



Great Barrington Affordable Housing Trust Fund



MORTGAGE

THIS MORTGAGE (the "Mortgage") is made this _____ day of _____, 20_____, between the mortgagor, _____, whose address is _____, and his/her heirs, successors and assigns (hereinafter referred to as the "Borrower"), and the mortgagee, the Great Barrington Affordable Housing Trust Fund (the "Lender"), a Massachusetts affordable housing trust, established pursuant to G.L. c.44, §55C, acting by and through its Trustees, having an address of 334 Main Street, Great Barrington, Massachusetts 01230.

I. BACKGROUND AND GRANTING CLAUSE

Lender is providing monies to Borrower for the down-payment in connection with the purchase of a residence by the Borrower, which shall be used as the Borrower's primary residence.

Lender has determined that the Borrower meets the definition of an eligible purchaser, whose income does not exceed 100% of the HUD median income for Pittsfield, MA Metropolitan Statistical Area, adjusted for family size.

Borrower is indebted to Lender in the principal sum of _____ (the "Loan"), which indebtedness is evidenced by Borrower's Promissory Note dated _____ (the "Note"), providing for repayment of the Loan under certain conditions and providing for other conditions of the Loan.

TO SECURE to Lender the Borrower's repayment obligations under the Note and the performance of the covenants and agreements of Borrower contained in this Mortgage, Borrower hereby mortgages, grants and conveys to Lender, with MORTGAGE COVENANTS, upon the STATUTORY CONDITION and with the STATUTORY POWER OF SALE the real property located at _____, as more particularly described in Exhibit A attached hereto and incorporated herein;

TOGETHER with all the buildings and improvements now or hereafter erected on such real property, and all fixtures, easements, rights, licenses, appurtenances and rents, all of which shall be deemed to be and remain a part of the real property covered by this Mortgage; and all of the foregoing, together with said real property are hereinafter referred to as the "Property."

Borrower covenants that Borrower is lawfully seized of the estate hereby conveyed and has the right to mortgage, grant and convey the Property, and that the Property is unencumbered except for the mortgages on the Property (the "Senior Mortgages") and any other encumbrance approved by Lender, if any, which Senior Mortgages and other encumbrances are listed in

Exhibit B, attached hereto and incorporated herein (the "Permitted Encumbrances"). Borrower warrants and covenants to defend the title to the Property against all claims and demands, subject to encumbrances of record.

II. COVENANTS

Borrower and Lender covenant and agree as follows:

1. Repayment.

In the event the Property that secures the Promissory Note is sold, the Borrower agrees to repay to the Lender the full amount of the Loan, UNLESS the sale price is lower than 90% of the price paid for Borrower's purchase of the Property, as verified by Lender.

The Lender is authorized to declare, at its option, the entire amount of the Loan immediately due and payable upon the happening of any of the following events:

(A) Nonperformance by the Borrower of any covenant, agreement, term or condition of this Mortgage, the Note, or any other agreement heretofore, herewith or hereafter made by the Borrower with the Lender.

(B) Failure of the Borrower to perform any covenant, agreement, term or condition in any instrument creating a lien upon the Property, or any part thereof, which shall have priority over the lien of this Mortgage.

(C) The Lender's discovery of the Borrower's failure in any application of the Borrower to the Lender to disclose any fact deemed by the Lender to be material, or the making therein, or in any of the agreements entered into by the Borrower with the Lender.

(D) The sale or other transfer of any kind or nature of the Property, or any part thereof, without the prior written consent of the Lender.

(E) The granting of any mortgages on the Property or any part thereof (other than this Mortgage and any Senior Mortgage), or refinancing any mortgage, including the Senior Mortgages, or the placing of any other encumbrance on the Property, without the prior written consent of the Lender, which consent may be withheld in the Lender's sole discretion.

(F) The appointment of a receiver or liquidator whether voluntary or involuntary, of the Borrower or any of the property of the Borrower, or upon the filing of a petition by or against the Borrower under the provisions of the Bankruptcy Act of 1898, as amended, or upon the making by the Borrower of an assignment for the benefit of the Borrower's creditors.

The Lender's failure to exercise any of its rights hereunder shall not constitute waiver thereof. All the events in this Paragraph enumerated upon the happening of any of which the Note shall become, or may be declared to be, immediately due and payable, are in this Mortgage called "Events of Default."

