

## **2021 Model Declaration of Affordability Covenants with Refinance and Resale Restriction and Purchase Option and Model Subordinate Program Mortgage**

USE OF THIS DOCUMENT IS SUBJECT TO THE FOLLOWING DISCLAIMER:

Thank you for using the 2021 Model Declaration of Affordability Covenants with Refinance and Resale Restriction and Purchase Option and 2021 Model Subordinate Program Mortgage (collectively the “Model Documents”) as part of your affordable housing program. Grounded Solutions Network relies on its members and participant jurisdictions to support its work and provide input on its program documents.

As a part of its nonprofit mission as a 501(c)3 organization, Grounded Solutions Network is providing the Model Documents to be used as a resource in developing shared equity homeownership programs. To use these resources, organizations must input information on the Model Documents based upon their program design and objectives. Grounded Solutions Network also recommends that organizations engage legal counsel to confirm the Model Documents satisfy legal requirements and comply with local laws, regulations and practice in the jurisdiction where the property is located.

Grounded Solutions Network does not guarantee the accuracy, completeness, or suitability of the Model Documents for any particular program in any particular jurisdiction, nor does it take responsibility or warrant the content or information contained in the Model Documents. To the broadest extent possible, Grounded Solutions Network assumes no liability for the use of the Model Documents.

In particular the Model Documents include certain mortgagee rights and restrictions on alienability, including rights of first refusal and purchase options, and also makes assumptions regarding how courts would treat the priority of the Model Documents in the case of a foreclosure or bankruptcy. While Grounded Solutions Network endeavored to reflect the laws and rules generally in force at the time of its drafting, Grounded Solutions Network makes no guarantee that such rights will be upheld in a court of law or equity.

Users of the Model Documents should fully read the Commentary before using the Model Documents.

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## PROFITS OR BUSINESS OR FOR DIRECT, INDIRECT, INCIDENTAL, SPECIAL OR

**PLEASE NOTE** the color coding used throughout this document:

**Green** = Must fill in information and/or choose one of the options provided. Language can be edited.

**Yellow** = Optional language; must choose whether to include or not. Language can be edited.

**Red** = Must include exact language to satisfy Government Sponsored Enterprise requirements; do not edit. Note that red language sometimes appears within yellow language; if the yellow optional language is used, the red language must be included (if the yellow language is deleted, the red language can be deleted along with it).

**Blue** = Language required for certain states and programs within those states, as noted. If applicable to your program, do not edit language. Remove if not applicable to your program.

**No Color** = Recommended and customary language; edit if needed to satisfy the laws of your state or reflect details of your particular program.

Additional guidance and context for making choices for green- and yellow-coded items can be found in the Commentary on the Model Documents.

In addition to the color-coding described above, Grounded Solutions has flagged in the Commentary sections of this document where programs would need to meet certain criteria in order for the program to meet the Fannie Mae and Freddie Mac definition of a shared equity homeownership program for their Duty to Serve program.

If your program does not meet that regulatory definition, then Fannie Mae and Freddie Mac will not get credit for meeting their obligations under the Duty to Serve program. This doesn't necessarily mean that buyers in your program won't be able to access their mortgages, but it means that your program will probably not benefit from many changes being rolled out during the implementation of the Plans.

CONSEQUENTIAL DAMAGES OF ANY NATURE, HOWSOEVER CAUSED.



[INSERT ANY STATEMENTS REQUIRED FOR RECORDING]

## DECLARATION OF AFFORDABILITY COVENANTS WITH USE, REFINANCE, AND RESALE RESTRICTIONS AND PURCHASE OPTION

Based on Grounded Solutions Network 2021 Model Declaration

[FULL NAMES OF HOMEBUYERS], [each] an individual ([together, and] with permitted heirs, successors, and assigns the “**Homeowner**”) and [FULL NAME OF ENTITY/GOVERNMENT WITH FINANCIAL INTEREST IN PROPERTY], its successors and assigns (the “**Program Manager**”), make this Declaration of Affordability Covenants with Use, Refinance, and Resale Restrictions and Purchase Option (this “**Declaration**”) as of [Month Date], 20[Year] (the “**Effective Date**”), for the purpose of encumbering the improved real estate described on attached Exhibit A (the “**Home**”), having an address of [Street Address, City, State, Zip Code].

### RECITALS

A. The Program Manager is [DESCRIBE ENTITY TYPE, e.g. an agency organized exclusively for charitable purposes, a public agency organized for the purposes set forth in a particular statute, or a quasi-public entity organized for a particular purpose], including the purpose of providing homeownership opportunities for low and moderate income people.

B. The Program Manager operates a program to preserve affordable homeownership opportunities through the stewardship of homes whose owners, at the time of purchase, have agreed to accept title subject to certain covenants, conditions, and restrictions in exchange for a reduced or subsidized purchase price (the “**Program**”).

C. The purpose of this Declaration is to include the Home in the Program. Consistent with the Program, the Declaration includes terms that affect the use and resale price of the Home and are designed to ensure that the Home continues to be affordable to low- and moderate-income households over an extended period of time and through a succession of owners and that limit the proceeds the Homeowner may receive from the Home.

D. The Homeowner wishes to purchase the Home for the reduced or subsidized purchase price as described below, and the reduced or subsidized purchase price is available only if the Homeowner accepts title to the Home subject to this Declaration.

# ARTICLE I.

## SUBMISSION OF REAL ESTATE; DEFINED TERMS

**Section 1.01 Submission of Real Estate.** By signing this Declaration, the Homeowner submits the Home to the covenants, conditions, and restrictions of this Declaration for the benefit of the Program Manager. The Program Manager, together with any agent the Program Manager may appoint from time to time, will have the right to enforce this Declaration.

**Section 1.02 Consideration; Value Given and Value Received.** The Homeowner recognizes that the Initial Market Value of the Home is \$ [REDACTED], but the Homeowner is able to purchase the Home at the lower Base Price of \$ [REDACTED], due to the reduction in purchase price or subsidy provided by [the Program Manager] [IF NOT PROGRAM MANAGER OR DEVELOPER, IDENTIFY SOURCE OF (OR REASON FOR) SUBSIDY OR PRICE REDUCTION]. The Homeowner may obtain the purchase price reduction or subsidy only if the Homeowner submits the Home to this Declaration, and the Homeowner wishes to submit the Home to the Declaration, and agree to its terms, in exchange for this benefit.

**Section 1.03 Any Excess Proceeds of Transfer Go to Program Manager.**

(a) The Homeowner recognizes that it would be contrary to the purposes of this Declaration if the Homeowner could receive more than the Maximum Resale Price as the result of an eminent domain proceeding, foreclosure, or other transfer of the Home. It would also be contrary to the purposes of this Declaration if the Homeowner could receive financial benefit by violating Section 2.03. Therefore, the Homeowner hereby irrevocably assigns to Program Manager all net proceeds of sale, eminent domain proceeding, foreclosure, lease, refinancing, or other transfer of the Home that would otherwise have been payable to the Homeowner after satisfaction of all Permitted Mortgages, if applicable, and that exceed the amount of proceeds that the Homeowner would have received if the property had been sold only for the Maximum Resale Price, [leased only in accordance with Section 8.02,] refinanced only in accordance with Article VII, or used only in accordance with Section 2.03 (“**Excess Proceeds**”). The payment of any Excess Proceeds shall be secured by the Program Mortgage. For the avoidance of doubt, the Homeowner authorizes and instructs any party conducting any sale or eminent domain proceeding, foreclosure, refinancing, or other transfer, to pay such Excess Proceeds directly to Program Manager. If, for any other reason, Excess Proceeds are paid to Homeowner, Homeowner hereby agrees to promptly pay such amount to Program Manager.

(b) In addition to the lien of the Program Mortgage, the Program Manager shall have, and the Homeowner hereby grants and consents to, a lien upon the Home for any Excess Proceeds. Such lien shall be prior to all other liens and encumbrances on the Home except (i) liens and encumbrances recorded before the recording of this Declaration, (ii) Permitted Mortgages; and (iii) liens for real property taxes and other governmental assessments or charges against the

Home. For the avoidance of doubt, Homeowner's assignment to Program Manager of Excess Proceeds in Section 1.03(a), and the Program Manager's right to enforce collection of Excess Proceeds through foreclosure of its lien under the Program Mortgage and this Section 1.03(b), shall be subordinate in all respects to the lien of any Permitted Mortgagee under a Permitted Mortgage.

**Section 1.04** Term of Declaration is [99] Years.

(a) This Declaration shall remain in effect for [99] years after the Effective Date (the "**Term**"), unless terminated earlier by any of the following methods: (i) recordation of a new Declaration upon transfer of the Home to an Eligible Buyer in accordance with Section 8.08; or (ii) foreclosure of a Permitted Mortgage and expiration of the Program Manager's Purchase Option under Section 7. [redacted].

(b) Upon expiration of the full Term, the Homeowner shall have the option either to (i) record an amendment to this Declaration encumbering the Home for a second [99]-year term; or (ii) pay to the Program Manager the Excess Proceeds that would be received by the Homeowner if the Homeowner, upon expiration of the Term, were to sell the Home unencumbered by this Declaration to a third party in a bona fide arm's length transaction. If the Homeowner does not elect option (i) by recording an amendment before expiration of the Term, the Homeowner will be deemed to have elected option (ii). Excess Proceeds will be calculated and paid under option (ii) as follows:

A. The Program Manager, at its sole cost and expense, will obtain an Appraisal of the Home;

B. The Program Manager will calculate the Maximum Resale Price as described in Article VIII;

C. The Program Manager will calculate Excess Proceeds by subtracting the Maximum Resale Price from the fair market value of the Home, as determined by the Appraisal; and

(i) If the calculation in subparagraph (C) results in a negative number (in other words, if the Maximum Resale Price is higher than the fair market value), the Homeowner will not owe any Excess Proceeds, and the Program Manager shall promptly record a release of this Declaration; or

(ii) If the calculation in subparagraph (C) results in a positive number (in other words, if the Maximum Resale Price is lower than the fair market value), the Homeowner shall pay the Excess Proceeds to the Program Manager within 90 days after receiving the Program Manager's calculation, and the Program Manager shall then promptly record a release of this Declaration.

**Section 1.05** Covenants to Run with the Land. The Homeowner intends, declares, and covenants (a) that this Declaration, including all restrictions, rights and covenants contained herein, shall be and are covenants running with the land, encumbering the Home for the Term, and are binding upon the Homeowner and the Homeowner's successors in title and assigns, (b) are not merely personal covenants of the Homeowner, and (c) shall inure to the benefit of and be enforceable by the Program Manager **[MA: and DHCD] [NJ: and Housing Affordability Service of the New Jersey Department of Community Affairs ("DCA")]** and their successors and assigns, for the Term. Because the Declaration runs with the land, it shall encumber the Home for the Term and be binding upon the Homeowner's successors in title and assigns regardless of whether such successors in title and assigns agree in writing to be bound by the Declaration or execute a new Declaration at the time of resale, as provided in Article VIII.

