

THIS IS A DRAFT!

**CPC PUBLIC MEETING ON
NOVEMBER 14TH AT 7:30PM (TOWN HALL)
TO DISCUSS THIS PROGRAM**

**Grant of an Affordable Housing Restriction to the Town of Stow, Massachusetts
Pursuant to G.L. c. 184, s.31**

I. Grantor Clause:

In consideration of the agreements and covenants set forth in this Affordable Housing Restriction, and other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the parties to this Restriction agree and covenant as follows:

We, (Homeowner), having an address at : _____ (“Grantor(s)”), acting pursuant to Sections 31, 32 and 33 of G.L. c.184, grant, with quitclaim covenants, to the Town of Stow, a municipal corporation with principal offices at 380 Great Road, Stow, Massachusetts, and its successors and permitted assigns (“Grantee”) in perpetuity and exclusively for affordable housing purposes, the following described Affordable Housing Restriction on a dwelling unit located on a parcel of land located in the Town of Stow, Massachusetts, constituting approximately ____ acres, said parcel being described in Exhibit A attached (the “Premises”).

This document and all of the agreements, restrictions, rights and covenants contained herein shall be deemed to be an Affordable Housing Restriction as that term is defined in G.L. c.184, s.31 and that term is used in G.L. c.184, ss.26, 31, 32 and 33.

The Grantor(s) intends, declares and covenants on behalf of itself and its successors and assigns (i) that this Affordable Housing Restriction is intended to be a covenant running with the land, encumbering the Premises in perpetuity and is binding upon the Grantor’s(s)’ successors in title, (ii) are not merely personal covenants of the Grantor(s) and (iii) shall bind the Grantor(s), their successors and assigns and inure to the benefit of the Town of Stow and the Department of Housing and Community Development and their successors and assigns in perpetuity. Grantor(s) hereby agrees that any and all requirements of the laws of the Commonwealth of Massachusetts to be satisfied in order for the provisions of this Affordable Housing Restriction to constitute restrictions and covenants running with the land and that any requirements of privities of estate are also deemed to be satisfied in full.

II. Purposes:

When subject to this Affordable Housing Restriction, the Premises, comprised of a dwelling unit on ____ acres of land, will provide a dwelling unit perpetually affordable to moderate income purchasers in the Town of Stow. The Grantee concludes that reserving this dwelling unit for future, moderate income purchasers is in the public interest and consistent with the purpose and intent of G.L. c.184, s.31-33.

The Grantor and the Grantee hereby agree that the Stow Housing Authority, or if the Stow Housing Authority ceases to exist or is unable to fulfill its obligations, the Stow Board of Selectmen, shall act as the Monitoring Agent to ensure the compliance with the terms and conditions of this Restriction.

III. Restrictions on Transfer of the Premises:

In satisfaction of the purposes of the Affordable Housing Restriction, the maximum sales price of the Premises shall be the maximum price affordable for a household ("Eligible Purchaser") with an income that does not exceed seventy-five (75) percent of the median family income for the Boston Non-Metropolitan Area, as published annually by the United States Department of Housing and Urban Development (HUD) or if HUD discontinues publication of the median income statistics, then as determined by the Commonwealth's Department of Housing and Community Development, assuming a four person household. In determining this amount, the Monitoring Agent shall determine that no more than thirty (30) percent of the Eligible Purchaser's gross annual income may be allocated to housing costs (mortgage principal and interest, real estate taxes, home owner's insurance, private mortgage insurance and homeowner's association or condominium fees, if applicable), applying current interest rates offered for a thirty (30) year, one (1) point, fixed rate loan with a down payment of five (5) percent.

IV. Further Restriction on Eligible Purchasers of the Premises:

To be considered an Eligible Purchaser of the Premises, the individual(s) or household must intend to occupy the Property as his, her or their principal residence and must provide to the Monitoring Agent such certifications as to income and, if applicable, assets as the Monitoring Agent may require to justify designation as an Eligible Purchaser as required by Section III, above.

V. Prohibited Acts and Uses, Exceptions Thereto and Permitted Uses

A. Prohibited Acts and Uses. Subject to the exceptions set forth in paragraph B, below, the following acts and uses are prohibited on the Premises:

1. Conveying the Premises to an individual(s), corporation, trust or any other entity that does not comply at the time of conveyance with the terms and conditions of this Restriction, except as otherwise allowed by Section V.B.2, below.
2. The division or subdivision of the Premises by plan, deed or other instrument;
3. Leasing or renting any portion of the dwelling or the Premises;
4. Development or re-development of Premises into more than one (1) single family dwelling;
5. Activities that would violate any of the provisions of federal, state or Town of Stow statutes, rules and regulations, including but not limited to, the Town of Stow Zoning Bylaw;
6. Any other use of the Premises or activity which would materially impair the interests of this Restriction.

