the Municipality for deposit to its Affordable Housing Fund. Upon receipt of this excess amount, the Municipality shall issue to the third party a certificate (the "Compliance Certificate") in recordable form reflecting the Municipality's receipt of the excess amount, if any, that all rights, restrictions, agreements and covenants contained herein are henceforth null and void and that the sale of the Property to the third party is consistent with the terms of this Declaration. This Compliance Certificate is to be recorded in the Registry. This Compliance Certificate may be relied upon by the then owner of the Property and by third parties as constituting conclusive evidence that such excess amount, if any, has been paid to the Municipality and that the rights, restrictions, agreements and covenants set forth herein are nullvoid and terminated. The sale price to a third party shall be subject to the Municipality's prior written approval, giving due consideration to such factors as the appraised value of the Property, time on the market, marketing efforts and economic conditions.

(j) The Resale Fee shall be paid to the Municipality at the time of any conveyance by Owner contemplated under this Paragraph 4.

5. The Initial Owner understands and agrees that nothing in this Declaration in any way constitutes a promise or guarantee by the Municipality that the Initial Owner shall actually receive the Maximum Resale Price for the Property or any other price for the Property.

**6. Resale and Transfer Restrictions.** (a) Except as otherwise provided herein, the Property or any interest therein shall not at any time be sold by the Initial Owner, the Initial Owner's successors and assigns, and no attempted sale shall be valid, unless the aggregate value of all consideration and payments of every kind given or paid by the Eligible Purchaser (as located and defined in accordance with Section 4 above) or the Municipality, to the then owner of the Property for and in connection with the transfer of such Property, is equal to or less than the Maximum Resale Price for the Property, and (i) if the Property is conveyed to an Eligible Purchaser, unless a certificate (the "Eligible Purchaser Certificate") is obtained and recorded, signed and acknowledged by the Municipality which Eligible Purchaser Certificate refers to the Property, the Initial Owner, the Eligible Purchaser thereof, and the Maximum Resale Price therefor, and states that the proposed conveyance, sale or transfer of the Property to the Eligible Purchaser is in compliance with the rights, restrictions, covenants and agreements contained in this Declaration, and unless there is also recorded a new Declaration executed by the Eligible Purchaser, which new Declaration is substantially in the same form as this Declaration; or (ii) if the Property is conveyed to the Municipality unless a Certificate (the "Municipal Purchaser Certificate") is obtained and recorded, signed and acknowledged by the Municipality, which Municipal Purchaser Certificate refers to the Property, the Initial Owner, the Municipality, and the Maximum Resale Price for the Property and states that the

proposed conveyance, sale or transfer of the Property to the Municipality is in compliance with the rights, restrictions, covenants and agreements contained in this Declaration; or (iii) pursuant to Section 4(i), any amount in excess of the Maximum Resale Price which is paid to the Initial Owner by a purchaser who is permitted to buy the Property pursuant to Section 4(i), is paid by the Initial Owner to the Municipality, and the Municipality executes and delivers a Compliance Certificate as described in Section 4(i) for recording with the Registry.

7. A transfer by will or by an executor or administrator of Initial Owner's estate to the spouse or children of the Initial Owner shall not violate this Declaration or trigger the Resale or Transfer Restrictions as set forth herein, provided that (i) the executor or administrator shall, within ninety (90) days of his or her appointment, give the Municipality notice of the devise or inheritance of the Property; and (ii) such spouse or children intends to continue to use the Property as his or her principal residence. Any other person or persons who are heirs, legatees, or devisees of the Initial Owner must demonstrate to the Municipality's reasonable satisfaction that they are Eligible Purchasers, as defined herein, within said ninety (90) day period. If any such person is unable to do so, then such person shall not be entitled to possession of the Property but must transfer the Property in accordance with this Declaration.

8. Any good faith purchaser of the Property, any lender or other party taking a security interest in such Property and any other third party may rely upon a Compliance Certificate, an Eligible Purchaser Certificate or a Municipal Purchaser Certificate referring to the Property as conclusive evidence of the matters stated therein and may record such Certificate in connection with conveyance of the Property, provided, in the case of an Eligible Purchaser Certificate and a Municipal Purchaser Certificate the consideration recited in the deed or other instrument conveying the Property upon such resale shall not be greater than the consideration stated in the Eligible Purchaser Certificate or the Municipal Purchaser Certificate as the case may be.

9. Within ten (10) days of the closing of the conveyance of the Property from Initial Owner to Eligible Purchaser, the Eligible Purchaser shall deliver to the Municipality a copy of the Deed of the Property, together with recording information. Failure of the Eligible Purchaser, or Eligible Purchaser's successors or assigns to comply with the preceding sentence shall not affect the validity of such conveyance.

