

## **AFFORDABLE HOMESITE COVENANT**

This Affordable Homesite Covenant (the "Covenant") is entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2019, by and between **ROBERT LIONETTE and HEATHER QUINN**, having a mailing address of P.O. Box 152, Chilmark, Massachusetts 02535 ("Owner") and the **TOWN OF CHILMARK**, a municipal corporation, having a principal place of business at 401 Middle Road, Chilmark, Massachusetts and a mailing address of P.O. Box 119, Chilmark, MA 02535 (the "Town"). This Covenant is attached to and made a part of that certain deed relating to a Lot in the Town of Chilmark from conveyed to Owner from CHARLES F. PACHICO and KIM M. PACHICO (the Grantor), which deed is dated May 18, 2012 and recorded with the Dukes County Registry of Deeds in Book 1280, Page 562.

Whereas, the Town has enacted zoning by-laws in furtherance of the Town's goals of providing affordable housing to individuals and families of low and moderate incomes by facilitating the development of such affordable housing, which zoning by-laws include but are not limited to the creation of Homesite Housing Lots, as defined in Section 6.9 of the Chilmark Zoning By-laws, which section provides that the property shall be subject to a Long-term Deed Restriction in the record title of the land, limiting purchase, rental or transfer to persons qualified to own or rent affordable housing;

Whereas, the Town approved the creation of a Homesite Housing Lot being the real property located at 7 Ridge Hill Road, Chilmark, MA 02535, as more particularly described in Exhibit A attached hereto and incorporated herein by reference (the "Premises"), and Owner purchased the Premises at a consideration which is less than the fair market value of the Premises, as evidenced in a deed from Charles F. Pachico and Kim M. Pachico, dated May 18, 2012, and recorded in the Dukes County Registry of Deeds in Book 1280, Page 562;

Whereas, through inadvertence, an Affordable Homesite Covenant or Deed Rider restricting the Premises was never recorded at or around the time of purchase of the Premises by the Owner and Grantee now owns the above-referenced parcel ("Parcel") of land in Chilmark which has been designated by the Chilmark Zoning Board of Appeals as an Affordable Homesite ("Premises"), and

Whereas, the Owner understands and acknowledges that Owner is the beneficiary of the aforementioned Affordable Homesite Housing that is intended not only to benefit Owner, but to be available for future Eligible Purchasers in need of Affordable Housing;

Whereas, the Premises is restricted as an Affordable Homesite Housing Lot as shown on "Plan of Land in Chilmark, Mass. Prepared for Charles F. & Kim M. Pachico Scale: 1" = 60' March 5, 2012 Schofield, Barbini & Hoehn Inc." recorded in the Dukes County Registry of Deeds in Book 17, Page 6, and construction of the undersized lot was only permitted as a result of the Special Permit dated October 11, 2011, and recorded herewith; and

Whereas, these covenants are intended to assure the proper use of the Premises for Affordable Housing both now and in the future and in furtherance of these objectives the Owner enters into this Covenant with full knowledge that, among others, its provisions restrict and limit

Owner's ability to alienate, refinance, purchase or transfer the Premises in order to ensure that future owners may also be Eligible Purchasers and to preserve the affordability thereof pursuant to the terms and conditions in said Covenant.

Now Therefore, the Owner, in accordance with the provisions of Section 6.9 of the Chilmark Zoning Bylaws, in consideration of the granting of the Special Permit and the purchase of the Premises for less than fair market value, and other good and valuable consideration, the receipt and sufficiency of which consideration are hereby acknowledged, on behalf of Owner, Owner's successors and assigns, agrees that the Premises shall be subject to the following provisions, rights, covenants, agreements, restrictions, conditions, reservations, obligations, liens and other matters set forth herein (collectively the "restrictions") restrictions which are hereby imposed for the benefit of the Town of Chilmark ("Town") and shall be enforceable by the Town, and shall be secured by a mortgage granted by the Owner to the Town, to be recorded herewith.

1. Transfer: The Grantee shall not sell or otherwise transfer ownership other than (a) to an Eligible Purchaser who is certified in writing to be such by the Chilmark Housing Committee ("CHC"), or (b) to a nonprofit or government organization which organization shall resell the Parcel to an Eligible Purchaser without profit to the organization.

As used in this Covenant, an "Eligible Purchaser" shall mean a person or persons qualified by the CHC to own affordable housing pursuant to the CHC's Implementation Guidelines for the Homesite Housing Bylaw, as said Guidelines may be amended from time to time.