B. Exceptions to Otherwise Prohibited Acts and Uses.

1. Maintenance of the Premises that does not violate any provision of federal, state or Town of Stow statutes, rules and regulations, including but not limited to, the Town of Stow Zoning Bylaw.
2. If the Premises are conveyed by will, trust instrument or Court order to a Grantee that does not qualify under the terms and conditions of this Restriction, the Grantee shall, within twenty-four (24) months of conveyance, sell the Premises to an Eligible Purchaser. If the premises have not been sold to a qualified purchaser within said twenty four (24) month period, the Grantee shall immediately offer the Premises for purchase to the Town of Stow at the price established by Section III of this Restriction.
3. Actions approved by the Grantee not otherwise consistent with this Restriction.

C. Permitted Acts and Uses. All acts and uses not prohibited by subparagraphs A and B, above are permissible to the extent that the act and use complies with federal, state and Town of Stow statutes, rules and regulations, including but not limited to, the Town of Stow Zoning Bylaw.

VI. Legal Remedies of the Grantee(s):

A. Legal and Injunctive Relief

The rights hereby granted shall include the right to enforce this Affordable Housing Restriction by appropriate legal proceeding in a Court of competent jurisdiction and to obtain injunctive and other equitable relief against any violations, including, without limitation, relief requiring restoration of the Premises to its condition prior to the time of the injury complained of (it being agreed that the Grantee(s) may have no adequate remedy at law), and shall be in addition to, and not in limitation of, any other rights and remedies available to the Grantee(s).

B. Reimbursement of Costs of Enforcement

The Grantor(s) and thereafter the successors and assigns of the Grantor(s) covenant and agree to reimburse the Grantee(s) for all reasonable costs and expenses (including without limitation counsel fees) incurred in enforcing this Affordable Housing Restriction or in remedying or abating any violation thereof.

C. Grantee(s) Disclaimer of Liability

By its acceptance of this Affordable Housing Restriction, the Grantees do not undertake any liability or obligation relating to the condition of the Premises.

D. Severability Clause

If any of the provisions of this Affordable Housing Restriction shall to any extent be held invalid, the remainder shall not be affected.

E. Non-Waiver

Any election by the Grantee as to the manner and timing of its rights to enforce this Affordable Housing Restriction or otherwise exercise its rights hereunder shall not be deemed or construed to be a waiver of such rights.

VII. Access:

This Affordable Housing Restriction hereby conveyed does not grant to the Grantee, to the general public or to any other person any right to enter upon the Premises except there is granted to the Grantee and its representatives the right to enter the Premises at reasonable times and in a reasonable manner for the purposes of inspecting the same to determine compliance herewith.

VIII. Extinguishment:

A. Grantee's Receipt of Property Right

The Grantor(s) and the Grantee agree that this Affordable Housing Restriction gives rise for purposes of this paragraph to a real property right, immediately vested in the Grantee, with a fair market value that is at least equal to the proportionate value of this Affordable Housing Restriction and determined as of the date of this transaction in relation to the value of the unrestricted Premises at that time.

B. Value of Grantee's Property Right

C. Such proportionate value of the Grantee's property right shall remain constant, in perpetuity.
Right of Grantee to Recover Proportional Value at Disposition

If any occurrence ever gives rise to extinguishment or other release of the Affordable Housing Restriction under applicable law, then the Grantee, on a subsequent sale, exchange or involuntary conversion of the Premises, shall be entitled to a portion of the proceeds equal to such proportionate value, subject, however, to any applicable law which expressly provides for a different disposition of proceeds.

D. Grantor/Grantee Cooperation Regarding Public Action

Whenever all or any part of the Premises or any interest therein is taken by public authority under the powers of eminent domain or other act of public authority, then the Grantor(s) and the Grantee shall cooperate in recovering the full value of all direct and consequential damages resulting from such action.

E. Allocation of Expenses upon Disposition

All related expenses incurred by the Grantor(s) and the Grantee shall first be paid out of any recovered proceeds, and the remaining proceeds shall be distributed between the Grantor(s) and Grantee in shares equal to such proportionate value.

F. Continuing Trust of Grantee's Share of Proceeds of Affordable Housing Restriction

The Grantee shall use its share of the proceeds in a manner consistent with the affordable housing purposes of this grant.