**10. Exercise of Remedies by Mortgagees.** (a) The holder of record of any mortgage on the Property (each, a "Mortgagee") shall notify the Municipality and any senior Mortgagee(s) in the event of any default for which the Mortgagee intends to commence foreclosure proceedings or similar remedial action pursuant to its mortgage (the "Foreclosure Notice"), which notice shall be sent to the Municipality as set forth in this Declaration, and to the senior Mortgagee(s) as set forth in such senior Mortgagee's mortgage, not less than one hundred twenty (120) days prior to the foreclosure sale or the acceptance of a deed in lieu of foreclosure. The Owner expressly agrees to the delivery of the Foreclosure Notice and any other communications and disclosures made by the Mortgagee pursuant to this Declaration.

(b) The Owner grants to the Municipality or its designee the right and option to purchase the Property upon receipt by the Municipality of the Foreclosure Notice, or upon receipt of notice of an impending foreclosure by newspaper publication deemed to be received on the date of publication. In the event that the Municipality intends to exercise its option, the Municipality or its designee shall purchase the Property within one hundred twenty (120) days of receipt of such notice, at a price equal to the greater of (i) the sum of the outstanding principal balance of the note secured by such foreclosing Mortgagee's mortgage, together with the outstanding principal balance(s) of any note(s) secured by mortgage(s) senior



in priority to such mortgage plus all future advances, accrued interest and all reasonable costs and expenses which the foreclosing Mortgagee and any senior Mortgagee(s) are entitled to recover pursuant to the terms of such mortgages (the "Mortgage Satisfaction Amount"), and (ii) the Maximum Resale Price (the greater of (i) and (ii) above herein referred to as the "Applicable Foreclosure Price"). The Property shall be sold and conveyed in its then-current "as is, where is" condition, without representation or warranty of any kind, direct or indirect, express or implied, and with the benefit of and subject to all rights, rights of way, restrictions, easements, covenants, liens, improvements, housing code violations, public assessments, any and all unpaid federal or state taxes (subject to any rights of redemption for unpaid federal taxes), municipal liens and any other encumbrances of record then in force and applicable to the Property having priority over such foreclosing Mortgagee's mortgage, and further subject to a Declaration identical in form and substance to this Declaration which the Owner hereby agrees to execute, to secure execution by the Municipality or its designee, and to record with the deed, except that (i) during the term of ownership of the Property by the Municipality or its designee the owner-occupancy requirements of Section 2 hereof shall not apply (unless the designee is an Eligible Purchaser), and (ii) the Maximum Resale Price shall be recalculated based on the price paid for the Property by the Municipality or its designee, but not greater than the Applicable Foreclosure Price. Said deed shall clearly state that it is made subject to the Declaration which is made part of the deed. Failure to comply with the preceding sentence shall not affect the validity of the conveyance from the Initial Owner to the Municipality or its designee or the enforceability of the restrictions herein. (c) Not earlier than one hundred twenty (120) days following the delivery of the Foreclosure Notice to the Municipality and any senior Mortgagee(s) pursuant to subsection (a) above, the foreclosing Mortgagee may conduct the foreclosure sale or accept a deed in lieu of foreclosure. The Property shall be sold and conveyed in its then-current "as is, where is" condition, without representation or warranty of any kind, direct or indirect, express or implied, and with the benefit of and subject to all rights, rights of way, restrictions, easements, covenants, liens, improvements, housing code violations, public assessments, any and all unpaid federal or state taxes (subject to any rights of redemption for unpaid federal taxes), municipal liens and any other encumbrances of record then in force and applicable to the Property having priority over the foreclosing Mortgagee's mortgage, and free and clear of all rights and restrictions herein.

(d) In the event that the foreclosing Mortgagee conducts a foreclosure sale or other proceeding enforcing its rights under its mortgage and the Property is sold for a price in excess of the greater of the Maximum Resale Price and the Mortgage Satisfaction Amount, such excess shall be paid to the Municipality for its Affordable Housing Fund after (i) a final judicial determination, or (ii) a written agreement of all parties who, as of such date hold (or have been duly authorized to act for other parties who hold) a record interest in the Property, that the Municipality is entitled to such excess. The legal costs of obtaining any such judicial determination or agreement shall be deducted from the excess prior to payment to the Municipality. To the extent that the Owner possesses any interest in any amount which would otherwise be payable to the Municipality under this paragraph, to the fullest extent permissible by law, the Owner hereby assigns its interest in such amount to the Mortgagee for payment to the Municipality.