2. Prior Mortgages; Charges; Liens. The Borrower shall perform all of the Borrower's obligations under the Senior Mortgages, including the Borrower's covenants to make payments when due. The Borrower shall pay or cause to be paid all taxes, assessments and other charges, fines and impositions attributable to the Property, which may attain a priority over this Mortgage and leasehold payments or ground rents, if any.

3. Hazard Insurance. The Borrower shall keep improvements now existing or hereafter erected on the Property insured against loss by fire and other hazards included within the term "extended coverage," for such periods as the Lender may require, subject to the terms and conditions of the Senior Mortgages.

All insurance policies and renewals thereof shall include a standard mortgage clause in favor of the Lender. The Lender shall have the right to hold the policies and renewals thereof, subject to the terms of any mortgage or other security agreement with a lien that has priority over this mortgage.

In the event of loss, the Borrower shall give prompt notice to the insurance carrier and to the Lender. The Lender may make proof of loss if not made promptly by the Borrower.

If the Property is abandoned by the Borrower, or if the Borrower fails to respond to Lender within thirty (30) days from the date notice is mailed by the Lender to the Borrower that the insurance carrier offers to settle a claim for insurance benefits, subject to the rights of the mortgagees under the Senior Mortgages, the Lender is authorized to collect and apply the insurance proceeds at the Lender's option either to restoration or repair of the Property or to the sums secured by this Mortgage.

4. Preservation and Maintenance of Property. The Borrower shall keep the Property in good repair and shall not commit waste or permit impairment or deterioration of the Property. If this Mortgage is a unit in a condominium or a planned unit development the Borrower shall perform all of the Borrower's obligations under the declaration or covenants creating or governing the condominium or planned unit development, and constituent documents.

5. Protection of Lender's Security. If the Borrower fails to perform the covenants and agreements contained in this Mortgage, or if any action or proceeding is commenced which materially affects the Lender's interest in the Property, the Lender, at the Lender's option, upon notice to the Borrower, may disburse such sums and take such actions as are necessary to protect the Lender's interest, and any expenses so incurred by the Lender, including reasonable attorneys' fees, shall be secured by this Mortgage.

6. Inspection. The Lender may make or cause to be made reasonable entries upon and inspections of the Property, provided that the Lender shall give the Borrower notice prior to any such inspection specifying reasonable cause therefor related to the Lender's interest in the Property.

7. Condemnation. The proceeds of any award or claim for damages, direct or consequential, in connection with any condemnation or other taking of the Property, or part thereof, or for conveyance in lieu of condemnation are hereby assigned and shall be paid to the Lender to the extent of the amount of the outstanding Loan, as provided in the Note, subject to the terms and conditions of the Senior Mortgages.

8. Borrower Not Released; Forbearance By Lender Not a Waiver. Extension of the time for payment or modification of the conditions of the terms for payment of the sums secured by this Mortgage granted by the Lender to any successor in interest of the Borrower shall not operate to release, in any manner, the liability of the original Borrower and Borrower's successors in interest. The Lender shall not be required to commence proceedings against such successor or refuse to extend time for payment or otherwise modify amortization of the sums secured by this Mortgage by reason of demand made by the original Borrower and Borrower's successors in interest. Any forbearance by the Lender in exercising any right or remedy hereunder or otherwise afforded by applicable law, shall not be a waiver of or preclude the exercise of any such right or remedy.

9. Successors and Assigns Bound; Joint and Several Liability; Co-signers. The Borrower's interest under the Note and this Mortgage may not be transferred, assigned, or assumed without the written consent of the Lender, which may be withheld in the Lender's sole discretion. The covenants and agreements herein contained shall bind, and the rights hereunder shall inure to, the respective successors and assigns of the Lender and the Borrower. All covenants and agreements of the Borrower shall be joint and several.

10. Notice. Except for any notice required under applicable law to be given in another manner, **(a)** any notice to the Borrower provided for in this Mortgage shall be given by delivering it or by mailing such notice by certified mail addressed to the Borrower at the Property or to such other address as the Borrower may designate by notice to the Lender as provided herein, and **(b)** any notice to the Lender shall be given by hand-delivery or certified mail to the Lender's address stated herein or to such other address as the Lender may designate by notice to the Borrower as provided herein. Any notice provided for in this Mortgage shall be deemed to have been given to the Borrower or the Lender when given in the manner designated herein.