**Section 1.06** **[OPTIONAL:]** State and Local Laws Applicable to Program Apply.

**[IF PROGRAM-SPECIFIC STATE OR LOCAL LAWS/REGULATIONS APPLY, REFERENCE THEM HERE. EXAMPLES FOR CA, CO, MA, AND NJ FOLLOW:]**

**CA:** This Declaration, including all restrictions, rights and covenants contained herein, implements certain features of the [Below Market Price Housing Program] [Inclusionary Housing Requirements] established under [Municipal] [Town] Code Sections [\_\_\_\_\_]. In addition to the Declaration, the Home is subject to the Code [and the Program Guidelines]. One or more Requests for Notice of Default and Sale Under California Civil Code Section 2924b [and a Notice of Special Restrictions Under the Planning Code] **[CA requirement when a Resale Fee is imposed in Articles IV/VIII and the Program Manager is not a government entity: , together with a Payment of Transfer Fee Required agreement in compliance with California Civil Code Section 1098.5,]** have also been recorded against the Home in connection with this Declaration.

**CO:** This Declaration, including all restrictions, rights and covenants contained herein, implements certain features of the [Inclusionary Housing Ordinance] established under [City] [County] Code Sections [\_\_\_\_\_]. In addition to the Declaration, the Home is subject to the Code [and the Program Guidelines, including any amendments thereto if the amendments do not have a materially adverse effect on the interests of the Homeowner].

**MA:** This Declaration, including all restrictions, rights and covenants contained herein, is an affordable housing restriction as that term is defined in Section 31 of Chapter 184 of the Massachusetts General Laws, having the benefit of Section 32 of such Chapter 184, and is enforceable as such. This Declaration has been approved by the Director of the Massachusetts Department of Housing and Community Development ("**DHCD**").

**NJ:** This Declaration, including all restrictions, rights and covenants contained herein, implements affordability controls required by the Fair Housing Act (P.L. 1985, c. 222) (the "**Act**") to ensure that the Home, which has been designated by the Municipality of [\_\_\_\_\_], County of [\_\_\_\_\_], State of New Jersey as low and moderate

income housing as defined by the Act, will remain affordable to low and moderate-income eligible households for the Term, which serves as the “Control Period” defined in the Act.

**Section 1.07** Defined Terms. Homeowner and Program Manager agree on the following definitions of key terms used in this Declaration.

(a) **“Appraisal”**: A fair market valuation of the Home performed by a duly licensed appraiser, conducted by analysis and comparison of comparable properties, disregarding all of the restrictions of this Declaration.

(b) **“Base Price”**: The total price paid for the Home by the Homeowner, as set forth in Section 1.01.

(c) **“Eligible Buyer”**: A person or group of persons (i) whose household income does not exceed [ ]% of the median household income for the applicable Standard Metropolitan Statistical Area or County as calculated and adjusted for household size from time to time by the U.S. Department of Housing and Urban Development (“HUD”) or any successor (the **“AMI Eligibility Threshold”**), (ii) whose household size is appropriate for the Home, (iii) who is a First-Time Homebuyer, (iv) whose assets do not exceed \$[ ] in value; and (v) who has completed a homeownership counseling program [certified by HUD] [approved by the Program Manager] [NJ: and (ii) who has been approved in advance and in writing by either DCA or the Program Manager in its capacity as an administrative agent appointed under New Jersey Administrative Code at Title 5, chapter 93, subchapter 9 (N.J.A.C. 5:93-9.1, *et seq*) and chapter 80, subchapter 26 (N.J.A.C. 5:80-26.1, *et seq*) (the **“Regulations”**)]. A household size is “appropriate for the Home” if the household size does not exceed the maximum number of occupants defined by the governing building code.

(d) **“Event of Default”**: Any violation of the terms of this Declaration or the Program Mortgage unless the violation has been corrected (**“cured”**) by the Homeowner or the holder of a Mortgage in the period of time specified in a written Notice of Default has been given by the Program Manager.

(e) **“First-Time Homebuyer”**: A person or group of persons satisfying either (i) HUD’s definition as articulated in 24 CFR § 92.2, as may be amended from time to time, or (ii) both of the following criteria: (A) none has had an ownership interest in his or her principal residence at any time during the three-year period ending on the date of his or her application to the Program (but including an applicant who has divorced or separated during the three-year period where a formal settlement has been made under which the applicant does not receive an ownership interest in a primary residence which had been jointly owned), and (B) none has any other current ownership interest in residential real property.

(f) **“Ineligible Buyer”**: A person or group of persons, or a person and his or her spouse, not meeting the requirements to be eligible as an Eligible Buyer.

(g) **“Initial Market Value”**: The fair market value of the Home, assuming no affordability or resale restrictions, at the time of Homeowner’s purchase, as set forth in Section 1.01 [and documented by the appraiser’s report conducted by [ ] with an effective date of [ ], 20 ]].

(h) **“Intent-to-Sell Notice”**: Homeowner’s notification to the Program Manager that the Homeowner wishes to sell the Home.

(i) **“Maximum Resale Price”**: The maximum price for which the Homeowner can sell the Home, as calculated under Article VIII of this Declaration.

(j) **“Permitted Mortgage”**: A loan secured by a lien or security interest in the Home, for which the Homeowner has obtained the written permission of the Program Manager pursuant to Section 7.01, together with any modifications, which may be made from time to time, by agreement between the Homeowner and the Permitted Mortgagee.

(k) **“Permitted Mortgagee”**: The lender shown on the security instrument securing a Permitted Mortgage, its assignees and the owner of such Permitted Mortgage.

(l) **“Program Fee”**: The monthly fee provided in Section 4.01 that the Homeowner pays to the Program Manager to fund a portion of the Program Manager’s ongoing costs of administering the Program and performing its obligations under Article III (Role of Program Manager) below.

(m) **“Purchase Option”**: As described more fully in Article VIII, Program Manager’s option to purchase the Home at the Maximum Resale Price, which is triggered by (i) Program Manager’s receipt of an Intent-to-Sell Notice from Homeowner, (ii) Program Manager’s receipt of notice of a Foreclosure Action under Article VII, (iii) any sale or transfer resulting from a Foreclosure Action under Article VII, and/or (iv) an Event of Default under Article IX (any of the foregoing, an **“Option Trigger Event”**).

(n) **“Repair Reserve Fee”**: [USE THIS OPTION IF HOMEOWNER CAN ELECT TO PAY OR NOT PAY THIS FEE: If the Homeowner elects to participate in the Repair Reserve Fund,] The monthly fee the Homeowner pays to the Program Manager for contribution to the Repair Reserve Fund.

(o) **“Resale Fee”**: The fee that the Homeowner pays to the Program Manager upon resale of the Home to compensate the Program Manager for performing certain of its obligations under Article VIII (Transfer of the Home) below.

(p) **“Program Mortgage”**: The mortgage or deed of trust executed by the Homeowner in favor of the Program Manager, dated and recorded the same date as this Declaration, for purposes of securing the Homeowner’s monetary and non-monetary obligations under this Declaration, including without limitation Excess Proceeds [and Program Fees].

## **ARTICLE II.**

### **USE OF HOME**

**Section 2.01 Homeowner Must Use Home as Primary Residence.** The Homeowner must **[NJ: at all times]** use the Home as Homeowner's principal place of residence **[and must occupy the Home for at least [10] months of each year]**. The Homeowner may use the Home, and allow others to use the Home, only for residential purposes and any activities related to residential use that are permitted by local zoning law.

**Section 2.02 Homeowner Must Use and Maintain the Home Responsibly and in Compliance with the Law and Other Recorded Documents.** The Homeowner must use the Home in a way that will not cause harm to others or create any public nuisance, and must maintain all parts of the Home in good working order, in a safe, sound and habitable condition, and in full compliance with all laws and regulations. Homeowner shall comply, and cause the Home and all occupants to comply, with all declarations, easements, Permitted Mortgages (defined in Article VII (Financing)), and other documentation recorded against the Home in the local real estate records. If the requirements of any recorded documents are inconsistent with the requirements of this Declaration, the Homeowner shall comply, and shall cause the Home and all occupants to comply, with the stricter requirement.

**Section 2.03 Home May Not be Leased, Encumbered, Sold, or Transferred Except as Provided in Articles VII and VIII.** No interest in the Home, including without limitation a fee simple interest, tenancy in common, joint tenancy, community property, tenancy by the entireties, life estate, limited estate, leasehold estate, tenancy, easement, mortgage, deed, lien, security interest, or other encumbrance, whether voluntary or involuntary, may be granted, sold, assigned, conveyed, or transferred except in accordance with Articles VII and VIII of this Declaration.

## **ARTICLE III.**

### **ROLE OF PROGRAM MANAGER**

**Section 3.01 Program Manager Has a Right to Conduct Annual Meetings with the Homeowner.** The Program Manager may conduct annual meetings with the Homeowner in the offices of the Program Manager or in the Home or some other mutually convenient location (or via mutually convenient electronic means) for purposes of obtaining occupancy certifications, confirming insurance renewals, collecting proof that taxes and assessments have been paid, and addressing any other Program requirements. The Homeowner will cooperate with the Program Manager in scheduling and attending these meetings and will provide Program Manager with the requested information. The Program Manager may opt to request such information from the Homeowner by phone, mail, email, or some other method instead of conducting an in-person (or electronically facilitated) meeting, and the Homeowner will then promptly provide the Program Manager with the requested information using the alternative method.

**Section 3.02** Program Manager Has a Right to Inspect the Home. The Program Manager or its agent may inspect any exterior part of the Home on an annual basis at any reasonable time, after notifying the Homeowner at least [REDACTED] day[s] before the planned inspection. In addition, if the Program Manager has received an Intent-to-Sell Notice (as described in Article VIII below), then the Program Manager or its agent has the right to inspect the interior and exterior of the Home to determine its condition prior to the sale. Program Manager must notify the Homeowner at least [REDACTED] day[s] before carrying out such inspection. In either case (an annual inspection or an inspection after an Intent-to-Sell Notice), the Homeowner will cooperate with the Program Manager's efforts to schedule and conduct the inspection, and if negative property conditions are identified, the Program Manager or its agent has the right to re-inspect until they are resolved.

**Section 3.03** Program Manager May Escrow for Taxes, Assessments, and/or Insurance. Whenever a Permitted Mortgagee declines to escrow funds from the Homeowner for the payment of taxes and assessments under Article IV and for the payment of insurance under Article VI, the Program Manager may elect to escrow such amounts and the Homeowner shall cooperate with the Program Manager in setting up such an escrow.

**Section 3.04** Program Manager Will Review Proposed Capital Improvements. If the Homeowner wishes to make Capital Improvements to the Home, the Program Manager will work with the Homeowner as provided in Article V.

**Section 3.05** Program Manager Will Facilitate Proposed Financings or Transfers. If the Homeowner wishes to finance or otherwise transfer the Home, the Program Manager will work with the Homeowner as provided in Article VII or VIII, as applicable.

**Section 3.06** Program Manager's Successors and Assigns. The Program Manager may from time to time designate a successor or assign to its rights and obligations under this Declaration, provided that such successor or assign is a governmental body, governmental agency, or non-profit entity with a charitable purpose consistent with the Program. For clarity, the Program Manager may contract with a for-profit person or entity to assist Program Manager in running the Program, but the Program Manager itself shall not be a for-profit person or entity.

