

AFFORDABLE HOUSING
DEED RIDER
For

(annexed to and made part of that certain deed (the "Deed")
from _____ ("Grantor")
to _____ ("Grantee")
dated _____, 200_.)

WITNESSETH:

WHEREAS, the Grantor is the owner of real property located in _____, Massachusetts (the "Property") as more particularly described on Exhibit A hereto;

WHEREAS, [Town of _____, Massachusetts (the "Municipality")]/[_____ (the "Housing Authority")] a governmental body, organized exclusively for _____ [municipal purposes], including creating or retaining or assisting in the creation or retention of affordable rental or other housing for occupancy by persons or families of low or moderate income [on the Island of Martha's Vineyard] or [in the Town of _____] wishes to provide affordable housing to Eligible Purchasers (as defined below) by facilitating the development of such affordable housing; and
[SEE ADDENDUM 1 FOR LIST OF OPTIONS FOR SITUATIONS IN WHICH RIDER WOULD BE USED]

WHEREAS, Grantee is an Eligible Purchaser, as defined below, and the Grantor is accordingly conveying the Property to the Grantee for a consideration which is less than the unrestricted fair market value of the Property (the "Initial Price"); and

WHEREAS, pursuant to the Program [if chose Option E from Addendum 1, add the following: and the Regulatory Agreement for this Project], as a condition of purchasing the Property at the Initial Price, the Grantee is willing to agree to convey the Property on resale to an Eligible Purchaser or to the Grantor, the Monitoring Agent, their agents, successors, designees and assigns, as set forth in Section 3 below, for a price not to exceed the "Maximum Resale Price," as defined below.

[if chose Option A from Section 11, add the following Whereas:

WHEREAS, this Deed Rider and all of the agreements, restrictions, rights and covenants contained herein is intended to be an affordable housing restriction as the term is defined in M.G.L. c. 184, §31, 32, and 33 and shall be approved by the Department of Housing and

Community Development for the Commonwealth of Massachusetts in accordance with the procedure established by the above-referenced statute.]

NOW THEREFORE, as further consideration from the Grantee to the Grantor and the Municipality for the conveyance of the Property at a discount in accordance with the Program **[if chose Option E from Addendum 1, add the following: and the Regulatory Agreement]** (the "Initial Sale"), the Grantee and the Grantor and their respective heirs, successors and assigns, hereby agree 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 Grantor and the Grantor's assignees and designees, the Monitoring Agent and the Municipality, acting by and through its chief elected official.

1. Eligible Purchaser.

Subject to the provisions set forth below, in the event the Grantee desires to sell the Property, the Grantee shall use best efforts to find an Eligible Purchaser to purchase the Property. An Eligible Purchaser is defined for purposes of this Deed Rider as **[choose either Option A or Option B:**

- Option A. an appropriate size household (as defined below)**
Option B. an individual or household]

that has an annual income equal to or less than ___% of the median income¹, by household size, for the Dukes County Non-Metropolitan Statistical Area, as published from time to time by the Department of Housing and Community Development ("DHCD") and as adjusted from time to time according to HUD guidelines (the "Base Income").

The term "best efforts" as used herein shall mean (A) the placement of an advertisement for sale of the Property in at least two (2) daily newspapers of general circulation in Dukes County for at least four consecutive weeks, stating the Maximum Resale Price (as defined below), Grantee's telephone number, and the phrase: "*Sale of unit subject to certain guidelines and restrictions with respect to the maintenance and retention of affordable housing for households of low and moderate income.*" and (B) the receipt of evidence satisfactory to the Monitoring Agent that the new purchaser qualifies as an Eligible Purchaser.

[may also add the following: An Eligible Purchaser must also meet the eligibility criteria set forth by the Municipality and the Dukes County Housing Authority in guidelines in effect at the time the Grantee first places an advertisement for the sale of the Property, as set forth below.]

[if chose Option A above, may also add the following: For purposes of this Deed Rider, a household of no more than two individuals shall be deemed an appropriate size household for a one bedroom unit, a household of no less than two and no more than four individuals shall be deemed an appropriate size household for a two bedroom unit, a household of no less than three and no more than five individuals shall be

¹ To our knowledge, the Department of Housing and Community Development (DHCD) has not approved a deed rider in perpetuity with an income limit greater than 80% as of February, 2002.

deemed an appropriate size household for a three bedroom unit, and a household of no less than four and no more than six individuals shall be deemed an appropriate size household for a four bedroom unit.]

2. Maximum Resale Price.

Except when the Property is sold to an Ineligible Purchaser (as defined herein), the Property shall be sold at a price not exceeding the Maximum Resale Price, which is defined for purposes of this Deed Rider as:

SEE ADDENDUM 2 FOR LIST OF OPTIONS

but in no event greater than an amount established so that a household earning a Base Income for such appropriate size household would pay no more than 30% of the Base Income for the sum of annual debt service for a mortgage loan of 90% of the sale price of the Property (including principal and interest), property taxes, insurance and any homeowner association fees for the Property.