(e) If any institutional Mortgagee shall acquire the Property by reason of foreclosure or upon conveyance of the Property in lieu of foreclosure, then the rights and restrictions contained herein shall not apply to such institutional Mortgagee upon such acquisition of the Property and to any purchaser of the Property from such institutional Mortgagee, and the Property shall be conveyed free and clear of all rights and restrictions herein. This provision applies only to any institutional lender.

(f) If any party other than an institutional Mortgagee shall acquire the Property by reason of foreclosure by an institutional Mortgagee or upon conveyance of the Property in lieu of foreclosure to an institutional lender, the Property shall be conveyed free and clear of all rights and restrictions herein. This provision shall not apply to a party who is the Owner being foreclosed or who has granted a deed in lieu of foreclosure, or a person related to that Owner.

(g) Upon complete satisfaction of the requirements contained in this Section 10, the Monitoring Agent shall issue a Compliance Certificate to the foreclosing Mortgagee which, upon recording in the Registry, may be relied upon as conclusive evidence that the conveyance of the Property pursuant to this Section 7 is in compliance with the rights, restrictions, covenants and agreements contained in this Declaration ("Mortgagee Compliance Certificate").

(h) The Owner understands and agrees that nothing in this Declaration in any way constitutes a promise or guarantee by the Municipality that the Mortgagee shall actually receive the Mortgage Satisfaction Amount, the Maximum Resale Price for the Property or any other price for the Property, or (ii) impairs the rights and remedies of the Mortgagee in the event of a deficiency.

(i) If a Foreclosure Notice is delivered after the delivery of a Conveyance Notice as provided in Section 4(a) hereof, the procedures set forth in this Section 10 shall supersede the provisions of Section 4 hereof.

#### **11. Covenants to Run With the Property.**

(a) All of the agreements, covenants, rights and restrictions set forth herein shall be deemed to be covenants running with the Property and shall be binding upon and enforceable against the Initial Owner, the Initial Owner's successors and assigns and any subsequent party holding title to the Property, including an Eligible Purchaser, for the benefit of and enforceable by the Municipality, their successors and assigns, during the Term of this Declaration.

(b) This Declaration and all of the agreements, restrictions, rights and covenants contained herein shall be deemed to be an affordable housing restriction as that term is defined in Section 31 of Chapter 184 of the Massachusetts General Laws. This Declaration shall be binding upon the Initial Owner, jointly and severally and all heirs, successors and assigns of the Initial Owner, for the benefit of, and enforceable by the Municipality and its successors and assigns permanently with the approval of the Commonwealth of Massachusetts, pursuant to General Laws, Chapter 184, Sections 31-33, and absent such approval for whatever reason, for a period of thirty (30) years from the date of this Declaration and for such further time thereafter as this Declaration may be lawfully extended, including without limitation extensions permitted under General Laws, Chapter 184, Section 27-30.

(c) The Initial Owner intends, declares and covenants on behalf of Initial Owner and Initial Owner's successors and assigns (i) that this Declaration and the covenants, agreements, rights and restrictions contained herein shall be and are covenants running with the land, encumbering the Property for the Term, and are binding upon the Initial Owner's successors in title, (ii) are not merely personal covenants of the Initial Owner, and (iii) shall bind the Initial Owner, and Initial Owner's successors and assigns and inure to the benefit of the Municipality, and their successors and assigns, for the Term. Initial Owner hereby agrees that any and all requirements of the laws of the Commonwealth of Massachusetts for the provisions of this Declaration to constitute restrictions and covenants running with the land shall

be deemed to be satisfied in full and that any requirements of privity of estate are also deemed to be satisfied in full.

(d) Without limitation on any other rights or remedies of the Municipality, its successors and assigns, any sale or other transfer or conveyance of the Property in violation of the provisions of this Declaration, shall, to the maximum extent permitted by law, be voidable by the Municipality, its successors and assigns, by an action to enforce such rights, restrictions, covenants, and agreements.

**12. Notice.** Any notices, demands or requests that may be given under this Declaration shall be sufficiently served if given in writing and delivered by hand or mailed by certified or registered mail, postage prepaid, return receipt requested, to the parties hereto at the addresses set forth below, or such other addresses as may be specified by any party (or its successor) by such notice.

Municipality:

Initial Owner:

Any such notice, demand or request shall be deemed to have been given on the day it is hand delivered or mailed.

**13. Further Assurances.** The Initial Owner agrees from time to time, as may be reasonably required by the Municipality, to furnish the Municipality with a written statement, signed and, if requested, acknowledged, setting forth the condition and occupancy of the Property, information concerning the resale of the Property and all other material information pertaining to the Property or the Initial Owner's conformance with the requirements of the Guidelines.