11. Governing Law; Severability. This Mortgage shall be governed by the laws of the Commonwealth of Massachusetts. The foregoing sentence shall not limit the applicability of Federal law to this Mortgage. In the event that any provision or clause of this Mortgage or the Note conflicts with applicable law, such conflict shall not affect other provisions of this Mortgage or the Note which can be given effect without the conflicting provision, and to this end the provisions of this Mortgage and the Note are declared to be severable. As used herein, "costs," "expenses," and "attorneys' fees" include all sums to the extent not prohibited by applicable law or limited herein.

12. Breach; Remedies. Subject to the terms and conditions of the Senior Mortgages, upon

the Borrower's breach of the STATUTORY CONDITION or any covenant or agreement of the Borrower in the Note or this Mortgage, including the covenant to pay when due any sums secured by this Mortgage, the Lender, prior to acceleration, shall give notice to the Borrower as provided in Paragraph 10 hereof specifying; **(a)** the breach; **(b)** the action required to cure such breach; **(c)** a date, not less than ten (10) days from the date the notice is mailed to the Borrower, by which such breach must be cured; and **(d)** that failure to cure such breach on or before the date specified in the notice may result in acceleration of the sums secured by this Mortgage and sale of the Property. The notice shall further inform the Borrower of the right to reinstate after acceleration and the right to bring a court action to assert the nonexistence of a default or any other defense of the Borrower to acceleration and sale.

If the breach is not cured on or before the date specified in the notice, the Lender, at the Lender's option, may declare all of the sums secured by this Mortgage to be immediately due and payable without further demand and may invoke the STATUTORY POWER OF SALE and any other remedy permitted by applicable law. The Lender shall be entitled to collect all reasonable costs and expenses incurred in pursuing the remedies provided in this Paragraph 12, including, but not limited to, reasonable attorneys' fees, all of which shall be secured by this Mortgage.

If the Lender invokes the STATUTORY POWER OF SALE, the Lender shall mail a copy of a notice of sale to the Borrower, and to any other person required by applicable law, in the manner provided by applicable law. The Lender shall publish the notice of sale and the Property shall be sold in the manner prescribed by applicable law. The Lender or the Lender's designee may purchase the property at any sale. The proceeds of the sale shall be applied in the following order: **(a)** to all reasonable costs and expenses of the sale, including reasonable attorneys' fees and costs of title evidence; **(b)** to all sums secured by any mortgage with a lien which has priority over this Mortgage; **(c)** to all sums secured by this Mortgage; and **(d)** the excess, if any, to the person or persons legally entitled thereto.

13. Borrower's Right to Reinstate. Notwithstanding the Lender's acceleration of the sums secured by this Mortgage due to the Borrower's breach, subject to the terms and conditions of the Senior Mortgages, the Borrower shall have the right to have any proceedings begun by the Lender to enforce this Mortgage discontinued at any time prior to the earlier to occur of **(a)** sale of the Property pursuant to the Statutory Power of Sale contained in this Mortgage or **(b)** entry of a judgment enforcing this Mortgage if: **(x)** the Borrower cures all breaches of any covenants or agreements of the Borrower contained in the Note and this Mortgage; **(y)** the Borrower pays all reasonable expenses incurred by the Lender in enforcing the covenants and agreements of the Borrower contained in the Note or this Mortgage and in enforcing the Lender's remedies as provided in Paragraph 12 hereof, including, but not limited to, reasonable attorneys' fees; and **(z)** the Borrower takes such action as the Lender may reasonably require to assure that the lien of this Mortgage, the Lender's interest in the Property, and the Borrower's obligation to pay the sums secured by this Mortgage shall continue unimpaired. Upon such payment and cure by the

Borrower, the Note and this Mortgage and the obligations secured hereby shall remain in full force and effect as if no acceleration had occurred.

14. Release. Upon the expiration of the term of the Note or upon proper payment of all sums secured by this Mortgage, the Lender shall discharge this Mortgage without cost to the Borrower. The Borrower shall pay all costs of recordation, if any.

[Signature Page Follows]

IN WITNESS WHEREOF, the Borrower has executed this Mortgage under seal as of the date written above.

BORROWER DATE

LENDER DATE

COMMONWEALTH OF MASSACHUSETTS

Berkshire, ss.

On this _____ day of _____, 20____, before me, the undersigned Notary Public, personally appeared _____, proved to me through satisfactory evidence of identification, which was _____, to be the person whose name is signed on the preceding or attached document and acknowledged to me that he/she/they signed it voluntarily for its stated purpose.

NOTARY PUBLIC

My commission expires: _____

EXHIBITS

A: Property Description

B: Permitted Encumbrances

EXHIBIT A

Property Description

Property Location

EXHIBIT B

Permitted Encumbrances