As used in this Deed Rider, “Capital Improvements” shall be defined as capital improvements made to the Property and/or to the common facilities that add to the basis under the tax code.

As used in this Deed Rider, “Fair Market Value” shall be defined as an amount determined by a real estate appraiser engaged by Grantee at their own expense, qualified to appraise property for secondary mortgage markets and utilizing acceptable professional appraisal standards in Massachusetts approved by the Monitoring Agent. The Property with the improvements thereon shall be appraised as if free of this Deed Rider and any affordable housing restrictions. The real estate appraiser shall report to the Monitoring Agent, within ten (10) days of the first advertisement for the sale of the Property, the Fair Market Value of the Property, including without limitation, any appurtenant rights in common areas or other appurtenant rights.

As used in this Deed Rider, “Replacement Cost” shall be defined as an amount determined by a real estate insurance adjuster engaged by Grantee at their own expense, qualified to value property for secondary mortgage markets and utilizing acceptable professional appraisal standards in Massachusetts approved by the Monitoring Agent. The Property shall be valued as if free of this Deed Rider and any affordable housing restrictions. The real estate insurance adjuster shall report to the Monitoring Agent, within ten (10) days of the first advertisement for the sale of the Property, the Replacement Cost of the Property, including without limitation, any appurtenant rights in common areas or other appurtenant rights.

3. Options to Purchase:

When the Grantee or any successor in title to the Grantee shall desire to sell, dispose of or otherwise convey the Property, or any portion thereof, the Grantee shall first notify the Monitoring Agent, Municipality, and the Grantor in writing of the Grantee’s intention to so convey the property (the “Notice”). The Notice shall set forth the Maximum Resale Price for which the Property is proposed to be sold. Within ten (10) days of receipt of the Notice, the

Monitoring Agent shall certify that the Maximum Resale Price as set forth in the Notice is (or is not, as may be applicable) in accordance with the requirements of this Deed Rider.

SEE ADDENDUM 3 FOR LIST OF OPTIONS

If the Grantee or its successors and assigns are unable to find an Eligible Purchaser within sixty (60) days from the date the Property was first put on the market, as determined by the date of the first advertisement for sale or the date an agreement was signed with a listing broker to market the Property (the "Initial Marketing Period"), the Grantor and the Monitoring Agent shall have **[if chose Option A or B in Addendum 3, then add the following: in addition to any other option to purchase set forth herein]** the right to assist Grantee in identifying Eligible Purchasers during the sixty (60) days immediately following the Initial Marketing Period.

The Monitoring Agent shall review and approve the eligibility of all interested Eligible Purchasers after all notice and marketing periods provided for in Sections 1 and 3 have expired. If more than one Eligible Purchaser is located while the Property is on the market, the Monitoring Agent shall determine whether such interested purchasers qualify as Eligible Purchasers and then conduct a lottery or other like procedure to determine which Eligible Purchaser shall be entitled to the conveyance of the Property. After review of a proposed sale pursuant to this paragraph, and the selection of an Eligible Purchaser pursuant to a lottery, if necessary, the Monitoring Agent shall issue to the selected Eligible Purchaser a Recording Certificate as set forth in Section 7(a) below, indicating the Monitoring Agent's approval of the sale. This Recording Certificate shall be recorded in the Dukes County Registry of Deeds or registered with the Dukes County Registry District Office of the Land Court, and such Recording Certificate may be relied upon by the then owner of the Property and by third parties as constituting conclusive evidence that such sale has been made and approved pursuant to the requirement of this Deed Rider.

4. Sale to Ineligible Purchaser:

SEE ADDENDUM 4 FOR LIST OF OPTIONS

If more than one Ineligible Purchaser offers to purchase the Property, the Monitoring Agent shall conduct a lottery or other like procedure to determine which Ineligible Purchaser shall be entitled to the conveyance of the Property. After review of a proposed sale pursuant to this paragraph, and the selection of an Ineligible Purchaser pursuant to a lottery, if necessary, the Monitoring Agent shall issue to the selected Ineligible Purchaser a Recording Certificate (as defined in Paragraph 6(b)(ii) below) indicating the Monitoring Agent's approval of the sale. This Recording Certificate shall be recorded in the Dukes County Registry of Deeds or registered with the Dukes County Registry District Office of the Land Court and such Recording Certificate may be relied upon by the then owner of the Property and by third parties as constituting conclusive evidence that such sale has been made and approved pursuant to the requirement of this Deed Rider.

