

AFFORDABLE HOUSING COVENANT
Liabilities to Assets Program

Property Address: _____, **Massachusetts**

This Covenant contains affordability restrictions that survive foreclosure; imposes certain use, transfer, and resale restrictions upon the Owner of the Property; and grants the Monitoring Agent an option to purchase the Property upon receipt of a Foreclosure Notice.

This Affordable Housing Covenant (the “Covenant”) is made as of _____, 20__ by _____ (the “Initial Owner”) for the benefit of THE COMMONWEALTH OF MASSACHUSETTS, acting by and through the DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT (including any successor(s) and/or assign(s), “DHCD”). This Covenant imposes affordable housing restrictions on the land located at _____, in the [Town/City] of _____, **Massachusetts** (the “Municipality”), as more completely described in EXHIBIT A hereto (the “Land”), together with the building(s) and any and all other improvements now or hereafter located thereon, and any and all rights and easements now or hereafter appurtenant thereto (collectively, the “Property”), which Property has been conveyed to the Initial Owner by deed recorded and/or filed, as applicable (with the term “recorded” or its variants being used hereafter to refer to such recording and/or filing, as applicable), with the _____ Registry of Deeds and/or Registry District of the Land Court (the “Registry”), concurrently herewith.

BACKGROUND

A. DHCD has established the Liabilities to Assets pilot program under M.G.L. Chapter 121A (the “Liabilities to Assets Program”) and approved NewVue Liabilities to Assets, Inc., a Massachusetts corporation, (the “LTA Developer”) as the urban redevelopment corporation to carry out a regional urban redevelopment project at the Property under the Liabilities to Assets Program.

B. The Affordable Housing Trust Fund, which is administered by the Massachusetts Housing Finance Agency, (“AHTF”) has provided a grant to the LTA Developer to enable the LTA Developer to sell the Property to an income-eligible household at a price not to exceed a resale price approved by DHCD. The “Initial Sale Price” paid by the Initial Owner is \$_____. So long as the Property is owned by one or more owners who are income-eligible households at the time of purchasing the Property, this subsidy will be forgiven over a seven-year period in accordance with the terms hereof. However, if, at any time while this Covenant is in effect, the Property is sold to a buyer that is not a qualified income-eligible household, the selling Owner will be obligated to pay AHTF a portion of the Owner Subsidy Amount as described in the definition of Owner Subsidy Repayment Amount. The Owner Subsidy Amount applicable to the Property is \$_____.

C. For so long as this Covenant remains in effect, the LTA Developer (in such capacity, the “Monitoring Agent”) shall act as monitoring agent for and on behalf of DHCD, and shall monitor compliance with and enforce the terms of this Covenant, and shall be paid a fee for

such monitoring services, all as more fully set forth herein. [The Monitoring Agent has designated MCO Housing Services, LLC to be its designee for purposes of monitoring the Sale Restrictions contained in Section 4 of the Covenant, which designation DHCD has approved.]

The Initial Owner hereby acknowledges the receipt and sufficiency of the assistance and support from DHCD as consideration for this Covenant, and for itself and any successors and/or assigns, and for and on behalf of any and all other Owners of the Property during the term of this Covenant, hereby agrees that the Property shall, at all times during the term hereof, be subject to the covenants, terms and restrictions set forth herein for the benefit of DHCD, and their respective successors, assigns, agents and designees.

1. Definitions

The following words and phrases when capitalized have the following meaning:

“AHC Mortgage” means the Affordable Housing Covenant Mortgage in the form attached as EXHIBIT B hereto, granted or to be granted to the Monitoring Agent as set forth herein and securing the full and timely performance of the mortgagor’s obligations under this Covenant.

“AHTF” is as defined in the opening paragraph of this Covenant.

“Affordable Sale Price” means the price for which a credit-worthy Income Eligible Household earning one hundred percent (100%) of the Area Median Income for the Area in which the Property is located could obtain mortgage financing at the time in question, as determined by the Monitoring Agent using the same methodology then used by DHCD for its Local Initiative Program or a similar comprehensive permit program selected by DHCD.

“Area” is the primary metropolitan statistical area or the non-metropolitan area that includes the Municipality in which the Property is located.

“Area Median Income” means the median household income for the Area in which the Property is located as published by HUD, or, in the absence thereof, such other comparable standard established by the Commonwealth of Massachusetts or the Federal government, as the case may be (and, if more than one such standard exists, the one selected or otherwise approved by DHCD) during the Term of this Covenant. When used for establishing whether a Household qualifies as an Income Eligible Household, the referent Household income is adjusted based on an imputed Household size of number of bedrooms plus one (1).

“Compliance Certificate” means a certificate issued by the Monitoring Agent in connection with the Owner’s sale of the Property to an Income Eligible Household under Section 4(b) of this Covenant during the Term, certifying such sale’s compliance with the terms hereof.

“Conveyance Notice” is as defined in Section 4, titled “Owner Rights and Obligations on Sale of Property”.

“Covenant” means this Affordable Housing Covenant.

“DHCD” is as defined in the opening paragraph of this Covenant.

“Foreclosure Notice” is as defined in Section 5, titled “Mortgages and Mortgagee Rights”.

“Household” means the legal owner(s) of the Property, together with all persons who reside or will reside together at the Property on a permanent basis as a family (whether or not related by blood or marriage), it being understood and agreed that the composition of a Household may change from time to time, but shall not be construed to include or allow any transient or short- or long-term tenant(s) or lodger(s), short- or long-term guest(s), students or other similar non-permanent relationship.

