

REAL PROPERTY DISPOSITION AGREEMENT

This Real Property Disposition Agreement (“Agreement”) is entered into as of this 24th day of February, 2022, by and among the Town of Orleans Affordable Housing Trust Fund, a municipal affordable housing trust fund, established pursuant to M.G.L. c. 44, §55C and the Town of Orleans Bylaw Chapter 104, under Declaration of Trust dated January 30, 2019 (“Trust”), and the Town of Orleans, a Municipal Corporation, acting by and through its duly elected Select Board (“Town”) to extent it has duties described below, both having their offices at 19 School Road, Orleans, MA 02653 and the Housing Assistance Corporation, a Massachusetts non-profit corporation, with an office at 416 West Main Street, Hyannis, MA 02601 (“HAC” or “Developer”).

WHEREAS, the Town has voted to support the Massachusetts Department of Housing and Community Development (“DHCD”) Local Initiative Program (“LIP”) application for the below described project;

WHEREAS, the Trust is a municipal agency of the Town of Orleans (“Town”) and the Trustees special municipal employees, for purposes of chapter 268A of the General Laws;

WHEREAS, the Trust is a board of the Town for purposes of chapter 30B and section 15A of chapter 40 of the General Laws;

WHEREAS, the Trust has the power with the approval of the Town’s Select Board “to sell, lease, exchange, transfer or convey any personal, mixed, or real property at public auction or by private contract for such consideration and on such terms as to credit or otherwise, and to make such contracts and enter into such undertaking relative to Trust property as the Trustees deem advisable notwithstanding the length of any such lease or contract;”

WHEREAS, the Trust is the owner in fee simple of property located at 107 Main Street, Orleans, consisting of 1.25 Acres \pm , acres, more or less, and described in a deed recorded with the Barnstable Registry of Deeds in Book 32931 Page 260 (the “Property”);

WHEREAS, the Developer was the successful bidder on the Request for Proposals (“RFP”) issued by the Town and advertised on April 21, 2021 seeking proposals to develop, own and manage affordable rental housing located on the Property;

WHEREAS, the affordable housing development is to consist of fourteen rental units and related improvements and all of the Units will be rented at rental levels specified in this Agreement to persons or households with incomes at or below 80% of the area median household income

WHEREAS, the Developer, the Town, the Trust, and the Massachusetts Department of Housing and Community Development will enter into a Regulatory Agreement and Declaration of Restrictive Covenants for the affordable housing Development project (Regulatory Agreement);

NOW THEREFORE, in consideration of the mutual covenants contained herein and for other good and valuable consideration, the receipt of which is hereby acknowledged, the parties hereto do hereby agree as follows:

ARTICLE 1 - DEFINITIONS

Section 1.1 Defined Terms

For the purpose of this Agreement, the following terms shall have the meanings, respectively, ascribed to them below:

- (a) Comprehensive Permit shall mean the Comprehensive Permit issued pursuant to M.G.L. c.40B §§20-23 to the Developer for the construction of the Development.
- (b) Deed shall mean the instrument, to be filed with this Agreement in the Barnstable Registry of Deeds whereby the Property is conveyed to the Developer.
- (c) Development shall mean the affordable rental housing development to be constructed by the Developer at 107 Main Street, Orleans, MA (Property) and which is to consist of a total of 14 Units and related improvements, as more particularly described in the Plans and Specifications, and as may be modified and approved within the Comprehensive Permit review process.
- (d) DHCD shall mean the Department of Housing & Community Development, 100 Cambridge Street, Suite 300, Boston, MA 02114.
- (e) Event of Default shall have the meaning set out therefore in Section 6.1.
- (f) LIP shall mean the Local Initiative Program under Chapter 40B and its regulations as administered by the DHCD.
- (g) Mortgagee shall mean the person or entity making either a permanent or construction loan that is secured by the Property.
- (h) Plans and Specifications shall mean the proposal submitted by HAC on June 16, 2021 and the Town's Notice of Intent to Award letter, dated August 9, 2021; and HAC's Correspondence dated August 11, 2021, regarding Confirmation of Changes to HAC Proposal and the enclosures to such correspondence.
- (i) Proposal shall mean the written proposal package prepared by HAC and submitted to the Town on June 15, 2021, in response to the Town's RFP, and as supplemented by HAC's correspondence of August 22, 2021 and its enclosures thereto.

- (j) Regulatory Agreement shall mean the Regulatory and Use Agreement among the Town, DHCD and the Developer, and to be recorded in the Barnstable County Registry of Deeds prior to construction of the Units.
- (k) Site Plan shall mean the site plan for the Project which is to be submitted as part of the Comprehensive Permit Application with copies of such site plan also provided to the Site Plan Review Committee as part of the Comprehensive Permit Application.

ARTICLE 2 - TRANSFER OF THE PROPERTY

Section 2.1: Covenant of Conveyance and Transfer of Property

Subject to all of the terms, covenants and conditions of this Agreement, the Trust covenants and agrees to grant and convey, and the Developer covenants and agrees to acquire and develop the Property.

Section 2.2: Property to be Conveyed.

The real property at 107 Main Street, consisting of approximately 1.25 acres of land, any structures or other improvements thereon, together with any and all easements, rights, privileges and appurtenances belonging or in any way appertaining thereto. For legal description see Exhibit A attached hereto.