5. Delivery of Deed:

(a) The Property shall be conveyed by the Grantee 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 Exercise Notice, (iii) provisions of local building and zoning laws, (iv) all easements, restrictions, covenants and agreements of record, (v) such additional easements, restrictions, covenants and agreements of record as the Grantor and the Monitoring Agent consent to, such consent not to be unreasonably withheld or delayed, **[if chose Options A.1 or B.1 in Addendum 4, then add the following: and (vi) this form of Deed Rider which the Grantee hereby agrees to annex to said deed.]**

(b) Said deed shall be delivered and the purchase price paid (the “Closing”) at the Dukes County Registry of Deeds, or at the option of the purchaser, exercised by written notice to the Grantee at least five (5) days prior to the delivery of the deed, at such other place as the purchaser may designate in said notice. If the Eligible Purchaser is a purchaser located by the Grantor or Monitoring Agent, or if the Grantor or Monitoring Agent is purchasing the Property, the Closing shall occur no later than sixty (60) days after the Exercise Notice is given by said party.

(c) To enable Grantee to make conveyance as herein provided, Grantee may, if Grantee so desires 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 so procured to be recorded promptly in accordance with standard conveyancing practice on Martha’s Vineyard.

(d) Water and sewer charges and taxes for the then current tax period shall be apportioned and fuel value and any common area charges or association fees, if any, 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 purchaser.

(e) 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 the Grantee’s Notice, reasonable wear and tear only excepted.

(f) If Grantee 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 the Closing shall be extended for up to thirty (30) days and Grantee shall remove any defect in title or to restore the Property to the condition hereby provided for. The Grantee shall use best efforts to remove any such defects in the title whether voluntary or involuntary and to restore the Property to the extent permitted by insurance proceeds or condemnation award, though the Grantee shall not be required to spend more than ___% of **[choose the same valuation that is used in the option selected in Addendum 2: the Fair Market Value/Replacement Cost]** of the Property² to clear title. The purchaser shall have the election, at either the original or any extended time for performance, to accept such title as the Grantee can deliver to the Property in its then condition and to pay therefore the purchase price without deduction, in which case the Grantee shall convey such title, except that in the

² 10% is the recommended amount.

event of such conveyance in accordance with the provisions of this clause, if the Property shall have been taken by a public authority, then the Grantee shall, unless the Grantee has previously restored the Property to its former condition, either:

- (i) pay over or assign to the purchaser, 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 Grantee for the partial restoration, or
- (ii) 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 purchaser 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 Grantee for any partial restoration.

6. Resale and Transfer Restrictions:

Except as otherwise set forth in Section 4 above, the Property or any interest therein shall not at any time be sold by the Grantee, the Grantee's successors and assigns, and no attempted sale shall be valid, unless:

(a) the aggregate value of all consideration and payments of every kind given or paid 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

(b)

(i) if the Property is conveyed to an Eligible Purchaser, a certificate in recordable form (the "Recording Certificate") is obtained and recorded, signed and acknowledged by the Monitoring Agent, which Recording Certificate refers to the Property, the Grantee, the purchaser, and the actual resale price paid by the purchaser (the "Resale Price"), and states that the proposed sale of the Property is in compliance with and subject to the rights, restrictions, covenants and agreements contained in this Deed Rider **[if chose Option E in Addendum 1, include the following: and the Regulatory Agreement]**; or

(ii) if the Property is conveyed to the Grantor or Monitoring Agent, a certificate (the "Option Purchaser Certificate") is obtained from the Monitoring Agent (even if Monitoring Agent is the purchaser) and recorded with the Registry of Deeds or the Land Court, which Option Purchaser Certificate refers to the Property, the Grantee, the Purchaser, and the Resale Price for the Property and states that the proposed conveyance, sale or transfer of the Property to the party is in compliance with and subject to the rights, restrictions, covenants and agreements contained in this Deed Rider and that the options to purchase set forth in Paragraph 3 above have been properly exercised or waived, as the case may be; or

(iii) if the Property is conveyed to an Ineligible Purchaser in accordance with Paragraph 4 hereof, the Monitoring Agent executes and delivers the Recording Certificate in accordance with said Paragraph 4.

(c) 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 Recording Certificate or an Option Purchaser Certificate referring to the Property, provided that 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 Recording Certificate or the Option Purchaser Certificate, as the case may be. If the Property is conveyed to the Grantor, the Monitoring Agent, their agents, successors, designees and assigns, any future sale of the Property by such party shall be subject to this form of Deed Rider.

(d) Within ten (10) days of the closing of the conveyance of the Property from Grantor to Grantee, the Grantee shall deliver to the Monitoring Agent a true and certified copy of the Deed of the Property and this Deed Rider, together with information as to the place of recording thereof in the public records. Failure of the Grantee, or Grantee's successors or assigns to comply with preceding sentence shall not affect the validity of such conveyance.

(e) The Grantee understands and agrees that nothing in this Deed Rider [**if chose Option E in Addendum 1, then include the following: or the Regulatory Agreement**] in any way constitutes a promise or guarantee by the Grantor or the Monitoring Agent that the Grantee shall actually receive the Maximum Resale Price for the Property or any other price for the Property.