“Housing Covenants” are as defined in Section 3, titled “Housing Covenants.”

“HUD” means the United States Department of Housing and Urban Development, or any successor thereto.

“Income Eligible Household” means a Household whose Household income has been verified by DHCD or their designee or by the Monitoring Agent to be at or below 110% of Area Median Income for the Area in which the Property is located adjusted for family size, according to information published by HUD at the time that Household income is determined.

“Initial Owner” is as defined in the opening paragraph of this Covenant.

“Initial Sale Price” means the actual price for the sale of the Property by the LTA Developer to the Initial Owner.

“Land” is as defined in the opening paragraph of this Covenant.

“Lender” is as defined in Section 5, titled “Mortgages and Mortgagee Rights”.

“Liabilities to Assets Program” is as defined in Background paragraph (A).

“LTA Developer” is as defined in the opening paragraph of this Covenant.

“Marketing Period” means, initially, the period of ninety (90) days from an Owner’s delivery of a Conveyance Notice to DHCD and the Monitoring Agent (as the same may be extended by an Owner). As provided in Section 4(a), the Monitoring Agent may extend the Marketing Period for a period commensurate with the time, if any, that the Owner fails to cooperate.

“Marketing Plan” means the affirmative fair housing marketing plan for the Property prepared by the LTA Developer, as approved by DHCD in writing, which shall address, inter alia, the process for marketing the Property for sale to Income Eligible Households, verifying qualified Income Eligible Households, establishing (if necessary) a lottery or waiting list, and other matters related to the sale of the Property.

“Maximum Foreclosure Value” means the greater of (i) the Maximum Sale Price and (ii) the sum of the outstanding principal balance of the note secured by such foreclosing Lender’s mortgage, together with the outstanding principal balance(s) of any note(s) secured by mortgage(s) senior in priority to such mortgage (but in no event shall the aggregate amount thereof be greater than one hundred percent (100%) of the Maximum Sale Price calculated at the time of the granting of the mortgage) plus all future advances, accrued interest and all reasonable costs and expenses which the foreclosing Lender and any senior Lender(s) are entitled to recover pursuant to the terms of such mortgages.

“Maximum Sale Price” means the maximum price at which the Property may be resold during the Term of this Covenant to an Income Eligible Household, which shall be calculated by the Monitoring Agent and approved by DHCD. The Maximum Sale Price shall be the sum of the Affordable Sale Price and the Monitoring Agent Fee and shall not be less than the price paid for the Property by the selling Owner, unless such Owner agrees to accept a lesser price.

“Monitoring Agent” is as defined in Background paragraph (C).

“Monitoring Agent Fee” means a fee of the greater of (i) two percent (2%) of the Affordable Sale Price and (ii) three thousand dollars (\$3,000), to be paid to the Monitoring Agent or its designee, as applicable, at the closing of each sale of the Property by the Initial Owner and subsequent Owners while this Covenant is in effect, as compensation for its services in monitoring and enforcing compliance with the terms herein, including, without limitation, determining the qualification of Income Eligible Households and verifying that the marketing and sale are conducted in compliance with the Marketing Plan.

“Municipality” is as defined in the opening paragraph of this Covenant.

“Owner” (or, collectively, “Owners”) means the person(s) having legal and equitable ownership of the Property during the Term of this Covenant (including the Initial Owner, but excluding the LTA Developer), whether acquired by sale, conveyance, inheritance or any other assignment or transfer, and “Ownership” means the period of time that an Owner holds such an ownership interest in the Property. If, at any time during the term hereof, the legal and equitable ownership of the Property is held by more than one person, all such persons shall, jointly and severally, constitute the Owner. Unless the context otherwise requires, references to an Owner shall mean the Owner at the time in question.

“Owner Subsidy Amount” means the lesser of \$100,000 or the difference between the actual costs incurred by the LTA Developer to acquire, rehabilitate and/or redevelop the Property and the Initial Sales Price, both as approved by DHCD. The Owner Subsidy Amount applicable to the Property is identified in Background paragraph (B).

“Owner Subsidy Burn-Off Amount” means the amount by which the Owner Subsidy Repayment Amount is reduced over time, which will be equal to one-seventh of the Owner Subsidy Amount for each full year that the Property is owned by an Owner that was (or by a series of Owners, each of whom was) an Income Eligible Household at the time of the Owner’s purchase and who complied with the terms of this Covenant throughout such Owner’s ownership of the Property.

As an example:

The first Income Eligible Household purchased the home under the LTA Program and the Covenant identified the Owner Subsidy Amount to be \$100,000. The first Income Eligible Household sells its home after 2 years, 5 months of owner-occupancy to a second Income Eligible Household. No Owner Subsidy Repayment Amount is owed at this time (because the home is being sold to an Income Eligible Household), so there is no need to calculate the Owner Subsidy Burn-Off Amount.

The second Income Eligible Household later sells its home after 3 years, 4 months of owner-occupancy to a non-Income Eligible Household. At this time, the home has been occupied for a total of 5 years, 9 months by all Income Eligible Households. Since 5 full years have passed, five-seventh of the Owner Subsidy Amount has burned-off, so the Owner Subsidy Burn-Off Amount would be \$71,429.

Notwithstanding the foregoing definition of Owner Subsidy Burn-off Amount, the actual and final amount that an Owner will be obligated to pay at the time of sale to a buyer who is not an Income Eligible Household shall not be greater than is provided in the definition which follows of Owner Subsidy Repayment Amount.

