



## DECLARATION OF AFFORDABLE HOUSING COVENANTS

**MYRTLE VILLAGE, LLC**, a limited liability company organized under the laws of the Commonwealth of Massachusetts, having an address of **21 Curve Street, Newton, MA 02465**, and owner in fee simple of property known as **12 Curve Street and 18-20 Curve Street** in Newton, Massachusetts, acting by and through its **Manager** pursuant to a Certificate of Authority of the limited liability company recorded herewith (the "Owner") hereby covenants and agrees for itself, its successors, heirs and assigns, that the parcel described in Exhibit A, attached hereto and incorporated herein, (hereinafter the "Property") shall be subject to the following restrictions for the benefit of the Newton Community Development Authority, having a mailing address of Newton City Hall, 1000 Commonwealth Avenue, Newton Centre, Massachusetts, 02459 (the "NCDA"), its successors and permitted assigns.

The consideration for this Declaration of Affordable Housing Covenants (hereinafter "Covenant") is a loan to the Owner from the Newton Community Development Authority, which is evidenced by a promissory note and secured by a mortgage of the Property of even date recorded herewith at the Middlesex South District Registry of Deeds.

The terms of this Covenant authorized by Massachusetts General Laws, Chapter 184, §§31-33 and otherwise by law, are as follows:

1. **Purpose.** The purpose of this Covenant is to ensure that the Property will be retained as affordable housing for occupancy by low and moderate-income households as defined by the U.S. Department of Housing and Urban Development's (HUD) Community Development Block Grant (CDBG) and HOME Investment Partnerships Programs. This Covenant is intended to be construed as an affordable housing restriction as defined in Section 31 of Chapter 184 of the Massachusetts General Laws which has the benefit of Section 32 of said Chapter 184.
2. **Covenants.** The Owner intends, declares and covenants on behalf of itself, its successors and assigns that these covenants, agreements, and restrictions are not merely personal covenants of the Owner and shall run with the land and shall bind the Owner, its successors and assigns and inure to the benefit of the NCDA, and its successors and assigns.
3. **Term.** For the maximum duration permitted by law with the approval of the Commonwealth of Massachusetts, pursuant to General Laws, Chapter 184, Sections 31-33, and in the event such approval is not given, for a period of fifty (50) years from the date of this Covenant and for such further time thereafter (up to 99 years) as this Covenant may be lawfully extended (including without limitation extensions permitted under General Laws, Chapter 184, Section 27-30), the property shall be maintained as affordable housing as defined in paragraph 1 above.
4. **Completion Date.** The date on which all required Certificates of Occupancy for the rental units on the Property are issued by the City of Newton Inspectional Services Department and the Owner has provided written notification to the NCDA and the NCDA has verified that all

City of Newton Law Department  
1000 Commonwealth Avenue  
Newton Centre, MA 02459

units are fully occupied, as provided in the CDBG and HOME Program Loan Agreement of even date between the NCDCA and the Owner. If the units receive Certificates of Occupancy and are occupied on different dates, then the Completion Date shall be the date of occupancy of the unit that is occupied last.

**5. Owner's Warranties and Representations.** During the term of this Covenant as defined in paragraph 3 beginning from the Completion Date as defined in paragraph 4 above, (hereinafter "affordability period") the Owner shall comply with the following requirements:

- A. The Owner shall provide two units of rental housing at the Property which shall be rented at HOME Program rents as defined by the United States Department of Housing and Urban Development for the twenty (20) year period of HOME affordability. Notwithstanding the above, upon completion of the twenty (20) year period, any HOME Program imposed rules not also mandated by other programs, shall expire. The expiration of the HOME rules shall not impact the affordability period placed on the units by any other programs. The HOME-assisted units will comply with the following income and affordable rent requirements:
- (i) Units must be occupied by households with incomes that do not exceed 50% of the area median income for the Boston-Cambridge-Quincy, MA-NH Metropolitan Statistical Area, adjusted for family size.. The actual income limits are determined by HUD and published annually in the Federal Register;
  - (ii) Rents, including utilities, may not exceed the maximum rent limits imposed by the United States Department of Housing and Urban Development.
  - (iii) A tenant whose income met the income limits at the time of initial occupancy, but whose income eventually exceeds 50% of the area median income, may remain in the unit, provided that the rent is adjusted so that the "over-income" tenant is paying not less than 30% of their adjusted monthly gross income for rent and utilities. As soon as the "over-income" tenant vacates the Property, the Owner must re-rent the unit to an income-eligible household.
  - (iv) After the expiration of the twenty (20) year period of HOME affordability, units must continue to be occupied by households with incomes that do not exceed 50% of the area median income for the Boston-Cambridge-Quincy, MA-NH Metropolitan Statistical Area, adjusted for family size.
- B. The Owner represents warrants and covenants that the determination of whether a resident meets the income requirements set forth herein shall be made by Owner at the time of the leasing of the units and thereafter at least annually on the basis of the current income of such resident. The Owner shall maintain as part of its records, copies of all leases governing the rental of the units as may be executed throughout the affordability period and all initial and annual income certification(s) by the tenant(s) of the units. At the request of the NCDCA, the Owner shall provide copies of records documenting the annual and monthly gross and adjusted income of each resident

occupying the units. In addition to the foregoing, Owner shall keep such additional records and prepare and submit to NCDA such reports as the NCDA may deem necessary to ensure compliance with the requirements of this Covenant and of the CDBG and HOME Programs.