7. Rights of Heirs:

Notwithstanding Paragraphs 1, 2 and 3 above, upon the death of the last surviving Grantee, if such event occurs within the duration of these restrictions, one or more of the following parties (the "Heir" or "Heirs") may hold title to the Property, whether or not such Heir qualifies as an Eligible Purchaser, upon the same conditions as the original Grantee and subject to all the terms and conditions of this Deed Rider, including, but not limited to, the obligation to reside on the Property set forth in Paragraph 8 and the restrictions against leasing set forth in Paragraph 9:

- (a) the spouse of the Grantee; or
- (b) the child or children of the Grantee; or
- (c) member(s) of the Grantee's household who have resided on the premises for at least one (1) year; or
- (d) any other person or persons who have inherited the Property by will or by operation of law from the Grantee.

In the event that the Heir declines the inheritance of the Property and there is no provision in the Grantee's will or the applicable laws of inheritance for appointing another devisee for the Property, then the provisions of Paragraph 3 will apply.

8. Occupancy Condition:

The Property is conveyed subject to the condition that the Grantee shall reside in the Property for at least nine months during a calendar year, unless the Monitoring Agent waives this

**[if chose Option B above, include the following:
and such Property shall thereupon and thereafter be free from all such rights and
restrictions.]**

(b) In the event such holder conducts a foreclosure or other proceeding enforcing its rights under such mortgage and receives sale proceeds, net of expenses of sale, in excess of the (i) the sum of the outstanding principal balance of the note secured by such mortgage plus all future advances, accrued interest and all reasonable costs and expenses which the holder is entitled to recover pursuant to the terms of the mortgage **[if chose Option B above, then add the following: or (ii) the Maximum Resale Price applicable on the date of the sale, whichever of (i) or (ii) is greater]** such excess after repayment to the Grantee of the Grantee's equity investment in the Property (the "Equity Investment") shall be paid to **[choose either 1 or 2 below]**

1. **the Monitoring Agent**
2. **the Grantor**

**[if chose Option B above, include the following:
in consideration of the loss of the value and benefit of the rights and restrictions herein
contained held by the Monitoring Agent and released by the Monitoring Agent pursuant to
this section in connection with such proceeding]**

(provided, that in the event that such excess shall be so paid to **the Monitoring Agent/the Grantor** by such holder, **the Monitoring Agent/Grantor** shall thereafter indemnify such holder against loss or damage to such holder, resulting from any claim made by the mortgagor of such mortgage to the extent that such claim is based upon payment of such excess by such holder to **the Monitoring Agent/the Grantor** in accordance herewith, provided that such holder shall give **the Monitoring Agent/the Grantor** prompt notice of any such claim and shall not object to the intervention by **the Monitoring Agent/the Grantor** in any proceeding relating thereto). The Monitoring Agent may determine the Maximum Resale Price in good faith based on the size of the Property and the records available to it. If the holder disagrees with such value, the holder may obtain a second opinion, at the holder's expense and the Maximum Resale Price, for purposes of this Section 9(b) only, shall be equal to the average of the two opinion amounts. To the extent the Grantee possess any interest in any amount which exceeds the Equity Investment which would otherwise be payable to **the Monitoring Agent/the Grantor** under this paragraph, to the fullest extent permissible by law, the Grantee hereby assigns its interest in such amount to said holder for payment to **the Monitoring Agent/the Grantor**.

11. Covenants to Run with the Property:

(a) The Grantor and the Grantee, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, hereby grant and assign to the Grantor and the Monitoring Agent the right to enforce the rights, covenants and agreements set forth in the Deed Rider. The Grantor and the Grantee hereby grant to the Monitoring Agent the right to enter upon the Property for the purpose of enforcing any and all of the restrictions, covenants and agreements herein contained, and of taking all actions with respect to the Property which said party may determine to be necessary or appropriate, with or without court order, to prevent, remedy or abate any violation of the restrictions, covenants and agreements set forth herein. The rights hereby granted to the Monitoring Agent shall be in addition to and not in limitation of any

other rights and remedies available to the Grantor or the Monitoring Agent for enforcement of the restrictions, rights, covenants and agreements set forth in this Deed Rider.

(b) The Grantee intends, declares and covenants on behalf of itself and its successors and assigns (i) that the Deed Rider and the covenants, agreements, rights and restrictions contained herein shall be and are covenants running with the land, encumbering the Property for

[choose one of Options A, or B:

- A. perpetuity³,**
- B. a period which is _____ years from creation of the restriction,**

and are binding upon the Grantee's successors in title, (ii) are not merely personal covenants of the Grantee, and (iii) shall bind the Grantee, its successors and assigns and inure to the benefit of the Municipality and its successors and assigns for the term of the Deed Rider. Grantee hereby agrees that any requirements of the law of the Commonwealth of Massachusetts to be satisfied in order for the provisions of this Deed Rider 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 Grantor, the Monitoring Agent, their agents, successors, designees and assigns, any sale or other transfer or conveyance of the Property in violation of the provisions of this Deed Rider, shall, to the maximum extent permitted by law, be voidable by the Grantor or the Monitoring Agent, the Monitoring Agent's agents, successors, designees and assigns by suit in equity to enforce such rights, restrictions, covenants, and agreements.