“Owner Subsidy Repayment Amount” means the amount an Owner will be obligated to pay to AHTF if the Owner, at any time while this Covenant remains in effect, sells the Property to a buyer who is not an Income Eligible Household, which amount is the lesser of (1) the difference between the sale price and the sum of outstanding approved mortgage debt evidenced by written payoff letter(s) submitted by the Owner to the Monitoring Agent pursuant to Section 4(c) of this Covenant, other outstanding liens or encumbrances previously approved by the Monitoring Agent, the Monitoring Agent Fee, the deed excise tax, and any other cost of sale approved by the Monitoring Agent and DHCD; or (2) the difference between the Owner Subsidy Amount and the Owner Subsidy Burn-Off Amount. As an example:

An Income Eligible Household sells its home after 5 years and 9 months of owner-occupancy to a non-Income Eligible Household for \$300,000. An Owner Subsidy Amount of \$100,000 is identified in the Covenant for this home. Since 5 full years have passed since the Income Eligible Household purchased its home, five-seventh of the Owner Subsidy Amount has burned-off, so the Owner Subsidy Burn-Off Amount is \$71,429. At the time of sale, the Income Eligible Household owes \$270,000 on its mortgage debt and has the following costs relating to the sale:

- \$6,000 Monitoring Agent Fee,
- \$1,368 deed excise tax, and
- \$500 in other closing costs approved by the Monitoring Agent and DHCD.

The Owner Subsidy Repayment Amount is the lesser of:

1. The difference between the Owner Subsidy Amount and the Owner Subsidy Burn-Off Amount, which is \$28,571.

$$\$100,000 - \$71,429 = \$28,571$$

OR

2. The difference between the sale price and the sum of the outstanding mortgage debt and the costs of sale identified above, which is \$22,132.

$$\$300,000 - \$270,000 - \$6,000 - \$1,368 - \$500 = \$22,132$$

In this example, the Income Eligible Household would owe an Owner Subsidy Repayment Amount of \$22,132 when selling the home to the non-Income Eligible Household.

“Property” is as defined in the opening paragraph of this Covenant.

“Registry” is as defined in the opening paragraph of this Covenant.

“Sale Restrictions” is as defined in Section 4, titled “Owner Rights and Obligations on Sale of Property”.

“Term” means the period from the effective date of this Covenant until the date that is seven (7) years after the date of the recording of this Covenant unless sooner terminated upon the recording of a Termination Certificate pursuant to Section 4(c) or Section 5(c) of this Covenant.

“Termination Certificate” means a certificate issued by DHCD in connection with (1) any Owner’s sale of the Property to a non-Income Eligible Household pursuant to Section 4(c) of this Covenant or (2) the acquisition or conveyance of the Property pursuant to Section 5(c) of this Covenant by any Lender that is a holder of an Approved Mortgage, during the Term of this Covenant, certifying such conveyance’s compliance with the terms hereof.

2. Affordable Housing Restriction; Covenant Scope

(a) M.G.L. c. 184 Affordable Housing Restriction; Covenant Running with the Land. By the execution and delivery of this Covenant, DHCD declares and affirms, and the Initial Owner expressly acknowledges and agrees, for itself and for any and all Owners of the Property and any and all Lenders and/or other persons or parties holding a mortgage or other interest in the Property during the Term of this Covenant, that the reservation and grant of the covenants and restrictions contained in this Covenant are for public purposes and constitute an affordable housing restriction on the Property, as defined in and subject to the Massachusetts General Laws, Chapter 184, Sections 31-33, and shall, during the Term hereof, be binding upon the Initial Owner, any all other Owners of the Property, and any and all Lenders and other persons or parties holding a mortgage or other interest on the Property, for the benefit of, and enforceable by, DHCD. All covenants, rights and restrictions set forth in this Covenant shall run with the Land.

(b) Restrictions on Occupancy and Sale of the Property. The Initial Owner and each subsequent Owner, during the period of its Ownership of the Property, must comply with the

Housing Covenants and all other covenants and terms set forth herein, and the Initial Owner and any subsequent Owner electing to sell the Property during the Term hereof shall be obligated to market the Property for sale to an Income Eligible Household at a price not exceeding the Maximum Sale Price, and may not sell or otherwise transfer the Property except in accordance with the terms set forth herein.

(c) AHC Mortgage. This Covenant is secured by the AHC Mortgage granted by the Initial Owner and recorded in the Registry concurrently with the recording of the deed conveying the Property to the Initial Owner. Each subsequent Owner of the Property during the Term hereof shall execute and record in the Registry, concurrently with the recording of the deed to such Owner, an AHC Mortgage in substantially the same form, and the Monitoring Agent shall execute and record a discharge of the selling party's AHC Mortgage concurrently therewith. The rights of the holder(s) of any mortgage(s) on the Property granted by the Initial Owner or any subsequent Owner to secure repayment of funds for the purchase of the Property, authorized construction and/or rehabilitation work or for any other approved purpose, and the relative priority of the AHC Mortgage and any such other mortgage(s), are more fully set forth in Section 5, titled "Mortgages and Mortgagee Rights".

3. Housing Covenants

Each Owner shall, at all times during such Owner's Ownership of the Property while this Covenant remains in effect, comply with the following terms and provisions (collectively, the "Housing Covenants"):

(a) Principal Residence. Except as otherwise expressly permitted in this Covenant, the Property shall be used only as the principal residence for members of the Owner's Household (that is, as the domicile and primary place where each Household member resides).