IX. Assignability:

A. Running of the Burden

The burdens of this Affordable Housing Restriction shall run with the Premises in perpetuity, and shall be enforceable against the Grantor(s) and the successors and assigns of the Grantor(s) holding any interest in the Premises by the Grantee.

B. Execution of Instruments

The Grantee is authorized to record or file any notices or instruments appropriate to assuring the perpetual enforceability of this Affordable Housing Restriction; the Grantor(s) on behalf of themselves and their successors and assigns appoint the Grantee their attorney-in-fact to execute, acknowledge and deliver such instruments on their behalf. Without limiting the foregoing, the Grantor(s) and their successors and assigns agree themselves to execute any such instruments upon request.

C. Running of the Benefit

The benefits of this Affordable Housing Restriction shall be in gross and shall not be assignable by the Grantee, except in the following instances and from time to time:

1. as a condition of any assignment, the Grantee requires that the purposes of this Affordable Housing Restriction continue to be carried out, and
2. the assignee, at the time of the assignment, qualifies under G.L. c184, s.32, as may be amended, as an eligible donee to receive this Affordable Housing Restriction directly.

X. Subsequent Transfers:

The Grantor(s) agree to incorporate by reference the terms of this Affordable Housing Restriction in any deed or other legal instrument by which they divest themselves of any interest in all or a portion of the Premises.

XI. Mortgagee Consent:

Homeowner represents and warrants that it has obtained the consent or subordination of all existing mortgagees, if any, of the Premises to the execution and recording of this Affordable Housing Restriction and to the terms and conditions of this Restriction and that all such mortgagees have executed a consent or subordination to this Restriction which shall be recorded herewith as documents _____ and _____.

XII. Estoppel Certificates:

Upon request by the Grantor(s), the Grantee shall within twenty (20) days execute and deliver to the Grantor(s) any document, including an estoppel certificate, which certifies the Grantor(s) compliance with any obligation of the Grantor(s) contained in this Affordable Housing Restriction.

XIII. Effective Date:

This Affordable Housing Restriction shall be effective when the Grantor and the Grantee have executed it, the administrative approvals required by G.L. c.184, s.32 have been obtained and it has been recorded, or if registered land, it has been registered.

XIV. Recordation:

The Grantee(s) shall record this instrument in a timely fashion in the Middlesex County Registry of Deeds.

Executed under seal this ____ day of _____, 200_.

COMMONWEALTH OF MASSACHUSETTS

, ss. _____, 200_

Then personally appeared the above-named (Homeowner) and acknowledged the foregoing instrument to be (their) free act and deed before me.

Notary Public

My Commission Expires:

ACCEPTANCE OF GRANT BY TOWN OF STOW

The above Affordable Housing Restriction is accepted this _____ day of _____, 200_.

Town of Stow, Massachusetts

By:

COMMONWEALTH OF MASSACHUSETTS

Then personally appeared the above-named Agent for the Town of Stow and acknowledged the foregoing instrument to be (their) free act and deed before me.

Notary Public

My Commission Expires:

APPROVAL BY TOWN OF STOW BOARD OF SELECTMEN OF ACCEPTANCE
OF GRANT

We., the undersigned, being a majority of the Board of Selectmen of the town of Stow, Massachusetts, hereby certify that at a meeting duly held on _____, 200_, the Selectmen voted to approve the foregoing Affordable Housing Restriction to the Town of Stow pursuant to G.L. c.184, s.32.

By the Selectmen:

COMMONWEALTH OF MASSACHUSETTS

Then personally appeared the above-named Selectmen for the Town of Stow and acknowledged the foregoing instrument to be their free act and deed before me.

Notary Public

My Commission Expires:

APPROVAL BY SECRETARY OF THE DEPARTMENT OF HOUSING AND
COMMUNITY DEVELOPMENT OF AFFORDABLE HOUSING RESTRICTION

The undersigned, Secretary of the Department of Housing and Community Development of the Commonwealth of Massachusetts, hereby certifies that the foregoing Affordable Housing Restriction to the Town of Stow has been approved in the public interest pursuant to G.L. c.184, s.32.

Secretary of the Department of Housing and Community Development
Date: _____, 200__

COMMONWEALTH OF MASSACHUSETTS

Then personally appeared the above-named Secretary of the Department of Housing and Community Development and acknowledged the foregoing instrument to be their free act and deed before me.

Notary Public

My Commission Expires:

EXHIBIT A: (Deed Description and plot plan)