12. Notice:

Any notices, demands or requests that may be given under this Deed Rider 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 for below, or such other addresses as may be specified by any party by such notice.

Municipality:

Grantor:

Grantee:

Monitoring Agent:

³ Perpetual deed riders must be certified by the Department of Housing and Community Development (DHCD) to be legally enforceable under M.G.L. c. 184, §31, 32, and 33.

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 Grantee agrees from time to time, as may be reasonably required by the Monitoring Agent and the Municipality, to provide 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 information pertaining to the Property or the Grantee's eligibility for and conformance with the Program **[if chose Option E from Addendum 1, add the following: and the Regulatory Agreement]** for this Project.

14. Waiver:

Nothing contained herein shall limit the rights of the Monitoring Agent and/or the Municipality to release or waive, from time to time, in whole or in part, any of the rights, restrictions, covenants or agreements contained herein with respect to the Property. Any such release or waiver must be made in writing and must be executed by the Monitoring Agent or designee.

15. 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.

16. Responsibility of the Monitoring Agent.

The Monitoring Agent shall not be held liable for any action taken or omitted pursuant to this Deed Rider so long as it shall have acted in good faith and without gross negligence.¹⁷

Indemnity.

The Grantor indemnifies and holds harmless the Monitoring Agent against all damages, costs and liabilities, including reasonable attorney's fees, asserted against the Monitoring Agent by reason of its relationship with the Project pursuant to this Deed Rider and not involving claims that the Monitoring Agent acted in bad faith and with gross negligence.

Executed as a sealed instrument this _____ day of _____, 20__.

Grantor:

By _____
Name
Title

Grantee:

By _____
Name
Title

[See Attached Schedule I for Certificate issued by the
Secretary of the Department of Housing and Community Development]

COMMONWEALTH OF MASSACHUSETTS

County of _____, ss _____, 20__

Then personally appeared the above-named _____, Grantor, and acknowledged the foregoing instrument to be his/her free act and deed, and the free act and deed of _____, before me.

Notary Public
My commission expires:

COMMONWEALTH OF MASSACHUSETTS

County of _____, ss _____, 20__

Then personally appeared the above-named _____, Grantee(s), and acknowledged the foregoing instrument to be his/her free act and deed, before me.

Notary Public
My commission expires:

SCHEDULE I

DHCD Secretary's Certificate

ADDENDUM 1

BACKGROUND SCENARIOS

[Choose one of Options A through H; Option I may be chosen in addition to any one of Options A through G]

A. [DEVELOPER WITH A COMPREHENSIVE PERMIT]

WHEREAS, the Grantor has received a comprehensive permit under Chapter 40B of M.G.L. for the purpose of constructing _____ () residential units (the "Project") comprised of _____ () units to be sold by Grantor at market rates and _____ () units to be sold by the Grantor to households with low and moderate incomes at a discount from the fair market value, in accordance with the terms and provisions of the grant of permit from the Town of _____ (the "Municipality") (the "Program"); and the Monitoring Agent, as defined below, has agreed to oversee such conveyances in accordance with the terms and provisions of the grant of permit and in accordance with the terms of a Monitoring Agreement between the Monitoring Agent, the municipality and the Grantor; and

B. [FOR-PROFIT DEVELOPER WITH SOME PUBLIC FUNDING]

WHEREAS, the Grantor is a for-profit developer who is participating in a program established by _____ (the "Public Funding Source"), under which Grantor is developing housing on Martha's Vineyard, and as part of that development, the Grantor is designating _____ () units of housing in the development to be sold to households with low and moderate incomes (as defined by _____) at a discount from each unit's appraised value if the purchaser agrees to convey the unit on resale to another eligible home purchaser in an amount determined as set forth below (the "Program"); and the Monitoring Agent, as defined below, has agreed to oversee such conveyances in accordance with the terms of a Monitoring Agreement between the Monitoring Agent, the Public Funding Source, and the Grantor; and

C. [FOR-PROFIT DEVELOPER WITH NO PUBLIC FUNDING]

WHEREAS, the Grantor is a for-profit developer who is developing housing on Martha's Vineyard, and as part of that development, the Grantor is voluntarily designating _____ () units of housing in the development to be sold to households with low and moderate incomes at a discount rate from each unit's appraised value if the purchaser agrees to convey the unit on resale to another eligible home purchaser in an amount determined as set forth below (the "Program"); and the Monitoring Agent, as defined below, has agreed to oversee such conveyances in accordance with the terms of a Monitoring Agreement between the Monitoring Agent and the Grantor; and

D. [NON-PROFIT ORGANIZATION DEVELOPING HOUSING WITH SOME

PUBLIC FUNDING]

WHEREAS, the Grantor is a non-profit corporation organized under the laws of the Commonwealth of Massachusetts and, as part of its activities, is participating in a program established by _____, under which dwelling units are sold to households with low and moderate incomes at a discount from each unit's appraised value if the purchaser agrees to convey the unit on resale to another eligible home purchaser in an amount determined as set forth below (the "Program"); and the Monitoring Agent, as defined below, has agreed to oversee such conveyances; and