(b) Permitted Accessory Uses. Members of the Owner's Household, while occupying the Property as their principal residence, shall have the right to make accessory use of the Property (e.g., as a Household member's place of business), provided and on the conditions that (1) such accessory use is allowed under and at all times remains in compliance with the Municipality's zoning ordinance or by-law provisions regarding accessory uses and any and all other applicable requirements of law and state regulation; (2) such accessory use is incidental to the use of the Property as the principal residence of the Household's members; (3) such member has duly obtained and at all times remains in compliance with any and all applicable permits, approvals and/or accreditations; and (4) if such accessory use is of a nature that requires special insurance coverage, or if special insurance coverage is typically obtained as a matter of good business practice, such member has duly obtained and at all time maintains such insurance (any such use, a "Permitted Accessory Use").

(c) Restrictions on Leasing, Refinancing, Mortgages and Encumbrances. The Owner shall not (and shall not allow any other person or party to) lease, rent, refinance, grant a mortgage upon or otherwise in any way encumber or allow the creation of an encumbrance upon all or any

portion of the Property without the prior written consent of (and subject to any condition(s) deemed appropriate by) the Monitoring Agent. Consent to a proposed lease of the Property will not be granted except in cases where the Owner has demonstrated to the satisfaction of the Monitoring Agent that the Owner is under serious and long-term hardship for which a lease of the Property is the only viable solution.

Notwithstanding the foregoing, if the Property is a two- or three-unit dwelling, the Owner shall be required to occupy at least one dwelling unit at the Property as the principal residence of the Owner's Household, but shall have the right to rent the other unit(s) at the Property to another person or party, provided and on the condition that the Owner shall require, and the lease or rental agreement shall expressly provide, that such tenant shall use the rented unit solely for residential purposes and, if applicable, any Permitted Accessory Use.

In connection with the foregoing, **it is expressly understood and agreed that:**

- (i) **if an Owner has obtained the requisite consent to lease or rent the portion of the Property that the Owner would have been required to occupy as the principal residence of the Owner's Household but for such consent, based on a demonstration of hardship as described above, it shall be a condition to such consent that any and all rents, profits or proceeds from or otherwise relating to such transaction that exceed the actual carrying costs of the Property (and, in the case of an approved lease due to hardship, the actual costs to the Owner of renting an alternate principal residence) shall be paid to AHTF, in the amount and in accordance with a schedule determined by the Monitoring Agent.**
- (ii) **if an Owner has failed to obtain the requisite consent for any unauthorized transaction, including leasing, refinancing, mortgages and encumbrances, any and all rents, profits or proceeds from or otherwise relating to such unauthorized transaction shall be payable by the Owner to AHTF upon demand by the administrator of AHTF.**

The Monitoring Agent and DHCD shall have the right to institute proceedings against the Owner at any time (including any time after the Owner's Ownership of the Property) to recover the full amount of the rents, profits or proceeds payable under this provision, together with the costs of collection, including attorneys' fees.

(d) Owner Compliance with Sale Restrictions. If an Owner elects to sell, assign or otherwise convey the Property, the Owner shall comply with all the Sale Restrictions, including, without limitation, the restriction regarding the Maximum Sale Price. In no event shall an Owner sell or in any other way transfer any interest in less than the entire Property (except for any duly-approved lease of other unit(s) for any Property that, at the time of such Owner's acquisition, legally qualified as a two- or three-family dwelling) or create a condominium or cooperative ownership structure for the Property.

(e) Changes in Owner's Household.

- (i) It is not a violation of this Covenant if, during an Owner's Ownership of the Property, such Owner's Household ceases to be an Income Eligible Household, provided and on the condition that the Owner's Household continues to comply with all the Housing Covenants including Section 3(e)(iii) hereunder.
- (ii) It is not a violation of this Covenant for the Owner's spouse, partner, or heir who was previously residing at the Property as a Household member, to continue to occupy the Property after the Owner's death, provided and on the condition that the deceased Owner's spouse, partner's, or heir's Household continues to comply with all the Housing Covenants, and such spouse, partner, or heir complies with all the obligations of the Owner under this Covenant, including, without limitation, the obligation to comply with all the Sale Restrictions, at the time such spouse, partner, or heir no longer occupies the Property as his or her principal residence, elects to sell or otherwise transfer the Property, or dies. If more than one person is the Owner, this provision shall apply to the last survivor of all persons who together are the Owner.
- (iii) No additional person(s) may be added as an Owner of the Property within the first twelve months (1) of the Owner's Ownership of the Property, or (2) after the death of the Owner (or, if more than one person is the Owner, after the death of any person who was an Owner upon the Owner's acquisition of the Property), if the resulting Owner's Household would not be an Income Eligible Household.

(f) Owner Reporting Requirements. The Owner shall promptly furnish such information about the Property as the Monitoring Agent or DHCD may reasonably request from time to time (for example, on the identity of each member of the Owner's Household, including, without limitation, each Owner, living in the Property; the identity of any mortgagee(s) or other person(s) having an interest in the Property; the full consideration paid by the Owner for the Property; the amount of any outstanding mortgage debt on the Property; the amount of any other liens on the Property; the condition of the Property; and any other information that the Monitoring Agent or DHCD in good faith deems relevant), all for the purpose of verifying the Owner's compliance with this Covenant.