Section 2.3: Condition of Property to be Conveyed; Delivery of Documents

(a) Condition of Property. The Trust and the Developer covenant and agree that the Property shall be conveyed in "as is" condition, free and clear of all tenants and occupants, and subject to the terms and provisions of Section 2.6 hereof. (b) In further clarifying the term "as is," it is understood and agreed that upon conveyance of the Property, the Developer shall be responsible for all aspects of developing the project as may be approved by a Comprehensive Permit issued to Developer, which includes, but is not limited to all demolition of existing structures, site work, curb cut, access drive, parking area, septic system, water and gas lines, other utilities, landscaping, and all other activities necessary to complete the project as required in the RFP, the Comprehensive Permit, the Site Plan, and this Agreement.

(c) Delivery of Documents: If the Trust has not done so prior to the execution of this Agreement, the Trust shall provide Developer, within 15 days of the date of this Agreement, to the extent now or hereafter in the possession of the Trust, with a) all as-built or site surveys or plot plans; (ii) all engineering, utility, soil or environmental reports; (iii) any title insurance policies or title run downs and any zoning opinions or analysis; and (iv) copies of any and all permits, approvals, licenses, reports and contracts relating to the Property.

Section 2.4: Time of Conveyance/Closing Date.

The Trust shall deliver the deed for the Property and such other Closing Documents within 1 ½ years following satisfaction of the following conditions (the “Closing Date”):

- (a) The Plans and Specifications for the Development have been approved by the Town’s Zoning Board of Appeals pursuant to a Comprehensive Permit issued under M.G.L. c.40B, §§20-23, together with the conclusion, lapse or resolution of all appeals from such Comprehensive Permit decision, and such that the final Comprehensive Permit shall not contain any condition, restriction or limitation that is unacceptable to the Developer in its reasonable discretion.
- (b) The Developer shall have obtained in addition to a final Comprehensive Permit, any and all applicable final federal, state, regional, local permits, licenses or approvals reasonably deemed necessary by Developer to commence construction of the Development on the Property. The Trust shall reasonably cooperate with the Developer in the obtaining of all such permits, easements and the like, and shall execute any consents, applications and/or other documents required in connection therewith.
- (c) The Developer shall have obtained and provided to the Trust with a firm commitment from one or more institutional lender(s) or other funding sources (the “Funding Sources”) without conditions that cannot readily, or at the time of the Closing, be anticipated to be met, or other evidence showing that the Developer has funds sufficient, in the Trust’s reasonable judgment, to acquire the Property and to design, construct and operate the Development, and further the Developer shall provide the Trust with copies of all Funding Source documents, as reasonable needed for the Trust to determine (i) adequacy of Project Financing for completion of the Development; (ii) adequacy of procedures, which may include, without limitation, requiring Developer’s contractor to provide a payment or and performance bond in favor of the Funding Source to take possession of the Property and complete the Project in accordance with Agreement; and (iii) reasonable terms customary for construction loans whereby the amount of debt is secured by the Funding Source’s mortgages does not exceed the amounts disbursed from time to time to Developer and/or its contractor; and Developer shall close on such financing and receive the Project Financing on the Closing Date. The Trust also agrees to modify the terms of the Agreement to conform to the requirements of Funding Sources so long as such modifications substantially comply with the terms of the RFP, the Proposal, and the Regulatory Agreement. The Developer agrees that the construction contract with the general contractor for the Project shall include Performance and Payment Bonds.
- (d) Affordable Housing Restriction. On the Closing Date, the Developer will record a restriction on the Property ensuring that the 14 units constructed on the Property are rented to persons earning no more than 80% of the area median income in the Metropolitan Statistical Area that includes the Town of Orleans, in perpetuity, which restriction shall be on terms satisfactory to the Developer and the Trust and approved by DHCD under G.L. c. 184, § 31, including all the units in the Town’s Subsidized Housing Inventory. The Affordable Housing Restriction shall be recorded with the Registry at the Developer’s sole cost and prior to any mortgages, liens or other

encumbrances recorded against the Property (unless each mortgage or lien holder shall have executed a subordination agreement, acceptable to the Trust expressly subordinating its mortgage or other lien to the Restriction). If the LIP Regulatory Agreement contains these Affordable Housing Restrictions, then the LIP Regulatory Agreement shall be deemed the Affordable Housing Restriction. All references in this agreement to "Affordable Housing Restriction" shall have the meaning described in this section.

Section 2.5: Developer Access Prior to Conveyance.

Prior to the grant and conveyance and delivery of possession of the Property, the Developer and its representatives shall have the right to enter upon the Property for the purpose of (i) applying for any and all necessary permits, approvals, zoning changes or waivers (final beyond all appeals or appeal periods) from all federal, state, local, governmental or quasi-governmental authority having jurisdiction of the Property for the construction of the Development; (ii) taking all soil, groundwater, percolation and any other engineering tests necessary for the design and/or construction of the Development; (iii) obtaining all permits and easements for all water, sewer, electricity, gas and other utilities in amounts adequate to service the Development; (iv) preparing plans and specifications, site plans, architectural drawings, engineering and mechanical and layout drawings, and the like, for the design and construction of the Development, provided that the Developer shall indemnify and save harmless the Town from all suits, actions, claims, damages or leases, reasonable expenses and costs of every kind and description to which the Trust may be subjected or put by reason of injury (including death) to persons or property resulting from, in connection with, or growing out of any act of commission or omission of the Developer, its agents, servants, employees, visitors, guests, contractors, subcontractors, or any and all other persons or corporations arising from such access granted to Developer and its representatives prior to conveyance of the Property from the Trust to the Developer.

The Trust shall reasonably cooperate with the Developer in the obtaining of all such permits, easements and the like, and shall execute any consents, applications and/or other documents required in connection therewith.