**Section 3.07** [USE WHEN THE PROGRAM MANAGER DID NOT BUILD THE HOME: Nonliability of Program Manager for Negligence, Loss or Damage. The Homeowner understands and agrees that the relationship between Homeowner and Program Manager is solely that of a homeowner and a program administrator, and that the Program Manager has no responsibility or duty to the Homeowner to select, review, inspect, supervise, pass judgment on, or inform the Homeowner of the quality, adequacy, or suitability of the Home or any other matter. The Program Manager does not owe a duty of care to protect the Homeowner against negligent, faulty, inadequate, or defective building or construction or any condition of the Home; instead the Homeowner has made his or her own investigation of these matters and hired home inspectors and other professionals to assist this investigation, to the extent the Homeowner deemed

necessary. Homeowner agrees that neither Homeowner nor Homeowner's heirs, successors or assigns shall ever claim, have, or assert any right or action against the Program Manager for any loss, damage, or other matter arising out of or resulting from any condition of the Home and will hold the Program Manager harmless from any liability, loss, or damage for these things.]

## ARTICLE IV.

### [DECLARATION FEES;] TAXES AND ASSESSMENTS

**Section 4.01** [OPTION: Program Fee, Repair Reserve Fee, and Resale Fee. To compensate the Program Manager for performing its obligations under this Declaration, the Homeowner shall pay to the Program Manager (a) a monthly Program Fee of \$[\_\_\_\_\_]; (b) [in the event Homeowner elects to participate in the Repair Reserve Fund,] a Repair Reserve Fee of \$[\_\_\_\_\_]; and (c) upon a resale of the Home, a Resale Fee as provided in Section 8.05. The Program Fee [and Repair Reserve Fee] shall be payable to the Program Manager on the fifth day of each month, unless the Program Fee [and Repair Reserve Fee] is to be escrowed and paid by a Permitted Mortgagee, in which case payment shall be made as directed by that Permitted Mortgagee. For the avoidance of doubt, Homeowner's obligation to pay Program Manager any amounts under this Declaration, including the Fees provided in this Article IV, shall be subordinate in all respects to any Permitted Mortgagee's right to receive payment of all amounts secured by a Permitted Mortgage. The Homeowner and the Program Manager agree that they will execute such other and further documents as are useful for a Permitted Mortgagee to prioritize payment of the amounts owed to it and they will not execute any document that contradicts such priority.]

**Section 4.02** [OPTION: A Repair Reserve Fund is Established to Support Future Repairs.

(a) As an additional assurance that the Homeowner will be able to comply with the maintenance and repair obligations under Section 2.02 above, the Homeowner will pay a Repair Reserve Fee, to be held as a reserve by the Program Manager for any significant required maintenance and repair of the Home during or after the Homeowner's period of ownership. [OR: As provided in Section 4.01(c)(ii), the Homeowner may elect from time to time to pay or not pay a monthly Repair Reserve Fee, to be held as a reserve by the Program Manager in an interest bearing account for any significant required maintenance and repair of the Home during or after the Homeowner's period of ownership.]

(b) The Program Manager shall account for the Repair Reserve Fees paid by the Homeowner over time and shall periodically deliver an accounting of such funds to Homeowner. The Program Manager may commingle and hold in a common account Repair Reserve Fees paid by the Homeowner with Repair Reserve Fees paid by other homeowners in the Program, however, the Program Manager will not commingle such funds with any other funds of the Program Manager. The Homeowner may request release of the funds, and the Program Manager shall release funds at its reasonable

discretion, if the requested use is found to be necessary for the preservation of the Home including: maintenance and repair of roof, exterior siding, brickwork, or other exterior materials, exterior paint and finishes, windows, foundation, HVAC, electrical or plumbing systems, or similar features necessary for the preservation of the Home. The Program Manager may reasonably withhold Repair Reserve Fee funds if the requested use is for purely aesthetic alterations (such as a change in paint color when existing paint is still in good condition), to repair damage for which a homeowner association is responsible, or to repair damage that would be covered by insurance or condemnation proceeds under Article VI had such insurance or condemnation proceeds been obtained.

(c) The Homeowner acknowledges that the Repair Reserve Fund is intended to facilitate savings for certain long-term maintenance needs of the Home, but that the Homeowner is responsible for all maintenance and repair needs of the Home even if Repair Reserve Funds are inadequate or unavailable given the nature of the needed repair or replacement. It is the Homeowner's responsibility to fund from Homeowner's resources all required maintenance and repair needs of the Home that are not, or cannot be, covered by the Repair Reserve funds held by the Program Manager.

(d) In the event the Home is sold or transferred by the Homeowner, the unused Repair Reserve funds, including accrued interest, will [USE THIS LANGUAGE IF FUNDS STAY WITH THE HOME: remain with the Program for use by the Program Manager or new owners and the Homeowner will have no further right to such funds] [USE THIS LANGUAGE IF FUNDS STAY WITH THE HOMEOWNER: be disbursed to the Homeowner at the closing of a resale occurring in accordance with Article VIII after paying for all required repairs; if instead a transfer violates Article VIII, the Repair Reserve funds shall be applied to cover Program Manager's costs pursuing its remedies].

**Section 4.03 Fees May Be Adjusted From Time To Time.** Program Manager may increase the amounts of the Program Fee [and/or[, with Homeowner's consent,] Repair Reserve Fee] from time to time, but not more often than once every [odd year] [\_\_\_\_\_ years], after 60 days advance written notice to Homeowner. Any increase shall not exceed [ ]% of the then existing Program Fee [or Repair Reserve Fee, as applicable]. The Program Manager may also reduce or suspend the amounts of the Program Fee [and/or Repair Reserve Fee] for a period of time for the purpose of improving the affordability of the Homeowner's monthly housing costs. Any such reduction or suspension must be in writing and signed by the Program Manager.

**Section 4.04 Homeowner Is Responsible for Paying all Taxes and Assessments.** Homeowner shall pay directly, when due, all taxes, governmental and homeowner association assessments that relate to the Home, unless such taxes and assessments are to be escrowed and paid by a Permitted Mortgagee, in which case payment shall be made as directed by that Permitted Mortgagee.

**Section 4.05 If Homeowner Fails to Pay Taxes, Program Manager may Pay Taxes.** If the Homeowner or its Permitted Mortgagee fails to pay the taxes or assessments described in Section 4.04 above, the Program Manager shall have the right to pay such taxes or assessments on the Homeowner's behalf from time to time at the sole and absolute discretion of the Program Manager. Homeowner shall reimburse the Program

Manager for any amounts paid by the Program Manager to cover such taxes or assessments promptly upon demand by the Program Manager.

**Section 4.06** If Payment Is Late, Interest Can Be Charged. If the Program Manager has not received any amounts due under this Declaration on or before the required date (the “**Due Date**”), the Program Manager may require the Homeowner to pay interest on the unpaid amount from the Due Date through and including the date such payment or installment is received by the Program Manager, at a rate not to exceed [ ]% per annum or the maximum amount permitted by law, whichever is less. Such interest shall be deemed additional Program Fee and shall be paid by the Homeowner to the Program Manager upon demand. [USE THIS LANGUAGE WHEN REPAIR RESERVE CONTRIBUTIONS ARE VOLUNTARY AND NOT MANDATORY: There is one exception to the Program Manager’s ability to charge interest under this Section: the Program Manager shall not charge interest on the unpaid amount of any Repair Reserve Fees.]

**Section 4.07** Program Manager Can Collect Unpaid Amounts When Home Is Sold. In the event that any amounts due under this Declaration remain unpaid when the Home is sold, including without limitation amounts due to Program Manager under this Article IV and any enforcement fees under Section 9.04(e), the outstanding amount, including any interest (the “**Unpaid Amounts**”), shall be paid to the Program Manager out of any proceeds from the sale that would otherwise be due to the Homeowner, and the payment of any Unpaid Amounts shall be secured by the Program Mortgage. Any amounts paid pursuant to this Section may be paid to the Program Manager only after amounts owed under the Permitted Mortgage have been disbursed to the Permitted Mortgagee. In addition to the lien of the Program Mortgage, the Program Manager [MA: and the Municipality] shall have, and the Homeowner hereby grants and consents to, a lien upon the Home for such Unpaid Amounts. Such lien shall be prior to all other liens and encumbrances on the Home except (a) liens and encumbrances recorded before the recording of this Declaration, (b) Permitted Mortgages; (c) liens for real property taxes and other governmental assessments or charges against the Home; and (d) the lien for Excess Proceeds under Section 1.03. For the avoidance of doubt, the Program Manager’s right to enforce collection of Unpaid Amounts through foreclosure of its lien under the Program Mortgage and this Section 4.07 shall be subordinate in all respects to the lien of any Permitted Mortgagee under a Permitted Mortgage.

## ARTICLE V. IMPROVEMENTS TO THE HOME

**Section 5.01** Homeowner’s Ability to Improve the Home is Limited. The Homeowner shall not make any Capital Improvements to the Home without the prior written consent of the Program Manager, which consent may be withheld in the Program Manager’s sole and absolute discretion. The term “**Capital Improvements**” means any improvements that change the number of bedrooms or the footprint, square-footage, or height of the house, or increase or decrease the number of structures on the Property, or the installation of an in-ground pool, or any other improvement the cost of which would exceed \$[ ] [ ]% of the Base Price of the Home]. The Homeowner may make

other improvements to the Home without the consent of the Program Manager as long as such improvements are constructed in a professional manner and comply with Section 5.04 below and all applicable laws and regulations. This Section 5.01 does not apply in the event the Home is damaged or destroyed following a fire or other casualty, as described in Section 6.02. [NJ: No improvements may be made to the Home that would affect its bedroom configuration, and in any event, no improvement made to the Home will be taken into consideration to increase the Maximum Resale Price, except for improvements approved in advance and in writing by the Program Manager in accordance with this Article V.]

**Section 5.02** Requests for Consent from Program Manager. For any proposed Capital Improvements, the Homeowner shall submit a written request to the Program Manager including the following information:

- (a) a written statement of the reasons for undertaking the construction;
- (b) upon request by the Program Manager, a set of drawings (floor plan and elevations) showing the dimensions of the proposed construction;
- (c) a list of the necessary materials, with quantities needed; [and]
- (d) a statement of who will do the work[; and]
- (e) if the Homeowner would like to receive a monetary credit for the Value Added by Capital Improvements, as determined subsequently by appraisal at the time of resale of the Home (see Article VIII) (a "**Capital Improvements Credit**"), a statement requesting the Program Manager to consider permitting such a credit].

Prior to granting or withholding consent, the Program Manager may request additional information from the Homeowner within three weeks of receipt of the Homeowner's request. The Program Manager shall inform the Homeowner of its decision to grant or withhold consent to construction of the proposed Capital Improvements[, as well as its decision to grant or withhold consent to any requested Capital Improvements Credit,] within 45 days after receipt of all information from the Homeowner. [If the Program Manager consents to a requested Capital Improvements Credit, the Program Manager shall also inform the Homeowner of the value to be ascribed to the Capital Improvements or the method to be employed to determine such value at resale, including application of depreciation rates, which may result in a Capital Improvements Credit less than the actual cost of the Capital Improvements.]

**Section 5.03** Building Permits; Right to Inspect. Prior to the commencement of construction of any Capital Improvements, the Homeowner shall provide the Program Manager with copies of all necessary building permits, if not previously provided. The Program Manager shall have the right to inspect the Capital Improvements while under construction and after completion to confirm consistency with the information presented in Section 5.02 and with this Article V[, and may adjust the Capital Improvements Credit

to account for any identified inconsistency]. Any inspection and identification of inconsistencies by the Program Manager shall be for the benefit of the Program Manager only; the Homeowner will conduct his or her own inspections to confirm all work performed is satisfactory to the Homeowner.