4. Owner Rights and Obligations on Sale of Property

So long as this Covenant is in effect, the Owner of the Property shall be subject to the following restrictions (collectively, the "Sale Restrictions"):

(a) Owner's Conveyance Notice. Any time an Owner intends to sell the Property, the Owner shall give written notice to DHCD and the Monitoring Agent, and its designee, if identified in this Covenant or in an instrument recorded in the Registry pursuant to Section 6(b) of this Covenant, in the manner required in Section 8, titled "Notices" (the "Conveyance Notice"). Upon receipt of the Conveyance Notice, the Monitoring Agent or its designee shall (i) calculate (subject to the approval of DHCD) and notify the Owner in writing of the Maximum Sale Price for sale of the Property to an Income Eligible Household and the Marketing Period, (ii) review and, if appropriate, revise and update the Marketing Plan (which revisions shall be subject to DHCD's

written approval), and (iii) promptly begin marketing efforts based upon the (updated) Marketing Plan. The Owner shall fully cooperate with the Monitoring Agent's or its designee's efforts to locate an Income Eligible Household to purchase the Property and, if so requested of the Monitoring Agent or its designee, shall hire a broker selected by the Monitoring Agent or its designee to assist in locating an Income Eligible Household. If the Owner fails to cooperate during the Marketing Period, the Monitoring Agent or its designee may extend the Marketing Period for a period commensurate with the time the lack of cooperation continues, as determined by the Monitoring Agent or its designee in its sole reasonable discretion. In such event, the Monitoring Agent or its designee shall give the Owner written notice of the lack of cooperation and the length of the extension added to the Marketing Period.

(b) Owner's Sale to an Income Eligible Household.

- (i) The Monitoring Agent or its designee shall ensure that diligent marketing efforts are made to locate an Income Eligible Household ready, willing and able to purchase the Property at the Maximum Sale Price (or such lower price as may be acceptable to the Owner) within the Marketing Period. If an Income Eligible Household signs an offer to purchase at the Maximum Sale Price or such other lower price as is acceptable to the Owner within the Marketing Period, but (1) such Household fails to execute a purchase and sale agreement reasonably acceptable to the Owner within the period of time specified in the executed offer to purchase, as the same may be extended by mutual agreement of the parties, or (2) such Household terminates the offer because the Household is unable to secure mortgage financing to complete the purchase of the Property, then following such termination or failure the Monitoring Agent or its designee shall have an additional sixty (60) days to locate another Income Eligible Household ready, willing and able to purchase the Property as evidenced by a signed offer to purchase at the Maximum Sale Price (or such lower price as may be acceptable to the Owner) submitted by the end of such sixty (60)-day period.
- (ii) The Monitoring Agent or its designee shall verify that the proposed buyer Household qualifies as an Income Eligible Household and that the sale price offered by such Household does not exceed the Maximum Sale Price. Upon the Monitoring Agent's or its designee's consent in writing to the sale to an Income Eligible Household, the Owner may sell the Property to such Income Eligible Household, in an amount not to exceed the Maximum Sale Price, which sale must take place within one hundred and twenty (120) days after the execution of the purchase and sale agreement, unless the Owner agrees to a longer period of time. In connection with such sale, the Owner shall deliver to the Monitoring Agent or its designee the settlement statement, written payoff letter(s) from the Owner's mortgage Lender(s), a proposed deed clearly stating that the conveyance is made subject to this Covenant, and other documentation requested by the Monitoring Agent or its designee. Promptly upon receipt of such documentation to the satisfaction of the Monitoring Agent or its designee, the Monitoring Agent or its designee shall issue and deliver into escrow with the settlement agent a Compliance Certificate and a discharge of the selling Owner's AHC Mortgage, each in a form suitable for

recording, on condition that such Compliance Certificate and AHC Mortgage discharge may be recorded concurrent with the payoff of the selling Owner's mortgage loans and the recording of the deed and the new Owner's AHC Mortgage. Notwithstanding the discharge of record of the prior Owner's AHC Mortgage and the recording of the Compliance Certificate, this Covenant shall remain in full force and effect.

(c) Owner's Sale to a non-Income Eligible Household. If, despite diligent efforts, the Owner, working with the Monitoring Agent or its designee and any brokers, is unable to locate a buyer who qualifies as an Income Eligible Household by the end of the Marketing Period, as such period may be extended under Section 4(a) and (b) of this Covenant, the Owner may thereafter sell the Property to a non-Income Eligible Household at the market value of the Property as determined by an appraisal approved by DHCD or at a price otherwise approved by DHCD, on the conditions that (i) the Owner shall deliver to the Monitoring Agent or its designee a copy of the sale agreement with the date, purchaser and sale price, written payoff letter(s) from the Owner's mortgage Lender(s), and such other documentation of the sale as the Monitoring Agent or its designee may request, and the Monitoring Agent or its designee shall calculate (subject to the approval of DHCD) and deliver to the Owner the calculation of the Owner Subsidy Repayment Amount; (ii) the Owner shall pay the Owner Subsidy Repayment Amount to AHTF concurrently with the sale closing. If the Monitoring Agent or its designee has determined in its sole discretion that the Owner has ceased to market the Property for sale after the lapse of the Marketing Period for any period, then if the Owner subsequently elects to sell the Property, the Owner shall recommence the resale process under Section 4(a) of this Covenant and be obligated to deliver a new Conveyance Notice, and a new Marketing Period shall apply. Upon the Owner's payment of the full Owner Subsidy Repayment Amount to AHTF, DHCD shall issue a Termination Certificate and the Monitoring Agent shall issue a discharge of the AHC Mortgage, for recording in the Registry, evidencing the Owner's payment of the full Owner Subsidy Repayment Amount.

(d) Delivery of Documents to the Monitoring Agent. Within ten (10) days of the sale of the Property to a new Owner, such new Owner shall deliver to the Monitoring Agent a copy of the deed and the new AHC Mortgage, together with the recording information. Failure of the new Owner or the Owner's successors or assigns to comply with the preceding sentence shall not affect the validity of such conveyance or the enforceability of the restrictions herein.