Section 2.6 Title and Instrument of Conveyance

At the closing, the Trust shall, subject to the terms and conditions of this Agreement, convey good and clear record and marketable title to the Property to the Developer, by documentation reasonably satisfactory to the Developer, free and clear of all liens, encumbrances, claims and interests of all parties, reservations, exceptions, conditions and restrictions of whatever sort or nature, except (i) provisions of existing building and zoning ordinances, regulations and by-laws applicable to the Property; (ii) the provisions of this Real Property Disposition Agreement; (iii) the provisions of the RFP; (iv) the Comprehensive Permit and (v) those easements, restrictions, rights and reservations of record insofar as the same do not materially interfere with the use of the premises for the proposed Development; and (vi) right of reverter, the precise terms of which shall be specified in the deed to the Developer, to be mutually agreeable to the Trust and the Developer.

The Trust will also convey all rights, easements, licenses and appurtenances whatsoever belonging to the Property or appertaining thereto, together with whatever surveys, site plans, approvals and permits relating thereto it may possess.

If the Trust is unable to convey such title, or to deliver possession of the Property, all as herein described, or if at the time of the delivery of the deed the Property does not conform with the provisions hereof, then the Trust shall use diligent efforts to remove any defects to title, or deliver possession as provided herein, or to make the Property conform with the provisions hereof, provided that the Trust shall not be required to expend more than \$3,000 in such efforts and where such expenditures shall not become Town Costs, in which event the Trust shall give written notice to the Developer at or before the time for performance hereunder and thereupon, the time for performance shall be extended for thirty (30) days, which shall also have the effect of extending such other time period for an equivalent amount of time so extended.

At the expiration of such time, as may be extended, the Trust shall have failed to remove any defects in title, delivery possession or make the Property conform, Developer shall have the election, at either the original time for performance or any extended time, to accept such title as the Trust can deliver for the Property in its then condition

Section 2.7 Adjustments

Taxes, if any, sewer charges or other assessments or charges allocable with respect to any period after delivery to the Developer of the Deed hereunder shall be paid by the Developer.

Section 2.8 Recording

Upon the conveyance of the Deed, the Developer shall promptly record this Agreement together with the Deed, and the Regulatory Agreement, and the Affordable Housing Restriction and the Developer shall pay all costs of such recording.

Section 2.9 Covenant; Binding Upon Successors in Interest; Period of Duration

It is intended and agreed, and the Deed shall so expressly provide, that this Agreement and the Covenants provided in this Agreement shall be covenants running with the land and that they shall, in any event, and without regard to technical classification or designation, be binding, to the fullest extent permitted by law and equity for the benefit and in favor of, and enforceable by, the Trust, DHCD, any successor in interest to the Property, or any part thereof. It is further intended and agreed that this Agreement and the covenants provided herein shall remain in effect in perpetuity.

ARTICLE 3

RESTRICTIONS AND CONTROLS UPON DEVELOPMENT

Section 3.1: Restrictions on Use

- (a) The Developer agrees for itself, and its successors and assigns, and every successor in interest of the Property, or any part thereof, and the Deed shall contain covenants on the part of the Developer for itself, and such successors and assigns, shall:
1. Devote the Development only to and in accordance with the uses specified in this Agreement and the Comprehensive Permit; and
 2. The Developer will use the Property for the sole purpose of constructing 14 residential units thereon, or such other number as may be allowed in the Comprehensive Permit, and renting all units to persons earning no more than 80% of the area median income.¹ Local preference for the leasing of units shall be provided to the maximum extent allowed by legal requirements.
- (b) It is intended and agreed, and the Deed shall expressly provide, that the documents referenced in subsection (a) of this Section shall be agreements running with the land with respect to the Development, binding to the fullest extent permitted by law and equity for the benefit and in favor of, and enforceable by the Trust, DHCD, and its successors and assigns, as applicable, and shall remain in effect in perpetuity.

Section 3.2: Improvements and Submission of Plans.

The Town and the Developer agree as follows:

- (a) The Developer will permit and thereafter construct the Development in accordance with the Plans and Specifications, the terms of this Agreement and with the terms of the Comprehensive Permit. The Development will be constructed in accordance with all applicable state and local regulations and laws, including but not limited to, state and local building codes, the Town of Orleans Zoning Bylaw, the Orleans Board of Health Regulations, except as waived by the Comprehensive Permit, and all applicable state and federal permits and approvals issued for the Development.
- (b) The Developer will be responsible for ensuring that all Units are eligible for listing on the Commonwealth of Massachusetts Subsidized Housing Inventory by obtaining either a Comprehensive Permit (40B) or a Special Permit with approval under the Local Initiative Program's (LIP) Local Action Unit.

Section 3.3: Time for Commencement and Completion of Construction.

- (a) Subject to provisions of Section 7.7 hereof, the Developer shall diligently prosecute to completion the construction of the Development and, subject to the other provisions of this Agreement, shall complete construction of the Development, which

¹ The Developer will be requesting that DHCD agree to the Project having only 1 three bedroom unit instead of the 10% of total units stated in DHCD's policies (which would require 2 three bedroom units; if DHCD still requires 3 three bedroom units, the result may be that only 13 units can be built. By signing this Agreement, the Trust and the Town agree to support the Developers request to DHCD to allow only one three unit.

shall mean not later than eighteen (18) months after the date of the delivery of the Deed, or as may be extended by the Trust.