**Section 5.04 Homeowner May Not Allow Statutory Liens to Remain Against Home.** The Homeowner shall not permit any statutory or similar lien to be filed against the Home which remains more than 30 days after it has been filed. The Homeowner shall take action to discharge such lien, whether by means of payment, deposit, bond, court order, or other means permitted by law. If the Homeowner fails to discharge such lien within the 30-day period, then the Homeowner shall immediately notify the Program Manager of such failure. The Program Manager shall have the right to discharge the lien by paying the amount in question. The Homeowner may, at Homeowner's expense, contest the validity of any such asserted lien, provided the Homeowner has furnished a bond or other acceptable surety in an amount sufficient to release the Home from such lien. Any amounts paid by the Program Manager to discharge such liens shall be reimbursed by the Homeowner upon demand of the Program Manager.

## ARTICLE VI.

### INSURANCE, DAMAGE OR DESTRUCTION, TAKING FOR PUBLIC USE

**Section 6.01 Homeowner Must Insure the Home Against Loss.** The Homeowner shall, at the Homeowner's expense, keep the Home continuously insured against accidental direct physical loss with a coverage limit equal to the estimated full replacement cost of the Home, that is, the amount necessary to rebuild the Home as opposed to the Home's market value. The insurance policy must satisfy all requirements of the Program Mortgage and any other Mortgage of record, and certificates of insurance shall be delivered to Program Manager prior to the purchase of the Home and upon request thereafter. Whenever the Permitted Mortgagee has the capability of escrowing funds from the Homeowner for the payment of insurance premiums, the Homeowner shall establish such an escrow.

**Section 6.02 What Happens if Home Is Damaged or Destroyed.** In the event of fire or other damage to the Home, the Homeowner shall take all steps necessary to assure the repair of such damage and the restoration of the Home to its condition immediately prior to the damage. All such repairs and restoration shall be completed as promptly as possible. Homeowner shall also promptly take all steps necessary to assure that the damaged Home does not constitute a danger to persons or property. For clarity, the obligations of the Homeowner to repair and restore the Home are the same in a case of insufficient insurance proceeds as in a case of excess insurance proceeds; in either case the Homeowner must still repair and restore the Home, obtaining additional funds (in the case of insufficient insurance proceeds) or, if permitted by the terms of the policy and the terms of any Permitted Mortgage, retaining excess funds (in the case of excess insurance proceeds). In a case where repair and restoration are not feasible (for example, in the case of sinkhole or other condition that materially adversely impacts and precludes restoration of the structure of the Home), the Homeowner shall provide reasonably acceptable documentation of such circumstance to Program Manager, and in such case

shall be excused from repairing and restoring the Home, provided that the Homeowner uses available insurance proceeds to pay off any Permitted Mortgage and any other lien on the Home. In any event, if the terms of a Permitted Mortgage conflict with this Section 6.02, the terms of the Permitted Mortgage shall govern and control.

**Section 6.03 What Happens if Some or All of the Home Is Taken for Public Use.**

(a) If all of the Home is taken by eminent domain or otherwise for public purposes, or if so much of the Home is taken that the Home is lost or damaged beyond repair, this Declaration shall terminate as of the date when Homeowner is required to give up possession of the Home, provided, however, that any Excess Proceeds (defined in Article VIII) arising from eminent domain or other public use proceedings shall be paid to Program Manager.

(b) In the event of a taking of a portion of the Home that results in damage to the Home that can reasonably be restored to a residential use consistent with this Declaration, then this Declaration shall remain in full force and effect and the damage shall be treated as damage is treated in Section 6.02 above.

**ARTICLE VII.  
FINANCING**

**Section 7.01 Homeowner Cannot Mortgage the Home Without Program Manager's Permission.**

(a) The Homeowner may only grant a lien or security interest, including a mortgage or deed of trust (either at the time of purchase of the Home or subsequent to the purchase of the Home to refinance an existing Permitted Mortgage or to finance home repairs or to facilitate a Home Equity Line of Credit ("HELOC") or for any other purpose), on the Home or encumber the Home in any other way after first obtaining the written permission of the Program Manager. Any Permitted Mortgage or other lien, security interest, or other encumbrance shall be subject to the terms of this Declaration, including without limitation this Article VII and Section 7.04 below.

(b) The Program Manager will not permit such a loan if the loan increases the Homeowner's total mortgage debt to an amount greater than [ ]% of the then current Maximum Resale Price, calculated in accordance with Article VIII below, or if any Permitted Mortgagee has not provided written consent to the loan, or if the terms of the transaction otherwise adversely affect the interests of either the Homeowner, Permitted Mortgagee, or Program Manager.

(c) The Program Manager may require the Homeowner to submit, in writing, certain information about the proposed terms and conditions of such loan at least 30 days prior to the expected closing of the loan.

**Section 7.02** By Signing Declaration, Program Manager Gives Permission for Original Mortgage. By signing this Declaration, the Program Manager gives written permission for the first **[and second]** priority mortgage or deed of trust signed by the Homeowner and financing the Homeowner's purchase of the Home. The Program Manager also hereby gives written permission for any assignee of a Permitted Mortgage to be a Permitted Mortgagee at any time it purchases a Permitted Mortgage.

**Section 7.03** Property Assessed Clean Energy.

Property Assessed Clean Energy ("**PACE**") financing in connection with the Home is prohibited.

**Section 7.04** Survival of Declaration Upon Exercise of Remedies by Mortgagees.

(a) If the holder of any mortgage, deed of trust, or other encumbrance on the Home (each, a "**Mortgagee**") conducts a foreclosure sale, accepts a deed in lieu of foreclosure, or exercises any other right or remedy that results in the Homeowner no longer having title to the Home (any such right or remedy, a "**Foreclosure Action**"), this Declaration shall run with the land pursuant to Section 1.03 above and shall continue to encumber the Home as follows:

(i) With respect to any Mortgagee who is also a Permitted Mortgagee, this Declaration shall survive until expiration of the Program Manager's Purchase Option under Section 8.06 below, specifically 60 days to exercise the Purchase Option and 90 days to complete the purchase. If the Program Manager exercises the Purchase Option, completes purchase of the Home, and satisfies the amounts owed under the Permitted Mortgage, this Declaration shall continue in full force and effect. If the Program Manager fails to exercise the Purchase Option, or exercises the Purchase Option but fails to complete the purchase within the 90-day period allowed by Section 8.06, or fails to satisfy the amounts owed under the Permitted Mortgage, then this Declaration shall terminate and be of no further force and effect, and the Program Manager shall cooperate with the Permitted Mortgagee or transferee at the Foreclosure Action to record a termination and release.

(ii) With respect to any Mortgagee who is not a Permitted Mortgagee, Article VIII and all other provisions of this Declaration shall apply to the transfer of the Home resulting from the Foreclosure Action, and Article VIII and all other provisions of this Declaration shall continue to encumber the Home and shall be binding on the grantee receiving an interest in the Home by virtue of the Foreclosure Action and on all subsequent owners of any interest in the Home.

(b) The Homeowner expressly authorizes any Mortgagee to provide Program Manager with any information requested by Program Manager with respect to the obligations secured by a mortgage, deed of trust, or other security

instrument encumbering the Home, including without limitation, the original or maximum principal amount of the loan, the interest rate and other terms governing repayment, payment history, including any history of delinquent payments, current payments of principal, interest, and late fees due or delinquent, and the amount of total obligations currently secured by the Mortgage.

(c) The Homeowner understands and agrees that nothing in this Declaration (i) in any way constitutes a promise or guarantee by [MA: DHCD or NJ: DCA or] the Program Manager that the Mortgagee shall actually receive the Mortgage Satisfaction Amount, the Maximum Resale Price for the Home or any other price for the Home, or (ii) impairs the rights and remedies of the Mortgagee in the event of a deficiency.

## ARTICLE VIII. TRANSFER OF THE HOME

**Section 8.01** Homeowner May Transfer Home Only in Strict Compliance with Article VIII; Other Transfers Null and Void. Homeowner may transfer the Home only as explicitly permitted by the provisions of this Article VIII (and, in the event of a Foreclosure Action, Section 7.04). Any purported transfer that does not strictly follow the procedures set forth below (or, in the event of a Foreclosure Action, the procedures of Section 7.04), shall be null and void.

**Section 8.02** [IF LEASING IS PERMITTED IN CERTAIN SITUATIONS: Home May Only be Leased if Permitted in Writing by Program Manager. Homeowner shall not lease or rent any portion of the Home, except as allowed under the terms of any Permitted Mortgage and with the written permission of Program Manager [NJ: which will only be given on a short-term hardship basis]. Homeowner agrees that Program Manager shall have the right to withhold such consent in order to further the purposes of this Declaration. If permission for leasing is granted, [NJ: REPLACE OPENING PHRASE WITH THIS LANGUAGE: If the Home is a two-family home, the Homeowner shall lease the rental unit only under the following conditions:] (a) the lease shall be in writing with a proposed form provided to Program Manager for approval in advance and a term no shorter than 6 months, (b) the lease shall be subject to all of the terms of this Declaration, (c) the tenant must satisfy current income requirements for Eligible Buyers, (d) the rent shall be no greater than the [amount needed to cover Homeowner's obligations to any Permitted Mortgagee and payment of taxes, assessments, and insurance under Articles IV and VI above] [maximum permitted rent as determined by the Program Manager], and (e) a fully executed copy of the lease shall be provided to Program Manager promptly after execution.

**Section 8.03** Home May be Transferred to Certain Relatives of Homeowner.

(a) Subject to the requirements of subsection (b) below, and provided the Homeowner has obtained the written permission of any Permitted Mortgagee, the Homeowner may transfer the Home, or an interest in the Home, without monetary consideration, as follows:

(i) transfer to the spouse of the Homeowner who by virtue of the transfer becomes a co-owner of the Home with the Homeowner;

(ii) transfer to the child or children of the Homeowner, provided such child or children qualify as Eligible Buyers;

(iii) transfer between spouses as part of a marriage dissolution proceeding; or

(iv) transfer by the Homeowner into an inter vivos trust in which the Homeowner is the beneficiary.

(b) Before proceeding with a transfer under this Section 8.03, the Homeowner shall give the Program Manager at least 30 days prior written notice, shall promptly provide the Program Manager with related documentation requested by the Program Manager, and shall obtain the Program Manager's written confirmation that the transfer qualifies as a permitted transfer under subsection (a).

(c) Any transferee permitted under this Section 8.03 shall take title subject to all the terms and conditions of this Declaration, and shall execute and record such documents as the Program Manager may require and/or approve.

**Section 8.04 Home May be Transferred to Certain Heirs of Homeowner.**

(a) If the Homeowner dies (or if the last surviving co-owner of the Home dies), the executor or personal representative of the Homeowner's estate shall notify the Program Manager within 90 days after the date of the death. Upon receiving such notice the Program Manager shall consent to a transfer of the Home to one or more of the possible heirs of Homeowner listed below as (i), (ii), or (iii):

(i) the spouse of the Homeowner; or

(ii) the child or children of the Homeowner; or

(iii) member(s) of the Homeowner's household who have resided in the Home for at least one year immediately prior to Homeowner's death.