**14. Enforcement.** (a) The rights hereby granted shall include the right of the Municipality to enforce this Declaration independently by appropriate legal proceedings and to obtain injunctive and other appropriate relief against any violations including without limitation relief requiring restoration of the Property to its condition prior to any such violation (it being agreed that there shall be no adequate remedy at law for such violation), and shall be in addition to, and not in limitation of, any other rights and remedies available to the Municipality.

**15.** Without limitation of any other rights or remedies of the Municipality, or their successors and assigns, in the event of any sale, conveyance or other transfer or occupancy of the Property in violation of the provisions of this Declaration, the Municipality shall be entitled to the following remedies, which shall be cumulative and not mutually exclusive:

- (a) specific performance of the provisions of this Declaration;
- (b) money damages for charges in excess of the Maximum Resale Price, if applicable;
- (c) if the violation is a sale of the Property at a price greater than the Maximum Resale Price as provided herein, the Municipality shall have the option to locate an Eligible Purchaser or purchase the Property on the terms and conditions provided herein; the purchase price shall be a price which complies with the provisions of this Declaration;

(d) the right to void any contract for sale or any sale, conveyance or other transfer of the Property in violation of the provisions of this Declaration in the absence of the appropriate Certificate, by an action in equity to enforce this Declaration; and

(e) money damages for the cost of creating or obtaining a comparable dwelling unit for an Eligible Purchaser.

16. In addition to the foregoing, in the event of a violation of the provisions of this Declaration, the Municipality may take appropriate enforcement action against the Initial Owner or the Initial Owner's successors in title, including, without limitation, legal action to compel the Initial Owner to comply with the requirements of this Declaration. The Initial Owner hereby agrees to pay all fees and expenses (including legal fees) of the Municipality in the event successful enforcement action is taken against the Initial Owner hereunder. The Initial Owner hereby grants to the Municipality a lien on the Property, junior to the lien of any institutional holder of a first mortgage on the Property, to secure payment of such fees and expenses in any successful enforcement action. The Municipality shall be entitled to seek recovery of fees and expenses incurred in a successful enforcement action of this Declaration against the Initial Owner and to assert such a lien on the Property to secure payment by the Initial Owner of such fees and expenses. Notwithstanding anything herein to the contrary, in the event that the Municipality fails to enforce this Declaration as provided in this Section, its successors and assigns, shall have the same right to enforce this Declaration as provided herein.

17. The Initial Owner for himself, herself or themselves and his, her or their successors and assigns, hereby grants to the Municipality the right to enter upon the Property for the purpose of enforcing the restrictions herein contained, or of taking all actions with respect to the Property which the Municipality may determine to be necessary or appropriate pursuant to court order, or with the consent of the Initial Owner to prevent, remedy or abate any violation of this Declaration. Notwithstanding anything herein to the contrary, in the event that the Municipality fails to enforce this Declaration as provided in this Section, its successors and assigns, shall have the same right to enforce this Declaration as provided herein.

18. **Severability.** If any provisions hereof or the application thereof to any person or circumstance shall come, to any extent, to be invalid or unenforceable, the remainder hereof, or the application of such provision to the persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each provision hereof shall be valid and enforced to the fullest extent permitted by law.

Executed as a sealed instrument this \_\_\_\_\_ day of \_\_\_\_\_, 2014

Initial Owner

By: \_\_\_\_\_

Form: April 15, 2014 (5)

**COMMONWEALTH OF MASSACHUSETTS**

Franklin, ss.

On this \_\_\_\_ day of \_\_\_\_\_, 2013, before me, the undersigned notary public, personally appeared \_\_\_\_\_, and proved to me through satisfactory evidence of identification, which was/were [type of evidence] \_\_\_\_\_, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that she signed it voluntarily, in such capacity, for its stated purpose.

\_\_\_\_\_  
Notary Public  
Name (Print):  
My commission expires:

Form: April 15, 2014 (5)

Executed as a sealed instrument this \_\_\_\_\_ day of \_\_\_\_\_, 2013.

Municipality

By: \_\_\_\_\_

**COMMONWEALTH OF MASSACHUSETTS**

Franklin, ss.

On this \_\_\_\_ day of \_\_\_\_\_, 2013, before me, the undersigned notary public, personally appeared \_\_\_\_\_, and proved to me through satisfactory evidence of identification, which was/were [type of evidence] \_\_\_\_\_, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that she signed it voluntarily, in such capaTown, for its stated purpose.

\_\_\_\_\_  
Notary Public  
Name (Print):  
My commission expires:

Form: April 15, 2014 (5)

**EXHIBIT A**  
**PROPERTY DESCRIPTION**