E. [NON-PROFIT ORGANIZATION DEVELOPING HOUSING WITH NO PUBLIC FUNDING]

WHEREAS, the Grantor is a non-profit corporation organized under the laws of the Commonwealth of Massachusetts and, as part of its activities, is voluntarily developing ____ (___) units of housing to be sold to households with low and moderate incomes at a discount rate from each unit's appraised value if the purchaser agrees to convey the lot on resale to another eligible home purchaser in an amount determined as set forth below (the "Program"); and the Monitoring Agent, as defined below, has agreed to oversee such conveyances; and

F. [TOWN DEVELOPING HOUSING]

WHEREAS, the Grantor is the Town of _____ in Dukes County, Massachusetts (the "Municipality"), and, acting through the Dukes County Regional Housing Authority, is developing ____ (___) units of housing to be sold to households with low and moderate incomes at a discount rate from each unit's appraised value if the purchaser agrees to convey the unit on resale to another eligible home purchaser in an amount determined as set forth below (the "Program"); and the Monitoring Agent, as defined below, has agreed to oversee such conveyances; and

G. [RESIDENT HOMESITE PROGRAM]

WHEREAS, the Grantor is the Town of _____ in Dukes County, Massachusetts (the "Municipality"), and acting through the Municipality's Resident Homesite Committee, is selling undeveloped lots within the boundaries of the Town to residents of the Town with low and moderate incomes at a discount rate from each lot's appraised value if the purchaser agrees to construct on the lot a dwelling unit and then to convey the unit on resale to another eligible home purchaser in an amount determined as set forth below (the "Program"), and the Monitoring Agent, as defined below, has agreed to oversee such conveyances; and

H. [PRIVATE INDIVIDUAL]

WHEREAS, the Grantor desires to increase the number of affordable housing units on Martha's Vineyard, and is conveying the Property to the Grantee on the condition that the Grantee and its successors and assigns transfer the Property only to Eligible Purchasers (as defined below); and the Monitoring Agent, as defined below, has agreed to oversee such conveyances in accordance with the terms of a Monitoring Agreement between the Monitoring Agent and the Grantor's; and

I [OTHER BACKGROUND SCENARIO AS DEFINED]:

WHEREAS, the Grantor is

[Option J may be chosen in addition to any of Options A through G]

J. [REGULATORY AGREEMENT]

WHEREAS, the Grantor has entered into a certain regulatory agreement ("Regulatory Agreement") by and between the Grantor, the Monitoring Agent and _____ (the "Bank"), as part of the Federal Home Loan Bank Board New England Fund Program (the "NEF Program"); and the Grantor has agreed that this Deed Rider shall be governed by the terms and provisions of the Regulatory Agreement; and

MONITORING AGENT⁴

[Add one of Options One through Four to any of Options A through F above]

The Monitoring Agent for this Deed Rider shall be

1. Dukes County Regional Housing Authority
2. the Municipality (i.e. Resident Homesite Committee)
3. _____ [other choice of the parties]

⁴ Important that the institution selected as the Monitoring Agent serve in perpetuity.

ADDENDUM 2

DEFINITION OF MAXIMUM RESALE PRICE

[choose from one of Options A through D below

A. Adjusted Initial Price [for the sale of a completed unit dwelling unit]

equal to the Initial Price, plus (a) the cost of Capital Improvements to the Property (the "Base Price"); and (b) an amount equivalent to the Base Price multiplied by 0.417% per month (or 5% per annum) times the number of months (or years, as applicable) between (i) the initial sale of the Property (or incurring of a capital expense) and (ii) the subsequent sale of the Property (the "Escalation Amount") (the Base Price plus the Escalation Amount shall be the "Resale Price")

B. Current Price with Discount Ratio [for the sale of a completed dwelling unit]

equal to the product of (a) [**choose either option: the Fair Market Value/the Replacement Cost**] of the Property and (b) the Discount Ratio, as defined below. The Discount Ratio shall be calculated as a percentage equal to (i) the difference between the Initial Price and the **Fair Market Value/Replacement Cost** of the Property at the time of the Initial Sale, determined as set forth below, (the "**Initial Fair Market Value/the Initial Replacement Cost**") divided by (ii) the **Initial Fair Market Value/the Initial Replacement Cost**. The **Initial Fair Market Value/the Initial Replacement Cost** shall be determined at the time of the Initial Sale by a real estate appraiser engaged by the Grantor at its own expense, qualified to appraise property for secondary mortgage markets and utilizing acceptable professional appraisal standards in Massachusetts.

C. Initial Price (Land) Plus Replacement Cost (House) [for the sale of a house lot without land appreciation]

equal to the sum of (a) the Initial Price and (b) the Replacement Cost of the primary dwelling and any accessory non-dwelling structures constructed on the Property by Grantee or its successors in interest, determined as of the day the Grantee listed the Property for sale in a public newspaper.