(e) Reliance on Evidence of Compliance with this Covenant. Any mortgagee or other bona fide purchaser for value of the Property may conclusively rely upon a Compliance Certificate issued by the Monitoring Agent or a Termination Certificate issued by DHCD as to compliance with the rights and obligations under this Covenant, as the case may be.

5. Mortgages and Mortgagee Rights

(a) Priority of Covenant; Approved Mortgages. This Covenant shall be senior in lien and priority to any mortgage on the Property. Any lien or mortgage on the Property other than the AHC Mortgage shall be subject to the provisions of this Section 5.

(b) For purposes of this Covenant, a mortgage lien shall only be eligible for approval

by the Monitoring Agent as an “Approved Mortgage” if the holder is a financial institution (which shall include, without limitation, a public or nonprofit agency acting on behalf of one or more financial institutions, for example, as administrator of pooled loan resources) (each, a “Lender”) and if the following conditions are satisfied, in the sole determination of the Monitoring Agent:

(i) The lien is:

- i. a first mortgage on the Property that secures repayment of funds loaned to purchase the Property (or to refinance any such mortgage); or
- ii. a junior mortgage securing a loan of funds needed by the Owner to make essential repairs or capital improvements to essential building elements and systems such as roof, building envelope, boiler or hot water heater;

and

(ii) As of the date such mortgage was recorded in the Registry, or, if applicable, as of any later date that any amendment or refinancing increasing the amount secured was recorded in the Registry, the aggregate principal amount(s) secured by the lien and any other mortgage(s) on the Property did not exceed one hundred percent (100%) of the then-current Maximum Sale Price that would have applied to a sale to an Income Eligible Owner at the time the mortgage was granted; and

(iii) the mortgage is fully amortizing and has prevailing rates and terms throughout the full term of the mortgage.

(c) Foreclosure Rights of Holders of Approved Mortgages. Notwithstanding other provisions of this Covenant to the contrary, a Lender that is the holder of an Approved Mortgage may acquire title to the Property by deed in lieu of foreclosure or acquire or convey title to any successful bidder(s) at a foreclosure sale thereunder not earlier than one hundred and twenty (120) days following the delivery of the Foreclosure Notice to the Monitoring Agent. Such foreclosing Lender or such successful bidder(s) shall acquire title to the Property superior to this Covenant and the AHC Mortgage, and, upon such Lender’s delivery of documentation confirming compliance with the foregoing provisions as the Monitoring Agent or DHCD may reasonably require, DHCD shall deliver to such Lender a Termination Certificate and the Monitoring Agent shall deliver to such Lender a discharge of the AHC Mortgage for recording in the Registry.

In the event that the foreclosing Lender conducts a foreclosure sale or other proceeding enforcing its rights under its mortgage and the Property is sold for a price in excess of the Maximum Foreclosure Value, such excess shall be paid to AHTF after (i) a final judicial determination, or (ii) a written agreement of all parties who, as of such date hold (or have been duly authorized to act for other parties who hold) a record interest in the Property, that AHTF is entitled to such excess. The legal costs of obtaining any such judicial determination or agreement shall be deducted from the excess prior to payment to AHTF. To the extent that the Owner possesses any interest in any amount which would otherwise be payable to AHTF under this

paragraph, to the fullest extent permissible by law, the Owner hereby assigns its interest in such amount to the Lender for payment to AHTF.

The Owner grants to the Monitoring Agent the right and option to purchase the Property upon receipt by the Monitoring Agent of the Foreclosure Notice. In the event that the Monitoring Agent intends to exercise its option, the Monitoring Agent or its Income Eligible Household designee shall purchase the Property within one hundred twenty (120) days of receipt of such notice, at the Maximum Foreclosure Value. The Property shall be sold and conveyed subject to this Covenant, except that during the term of ownership of the Property by the Monitoring Agent the owner-occupancy requirements of this Covenant shall not apply and, if sold to an Income Eligible Household, then such purchaser shall execute and record in the Registry an AHC Mortgage pursuant to Section 2(c) of this Covenant. **The deed from the Owner to the Monitoring Agent or its Income Eligible Household designee shall clearly state that it is made subject to this Covenant.** Failure to comply with the preceding sentence shall not affect the validity of the conveyance from the Owner to the Monitoring Agent or its Income Eligible Household designee or the enforceability of the restrictions herein.

(d) Survival of the Covenant and AHC Mortgage. In the event the holders of any mortgage(s) other than an Approved Mortgage (or any other successful bidder(s) at a foreclosure sale of such other mortgage(s)) acquire or convey title to the Property, whether by foreclosure or deed in lieu thereof, such mortgage shall remain subject and junior in priority to, and the Property shall remain subject to, this Covenant and the AHC Mortgage, each of which shall remain in full force and effect.

(e) Lender Notices to DHCD. All notices from any Lender shall be sent to DHCD and the Monitoring Agent as set forth in Section 8, titled "Notices". Any Lender shall notify DHCD, the Monitoring Agent, and any Lenders holding mortgages senior in priority in the event of any default for which the Lender intends to commence foreclosure proceedings or similar remedial action pursuant to its mortgage not less than one hundred twenty (120) days prior to the foreclosure sale or the acceptance of a deed in lieu of foreclosure (the "Foreclosure Notice"). If such a notice is delivered after the delivery of a Conveyance Notice as provided in Section 4 hereof, the procedures set forth in this Section 5 shall supersede the provisions of Section 4 hereof.