(b) Any other heirs, legatees or devisees of the Homeowner must demonstrate to Program Manager's satisfaction that they are an Eligible Buyer. If they cannot demonstrate that they are an Eligible Buyer, they shall not be entitled to possession of the Home but must transfer the Home in accordance with the provisions of this Article VIII.

(c) Before proceeding with a transfer under this Section 8.04, the executor or personal representative shall give the Program Manager at least 30 days prior written notice, shall promptly provide the Program Manager with related documentation requested by the Program Manager, and shall obtain the Program

Manager's written confirmation that the transfer qualifies as a permitted transfer under subsection (a) or (b).

(d) Any transferee permitted under this Section 8.04 shall take title subject to all the terms and conditions of this Declaration, and shall execute and record such documents as the Program Manager may require and/or approve.

**Section 8.05 Home May be Transferred to Certain Buyers.** In the event that the Homeowner wishes to sell the Home, the Homeowner shall notify the Program Manager in writing of such wish (the "**Intent-to-Sell Notice**") at least 45 days before the Homeowner would like to begin to market the Home, and the Program Manager and the Homeowner shall proceed as follows:

(a) **Appraisal.** No later than 10 days after the Program Manager's receipt of an Intent-to-Sell Notice, the Program Manager shall commission an Appraisal, with copies to be provided to both Program Manager and Homeowner. Program Manager [and Homeowner] shall [each] be responsible for [half] the cost of such Appraisal. [OPTION FOR APPRAISAL-BASED RESALE FORMULA: If the Homeowner objects to the results of the Appraisal, the Homeowner (A) must notify the Program Manager of its objections in writing within 10 days after receipt of the results of the Appraisal, and (B) must commission an Appraisal of the Homeowner's choosing, to be completed within 30 days after the Homeowner's receipt of the initial Appraisal at the sole cost of the Homeowner. Copies of the Appraisal commissioned by the Homeowner are to be provided to Program Manager, Homeowner, and a Permitted Mortgagee at no cost upon request. The average of the two Appraisals shall be the binding valuation.]

(b) **Intent-to-Sell Notice Triggers Purchase Option** in favor of the Program Manager or its Assignee. As detailed in Section 8.06, Program Manager's receipt of the Intent-to-Sell Notice triggers a Purchase Option in favor of the Program Manager or its assignee. Please see Section 8.06 for the Purchase Option process to be followed upon issuance of the Intent-to-Sell Notice.

(c) **If Purchase Option Expires, Homeowner may Sell on Certain Terms.** If the 60-day Purchase Option has expired or if the Program Manager or its assignee has failed to complete the purchase within the 90-day period allowed by Section 8.06, the Homeowner may sell the Home to any Eligible Buyer for not more than the then applicable Maximum Resale Price, as calculated under Section 8.07. Further:

(i) **Resale Fee to be Paid at Transfer.** The [Homeowner shall pay] [price to be paid by the buyer shall include, in addition to the purchase price,] a Resale Fee to compensate Program Manager for carrying out its responsibilities with regard to the transaction. The amount of the resale fee shall be [ ]% of the Maximum Resale Price.

(ii) Ability to Sell to Ineligible Buyer in Certain Circumstances. If the Homeowner has made diligent efforts to sell the Home for at least **six months** after the expiration of the Purchase Option and the Home still has not been sold, the Homeowner may then sell the Home, for the Maximum Resale Price, to an Ineligible Buyer, but subject to all rights and restrictions contained herein, and further provided that if more than one Ineligible Buyer is ready, willing, and able to purchase the Home, the Homeowner will give preference to any person or groups of persons identified by the Program Manager as an appropriate household size for the Home earning less than **[REDACTED]**% of the AMI Eligibility Threshold.

(iii) Program Manager Shall Have Power of Attorney to Sell Home as Attorney in Fact for Homeowner in Certain Circumstances. If the Homeowner (a) is not then residing in the Home and (b) has made diligent efforts to sell the Home for at least **twelve months** after the expiration of the Purchase Option and the Home still has not been sold, the Homeowner does hereby appoint Program Manager as its attorney in fact to seek a buyer, negotiate a reasonable price that furthers the purposes of this Declaration, sell the Home, use the proceeds of sale first to satisfy Permitted Mortgages in order of priority, second to pay the Program Manager's costs of sale and any other sums owed the Program Manager by the Homeowner, and third to pay Homeowner the remaining proceeds of sale, minus amounts owed to any other secured lien holders.

#### **Section 8.06 Program Manager Has an Option To Purchase the Home.**

(a) Upon (i) Program Manager's receipt of an Intent-to-Sell Notice from Homeowner, (ii) Program Manager's receipt of notice of a Foreclosure Action under Article VII, (iii) any sale or transfer resulting from a Foreclosure Action under Article VII, and/or (iv) an Event of Default under Article IX (any of the foregoing, an "**Option Trigger Event**"), the Program Manager shall have the option to purchase the Home at the Maximum Resale Price, or in the case of a Foreclosure Action where the total obligations secured by the Permitted Mortgage exceed the Maximum Resale Price, the amount of such total obligations under the Permitted Mortgage (the "**Purchase Option**"). For purposes of subparagraph (iii), (A) the amount of total obligations owed to the Permitted Mortgagee shall be calculated as of the date the sale to the Program Manager closes, and (B) no Option Trigger Event occurring after a sale or transfer resulting from a Foreclosure Action shall trigger an additional Purchase Option (rather, the Program Manager shall be limited to the single Purchase Option initially triggered by the sale or transfer resulting from the Foreclosure Action). The Purchase Option is designed to further the purpose of preserving the affordability of the Home for succeeding Eligible Buyers while taking fair account of the investment by the Homeowner.

(b) If the Program Manager elects to purchase the Home, the Program Manager shall exercise the Purchase Option by notifying the current Homeowner and any Permitted Mortgagee in writing of such election (the "**Notice of Exercise**").

**of Option**") within 60 days after the Option Trigger Event, or the Option shall expire. Having given such notice, the Program Manager may either proceed to purchase the Home directly or may assign the Purchase Option to an Eligible Buyer.

(c) The purchase (by Program Manager or Program Manager's assignee) must be completed within 90 days after the Program Manager's Notice of Exercise of Option, or the Purchase Option shall be of no further force and effect with respect to such Option Trigger Event. Except as provided in Section 7.04 to the contrary and except in the case of a Foreclosure Action, the Purchase Option shall remain in effect with respect to Option Trigger Events occurring after the subject Option Trigger Event. The time permitted for the completion of the purchase may be extended by mutual agreement of the Program Manager or its assignee and the Homeowner and, if applicable, the Mortgagee undertaking the Foreclosure Action.

**Section 8.07 Calculation of Maximum Resale Price.** Except as specifically permitted in a Foreclosure Action under Section 8.06(a)(iii), so long as this Declaration remains in effect, in no event may the Home be sold for a price that exceeds the Maximum Resale Price. The "**Maximum Resale Price**" shall be equal to

**[Appraisal-Based Formula]** the lesser of (a) the value of the Home as determined by the Appraisal commissioned and conducted as provided in Section 8.05 above or (b) the price equal to the Base Price, plus [25]% of the Increase in Market Value of the Home, if any. The "**Increase in Market Value of the Home**" is the fair market value of the Home as determined by the Appraisal commissioned under Section 8.05 above, minus the Initial Market Value.

**OR**

**[Index-Based Formula]** the lesser of (a) the value of the Home as determined by the Appraisal commissioned and conducted as provided in Section 8.05 above or (b) the sum of (i) the Base Price, plus (ii) an amount equal to the Base Price multiplied by the total percentage of increase, since the Effective Date, in the [AMI Eligibility Threshold] [Consumer Price Index, as determined and published by the U.S. Department of Labor or such successor agency as may publish such index, for urban wage earners and clerical workers for the urban area in which the Home is located or, if none, for urban areas the size of [\_\_\_\_\_]] [, plus (iii) the Depreciated Value of Capital Improvements]. [The parties agree that as of the Effective Date the Consumer Price Index number was [\_\_\_\_\_] (the "**Original Number**"). To determine the "total percentage of increase", the Original Number shall be subtracted from the most recently published Consumer Price Index number, and the remainder shall then be divided by the Original Number.] **OR**

**[Fixed-Rate Formula]** the Base Price plus an annual increase of [1]% of the Base Price of the Home [compounded annually] [, plus the Capital Improvements Credit].

**Section 8.08 Repairs and Transfer Procedures.** The following procedures shall apply to all transfers of the Home pursuant to Sections 8.05 and 8.06:

(a) **Homeowner Required to Make Necessary Repairs at Transfer.** The Homeowner is required to make necessary repairs when he or she transfers the Home as follows:

(i) The Homeowner shall provide in the sales contract with the person purchasing the Home (the "**Buyer**") [through incorporation of Program Manager's current Purchase Agreement Addendum into the sales contract as an exhibit or otherwise,] that the Buyer shall, prior to purchasing the Home, hire at his or her sole expense a building inspector with a current Home Inspector license to assess the condition of the Home and prepare a written report of the condition ("**Inspection Report**"). The Homeowner shall cooperate fully with the inspection.

(ii) The Homeowner shall provide in the sales contract with the Buyer that the Buyer shall provide a copy of the Inspection Report to Buyer's lender (if any), the Homeowner, and Program Manager within 10 days after receiving the Inspection Report.

(iii) The Homeowner shall repair specific reported defects or conditions necessary, in the reasonable discretion of the Program Manager, to bring the Home into full compliance with Sections 2.02 and 3.02 above prior to transferring the Home.

(iv) The Homeowner shall bear the full cost of the necessary repairs and replacements. However, upon Homeowner's written request, Program Manager may allow the Homeowner to [draw on the Repair Reserve Fund to pay all or a portion of the repair costs prior to transfer and/or] pay all or a portion of the repair costs after transfer, from Homeowner's proceeds of sale, if Homeowner cannot afford to pay such costs prior to the transfer. In the event the repairs are postponed until after the transfer, either (A) 150% of the unpaid estimated cost of repairs or (B) 100% of the unpaid cost of completed repairs shall be withheld from Homeowner's proceeds of sale in a Program Manager-approved escrow account, and Program Manager shall pay documented, verified costs of repair from such account and return any remaining funds to Homeowner upon completion and documented, verified full payment of same.

(v) The Homeowner shall allow Program Manager, Buyer, and Buyer's building inspector and lender's representative to inspect the repairs prior to closing to determine that the repairs have been satisfactorily completed.

(vi) Upon sale or other transfer, Homeowner shall either (A) transfer the Home with all originally purchased appliances or replacements

in the Home in good working order or (B) provide the Buyer with cash at closing sufficient to purchase a comparable new appliance.

(b) Deed, Declaration, and Program Mortgage to be Prepared. The Home shall be conveyed by the Homeowner by a good and sufficient deed commonly used in the jurisdiction for single family residences conveying a good and clear record and marketable title to the Home 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 [MA: together with any lien for municipal betterments assessed after the date of the Intent-to-Sell Notice], (ii) provisions of local building and zoning laws, (iii) all easements, restrictions, covenants and agreements of record; (iv) a Declaration [identical in form and substance to this Declaration] [in the form then in use by Program Manager to administer the Program] which the Homeowner hereby agrees to secure execution by the transferee, and to record immediately after the deed, and (v) a new Program Mortgage [identical in form and substance to this Program Mortgage] [in the form then in use by Program Manager to administer the Program] which the Homeowner hereby agrees to secure execution by the transferee, and to record immediately after the Declaration or, in the event of any Permitted Mortgage approved in writing by Program Manager, immediately after the Permitted Mortgage [MA: , and (vii) the Regulatory Agreement]. **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 Homeowner to the transferee or the enforceability of the Declaration.