- (b) Prior to the sale and conveyance and delivery of possession of the Property, the Town shall permit the Developer access thereto whenever and to the extent necessary to carry out the purposes of this Agreement.; provided, however, that any disturbance to the Property made from soil borings, test pits, and the like shall be restored by Developer at Developer's sole cost and expense so that the Property remains reasonably the same as it is at the time of execution of this agreement.(d) It is intended and agreed that the agreements contained in this Section with respect to the beginning and completion of the Development shall be agreements running with the land with respect to the Development.

Section 3.4: Completion

The Development shall be deemed completed for the purposes of this Agreement when the improvements required of the Developer (with the exceptions hereinafter set forth) by the provisions of this Agreement and the Comprehensive Permit have been built substantially in accordance therewith and are ready for occupation, and shall incontestably be deemed completed for the purpose of this Agreement upon the issuance of a Certificate of Occupancy. The exceptions herein above referenced shall be: (i) items of work and adjustment of equipment and fixtures that can be completed after occupancy has been taken, i.e., so-called punch list items, (ii) landscaping and other similar work which cannot then be completed because of climatic conditions.

Section 3.5: Prompt Payment of Obligations

The Developer shall make, or cause to be made, prompt payment of all monies due and legally owing to all persons, firms and corporations doing any work, furnishing any materials or supplies or renting any equipment to the Developer or any of its contractors or subcontractors in connection with the development, construction, furnishing, repair or reconstruction of any of the improvements required by this Agreement to be constructed upon the Property, provided, however, that the Developer may withhold and contest and/or litigate any such payments owed or claimed to be owed, in connection with the improvements. If the Developer elects to so contest any such payment and a lien arising therefrom is recorded against the Property, then the Developer shall cause the same to be discharged of record within thirty (30) days after the date of recording the same, either by payment, deposit or bond. If the Developer fails to discharge any such lien within such period, such failure shall constitute an Event of Default hereunder. Neither this provision, nor any other provision of this Agreement, shall be construed to create rights in anyone who is not a party to this Agreement.

Section 3.6: Access to the Property by Town and Town Personnel

For so long as the Developer owns the Property, the Developer shall from time to time at all reasonable hours, give to the duly authorized representatives of the Trust and the Town, reasonable access, with notice, for inspection purposes to any and all portions of the Development (exclusive of the interior of occupied units following conveyance thereof)

including all open areas surrounding the same. The Trust and the Town (and DHCD) shall have access during normal business hours to all books and records of the Developer and the Development in order to monitor the Developer's compliance with this Agreement.

Section 3.7: Sharing of Cost Savings

The Trust and the Developer shall share construction cost savings, if any, as provided in Exhibit B hereto.

ARTICLE 4 - Transfer and Mortgage of Developer's Interest

Section 4.1: General Terms Relating to Transfer of Interest in Property by Developer

- (a) Except as provided in Article 5 and subsection (b) below, no interest or portion thereof in the Development shall be transferred, or caused or suffered to be transferred, except an involuntary transfer caused by the death or incapacity of any such party or except as provided in Section 4.1(b) or Section 4.2 hereof, without the written approval of the Trust and, if applicable, DHCD. The Developer shall advise the Trust of any and all such proposed changes in ownership.
- (b) Notwithstanding the terms and conditions of the aforesaid subsection (a), subsection (c) and Section 4.2 to the contrary, the Trust hereby expressly acknowledges and consents to a transfer and assignment at any time by the Developer upon written notice to the Trust, of all or part of its right, title and interest (i) in this Agreement and (ii) in the Property to any entity that is controlled by the Developer or to any financial institution such as a bank, trust company, insurance company, pension fund, mortgage company or investment company providing construction or permanent financing for construction of the Development.
- (c) The Developer agrees that it will not, after delivery of the Deed, make or suffer to be made, any assignment, lease, or any other manner of transfer of its interest in the Property or portion thereof, or in this Agreement, except (i) as provided in Section 4.2 hereof, (ii) leases of the 14 affordable units to persons earning no more than 80% of the area median income, and (iii) for construction, utility and other easements and agreements, including, without limitation, agreements relating to the Development.

Section 4.2: Mortgage of Property by the Developer

Notwithstanding any other provision of this Agreement and subject to the consent and approval of the Trust and, if applicable DHCD, the Developer shall have the right to encumber, pledge, or convey its rights, title and interest in and to the Property, or any portion or portions

thereof, by way of a bona fide mortgage to an institutional or governmental lender to secure the payment of any loans or grants obtained by the Developer to finance the development, construction, repair or reconstruction of any of the improvements required to be constructed by the Developer on the Property as contemplated by the RFP, the Proposal and this Agreement. Any such mortgage shall be expressly subject to this Real Property Disposition Agreement, the Deed and the Regulatory Agreement and the Affordable Housing Restriction.

The holder of any such mortgage or its designee (including a holder, or its designee, who obtains title to the Property or any portion thereof by foreclosure or action in lieu thereof) shall be obligated by this Agreement to construct or complete the Development in accordance with its terms.

ARTICLE 5 - Provisions Relating to Marketing and Rental of the Units

Section 5.1: Rentals

In compliance with all applicable statutes, regulations, bylaws or requirements of regulatory authorities having jurisdiction, the Developer will undertake and diligently pursue a program for the marketing and selection of tenants pursuant to a plan submitted to and approved by DHCD and including, as applicable, the guidelines of the Local Initiative Program. The Developer must conform to LIP requirements in the renter qualification and selection process, including preparation of the Affirmative Fair Housing Marketing Plan, advertising, qualification of prospective renters, and conducting a lottery for renter selection. The marketing process plan must be submitted to the Town for review and, to DHCD for review and approval all as more particularly set forth in the Regulatory Agreement. In addition, the Developer shall consult with the Affordable Housing Trust Fund Board to ensure that the proper documents are used to ensure affordability in perpetuity.