- C. Prior to initial occupancy of the units and annually thereafter, the Owner shall submit to the NCDA a proposed schedule of monthly rent and monthly allowances for utilities and services for the units. Such schedule shall be subject to the approval of NCDA for compliance with the requirements of applicable HUD regulations. After approval of a schedule of rent and allowances by NCDA, rents shall not be increased without either (a) a specific request by Owner for a rent increase or (b) the next annual schedule of rents and allowances. Notwithstanding the foregoing, rent increases shall be subject to the provisions of outstanding leases and shall not be implemented without at least 30 days prior written notice by Owner to the affected tenant(s).
- D. The Owner shall not demolish any part of the Property or substantially subtract from any real or personal property of the Property except in conjunction with renovation or rehabilitation of the Property or construction of a new project on the Property, in either case subject to the prior written consent of the NCDA, which consent shall not be unreasonably withheld. The Owner shall not permit the use of any residential unit for any purpose other than housing.
- E. The Owner represents, warrants and agrees that if the Property, or any part thereof, shall be damaged or destroyed, the Owner (subject to the approval of the lender(s) which will provide the financing) will use its best efforts to repair and restore the Property to substantially the same condition as existed prior to the event causing such damage or destruction, and the Owner represents, warrants and agrees that the Property shall thereafter continue to operate in accordance with the terms of this Covenant.
- F. Any use of the Property or activity thereon which is inconsistent with the purpose of this Covenant is expressly prohibited. The Owner shall carry out each activity provided for in this Covenant in compliance with all applicable federal laws and regulations described in 24 CFR 570, Community Development Block Grant Program and 24 CFR Part 92, the HOME Investment Partnership Program, as amended.

6. **Condition of Property.** By its acceptance of this Covenant, NCDA does not undertake any liability or obligation relating to the condition of the Property.

7. **Instruments to Enforce Covenant.** The NCDA is authorized to record or file any notices or instruments appropriate to ensuring the enforceability of this Covenant; and the Owner on behalf of itself and its successors and assigns appoints the NCDA its attorney-in-fact to execute, acknowledge and deliver any such instruments on its behalf. Without limiting the foregoing, the Owner and its successors and assigns agree to execute any such instruments upon request. The Owner and the NCDA intend that the restrictions arising hereunder take effect upon the date hereof, and to the extent enforceability by any person ever depends upon the approval of

governmental officials, such approval when given shall relate back to the date hereof regardless of the date of actual approval or the date of filing or recording of any instrument evidencing such approval.

**8. Covenants to be Referenced in Deed.** These restrictive covenants shall be contained or referenced in any deed of conveyance of the subject Property or any other instruments conveying a non-leasehold interest in the Property or any part thereof and shall be equally binding on any subsequent owner of the title thereto whether acquired by grant, sale or any other means and such subsequent owner shall comply with this restriction for the remaining duration of said restriction.

**9. Foreclosure.** At least 60 days prior to the foreclosure auction sale by a lender or other transfer in lieu of foreclosure, the lender shall notify the NCDA of its intent to so foreclose and shall allow the NCDA the option/opportunity to assume the mortgage. In the event of such assumption of the mortgage, the Owner shall not further pledge or hypothecate said Property and the Owner's recapture of any equity it may have shall be deferred until such time as the Property is sold. If the option is exercised, the NCDA may direct the sale of the Property at any time during the period of affordability and shall undertake to sell the property within a reasonable period of time after the expiration of the affordability period. In the event of such a sale, the monies received shall be applied first to any and all encumbrances outstanding with respect to the property in order of priority, next to the costs of sale, then to repay the NCDA and/or the City of Newton for any amounts expended on the assumption of the mortgage. Any sums remaining after the above payments shall then be paid to the person or entity which was Owner of record prior to assumption of the mortgage, in full satisfaction of its equity interest in the Property.

In the event the NCDA chooses not to exercise its option to assume the mortgage referenced above, then the affordability restriction created hereunder shall terminate upon foreclosure or by instrument in lieu of foreclosure, provided that the holder of the mortgage gives the NCDA not less than 60 days prior written notice of the mortgagee's intention to foreclose upon the Property or to accept an instrument in lieu of foreclosure. Thereafter, if at any time following foreclosure or other transfer in lieu of foreclosure but still during the term of affordability, as defined in paragraph 3, the Owner of Record prior to foreclosure, any subsidiary thereof, or any newly formed entity that includes the former Owner or those with whom s/he or it has had family or business ties obtains ownership interest in the Property, the affordability period shall be revived in accordance with its original term.