(c) Distribution of Sales Proceeds. The proceeds of any sale conducted in accordance with this Article VIII shall be distributed as follows: First to satisfy Permitted Mortgages in order of priority, second to pay the Program Manager's Unpaid Amounts, third to pay taxes, homeowner association assessments, and any statutory or municipal fees currently due and payable, fourth to pay amounts owed to any other secured lien holders, and fifth to the Homeowner, who may retain the remaining proceeds of sale. Notwithstanding the foregoing, any Excess Proceeds shall be paid to Program Manager.

**Section 8.09** No Promises Made as to Future Sales. Nothing in this Declaration [MA: or the Regulatory Agreement] constitutes a promise, commitment or guarantee by [MA: DHCD, MassHousing, the Municipality or] the Program Manager to sell or purchase the Home or that upon resale the Homeowner shall actually receive the Maximum Resale Price for the Home or any other price for the Home.

## ARTICLE IX. ENFORCEMENT

**Section 9.01** What Happens if Homeowner Fails to Make Payments to Program Manager That are Required by the Declaration. It shall be an event of default if the Homeowner fails to pay the Program Fee or any amounts when due under this Declaration or the Program Mortgage and such failure is not cured by the Homeowner or

a Permitted Mortgagee within 30 days after notice of such failure is given by Program Manager to Homeowner and Permitted Mortgagee. [However, in the case of a default caused by an unpaid Program Fee, if Homeowner makes a good faith partial payment of at least two-thirds (2/3) of the amount owed during the 30-day cure period, then the cure period shall be extended by an additional 30 days.]

**Section 9.02** What Happens if Homeowner Violates Other (Nonmonetary) Terms of the Declaration. It shall be an event of default if the Homeowner fails to abide by any other requirement or restriction stated in this Declaration, the Program Mortgage, and/or any other document of record encumbering the Home, and such failure is not cured by the Homeowner or a Permitted Mortgagee within 60 days after notice of such failure is given by the Program Manager to the Homeowner and any Permitted Mortgagee. However, if the Homeowner or a Permitted Mortgagee has begun to cure such default within the 60-day cure period and is continuing such cure with due diligence but cannot complete the cure within the 60-day cure period, the cure period shall be extended for as much additional time as may be reasonably required to complete the cure but not exceeding a total cure period of 120 days. Notwithstanding the foregoing, the Homeowner shall not be entitled to a cure period for any violation of the construction or statutory lien provisions in Article VI, the financing provisions in Article VII, the transfer provisions in Article VIII and/or Section 2.03, or the provisions of Section 9.03 below, and the Program Manager shall be entitled to exercise the rights and remedies under Section 9.04 for any such violation immediately upon notice of such violation being given by the Program Manager to the Homeowner and any Permitted Mortgagee.

**Section 9.03** What Happens if Homeowner Defaults as a Result of Judicial Process. It shall be an event of default if the Home is taken on execution or by other process of law, or if any assignment is made of the Home for the benefit of creditors, or if a receiver, trustee in involuntary bankruptcy or other similar officer is appointed to take charge of any substantial part of the Home by a court of competent jurisdiction, or if a petition is filed for the reorganization of Homeowner under any provisions of the Bankruptcy Act now or hereafter enacted, or if Homeowner files a petition for such reorganization, or for arrangements under any provision of the Bankruptcy Act now or hereafter enacted and providing a plan for a debtor to settle, satisfy or extend the time for payment of debts.

**Section 9.04** A Default (Uncured Violation) Gives Program Manager [MA: and Municipality] the Right to Exercise Rights and Remedies. Upon the occurrence of an event of default that continues beyond any applicable cure period, [MA: the Municipality and] the Program Manager shall have, in addition to all other rights and remedies provided at law or in equity, the right, at [MA: the Municipality and] the Program Manager's option, without further notice or demand of any kind, to take any one or more of the following actions:

- (a) The right to enforce this Declaration independently by appropriate legal proceedings and to obtain injunctive and other appropriate relief on account of any violations including without limitation relief requiring restoration of the Home to the condition, affordability or occupancy which existed prior to the violation

impacting such condition, affordability or occupancy (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 [MA: the Municipality and] the Program Manager.

(b) The right to exercise the Purchase Option under Section 8.06 above;

(c) In the case of a default under Section 9.02 or 9.03, the right to exercise all rights and remedies under the Program Mortgage, including without limitation the institution of foreclosure by judicial proceeding or private sale;

(d) Without limitation of any other rights or remedies of [MA: the Municipality and] the Program Manager, or [MA: their] its successors and assigns, in the event of any sale, conveyance, financing, refinancing, or other transfer or occupancy of the Home in violation of the provisions of this Declaration, the following rights and remedies, which shall be cumulative and not mutually exclusive:

(i) specific performance of the provisions of this Declaration;

(ii) money damages for Excess Proceeds and Unpaid Amounts, if applicable;

(iii) if the violation is a sale or other conveyance of the Home to an Ineligible Buyer except as permitted herein, the option to locate an Eligible Buyer to purchase or itself purchase the Home from the Ineligible Buyer on the terms and conditions provided herein; the purchase price shall be a price which complies with the provisions of this Declaration; specific performance of the requirement that an Ineligible Buyer shall sell, as herein provided, may be judicially ordered;

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

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

(e) In addition to the foregoing, the Homeowner hereby agrees and shall be obligated to pay all fees and expenses (including legal fees) of the Program Manager [MA: and/or the Municipality] in the event successful enforcement action is taken against the Homeowner or Homeowner's successors or assigns.

(f) The Homeowner for himself, herself or themselves and his, her or their successors and assigns, hereby grants to the Program Manager [MA: and the Municipality] the right to take all actions with respect to the Home which the Program Manager [MA: or Municipality] may determine to be necessary or appropriate pursuant to applicable law, court order, or the consent of the

Homeowner to prevent, remedy or abate any violation of this Declaration. [MA: Notwithstanding anything herein to the contrary, in the event that the Program Manager and/or Municipality fails to enforce this Declaration as provided in this Section, DHCD, if it is not named as Program Manager, shall have the same rights and standing to enforce this Declaration as the Municipality and the Program Manager.]

(g) All rights and remedies set forth in this Section 9.04 are subordinate to the rights of Permitted Mortgagees as set forth in Sections 1.03, 4.01, and 4.07 of this Declaration.

**Section 9.05** What Happens if Program Manager Defaults. The Program Manager shall not be in default in the performance of any of its obligations under this Declaration unless and until the Program Manager has failed to perform such obligations for 60 days, or such additional time as is reasonably required to correct any default, after notice by the Homeowner to the Program Manager properly specifying the Program Manager's failure to perform any such obligation.

## ARTICLE X. MEDIATION

**Section 10.01** Nothing in this Declaration shall be construed as preventing the parties from utilizing any process of mediation in which the parties agree to engage for the purpose of resolving a dispute.

**Section 10.02** Homeowner and Program Manager shall each pay one half (50%) of any costs incurred in carrying out mediation in which the parties have agreed to engage.

## ARTICLE XI. NOTICES, RIGHT OF FIRST REFUSAL, AND OTHER PROVISIONS

**Section 11.01** Notices. Whenever this Declaration requires either party to give notice to the other, the notice shall be given in writing and delivered in person or mailed, by certified or registered mail, return receipt requested, to the party at the address set forth below, or such other address designated by like written notice:

If to Program Manager:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Attn: \_\_\_\_\_

With a copy to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Attn: \_\_\_\_\_

If to Homeowner:

Homeowner at the Home address

All notices, demands and requests shall be effective upon being deposited in the United States Mail or, in the case of personal delivery, upon actual receipt.

**Section 11.02 Severability.** If any part of this Declaration is unenforceable or invalid, such material shall be read out of this Declaration and shall not affect the validity of any other part of this Declaration or give rise to any cause of action of Homeowner or Program Manager against the other, and the remainder of this Declaration shall be valid and enforced to the fullest extent permitted by law.

**Section 11.03 Right of First Refusal in Lieu of Option.** If the Program Manager ever has reason to believe that the provisions of the Purchase Option set forth in Article VIII of this Declaration have, for any reason, become unenforceable, the Program Manager shall give notice to the Homeowner and any Permitted Mortgagee of the Program Manager's election to replace the Purchase Option with this Section 11.03 and the Program Manager shall then have a right of first refusal to purchase the Home at the highest documented bona fide purchase price offer made to Homeowner as follows:

(a) If the Homeowner receives a bona fide third party offer to purchase the Home which the Homeowner is willing to accept, the Homeowner shall give written notice of such offer (the "**Notice of Offer**") to the Program Manager setting forth (i) the name and address of the prospective purchaser, (ii) the purchase price offered by the prospective purchaser, and (iii) all other terms and conditions of sale. The Program Manager shall have **45** days after receipt of the Notice of Offer (the "**Election Period**") within which to exercise the right of first refusal by giving the Homeowner a notice of intent to purchase the Home (the "**Notice of Intent to Purchase**") for the same price and on the same terms and conditions set forth in the Notice Offer, provided, however, that the price to Program Manager shall not exceed the Maximum Resale Price. Such Notice of Intent to Purchase shall be given in writing to the Homeowner within the Election Period.

(b) If the Program Manager exercises the right to purchase the Home, such purchase shall be completed within 60 days after the Notice of Intent to Purchase is given by the Program Manager (or if the Notice of Offer shall specify a later date for closing, such date) by performance of the terms and conditions of the Notice of Offer, including payment of either the purchase price provided therein or the Maximum Resale Price, whichever is less.

(c) Should the Program Manager fail to exercise the right of first refusal within the Election Period, then the Homeowner shall have the right (subject to any other applicable restrictions in the Declaration, including without limitation Section 8.08) to go forward with the sale described in the Notice of Offer, and to sell the Home within six months following the expiration of the Election Period on terms and conditions which are not materially more favorable to the purchaser than those set forth in the Notice of Offer. If the sale is not consummated within such six-month period, the Homeowner's right so to sell shall end, and all of the provisions of this Section 11.03 shall be applied again to any future offer. If a sale is consummated within such six-month period, the purchaser shall purchase subject to the Program Manager having a renewed right of first refusal in the Home.

(d) Any sale or transfer contrary to this Section 11.03, when applicable, shall be null and void.

**Section 11.04** Waiver.

(a) The waiver by Program Manager at any time of any requirement or restriction in this Declaration, or the failure of Program Manager to take action with respect to any breach of any such requirement or restriction, shall not be deemed to be a waiver of such requirement or restriction with regard to any subsequent breach of such requirement or restriction, or of any other requirement or restriction in the Declaration. Program Manager may grant waivers in the terms of this Declaration, but such waivers must be in writing and signed by Program Manager before being effective. **Notwithstanding the foregoing, the Program Manager may not waive the provisions of Sections 1.03(b), 4.05, 7.01, 7.03, 8.08(c), and 9.04(g) of this Declaration.**

(b) The subsequent acceptance by Program Manager of any late payments shall not be deemed to be a waiver of any preceding breach by Homeowner of any requirement or restriction in this Declaration, other than the failure of the Homeowner to make the particular payment so accepted, regardless of Program Manager's knowledge of such preceding breach at the time of acceptance of such payment.