Developer must conform to LIP requirements in the renter qualification and selection process, including preparation of the Affirmative Fair Housing Marketing Plan, advertising, qualification of prospective renters, and conducting a lottery for renter selection. The marketing process plan must be submitted to the Town for review and, to DHCD for review and approval all as more particularly set forth in the Regulatory Agreement. In addition, the Developer shall consult with the Affordable Housing Trust Fund Board to ensure that the proper documents are used to ensure affordability in perpetuity.

The completed housing Units will be rented to Renters earning 80% or less of median income for the area based on family size as determined by the Secretary of Housing and Urban Development with adjustments for smaller and larger families ("Low and Moderate Income Families"). Rent levels will conform with HUD standards for maximum rent with adjustments for number of bedrooms.

Developer covenants to work with DHCD or an entity acceptable to DHCD for purposes of monitoring Developer's compliance with the affordability requirements and other applicable program requirements associated with the financing of the Development (the "Monitoring Agent") not separate agent. Developer agrees to provide the Monitoring Agent such certifications, information, and/or reports as the Trust, the Town or the Monitoring Agent may

reasonably require in writing in order to ensure compliance with the affordability requirements. Developer shall notify the Trust and the Town and the Monitoring Agent in writing if Developer discovers non-compliance with the affordability requirements and any of the requirements hereof. Developer shall keep full, complete and proper books and records of all information and data collected from all resident households to assure that each resident household satisfies the affordability requirements, including without limitation the names and ages of members of each tenant household, which books and records shall be available at all reasonable times to the Monitoring Agent during regular business hours, all in compliance with applicable laws.

ARTICLE 6 - Rights, Remedies and Procedures in the Event of a Breach by Developer

Section 6.1: Consequence of Breach by Developer with Respect to Commencement and Completion of Construction, or Unauthorized Transfer of Interest.

If, except as provided below in Section 7.7 “Excusable Delays” and as otherwise provided herein, prior to completion of the Development:

1. The Developer shall fail to perform its obligations under this Agreement with respect to commencement, diligent prosecution, or completion of construction of the Development; or
2. There is, in violation of Sections 4.1(a) or 4.1(b) or 4.1(c) of this Agreement, a transfer of the Property or any part thereof;

then, the Trust shall in writing notify the Developer and the Mortgagee of such failure or violation. The Developer shall thereupon have sixty (60) 45days from the receipt by it of such written notice to cure such failure or violation (or if such failure or violation cannot be cured within sixty (60) days, to commence to cure the same within said period and diligently to proceed thereafter to complete such curing). If the Developer does not cure such failure or violation within the aforesaid periods (or within such extended period of time as may be approved by the Trust), the Trust shall give a second notice (the “Second Notice”) of such failure or violation and the expiration of the grace period to Developer and to each of the mortgagees, holders of construction loan agreements and/or lenders from whom the Developer has obtained loans for development operations.

(a) If the Developer does not cure such failure or violation within the aforesaid periods and if the holders of record of construction loan agreements and/or mortgages do not exercise their rights to cure such violations or failure (as provided in Section 6.3 hereof), an Event of Default shall be deemed to exist.

The Trust may invoke the remedies hereunder on account of an Event of Default under this Article at any time within a two-month period after the date of the Second Notice provided that at the time such remedies are invoked such Event of Default shall continue. Failure of the Trust timely to invoke such remedy shall be deemed a waiver of such Event of Default.

(i) If an Event of Default relating to the Development occurs without good cause prior to the commencement of any substantial construction of the Development (demolition and surface site work shall not be considered substantial construction, but the good faith commencement of excavation, foundation and other subsurface work shall constitute substantial construction), then the Trust's sole remedy shall be to cause a reconveyance of the Property to the Trust pursuant to this Section 6.1 and the related provisions of this Article; and the Trust shall reimburse the Developer for its costs and expenses incurred prior to such date of reconveyance, and this Agreement shall terminate without recourse to the parties;

(ii) If an Event of Default relating to the Development occurs after commencement of substantial construction of the Development, then the Trust's sole remedy shall be to institute such action and proceedings as may be appropriate against the Developer, including actions and proceedings to compel specific performance, but excluding money damages. OK

To the extent that the Trust invokes the remedy provided in clause (i) above, the Developer shall promptly transfer possession of, and reconvey, the Property together with all of the improvements thereon, to the Trust, by Quitclaim Deed, provided that such reconveyance shall be subject to any existing loan agreements and mortgages thereon permitted under this Agreement. If the Developer shall fail so to reconvey, the Trust may institute such actions or proceedings as it may deem advisable as well as proceedings to compel specific performance and the payment of damages, expenses and costs by the Developer. This does not preclude the Developer or any mortgagee from seeking injunctive relief, and the Town will cooperate with the Developer or any such mortgage in seeking a speedy trial. The rights and remedies of any mortgagee under this Agreement shall not be limited or reduced by the fact that any such mortgagee may have an equity interest in the Property, the Development or any part thereof.