2. Construction: A Certificate of Occupancy must be obtained within three years of obtaining the Building Permit, which Building Permit must be obtained within one and a half years from when Grantee took title to the Premises (which transfer of title took place on August 7, 2014). Failure to comply with this provision may, at the discretion of the CHC cause the designation of Grantee as Eligible Purchaser to lapse, and, in that event, said Homesite Housing Lot shall be awarded to an Eligible Purchaser selected by Grantee, or if Grantee fails or declines to make such a selection, then, by lottery to be conducted by the Town Selectmen. The construction on the Premises shall be limited to only one dwelling unit and usual and customary outbuildings.

If the designation lapses in accordance with the provisions set forth in the preceding paragraph, then in that event the new Eligible Purchaser shall pay to the Grantee an amount equal to the Cost Basis (as defined in Paragraph 4. hereof) plus \$40,000.

3. Occupancy: Upon completion of the dwelling in accordance with Paragraph 2. above, Grantee shall occupy the dwelling as Grantee's primary residence. The Grantee shall not rent, lease or otherwise let the Premises, or any portion thereof, except as provided in this Covenant.

4. Resale and Transfer: Grantee may market the Premises to an Eligible Purchaser at any time, provided that prior written notice is given to the CHC. Grantee shall have six months (this period commences on the date on which the CHC receives the written notice) during which to find an Eligible Purchaser to purchase the Premises for the Maximum Resale Price (as defined herein). If, after six (6) months, an Eligible Purchaser cannot be located by the Grantee, the Town shall have a sixty (60) day option to purchase the Premises for the Maximum Resale Price or to find an Eligible Purchaser. In the event that there is more than one interested Eligible Purchaser, the

buyer shall be selected by a lottery conducted by the Town Selectmen at a public meeting. If the Town does not exercise its option to purchase the Premises, the Dukes County Regional Housing Authority shall have a thirty (30) day option to purchase the Premises at the Maximum Resale Price or to find an eligible purchaser (pursuant to the guidelines, rules and regulations of said housing authority) to purchase the Premises at the Maximum Resale Price. If neither the Town nor the housing authority exercises its option to purchase within the given time periods, the Grantee may at that time sell the Premises at a price not to exceed the Maximum Resale Price to an ineligible purchaser who agrees to meet all other terms of this Covenant, including but not limited to the obligation to reside full time on the Premises, the provisions for resale and the restrictions regarding leasing. If no such purchaser can be found, then, in that event only, the Grantee may sell the Premises on the open market without restrictions.

As used in this Covenant, the term “Maximum Resale Price” shall mean a price not to exceed an amount which would be affordable by an Eligible Purchaser with a family size appropriate to the number of bedrooms in Premises as determined by the Dukes County Regional Housing Authority at the time of resale.

5. Requirement of Resale and Transfer Restriction Certification: Except as otherwise stated herein, the Premises or any interest therein shall not at any time be sold, transferred, disposed of or conveyed by the Grantee, and no sale, transference, disposal or other conveyance shall be valid unless the sale, transfer, disposal or conveyance is to an Eligible Purchaser for no more than the Maximum Resale Price in accordance with the terms set forth herein. Further, any conveyance, sale or transfer to an Eligible Purchaser shall be valid and be deemed in accordance with the terms of this Rider only if a Certificate is obtained and recorded, signed and acknowledged by the Town or its agent or designee which refers to the Premises, the Grantee, the Eligible Purchaser thereof, and the Maximum Resale Price therefor, and states either that: (i) the proposed conveyance, sale or transfer of the Premises to the Eligible Purchaser is in compliance with the restrictions contained in this Rider; or (ii) the Town waives the right to enforce the restrictions set forth herein or any of them in connection with the proposed conveyance, sale or transfer, provided that in no event shall such waiver by the Town denigrate the purpose of this Covenant to limit the Premises use as perpetually affordable housing for Eligible Purchasers.

Any good faith purchaser of the Premises, any lender or other party taking a security interest in such Premises and any other third party may rely upon a Certificate of the type referred to in this Covenant as conclusive evidence of the matters stated therein and may record such Certificate in connection with conveyance of the Premises, provided that the consideration recited in the deed or other instrument conveying the Premises shall not be greater than the consideration stated in the Certificate.

Within ten (10) days of the conveyance or transfer of the Premises pursuant to this Paragraph 5, the Grantee shall deliver to the Town a true and certified copy of the deed of the Premises as recorded, together with information as to the place of recording thereof in the public records.