**Section 11.05** Construction. Whenever in this Declaration a pronoun is used it shall be construed to represent either the singular or the plural, masculine or feminine, as the case shall demand.

**Section 11.06** Headings and Table of Contents. The headings, subheadings and table of contents appearing in this Declaration are for convenience only, and are not a part of this Declaration and do not in any way limit or amplify the terms or conditions of this Declaration.

**Section 11.07** Parties Bound. This Declaration sets forth the entire agreement between Program Manager and Homeowner with respect to the subject matter of this Declaration; it is binding upon and inures to the benefit of these parties and, in

accordance with the provisions of this Declaration, their respective successors in interest. This Declaration may be altered or amended only by written notice executed by Program Manager and Homeowner or their legal representatives or, in accordance with the provisions of this Declaration, their successors in interest.

**Section 11.08** Governing Law. This Declaration shall be interpreted in accordance with and governed by the laws of the State in which the Home is located. The language in all parts of this Declaration shall be, in all cases, construed according to its fair meaning and not strictly for or against Program Manager or Homeowner.

**[Signatures appear on the following pages]**

IN WITNESS WHEREOF, the parties have caused this Declaration to be executed as of the Effective Date.

***[INSERT SIGNATURE BLOCKS, NOTARY ACKNOWLEDGMENTS, AND (IF REQUIRED BY STATE LAW, WITNESS BLOCKS)]***

**EXHIBIT A**

**Legal Description  
of the Home**

[INSERT ANY STATEMENTS REQUIRED FOR RECORDING]

## SUBORDINATE PROGRAM MORTGAGE

Based on Grounded Solutions Network 2021 Model Subordinate Program Mortgage

This Subordinate Program Mortgage (as amended and/or restated from time to time, this "**Security Instrument**"), is executed by [FULL NAMES OF HOMEBUYERS], [each] an individual ([together,] the "**Mortgagor**"), residing at [Home Address] (the "**Property Address**"), in favor of [FULL NAME OF ENTITY/GOVERNMENT WITH FINANCIAL INTEREST IN PROPERTY], its successors and assigns (the "**Mortgagee**"), with an address of [Office Address], as of [Month Date], 20[Year], for the purpose of encumbering the improved real estate described on attached Exhibit A (as defined in greater detail below, the "**Property**").

### DEFINITIONS

Words used in multiple sections of this document are defined below. Certain rules regarding the usage of words used in this document are also provided in Section 12.

"**Applicable Law**": All controlling applicable federal, state and local statutes, regulations, ordinances and administrative rules and orders (that have the effect of law) as well as all applicable final, non-appealable judicial opinions.

"**Declaration**": The Declaration of Affordability Covenants with Refinance and Resale Restriction and Purchase Option signed by the Mortgagor, dated and recorded the same date as this Security Instrument, and encumbering the Property.

"**Default**": (i) The failure to pay any Payment on the date it is due, (ii) a breach of any other representation, warranty, covenant, requirement, restriction, obligation or agreement in the Declaration, (iii) the failure to pay any other amount secured by this Security Instrument on the date it is due, (iv) a breach of any representation, warranty, covenant, requirement, restriction, obligation or agreement in this Security Instrument, (v) a breach of any representation, warranty, covenant, requirement, restriction, obligation or agreement in the first lien security instrument that is secured by the Property, or (iv) the commencement of any action or proceeding described in Section 7(d).

"**Obligations**": Payment of all monetary obligations evidenced by the Declaration, including Program Fees, Excess Proceeds, and Unpaid Amounts (as defined in the Declaration) plus any interest, prepayment charges, costs, expenses and late charges due under the Declaration, and all sums due under this Security Instrument, plus any

interest, together with performance of all non-monetary obligations evidenced by the Declaration.

**"Payment"**: (i) The regularly scheduled amounts due under the Declaration, and (ii) any other amounts due from time to time under the Declaration, including, without limitation, Program Fees, Excess Proceeds, and Unpaid Amounts and all other amounts payable by Mortgagor under the terms of the Declaration.

**"Property"**: The property described below under the heading "TRANSFER OF RIGHTS IN THE PROPERTY."

**"Successor in Interest of Mortgagor"**: Any party that has taken title to the Property, whether or not that party has assumed Mortgagor's obligations under the Declaration and/or this Security Instrument.

### **TRANSFER OF RIGHTS IN THE PROPERTY**

This Security Instrument secures to Mortgagee: (i) the payment of the Obligations; and (ii) the performance of Mortgagor's covenants and agreements under this Security Instrument and the Declaration. For this purpose, Mortgagor mortgages, grants and conveys to Mortgagee the Property, which is located in [County, State] and has an address of the Property Address.

TOGETHER WITH all the improvements now or subsequently erected on the Property, including replacements and additions to the improvements on such Property, all property rights, including, without limitation, all easements, appurtenances, royalties, mineral rights, oil or gas rights or profits, water rights, and fixtures now or subsequently a part of the property. All of the foregoing is referred to in this Security Instrument as the **"Property"**.

MORTGAGOR REPRESENTS, WARRANTS, COVENANTS AND AGREES that: (i) Mortgagor lawfully owns and possesses the Property in fee simple or lawfully has the right to use and occupy the Property under a leasehold estate; (ii) Mortgagor has the right to mortgage, grant and convey the Property; and (iii) the Property is unencumbered, and not subject to any other ownership interest in the Property, except for encumbrances and ownership interests of record. Mortgagor warrants generally the title to the Property and covenants and agrees to defend the title to the Property against all claims and demands, subject to any Permitted Mortgages (as defined in the Declaration).

### **COVENANTS**

Mortgagor and Mortgagee covenant and agree as follows:

**1. Payment of Program Fees, Excess Proceeds, Unpaid Amounts, Interest, and Other Amounts.** Mortgagor will make each Payment when due. All Payments must be made in U.S. currency.

Payments are deemed received by Mortgagee when received at the location designated in the Declaration, or at such other location as may be designated by Mortgagee in accordance with the notice provisions in Section 11.

Any offset or claim that Mortgagor may have now or in the future against Mortgagee will not relieve Mortgagor from making the full amount of all payments due under the Declaration and this Security Instrument or performing the covenants and agreements set forth in the Declaration and this Security Instrument and secured by this Security Instrument.

**2. Application of Payments or Proceeds.** Except as otherwise described in this Section 2, all payments accepted by Mortgagee will be applied in the following order of priority: (a) interest due under the Declaration or Security Instrument (if any); and (b) amounts due under the Declaration or this Security Instrument, as applicable. Such payments will be applied to each Payment in the order in which it became due. Any remaining amounts will be applied first to late charges, second to any other amounts due under the Declaration, and third to any other amounts due under this Security Instrument.

**3. Prior Security Instruments; Charges; Liens.** Mortgagor will perform all of Mortgagor's obligations under any security instrument with a lien which has priority over the lien of this Security Instrument, including Mortgagor's covenants to make payments when due. Mortgagee and Mortgagor each recognize that provisions in the Declaration and in this Security Instrument give Mortgagee certain rights with respect to the Property and to the receipt of certain funds, including the right to receive payment of insurance proceeds, condemnation and other Miscellaneous Proceeds and the use and application of the proceeds, including the right to hold and disburse the proceeds, and that these rights are subject to the terms of any Permitted Mortgage.

**4. Property Insurance.** Mortgagor must keep the improvements now existing or subsequently erected on the Property insured against loss by fire, hazards included within the term "extended coverage," and any other hazards including, but not limited to, earthquakes, winds and floods. Mortgagor must maintain the types of insurance Mortgagee requires, all in accordance with the terms of any Permitted Mortgage. This insurance must be maintained in the amounts (including deductible levels) and for the periods that Mortgagee requires. What Mortgagee requires pursuant to the preceding sentences can change during the term of the Declaration, and may exceed any minimum coverage required by Applicable Law. Mortgagor may choose the insurance carrier providing the insurance, subject to Mortgagee's right to disapprove Mortgagor's choice, which right will not be exercised unreasonably.

If Mortgagee has a reasonable basis to believe that Mortgagor has failed to maintain any of the required insurance coverages described above, Mortgagee may obtain insurance coverage, at Mortgagee's option and at Mortgagor's expense. Mortgagee is under no obligation to purchase any particular type or amount of coverage. Any such coverage will insure Mortgagee, but might not protect Mortgagor, Mortgagor's

equity in the Property, or the contents of the Property, against any risk, hazard or liability and might provide greater or lesser coverage than was previously in effect.

All insurance policies required by Mortgagee and renewals of such policies: (i) will be subject to Mortgagee's right to disapprove such policies; (ii) must include a standard mortgage clause; and (iii) must name Mortgagee as mortgagee and/or as an additional loss payee in the order of the priority of its lien.

**5. Preservation, Maintenance and Protection of the Property.** Mortgagor will not destroy, damage or impair the Property, allow the Property to deteriorate or commit waste on the Property. Mortgagor must maintain the Property in accordance with the Declaration and in order to prevent the Property from deteriorating or decreasing in value due to its condition.

**6. Protection of Mortgagee's Interest in the Property and Rights Under this Security Instrument.**

**(a) Protection of Mortgagee's Interest.** If: (i) Mortgagor fails to perform the covenants and agreements contained in the Declaration and/or this Security Instrument; (ii) there is a legal proceeding or government order that might significantly affect Mortgagee's interest in the Property and/or rights under this Security Instrument (such as a proceeding in bankruptcy, probate, for condemnation or forfeiture, for enforcement of a lien that has priority or may attain priority over this Security Instrument or to enforce laws or regulations); or (iii) Mortgagee reasonably believes that Mortgagor has abandoned the Property, then Mortgagee may do and pay for whatever is reasonable or appropriate to protect Mortgagee's interest in the Property and/or rights under this Security Instrument, including protecting and/or assessing the value of the Property, and securing and/or repairing the Property, and may enter the Property for purposes of performing same.

Mortgagee's actions may include, but are not limited to: (I) paying any sums secured by a lien that has priority or may attain priority over this Security Instrument; (II) appearing in court; and (III) paying (A) reasonable attorneys' fees and costs, (B) property inspection and valuation fees, and (C) other fees incurred for the purpose of protecting Mortgagee's interest in the Property and/or rights under this Security Instrument, including its secured position in a bankruptcy proceeding. Securing the Property includes, but is not limited to, inspections of the Property, entering the Property to make repairs, changing locks, replacing or boarding up doors and windows, draining water from pipes, eliminating building or other code violations or dangerous conditions, and having utilities turned on or off. Although Mortgagee may take action under this Section 6, Mortgagee is not required to do so and is not under any duty or obligation to do so. Mortgagee will not be liable for not taking any or all actions authorized under this Section 6.

**(b) Additional Amounts Secured.** Any amounts disbursed by Mortgagee under this Section 6 will become additional Obligations of Mortgagor secured by this Security Instrument. If not paid by Mortgagee to Mortgagor within 30 days after issuance of an

invoice reflecting amounts disbursed by Mortgagee, these amounts shall bear interest at the rate specified in the Declaration for late payments under Article IV of the Declaration.