(f) The Monitoring Agent's Confirmatory Statement. If a Lender so requests in writing, and within a reasonable time after such Lender's delivery of such supporting documentation as the Monitoring Agent may reasonably require, the Monitoring Agent will issue a certificate in a form sufficient for recording in the Registry stating whether a mortgage is an Approved Mortgage consistent with this Covenant, and, if requested shall state the then-applicable Maximum Sale Price, and any such certificate, when recorded in the Registry, shall be binding and conclusive on the Monitoring Agent and all other persons relying thereon.

(g) Related Parties. Notwithstanding any provision herein to the contrary, the rights and restrictions contained herein shall not lapse if the Property is acquired through foreclosure or deed in lieu of foreclosure by (i) an Owner, (ii) any person with a direct or indirect financial interest in Owner, (iii) any person related to a person described in clause (ii) by blood, adoption, or marriage, (iv) any person who is or at any time was a business associate of a person described in

clause (ii), and (v) any entity in which any of the foregoing have a direct or indirect financial interest. Furthermore, if the Property is subsequently acquired by any of the foregoing parties during the period while this Covenant would have remained in effect but for the provisions of this Section 5, this Covenant and the AHC Mortgage shall be revived and shall apply to the Property as though it had never lapsed or discharged.

(h) Compliance. Upon satisfaction of the requirements contained in this Section 5 by a Lender who is the holder of an Approved Mortgage, DHCD shall issue a Termination Certificate to the foreclosing Lender which, upon recording in the Registry, may be relied upon as conclusive evidence that the conveyance of the Property pursuant to this Section 5 is in compliance with the rights, restrictions, covenants and agreements contained in this Covenant.

6. Designations and Assignments

(a) Designation of an Agent by DHCD. DHCD may from time to time designate an agent who shall have the authority to issue certificates as provided herein and to exercise DHCD's other rights and obligations under this Covenant to the extent expressly stated in such certificate. Such designations shall be made (or revoked) only by an instrument duly executed by DHCD and recorded in the Registry, and each such designation (or revocation) shall be effective only upon recording.

(b) Designation of an Agent by the Monitoring Agent. The Monitoring Agent may delegate all of its rights and obligations to monitor the Sale Restrictions under Section 4 of this Covenant to another entity with DHCD's prior approval. Such delegation shall be made (or revoked) only when an instrument duly executed by DHCD, the Monitoring Agent, and the assignee is recorded in the Registry, and each such designation (or revocation) shall be effective only upon recording.

(c) Assignments. DHCD may assign all its rights and obligations to another entity. Such assignment shall be effective only when an instrument duly executed by DHCD is recorded in the Registry. In no event shall the Monitoring Agent assign or delegate any of its rights or obligations hereunder without the prior written consent of DHCD.

(d) Replacement of Monitoring Agent. DHCD may, at any time or from time to time, designate a replacement Monitoring Agent, and from and after the recording in the Registry of a notice of such designation, the designated replacement monitoring agent specified therein shall be deemed the Monitoring Agent hereunder.

7. DHCD's and Monitoring Agent's Enforcement Rights

(a) Remedies. Without limiting any other remedies of DHCD and the Monitoring Agent, in the event that any Owner has sold, conveyed or otherwise transferred the Property, or rented or leased the Property, or any Owner or any member of the Owner's Household has used the Property in material violation of the provisions of this Covenant, or has otherwise violated the provisions of this Covenant, DHCD and the Monitoring Agent shall, in addition to all other rights and remedies available at law or in equity, be entitled to the following remedies (which shall be cumulative and not mutually exclusive) against such Owner, as applicable, and any other person(s) whose conduct has contributed to the violation, jointly and severally:

- (i) specific performance of the provisions of this Covenant including demand for the applicable Owner Subsidy Repayment Amount;
- (ii) voiding of any lease arrangement, mortgage, or encumbrance that violates this Covenant;
- (iii) damages equivalent to the cost of creating or obtaining a comparable property (including comparable additional dwelling units, if the Property is a two- or three-unit property) to replace the Property in the event it can no longer be occupied as the principal residence of an Income Eligible Household; and/or
- (iii) voiding any contract for sale, or any sale, transfer or conveyance, of the Property in violation of the provisions of this Covenant including, without limitation, any sale, transfer or conveyance made in the absence of a Compliance Certificate from the Monitoring Agent or a Termination Certificate from DHCD.

The Owner shall be obligated to pay all reasonable costs and expenses incurred in enforcing this Covenant against the Owner in the event successful enforcement action is taken against the Owner.

(b) Right to Enter the Property. Each Owner shall afford DHCD and the Monitoring Agent reasonable access to the Property upon reasonable notice for the purpose of monitoring compliance with the Owner's obligations under this Covenant.

(c) Survival of Enforcement Rights. DHCD's and the Monitoring Agent's enforcement rights against any Owner for violations of this Covenant shall survive any subsequent sale or transfer of the Property except as may be released in a Termination Certificate.

(d) Remedies Unlimited. Nothing in this Covenant shall limit exercise of rights or remedies arising under an instrument other than this Covenant or for legal obligations otherwise arising and not inconsistent herewith.