D. Adjusted Initial Price (Land) Plus Replacement Cost (House) [for the sale of a house lot with land appreciation]

equal to the sum of (a) the product of (i) the Initial Price times (ii).0025 times the number of months between the Initial Sale and the Resale (or 3% per annum) plus (b) the sum of (i) the Initial Price, (ii) the Replacement Cost of the primary dwelling and any accessory non-dwelling structures constructed on the Property by Grantee or its successors in interest, determined as of the day the Grantee listed the Property for sale in a public newspaper.

ADDENDUM 3

OPTIONS TO PURCHASE

[choose from Options A or B below, or choose none]

- A. The Grantor shall have the exclusive option to purchase the Property for the Maximum Resale Price, but in no event more than the Maximum Resale Price according to Section 2 (the "Option Price"), and subject to the requirements set forth in Sections 1 through 11 of this Deed Rider, or to find an Eligible Purchaser to purchase the Property for the Option Price and subject to the same requirements, within sixty (60) days of receiving the Notice (the "Grantor's Option Period"). If the Grantor does not give the Monitoring Agent and the Grantee an Exercise Notice (as defined below), then the Monitoring Agent or its successors and assigns will have sixty (60) days immediately following the earlier to occur of the Monitoring Agent's receipt of Exercise Notice or the expiration of the Grantor's Option Period to exercise an option to purchase the Property for the Option Price and subject to the same requirements, or to find an Eligible Purchaser to purchase the Property for Option Price and subject to the same requirements (the "Agent's Option Period"). [ADDITIONAL OPTION: In the event that the Monitoring Agent does not give the Grantor and the Grantee an Exercise Notice within the Agent's Option Period, the Grantor will have an additional thirty (30) days immediately following the earlier to occur of the Grantor's receipt of the Exercise Notice or the expiration of the Agent's Option Period to exercise a final option to purchase for such price.] In the event that either Grantor or Monitoring Agent notifies the Grantee within their respective option periods that the Grantor or Monitoring Agent is exercising its option to purchase (the "Exercise Notice"), the Grantor or Monitoring Agent, as the case may be, may purchase the Property itself or cause the Property to be purchased by an Eligible Purchaser for such price within sixty (60) days of the date that the Exercise Notice is given.
- B. If the Grantee, or its successors and assigns, are unable to find an Eligible Purchaser within sixty (60) days from the date the Property was put on the market, as determined by the date of the first advertisement for sale or the date an agreement was signed with a listing broker to market the Property (the "Initial Marketing Period"), then (i) the Grantor shall have an option to purchase the Property for the Maximum Resale Price but in no event more than the Maximum Resale Price according to Section 2 (the "Option Price") and subject to the requirements set forth in Sections 1 through 11 of this Deed Rider, during the 30-day period immediately following the Initial Marketing Period (the "Grantor's Option Period"). If the Grantor does not give the Monitoring Agent and the Grantee an Exercise Notice (as defined below), then (ii) the Monitoring Agent or its successors and assigns shall have an option to purchase the Property for such

price and subject to the same requirements during the 30-day period immediately following the earlier to occur of the Monitoring Agent's receipt of the Exercise Notice or the expiration of the Grantor's Option Period (the "Agent's Option"). In the event that either Grantor or Monitoring Agent notifies the Grantee within their respective option periods that the Grantor or Monitoring Agent is exercising its option to purchase (the "Exercise Notice"), the Grantor or Monitoring Agent, as the case may be, may purchase the Property itself or cause the Property to be purchased by an Eligible Purchaser for such price within sixty (60) days of the date that the Exercise Notice is given.

ADDENDUM 4

SALE TO INELIGIBLE PURCHASER

- A. In the event that neither the Grantor, the Monitoring Agent, their agents, successors, designees and assigns exercises its options to purchase, as described above in Section 3, and the Grantee, Grantor and Monitoring Agent are all unable to find an Eligible Purchaser within one hundred twenty (120) days from the date the Grantee listed the Property for sale in a public newspaper (the "Initial Marketing Period") then at the end of the Initial Marketing Period, the Grantee may sell the Property to any person, regardless of his/her income (an "Ineligible Purchaser");

[within Option A, choose either Option 1 or 2 below]

1. provided that such Property shall explicitly remain subject to the requirements set forth in Section 1 through 11 of this Deed Rider (including, but not limited to, the restrictions on Maximum Resale Price), which shall be applicable to any subsequent sale.
2. and free of all restrictions imposed by this Rider. Any amount by which the purchase price paid by an Ineligible Purchaser exceeds the Maximum Resale Price, as set forth above, shall be paid to [choose one of the following: the Monitoring Agent/the Grantor].