**10. Notices.** All notices required under this Covenant shall be deemed to have been received if mailed, postage prepaid to the following:

For the NCDA:  
Sole Member  
Newton Community Development Authority  
City Hall, 1000 Commonwealth Avenue  
Newton, MA 02459

For Owner:  
Myrtle Village, LLC  
21 Curve Street  
West Newton, MA 02465  
Attention: Manager

**11. Enforcement.**

- A. The rights hereby granted shall include the right of NCDA to enforce this Covenant by appropriate legal proceedings and to obtain injunctive and other equitable relief against any violations, including without limitation relief requiring restoration of the Property to its condition prior to any such violation (it being agreed that the NCDA will have no adequate remedy at law), and such restoration shall be in addition to, and not in limitation of, any other rights and remedies available to the NCDA. The Owner covenants and agrees to reimburse NCDA all reasonable costs and expenses (including without limitation reasonable counsel fees) incurred in enforcing this Covenant or in taking reasonable measures to cure any violation hereof, provided that a violation of this Covenant is acknowledged by Owner or determined by a court of competent jurisdiction to have occurred.
  
- B. Without limitation on any other rights or remedies of the NCDA, its successors and assigns, the NCDA shall be entitled to the following remedies, which shall be cumulative and not mutually exclusive:
  - (i) specific performance of the provisions of this Covenant, which shall be the preferred remedy;
  
  - (ii) voiding of any rental arrangement that violates this Covenant;
  
  - (iii) in the case of any rental arrangement where the Owner is found to have violated willfully or in bad faith, then money damages for charges in excess of rents permissible under this Covenant;
  
  - (iv) If any action is brought to enforce this Covenant, the prevailing party shall be entitled to reasonable attorneys' fees and other costs of bringing such action, in addition to any other relief or remedy to which such party may be entitled.
  
  - (v) The Owner hereby grants to the NCDA and its duly authorized representatives the right to enter upon the Property upon reasonable notice for the purpose of enforcing the restrictions contained in this Covenant and to take any reasonable and appropriate action under the circumstances to cure any violation of the provisions of this Covenant. Notwithstanding the definition of Owner hereinbefore contained, the rights of enforcement for violations of this Covenant shall survive any subsequent sale or transfer of the Property.

**12. Certificate.** Any party may rely on a certificate signed by the Owner and the NCDA as to any facts relative to this Covenant.

13. **Governing Law.** This Covenant shall be governed by the laws of the Commonwealth of Massachusetts. Any amendments to this Covenant must be in writing and executed by all of the parties hereto. If any provision of this Covenant shall to any extent be held invalid, the remainder shall not be affected.

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IN WITNESS WHEREOF the said Myrtle Village, LLC has caused its seal to be hereto affixed and these presents to be signed, acknowledged and delivered in its name and behalf by Shelby Robinson, Manager, its duly authorized representative, this 14<sup>th</sup> day of April, 2014.

Myrtle Village, LLC

By: Shelby Robinson  
Shelby Robinson  
Its: Manager

4-14-15  
Date

**COMMONWEALTH OF MASSACHUSETTS**

MIDDLESEX, SS.

April 14, 2015

On this 14<sup>th</sup> day of April 2015, before me, the undersigned notary public, personally appeared the above-named Shelby Robinson proved to me through satisfactory evidence of identification, which were MA Driver's License, to be the person whose name is signed on the proceeding document, and acknowledged to me that she signed it voluntarily for its stated purpose, as Manager of Myrtle Village, LLC.

Robert J. Waddick  
Notary Public  
My Commission expires: 8/11/2017

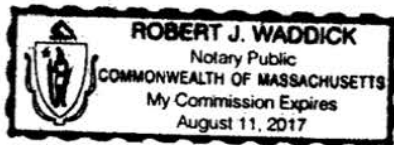


EXHIBIT A

LEGAL DESCRIPTION

A certain parcel of land in Newton, Middlesex County, MA on the Southerly side of Curve Street. Beginning at a point being at the Northwesterly corner of land of Rosalie Cater-Dixon thence

by a curve to the right distance of 7.57 feet, with a radius of 788.95 feet thence

N34-45-16E distance of 34.35 feet thence

by a curve to the right distance of 62.16 feet with a radius of 378.09 feet thence

N 44-10-26E distance of 74.67 feet thence

by a curve to the right distance of 23.84 feet with a radius of 245.81 feet to the Southwest corner of land of William & Mary Price Trustees. The initial 5 courses being by the line of Curve Street thence

S37-15-30E distance of 80.34 feet by land of said Price thence

S40-50-48W distance of 19.10 feet thence

S 70-28-36E distance of 3.77 feet thence

S30-19-27W distance of 106.33 feet to land of Rosalie Carter-Dixon thence

N 80-48-41W distance of 120.34 feet by land of said Carter-Dixon to the point of beginning.

Described land is shown on a plan dated January 5, 2012, Prepared by Land Surveys Incorporated, Containing 15,770.52 square feet according to said plan. Plan is recorded at the Middlesex County Registry of Deeds as Plan #132 of 2015.