**(c) Declaration Terms.** Mortgagor will comply with all the provisions of the Declaration.

**(d) Leasehold Terms.** If this Security Instrument is on a leasehold, Mortgagor will comply with all the provisions of the lease. If Mortgagor acquires fee title to the Property, the leasehold and the fee title will not merge unless Mortgagee agrees to the merger in writing.

## **7. Assignment of Miscellaneous Proceeds; Forfeiture.**

**(a) Assignment of Miscellaneous Proceeds.** Mortgagor unconditionally assigns the right to receive all insurance, condemnation, and other proceeds arising from a casualty or condemnation impacting the Home ("**Miscellaneous Proceeds**") to Mortgagee and agrees that, subject to the requirements of any Permitted Mortgagee, such amount will be paid to Mortgagee.

**(b) Application of Miscellaneous Proceeds upon Damage to Property.** If the Property is damaged, any Miscellaneous Proceeds will be applied to restoration or repair of the Property, if Mortgagee deems the restoration or repair to be economically feasible and Mortgagee's security will not be lessened by such restoration or repair. During such repair and restoration period, Mortgagee will have the right to hold such Miscellaneous Proceeds until Mortgagee has had an opportunity to inspect the Property to ensure the work has been completed to Mortgagee's satisfaction, provided that such inspection must be undertaken promptly. Mortgagee may pay for the repairs and restoration in a single disbursement or in a series of progress payments as the work is completed. Mortgagee may make such disbursements directly to Mortgagor, to the person repairing or restoring the Property, or payable jointly to both. Unless Mortgagee and Mortgagor agree in writing or Applicable Law requires interest to be paid on such Miscellaneous Proceeds, Mortgagee will not be required to pay Mortgagor any interest or earnings on such Miscellaneous Proceeds. If Mortgagee deems the restoration or repair not to be economically feasible or Mortgagee's security would be lessened by such restoration or repair, the Miscellaneous Proceeds will be applied to the sums secured by this Security Instrument, whether or not then due, with the excess, if any, paid to Mortgagor.

**(c) Application of Miscellaneous Proceeds upon Total Taking of Property.** In the event of a total taking, destruction, or loss in value of the Property, all of the Miscellaneous Proceeds will be applied to the sums secured by this Security Instrument, whether or not then due, with the excess, if any, paid to Mortgagor. Notwithstanding the foregoing, any Excess Proceeds shall be paid to Mortgagee in accordance with Section 1.03 of the Declaration.

**(d) Proceeding Affecting Mortgagee's Interest in the Property.** Mortgagor will be in Default if any action or proceeding begins, whether civil or criminal, that, in

Mortgagee's judgment, could result in forfeiture of the Property or other material impairment of Mortgagee's interest in the Property or rights under this Security Instrument. Mortgagor can cure such a Default by causing the action or proceeding to be dismissed within sixty (60) days after commencement with a ruling that, in Mortgagee's judgment, precludes forfeiture of the Property or other material impairment of Mortgagee's interest in the Property or rights under this Security Instrument. Mortgagor unconditionally assigns to Mortgagee the proceeds of any award or claim for damages that are attributable to the impairment of Mortgagee's interest in the Property, which proceeds will be paid to Mortgagee.

**8. Mortgagor Not Released; Forbearance by Mortgagee Not a Waiver.**

Mortgagor or any Successor in Interest of Mortgagor will not be released from liability under this Security Instrument if Mortgagee extends the time for payment or modifies the amortization of the sums secured by this Security Instrument. Mortgagee will not be required to commence proceedings against any Successor in Interest of Mortgagor, or to refuse to extend time for payment or otherwise modify amortization of the sums secured by this Security Instrument by reason of any demand made by the original Mortgagor or any Successors in Interest of Mortgagor. Any forbearance by Mortgagee in exercising any right or remedy including, without limitation, Mortgagee's acceptance of payments from third persons, entities or Successors in Interest of Mortgagor or in amounts less than the amount then due, will not be a waiver of, or preclude the exercise of, any right or remedy by Mortgagee.

**9. Joint and Several Liability; Signatories.** Mortgagor's obligations and liability under this Security Instrument will be joint and several. However, any Mortgagor who signs this Security Instrument but does not sign the Declaration: (a) signs this Security Instrument to mortgage, grant and convey such Mortgagor's interest in the Property under the terms of this Security Instrument; (b) signs this Security Instrument to waive any applicable inchoate rights such as dower and curtesy and any available homestead exemptions; (c) signs this Security Instrument to assign any Miscellaneous Proceeds, Rents or other earnings from the Property to Mortgagee; (d) is not personally obligated to pay the sums due under the Declaration or this Security Instrument; and (e) agrees that Mortgagee and any other Mortgagor can agree to extend, modify, forbear or make any accommodations with regard to the terms of this Security Instrument without such Mortgagor's consent and without affecting such Mortgagor's obligations under this Security Instrument.

Subject to the provisions of Section 14, any Successor in Interest of Mortgagor who assumes Mortgagor's obligations under this Security Instrument in writing, and is approved by Mortgagee, will obtain all of Mortgagor's rights, obligations and benefits under this Security Instrument. Mortgagor will not be released from Mortgagor's obligations and liability under this Security Instrument unless Mortgagee agrees to such release in writing.

**10. Charges.** If permitted under Applicable Law, Mortgagee may charge Mortgagor fees for services performed in connection with Mortgagor's Default to protect Mortgagee's interest in the Property and rights under this Security Instrument, including, (i) reasonable attorneys' fees and costs, (ii) property inspection, valuation, mediation and loss mitigation fees, and (iii) other related fees.

If Applicable Law sets maximum interest rates or other charges, and that law is finally interpreted so that the interest or other charges collected or to be collected in connection with the Obligations exceed the permitted limits, then: (i) any such charge will be reduced by the amount necessary to reduce the charge to the permitted limit; and (ii) any sums already collected from Mortgagor which exceeded permitted limits will be refunded to Mortgagor. Mortgagee may choose to make this refund by reducing the obligations owed under the Declaration or by making a direct payment to Mortgagor. To the extent permitted by Applicable Law, Mortgagor's acceptance of any refund made by direct payment to Mortgagor will constitute a waiver of any right of action Mortgagor might have arising out of such overcharge.

**11. Notices.** All notices given by Mortgagor or Mortgagee in connection with this Security Instrument must be in writing. Any written notice to Mortgagor in connection with this Security Instrument will be deemed to have been given to Mortgagor when (i) mailed by certified or registered mail, return receipt requested, or (ii) actually delivered to Mortgagor's notice address if sent by other means. Notice to any one Mortgagor will constitute notice to all Mortgagors unless Applicable Law expressly requires otherwise. The notice address for Mortgagor will be the Property Address.

Any notice to Mortgagee will be given by delivering it or by mailing it by certified or registered mail, return receipt requested, to Mortgagee's address stated in this Security Instrument unless Mortgagee has designated another address by notice to Mortgagor. If any notice required by this Security Instrument is also required under Applicable Law, the Applicable Law requirement will satisfy the corresponding requirement under this Security Instrument.

**12. Governing Law; Severability; Rules of Construction.** This Security Instrument is governed by federal law and the law of the jurisdiction in which the Property is located. All rights and obligations contained in this Security Instrument are subject to any requirements and limitations of Applicable Law. Applicable Law might explicitly or implicitly allow the parties to agree by contract or it might be silent, but such silence should not be construed as a prohibition against agreement by contract. If any provision of this Security Instrument or the Declaration conflicts with Applicable Law, such conflict will not affect other provisions of this Security Instrument or the Declaration that can be given effect without the conflicting provision. If any provision of this Security Instrument conflicts with the Declaration, the provisions of the Declaration shall govern and control. Any action required under this Security Instrument to be made in accordance with Applicable Law is to be made in accordance with the Applicable Law in effect at the time the action is undertaken.

As used in this Security Instrument: (a) words in the singular will mean and include the plural and vice versa, and (b) the word “may” gives sole discretion without any obligation to take any action.

**13. Mortgagor's Copy.** One Mortgagor will be given one copy of the Declaration and this Security Instrument.

**14. Mortgagee's Successors and Assigns.** Mortgagee is also the Program Manager under the Declaration. The Declaration permits the Program Manager from time to time to designate a successor or assign its rights and obligations under the Declaration, provided that such successor or assign is a governmental body, governmental agency, or non-profit entity with a charitable purpose consistent with the Program (as defined in the Declaration). Upon such a designation under the Declaration of a successor or assign by the Program Manager, all of Mortgagee's rights and obligations under this Security Instrument will likewise convey to such successor or assign.

**15. Acceleration; Remedies.**

**(a) Notice of Default.** Mortgagee will give a notice of Default to Mortgagor prior to exercising remedies under this Security Instrument following Mortgagor's Default. The notice will specify: (i) the Default; (ii) the action required to cure the Default; (iii) a date, not less than 30 days from the date the notice is given to Mortgagor (or such longer period set forth in Article IX of the Declaration), by which the Default must be cured; (iv) that failure to cure the Default on or before the date specified in the notice may result in acceleration of the sums secured by this Security Instrument, foreclosure by judicial proceeding and sale of the Property; (v) Mortgagor's right to reinstate after acceleration; and (vi) the right to deny in the foreclosure proceeding the existence of a Default or to assert any other defense of Mortgagor to acceleration and foreclosure. In the case of Defaults under subparagraphs (i) or (ii) of the Definition for “**Default**” set forth above, the notice and cure periods under this Section 19(a) shall run concurrently with any applicable notice and cure periods under Article IX of the Declaration.

**(b) Acceleration; Foreclosure; Expenses.** If the Default is not cured on or before the date specified in the notice, Mortgagee may require immediate payment in full of all sums secured by this Security Instrument without further demand and may foreclose this Security Instrument by judicial proceeding. Mortgagee will be entitled to collect all expenses incurred in pursuing the remedies provided in this Section 19, including, but not limited to: (i) reasonable attorneys' fees and costs; (ii) property inspection and valuation fees; and (iii) other fees incurred to protect Mortgagee's interest in the Property and/or rights under this Security Instrument.

**16. Release.** Upon payment and performance of all Obligations secured by this Security Instrument, Mortgagee shall release this Security Instrument. Mortgagor shall pay any recordation costs. Mortgagee may charge Mortgagor a fee for releasing this Security Instrument, but only if the fee is paid to a third party for services rendered and the charging of the fee is permitted under Applicable Law.

**17. Attorneys' Fees.** As used in this Security Instrument and the Declaration, attorneys' fees shall include those awarded by an appellate court and any attorneys' fees incurred in a bankruptcy proceeding.

**18. Jury Trial Waiver.** The Mortgagor hereby waives any right to a trial by jury in any action, proceeding, claim, or counterclaim, whether in contract or tort, at law or in equity, arising out of or in any way related to this Security Instrument or the Declaration.

**MORTGAGEE REQUESTS NOTICE OF ANY ADVERSE ACTION THAT A PRIORITY LIEN HOLDER TAKES WITH REGARD TO THE PROPERTY, INCLUDING DEFAULT AND FORECLOSURE**

**[Signatures appear on the following pages]**

IN WITNESS WHEREOF, the parties have caused this Security Instrument to be executed as of the date first set forth above.

***[INSERT MORTGAGEE SIGNATURE BLOCKS, NOTARY ACKNOWLEDGMENTS,  
AND IF REQUIRED BY STATE LAW, WITNESS BLOCKS]***

**EXHIBIT A**

**Legal Description  
of the Property**