(b) In the event of an Event of Default under clause (i) above, the Trust also shall have the right, after ten (10) days' prior written notice to the Developer, to seek a judicial determination of the Town's right to re-enter and take possession of the Property and to terminate and revert in the Trust the estate conveyed by the Deed to the Developer, it being the intent of this, together with other provisions of this Agreement, that the conveyance of the Property to the Developer shall be made upon, and that the Deed shall contain, a condition subsequent to the effect that in the event of an Event of Default, and upon giving notice to the Developer and obtaining the judicial determination indicated above, the Trust at its option, may declare a termination in favor of the Trust of the title, and of all the rights and interest of the Developer, and any assigns or successors in interest in the Property, shall revert to the Trust; provided, that such condition subsequent and any reverting of title as a result thereof in the Trust (1) shall always be subject to and limited by, and shall not defeat, render invalid, or limit in any way, the lien of any mortgage authorized by this Agreement, or any rights or interests provided herein for the protection of the holders of such mortgages.

(c) If the Developer or a mortgagee reconveys to the Trust, pursuant to this Section 6.1 hereof, the Trust shall undertake with due diligence and in a commercially reasonable manner to resell the Property so reconveyed and the improvements thereon, subject to all of the provisions

of this Agreement. The resale shall be, at the Trust's discretion, for cash only, unless the first mortgagee of record otherwise directs or approves. The proceeds of such resale, together with the net income, if any, derived by the Trust from its operation and management of the Property subsequent to such reconveyance shall be used:

First: to reimburse the Trust, pro rata in accordance with the number of Units completed, if any, for (i) all costs and expenses reasonably and proximately incurred by the Trust in connection with the recapture, management and resale of the Property and all administrative and overhead costs in connection therewith, including reasonable attorney's fees, and (ii) all expenditures made or obligations incurred with respect to the making or completion of improvements on or for the Property for which it has not otherwise been reimbursed;

Second: in their respective order of priority to pay any and all mortgage indebtedness permitted or authorized by this Agreement and to make all and whatever payments may be necessary to discharge any other encumbrances or liens existing or threatened on the Property in favor of mechanics, material suppliers or subcontractors;

Third: to reimburse the Developer for and up to the amount expended by it in the acquisition and improvement of the Property, not otherwise previously reimbursed to Developer under Section 6.1(a)(i); and

Fourth: any balance remaining shall remain the property of the Trust.

Section 6.2: Notice of Breaches to Mortgagees

If the Trust gives written notice to the Developer of a default under this Agreement, the Trust shall forthwith furnish a copy of the notice to each of the mortgagees of record of the Property permitted under this Agreement. Failure to provide any such mortgagee with a copy of a notice of default shall render such notice invalid and ineffective. To facilitate the operation of this Section, the Developer shall at all times keep the Trust provided with an up-to-date list of names and addresses of mortgagees and holders of construction loan agreements from whom the Developer has obtained loans as permitted under this Agreement. Any such mortgagee or holder may notify the Trust of its address and request that the provisions of Section 6.4 hereof as they relate to notices apply to it. The Trust agrees to comply with any such request.

Section 6.3: Mortgagee May Cure Breach of Developer

If the Developer has received notice from the Trust of a default under this Agreement and such breach is not cured by the Developer before the expiration of the period provided therefor, the holders of record of mortgages on the Property as permitted under this Agreement shall be entitled to notice from the Trust stating that the Developer has failed to cure any such default, and shall have the right to cure any such breach upon giving written notice of their intention to do so to the Trust within forty-five (45) days after such holder receives such notice of failure to cure, and said mortgagee shall thereupon proceed with due diligence to cure such breach. Any cure of a breach hereunder by a mortgagee shall be deemed a cure of said breach by the Developer.

If any mortgagee elects so to cure any breach, a reasonable extension of time for performance will be granted by the Trust to enable the mortgagee, and its transferee, to obtain possession and control of the Property, or portion thereof in question, by foreclosure or otherwise, and to correct such breach.

Section 6.4: Remedies for Other Breaches

It is understood by the parties hereto that in the event any party shall fail to comply with or shall violate any of the provisions of this Agreement, then the other party hereto may institute such actions and proceedings as may be appropriate, including actions and proceedings to compel specific performance and payment of all damages, expenses, and costs. Neither these remedies nor that class of remedies more particularly described in this Agreement shall be exclusive unless specifically so described, provided, however, that the remedies prescribed in Section 6.1 hereof for the defaults therein described respecting reconveyance are exclusive and that no other rights of the Trust to reconveyance are contained in or to be implied under this Agreement.

Section 6.5: Regulatory Agreement Default Provisions

It is understood and agreed that the Developer is also subject to the Default Provisions of the Regulatory Agreement.

ARTICLE 7 - MISCELLANEOUS PROVISIONS

Section 7.1: Obligations and Rights and Remedies Cumulative and Separable

Subject to the provisions of Section 7.10, the respective rights and remedies of the Trust, and the Developer, whether provided by this Agreement, or by law, shall be cumulative, and the exercise of any one or more of such rights or remedies shall not preclude the exercise, at the same or different times of any other such rights or remedies.

Section 7.2: Finality of Approvals

Where, pursuant to this Agreement, any document or proposed action by the Developer is submitted by it to the Trust, and the Developer has been notified in writing by the Trust that the same is approved or is satisfactory, such determination shall be conclusively deemed to be a final determination by the Trust with respect to such particular document or proposed action for which such approval or notice of satisfaction was given.

Where the consent, approval, authorization, determination, satisfaction, waiver or other action of the Trust is provided for or required hereunder, such consent, approval, authorization, determination, satisfaction, waiver or other action shall not be unreasonably withheld. If any such consent, approval, authorization, determination, satisfaction, waiver or other action is not given within thirty (30) business day after receipt of notice from the Developer (which notice shall clearly indicate that the Trust has thirty (30) business days in which to act, notwithstanding

Section 7.4 hereof, the Trust shall thereupon be deemed to have acted upon the issue in question in a manner favorable to the Developer.