- B. In the event that neither Grantor nor the Monitoring Agent exercises its option to purchase, as described in Section 3, and the Grantee, Grantor and Monitoring Agent are all unable to identify an Eligible Purchaser within one hundred twenty (120) days from the date the Grantee listed the Property for sale in a public newspaper (the "Initial Marketing Period"), the Grantee shall appeal to the Monitoring Agent at the end of the Initial Marketing Period to increase the income limit for an Eligible Purchaser. If the Monitoring Agent does not reply within thirty (30) days of receipt of Grantee's appeal, then the Grantee may sell the Property to any person, regardless of his/her income (an "Ineligible Purchaser") for a price not to exceed the Maximum Resale Price calculated as set forth above;

[within Option B, choose either Option 1 or 2 below]

1. provided that such Property shall explicitly remain subject to the requirements set forth in Section 1 through 11 of this Deed Rider (including, but not limited to, the restrictions on Maximum Resale Price), which shall be applicable to any subsequent sale.
2. and free of all restrictions imposed by this Rider. Any amount by which the purchase price paid by an Ineligible Purchaser exceeds the Maximum Resale Price, as set forth above, shall be paid to [choose one of the following: the Monitoring Agent/the Grantor].

In the event that the Monitoring Agent, within thirty (30) days of receipt of Grantee's appeal, agrees to increase the income limit, the Grantee shall have sixty (60) days following notice of the Monitoring Agent's decision to locate an Eligible Purchaser who meets the increased income limit. [If chose Options 2.D, 2.E, or 2.F, then add the following: If the income limit for an Eligible Purchaser has been increased pursuant to this section, then the Maximum Resale Price shall be calculated based on the increased income limit. If Grantee is still unable to find an Eligible Purchaser, the Grantee may sell to an Ineligible Purchaser, as set forth above. If the Monitoring Agent denies the Grantee's request to raise the income limit, then Grantee shall have thirty (30) days following notice of the Monitoring Agent's decision to locate an Eligible Purchaser. If the Grantee is unable to locate an Eligible Purchaser within the thirty-day period following notice of the Monitoring Agent's decision, then the Grantee may sell to an Ineligible Purchaser, as set forth above.

[if chose neither Option A nor Option B in Addendum 3, then choose Option C]

- C. If Grantee is unable to find an Eligible Purchaser within one hundred twenty (120) days from the date the Property was first put on the market, as determined by the date of the first advertisement for sale or the date an agreement was signed with a listing broker to market the Property (the "Initial Marketing Period") then at the end of the Initial Marketing Period, the Grantee may sell the Property to any person, regardless of his/her income (an "Ineligible Purchaser") at a price not to exceed the Maximum Resale Price calculated as set forth above;

[within Option C, choose either Option 1 or 2 below]

1. provided that such Property shall explicitly remain subject to the requirements set forth in Section 1 through 11 of this Deed Rider, which shall be applicable to any subsequent sale.
2. and free of all restrictions imposed by this Rider. Any amount by which the purchase price paid by an Ineligible Purchaser exceeds the Maximum Resale Price, as set forth above, shall be paid to [choose one of the following: the Monitoring Agent/the Grantor].

ADDENDUM 5

RESTRICTIONS AGAINST LEASING

[choose one of Options A through C below]

- A. to a third party unrelated to the Grantee by law for [insert any rental period as chosen by parties, ex: more than two weeks per year; any time], without prior written consent from [choose one of the following: the Monitoring Agent/the Grantor].
- B. to any third party for [insert any rental period as chosen by parties] without prior written consent from [choose one of the following: the Monitoring Agent/the Grantor].
- C. to any third party for any term who does not qualify under [choose one of the following: the Monitoring Agent's/the Grantor's] regulations to rent affordable housing, as defined by [choose one of the following: the Monitoring Agent/the Grantor].

[may also choose one or more of Options D through H]

- D. Any rents, profits, or proceeds from any lease or sublease entered into in violation of the terms hereof shall be paid to and be the property of [choose one of the following: the Monitoring Agent/the Grantor].
- E. In the event that the Grantee violates any restriction on leasing or requirements for occupancy set forth herein and the violation continues for more than 90 consecutive days after written notice of the violation to the Grantee, the Property shall be automatically put up for sale by the [[choose one of the following: the Monitoring Agent/the Grantor].
- F. In the event that [choose one of the following: the Monitoring Agent/the Grantor], in the exercise of its sole and absolute discretion, shall consent to any such lease or sublease, the [choose one of the following: the Monitoring Agent/the Grantor] may, in its sole and absolute discretion, impose as a condition to such consent that all rents, profits or proceeds from such transaction which exceed the carrying costs of the Property as determined by [choose one of the following: the Monitoring Agent/the Grantor] in its sole and absolute discretion shall be paid to and be the property of the [choose one of the following: the Monitoring Agent/the Grantor].
- G. Subleases are not permitted.

H. Any decisions made by [choose one of the following: the Monitoring Agent/the Grantor] under this Paragraph 9 may be appealed to the Town's duly appointed governing body, which shall in its sole and absolute discretion, make a decision as to whether to uphold or overturn the appealed decision, so long as such decision is within the governing body's statutory authority. If the decision is overturned, the Town's governing body shall make an independent determination on the question under appeal and such determination shall be final.