6. Approval of Financing and Refinancing Provisions: In order to assure that Grantee does not finance or refinance the Premises in excess of affordability for an Eligible Purchaser, the Town, acting through the Town’s Selectmen upon recommendation of the CHC, is required to give

prior approval to any financing or refinancing obtained by Grantee.

7. Rental Limitations: The Premises may be rented for up to six (6) weeks per year at an affordable rate as determined by the CHC. The Premises may be rented beyond the 6 weeks per year only in the event of hardship as determined by the Town Selectmen and only to applicants qualified, and at a rate approved, by the Dukes County Regional Housing Authority. Any such rental must be pre-approved by the CHC. A portion of the Premises may be rented to an individual(s) unrelated to Grantee provided said individual(s) is/are income qualified.

8. Rights of Mortgagees in Foreclosure: Notwithstanding anything herein to the contrary, if the holder of record of a first mortgage granted to a state or national bank, state or federal savings and loan association, cooperative bank, mortgage company, trust company, insurance company or other institutional lender or its successors or assigns shall propose to acquire the Premises by reason of foreclosure or similar remedial action under the provisions of such mortgage or upon conveyance of the Premises in lieu of foreclosure, such entity must first give to the Town sixty (60) days to cure such default. Provided that the aforementioned notice is properly given, then the restrictions and covenants herein contained shall not apply upon such acquisition of the Premises by any purchaser of the Premises at a foreclosure sale conducted by such holder, or any purchaser of the Premises from such holder, and the Premises shall thereupon and thereafter be free from all such restrictions.

In the event such holder, after having first given the aforesaid notice, conducts a foreclosure or other proceeding enforcing its rights under such mortgage and the Premises is sold for a price in excess of the sum of the outstanding principal balance of the note secured by such mortgage plus all future advances, accrued interest and all costs and expenses which the holder is entitled to recover pursuant to the terms of the note and the mortgage, such excess shall be paid to Grantee up to an amount that is no greater than the Maximum Resale Price less the sum of the outstanding principal balance of the note secured by such mortgage plus all future advances, accrued interest and all costs and expenses which the holder is entitled to recover pursuant to the terms of the note and the mortgage. Any additional sum in excess of that adjusted amount shall be paid to the Town or its designee in consideration of the loss of the value and benefit of the restrictions and covenants herein contained. To the extent Grantee possesses any interest in any amount payable to the Town under this Paragraph, to the fullest extent permissible by law, Grantee hereby assigns its interest in such amount to said holder for payment to the Town.

9. Covenants to Run With the Premises: Grantee, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, hereby grants and assigns to the Town, the Town's agents, successors, designees and assigns the right to enforce the restrictions set forth in this Covenant. The rights hereby granted to the Town shall be in addition to and not in limitation of any other rights and remedies available to the Town for enforcement of the restrictions set forth in this Covenant. It is intended and agreed that the agreements, covenants and restrictions set forth above shall be deemed to be covenants running with the Premises and shall be binding upon and enforceable against the Grantee, the Grantee's successors and assigns and any party holding title to the Premises, for the benefit of and enforceable by the Town, the Town's agents, successors, designees and assigns. The restrictions shall be perpetual to the maximum extent permitted by law. To the extent that provisions of this Covenant are deemed to constitute restrictions subject to the limiting provisions of M.G.L. Chapter 184, Sections 26

through 30, then all such restrictions shall be binding upon the Town and Grantee for a term of not less than one hundred fifty (150) years from the date of recording hereof and shall remain in full force and effect in accordance with the provisions of M.G.L. Chapter 184, Section 27, as it may be amended from time to time, or as provided in similar successor provisions, which provisions of M.G.L. Chapter 184, Section 27 permit the extension of the period of enforceability of said restrictions by the recording of an extension in accordance with the provisions of said law before the expiration of the first thirty (30) years from the date of recording hereof, and before the expiration of each succeeding twenty (20) year period thereafter, or for such other maximum further periods of time as may be allowed by any amendments of said law or by any successor provisions. Grantee hereby agrees that any requirements of the law of the Commonwealth of Massachusetts to be satisfied in order for the provisions of this Covenant to constitute restrictions and covenants running with the land shall be deemed to be satisfied in full and that any requirements of privity of estate are also deemed to be satisfied in full.