Section 7.3: How Agreement Affected by Provisions Being Held Invalid

If any provisions of this Agreement are held invalid, the remainder of this Agreement shall not be affected thereby, if such remainder would then continue to conform to the requirements of applicable laws.

Section 7.4: Approvals and Notices

Except as otherwise specifically provided in this Agreement, whenever under this Agreement consents, approvals, authorizations, determination, satisfactions, waivers or other actions are required or permitted, such approvals, authorizations, determinations, satisfactions, waivers or other actions shall be effective and valid only when given in writing signed by a duly authorized officer of the Trust or Developer, and shall be deemed given when delivered by hand or when mailed by registered or certified mail, postage pre-paid, return receipt requested to the principal office of the party to whom it is directed, provided that such notice is delivered, or tendered for delivery, in the normal course, which offices are as follows:

Developer: Housing Assistance Corporation
460 West Main Street
Hyannis, MA 02601

With a copy to: Peter L. Freeman, Esq.
Freeman Law Group LLC
86 Willow Street
Yarmouthport, MA 01675

Trust/Town: John Kelly, Town Administrator
19 School Road
Orleans, MA 02653

With a copy to: Michael D. Ford, Town Counsel
P. O. Box 485
West Harwich, MA 02671

DHCD
100 Cambridge Street, Suite 300
Boston, MA 02114

The parties shall promptly notify each other of any change of their respective addresses set forth above. Notice and other communications shall be deemed given when deposited in the United States mail and sent registered or certified, postage prepaid, to the last known address of the party concerned, provided that such notice is delivered, or tendered for delivery, in the normal course. Whenever any approval, authorization, determination, satisfaction, waiver or

other action is required of the Trust pursuant to this Agreement and is assented to by the Trustees by instrument duly signed, this shall be deemed conclusive evidence of compliance with this Agreement.

Except where otherwise expressly stated to the contrary, the term “days” as used in this Agreement shall be deemed to refer to calendar days.

Section 7.5: Matters to be Disregarded

The titles of the several articles and sections of this Agreement are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of the provisions of this Agreement.

Section 7.6: Obligations to Continue

Except as to obligations to be performed at or prior to the time of closing of the grant and conveyance of fee simple title to and delivery of possession of the Property, the provisions of this Agreement shall survive the time of closing and the sale and conveyance of fee simple title to and the delivery of possession of the Property to the Developer.

Section 7.7: Excusable Delays

For the purposes of any of the provisions of this Agreement, neither the Trust, nor the Developer, as the case may be, shall be considered in breach of or default in its obligations hereunder in the event of unavoidable delays in the performance of such obligations due to causes beyond its control and without its fault or negligence, including but not restricted to, acts of God or of the public enemy, acts of the Government, acts of the other party, fires, floods, or other casualties, epidemics, pandemics, quarantine restrictions, labor disputes, litigation, freight embargoes, and unusually severe weather or delays of contractors or subcontractors due to such causes; it being the purpose and intent of this provision that in the event of the occurrence of any such enforced delay, the time or times for performance of the obligations of such party shall be extended for the period of the enforced delay, provided that the party seeking the benefit of the provisions of this Section shall, within a reasonable period after the beginning of any such enforced delay, have first notified the other party thereof in writing stating the cause or causes thereof and requested an extension for the period of the enforced delay in calculating the length of the delay. The Trust shall consider not only actual work stoppages, but also any consequential delays resulting from such stoppages as well.

Section 7.8: Agreement Binding on Successors and Assigns

The respective provisions of this Agreement, in accordance with their terms, shall be binding upon, and shall inure to the benefit of, the respective successors and assigns of the Developer and the public body or bodies succeeding to the interests of the Trust, and to any subsequent grantees of the Property, except as otherwise expressly provided herein.

Section 7.9: Amendment of Proposal

No modification or amendment to any provisions of the Proposal shall be effective with respect to the Property, unless such modification or amendment of the Proposal has been consented to by the Developer and everyone entitled to be given notice under Section 6.2 prior to becoming effective with respect to the Developer.

Section 7.10: Waiver

Any right or remedy which the Trust, the Developer or DHCD may have under this Agreement, or any of its provisions, may be waived in writing by the Trust, the DHCD, or the Developer, as the case may be, without execution of a new or supplementary Agreement, but any such waiver shall not affect any other rights not specifically waived, and no waiver by the Developer or a right under Section 6.2 shall be effective unless approved in writing by everyone then entitled to be given notice under Section 6.2.

Section 7.11: Representations and Warranties.

The Developer represents that the following representations and warranties are true and accurate as of this date and shall continue as such:

- (a) The Developer is duly organized and existing corporation in good standing under the laws of the Commonwealth of Massachusetts and has the power and authority to enter into and perform its obligations under this Agreement, and each other agreement or instrument entered into or to be entered into by it pursuant to this Agreement.
- (b) The Developer has the power, authority, and legal right to enter into and perform this Agreement, and each other document entered into or to be entered into by it pursuant to this Agreement, and the execution, delivery and performance hereof and thereof:
 - (i) have been duly authorized;
 - (ii) have the requisite approval of all governmental bodies;
 - (iii) will not violate any judgment, order, law or regulation applicable to the Developer or any provisions of the Developer's organizational documents; and
 - (iv) do not conflict with, constitute a default under, or result in the creation of any lien, charge, encumbrance or security interest upon any assets of the Developer under any agreement or instrument to which the Developer is a party or by which the Developer or its assets may be bound or affected.
- (c) The Developer represents that, to the best of its knowledge, there are no pending or threatened actions or proceedings before any court or administrative agency which would materially adversely affect the financial condition of the Developer, or the ability of the Developer to perform its obligations under this Agreement, or under any other documents entered into by the Developer pursuant to this Agreement.