8. Notices.

Any demand, notice, request or other communication in connection with this Covenant (each, a “notice”) shall be made by certified or registered mail or delivered by a commercially recognized courier by hand or by overnight delivery service and sent, as applicable:

if to DHCD:

Massachusetts Department of Housing and Community Development
Attn: Chief Counsel
100 Cambridge Street, Suite 300
Boston, MA 02114

if to the Monitoring Agent:

NewVue Liabilities to Assets, Inc.
470 Main Street
Fitchburg, MA 01420
Attn: Executive Director

if to the Monitoring Agent’s designee:

MCO Housing Services, LLC

(or, if DHCD has designated a replacement Monitoring Agent in accordance with Section 6, titled “Designations and Assignments”, notices shall be sent to such Monitoring Agent at the address specified in such designation document); and

if to an Owner, at the Property mailing address;

provided, however, that any such party (other than an Owner) may change its address for such notices to any other address in the United States as it shall have specified by written notice given in accordance with the provisions hereof. A notice shall be deemed to have been given, delivered and received upon the earliest of: (i) if sent by certified or registered mail, on the date of actual receipt (or tender of delivery and refusal thereof) as evidenced by the return receipt; or (ii) if hand delivered by such courier or overnight delivery service, when so delivered or tendered for delivery during customary business hours on a business day at the specified address. Notice shall not be deemed to be defective with respect to the recipient thereof for failure of receipt by any other party.

9. Additional Provisions

(a) Amendment and Release. This Covenant may not be modified or amended except with the written consent of each party affected thereby. No release of or other change in the rights of DHCD contained in this Covenant shall be effective unless in writing and duly executed by DHCD or an authorized agent as provided in Section 6, titled “Designations and Assignments”.

(b) Interpretation; Severability. This Covenant is delivered and made in, and its construction and performance shall be governed by and enforced in accordance with, the laws of The Commonwealth of Massachusetts; shall be enforceable according to its terms; is subject to the general principles of equity, fairness and reasonableness, irrespective of whether such enforcement or interpretation is considered in a proceeding at equity or in law; and in the event of any ambiguity, shall be construed according to its purpose of fostering and preserving affordable housing. Any titles or captions contained herein are for reference only and shall not be deemed a part of this Covenant or play any role in the construction or interpretation hereof. If any provision of this Covenant or the application thereof to any person or circumstances is held to be invalid or unenforceable by any decision of any court of competent jurisdiction, such decision shall not impair or otherwise affect any other provision of this Covenant, or the application of such provision to persons or circumstances other than those as to which or to whom it is held invalid or unenforceable.

(c) Successors Bound. This Covenant shall inure to the benefit of DHCD and its successors and assigns, and shall be legally binding on, as the obligations of, the parties and their respective successors and assigns, including, without limitation, successor Owners of the Property, who by their acceptance of a deed to the Property shall be deemed to have agreed to perform and observe all the obligations of an Owner under, and to be bound by all the terms and conditions of, this Covenant.

(d) Recording of Covenant, AHC Mortgage and Related Notices. The Initial Owner shall cause this Covenant and the AHC Mortgage granted by the Initial Owner to be duly recorded in the Registry concurrently with the recording of the deed conveying the Property to the Initial Owner. Any subsequent Owner shall cause the AHC Mortgage granted by such Owner to be duly recorded in the Registry concurrently with the recording of the deed conveying the Property to such Owner. From time to time hereafter while this Covenant remains in effect, DHCD may record in the Registry a notice of this Covenant and/or any AHC Mortgage then in effect.

[SIGNATURES ON NEXT PAGE]

This Covenant shall take effect as a sealed instrument under Massachusetts law as of the date set forth above.

INITIAL OWNER:

Name (Print):

COMMONWEALTH OF MASSACHUSETTS
_____ County, ss.

On this ___ day of _____, 2___, before me, the undersigned notary public, personally appeared _____, proved to me through satisfactory evidence of identification, which was (a current driver's license) (a current U.S. passport) (my personal knowledge of the identity of the principal), to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he/she signed it voluntarily, in such capacity, for its stated purpose.

Notary Public
My commission expires:

THE COMMONWEALTH OF MASSACHUSETTS ACTING BY AND THROUGH THE
DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT

By: _____
Name (Print):
Title:

COMMONWEALTH OF MASSACHUSETTS
_____ County, ss.

On this ___ day of _____, 2___, before me, the undersigned notary public, personally appeared _____, the _____ of the Commonwealth of Massachusetts acting by and through the Department of Housing And Community Development, proved to me through satisfactory evidence of identification, which was (a current driver's license) (a current U.S. passport) (my personal knowledge of the identity of the principal), to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he/she signed it voluntarily, in such capacity, for its stated purpose.

Notary Public
My commission expires:

LTA DEVELOPER/MONITORING AGENT:
NEWVUE LIABILITIES TO ASSETS, INC.

By: _____
Name (Print):
Title:

COMMONWEALTH OF MASSACHUSETTS
_____ County, ss.

On this ___ day of _____, 2___, before me, the undersigned notary public, personally appeared _____, the _____ of NewVue Liabilities to Assets, Inc., proved to me through satisfactory evidence of identification, which was (a current driver's license) (a current U.S. passport) (my personal knowledge of the identity of the principal), to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he/she signed it voluntarily, in such capacity, for its stated purpose.

Notary Public
My commission expires:

MONITORING AGENT'S DESIGNEE:
MCO HOUSING SERVICES, LLC.

By: _____
Name (Print):
Title:

COMMONWEALTH OF MASSACHUSETTS
_____ County, ss.

On this ___ day of _____, 2___, before me, the undersigned notary public, personally appeared _____, the _____ of MCO Housing Services, LLC, proved to me through satisfactory evidence of identification, which was (a current driver's license) (a current U.S. passport) (my personal knowledge of the identity of the principal), to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he/she signed it voluntarily, in such capacity, for its stated purpose.

Notary Public
My commission expires:

EXHIBIT A

LEGAL DESCRIPTION

EXHIBIT B

FORM OF AHC MORTGAGE