(d) The Developer has made or will make its independent investigation and inquiry into all matters relevant to its entering into and performing its obligations under the Agreement without reliance on any statement or representation of the Town except as expressly set forth herein.

The Trust represents that the following representations and warranties are true and accurate as of this date and shall continue as such:

- (a) The Trust with the approval of the Select Board, has the power, authority and legal right to enter into and perform its obligations under this Agreement, and the execution, delivery and performance of each other agreement or instrument entered into or to be entered into by it pursuant to this Agreement hereof and thereof:
 - (i) have been duly authorized;
 - (ii) have the requisite approval of all governmental bodies;
 - (iii) will not violate any judgment, order, law or regulation applicable to the Trust;
 - and
 - (iv) do not conflict with, constitute a default under, or result in the creation of any lien, charge, encumbrance or security interest upon any assets of the Trust under any agreement or instrument to which the Trust is a party or by which the Trust or its assets may be bound or affected.

- (b) The Trust represents that, to the best of its knowledge, there are no pending or threatened actions or proceedings before any court or administrative agency which would materially adversely affect the financial condition of the Trust, or the ability of the Trust to perform its obligations under this Agreement, or under any other documents entered into by the Trust pursuant to this Agreement.

- (c) The Trust is not a party to and neither the Trust nor the Property is bound by any management, service, guaranty, warrant or other agreements relating to the Property as of the date hereof.

Section 7.12: Exhibits

The exhibits attached hereto are incorporated herein and form a part of this Real Property Disposition Agreement as if fully set forth herein.

IN WITNESS WHEREOF, as of the day and year first above written, the parties hereto have caused this Agreement in counterparts to be signed, sealed and delivered by their duly authorized officers or representatives, respectively.

ORLEANS AFFORDABLE HOUSING TRUST
FUND


Chair

Vice Chair

David Chozy, Clerk

Andrea Reed

Steve Baker

Michael A. Herman

Mr. P. Wadkins

TOWN OF ORLEANS SELECT BOARD

Mefford Runyon

Mefford Runyon, Chair

Andrea Reed

Andrea Reed, Vice Chair

Mark Mathison

Mark Mathison, Clerk

Kevin Galligan

Kevin Galligan, Member

Michael A. Herman

Michael Herman, Member

, Chair

, Vice Chair

, Clerk

HOUSING ASSISTANCE CORPORATION.

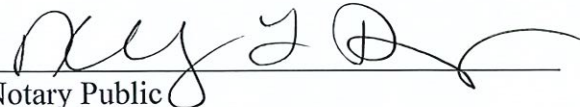
By: 
Alisa Magnotta, CEO

By: 
William Byrnes, Treasurer

COMMONWEALTH OF MASSACHUSETTS

Barnstable, ss.

On this 27th day of February, 2022, before me, the undersigned notary public, personally appeared Alan McLennan, member of the Board of Trustees of the Orleans Affordable Housing Trust Fund and proved to me through satisfactory evidence of identification, which was driver's license, personally known to me, or personally known to 3rd party witness personally known to me, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he signed it voluntarily for its stated purpose.


Notary Public

Printed Name: Kelly L. Darling
My commission expires: Feb 5, 2027




Kelly L. Darling
NOTARY PUBLIC
Commonwealth of
Massachusetts
My Commission Expires
2/5/2027

COMMONWEALTH OF MASSACHUSETTS

Barnstable, ss.

On this 24th day of February, 2022, before me, the undersigned notary public, personally appeared Andrew Reed, member of the Select Board and proved to me through satisfactory evidence of identification, which was driver's license, personally known to me, or personally known to 3rd party witness personally known to me, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he signed it voluntarily for its stated purpose.


Notary Public
Printed Name: Kelly L. Darling
My commission expires: Feb 5, 2027




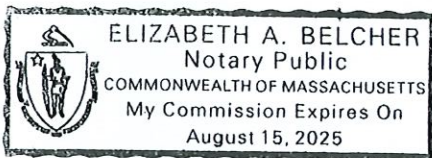
Kelly L. Darling
NOTARY PUBLIC
Commonwealth of
Massachusetts
My Commission Expires
2/5/2027

COMMONWEALTH OF MASSACHUSETTS

Barnstable, ss.

On this 14th day of February, 2022, before me, the undersigned notary public, personally appeared Alisa Magnotta, as CEO of the Housing Assistance Corp., and proved to me through satisfactory evidence of identification, which was driver's license, personally known to me, or personally known to 3rd party witness personally known to me, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he signed it voluntarily for its stated purpose.


Notary Public
Printed Name: Elizabeth Belcher
My commission expires: 8/15/25



COMMONWEALTH OF MASSACHUSETTS

Barnstable, ss.

On this 14th day of February, 2022, before me, the undersigned notary public, personally appeared William J. Bozdanovich, Treasurer of the Housing Assistance Corp. and proved to me through satisfactory evidence of identification, which was driver's license, personally known to me, or personally known to 3rd party witness personally known to me, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he signed it voluntarily for its stated purpose.

Mary J. Swaney

Notary Public

Printed Name: *Mary J. Swaney*

My commission expires: *7/7/2028*