Without limiting any other rights or remedies of the Town, its agents, successors, designees and assigns, any sale or other transfer or conveyance of the Premises in violation of the provisions of this Covenant in the absence of a Certificate from the Town approving such sale, transfer or conveyance as provided herein or waiving the restrictions set forth herein, shall, to the maximum extent permitted by law, be voidable by the Town, the Town's agents, successors, designees or assigns by suit in equity or law to enforce such restrictions.

10. Condition of Premises: Grantee agrees that throughout the term of this Covenant, Grantee shall maintain the Premises, and improvements thereon, in good, safe and habitable condition in all respects and in full compliance with all applicable laws, by-laws, rules and regulations of any governmental authority with jurisdiction over matters concerning the condition of the Premises.

11. Notice: Any notices, demands or requests that may be given under this Covenant shall be sufficiently served if given in writing and by hand delivered or posted in the United States mail by registered or certified mail, addressed to the Grantee at the address maintained by the Chilmark Board of Assessors for such Grantee and to the Town addressed to the Executive Secretary of Chilmark, P.O. Box 119, Chilmark, MA 02535, or such other addresses as may be specified by either party by written notice in accordance with these provisions.

12. Further Assurances: Grantee agrees from time to time, as may be reasonably required by the Town, to furnish the Town a written statement, signed and, if requested, acknowledged, setting forth the condition and occupancy of the Premises, information concerning the resale of the Premises and all other information pertaining to the Premises or the Grantee's eligibility for and conformance with the requirements of this Covenant.

13. Waiver: Nothing contained herein shall limit the rights of the Town, acting through its Selectmen and/or CHC, to release or waive, from time to time, in whole or in part, any of the restrictions contained herein with respect to the Premises so long as such waiver does not denigrate the purpose of this Covenant to limit the Premise's use to perpetual affordable housing for Eligible Purchasers.

14. Town's Right to Assign: The Town shall have the right to assign this Covenant or any or all

rights and obligations of the Town herein to the Dukes County Regional Housing Authority, or other government or non-profit organization in the business of affordable housing, to the fullest extent permitted by law.

15. Independent Counsel: GRANTEE ACKNOWLEDGES THAT GRANTEE HAS READ THIS DOCUMENT IN ITS ENTIRETY AND HAS HAD THE OPPORTUNITY TO CONSULT LEGAL AND FINANCIAL ADVISORS OF GRANTEE'S CHOOSING REGARDING THE EXECUTION, DELIVERY AND PERFORMANCE OF THE OBLIGATIONS HEREUNDER.

16. Severability: If any provision hereof or the application thereof to any person or circumstance shall come, to any extent, to be invalid or unenforceable, the remainder hereof, or the application of such provision to the persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each provision hereof shall be valid and enforced to the fullest extent permitted by law and to the fullest extent permitted by the Rule Against Perpetuities.

17. Security: This Covenant is or will be secured by a mortgage encumbering the Parcel, which mortgage is or shall be recorded in the Dukes County Registry of Deeds herewith. In addition, for the purpose of receiving timely notification of filings affecting the Premises, the Town of Chilmark will record with the Dukes County Registry of Deeds a second mortgage on the Parcel and Premises in the amount of \$1.

ACCEPTED AND AGREED:

\_\_\_\_\_  
Robert Lionette, Grantee

\_\_\_\_\_  
Heather Quinn, Grantee

TOWN OF CHILMARK

By its Board of Selectmen

\_\_\_\_\_  
Warren M. Doty, Chair

\_\_\_\_\_  
William N. Rossi

\_\_\_\_\_  
James M. Malkin

CHILMARK HOUSING COMMITTEE

By its Chairman

\_\_\_\_\_  
James Feiner

**COMMONWEALTH OF MASSACHUSETTS**

County of Dukes County, ss.

On this \_\_\_ day of \_\_\_\_\_, 2019, before me, the undersigned notary public, personally appeared Warren M. Doty, 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 signed it voluntarily for its stated purpose as Chair of the Chilmark Board of Selectmen.

\_\_\_\_\_  
[Print Notary Name: \_\_\_\_\_]

My commission expires:

**COMMONWEALTH OF MASSACHUSETTS**

County of Dukes County, ss.

On this \_\_\_\_\_ day of \_\_\_\_\_, 2019, before me, the undersigned notary public, personally appeared Robert Lionette and Heather Quinn, 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 signed it voluntarily for its stated purpose.

\_\_\_\_\_  
[Print Notary Name: \_\_\_\_\_]

My commission expires:

**COMMONWEALTH OF MASSACHUSETTS**

County of Dukes, ss.

On this \_\_\_\_ day of \_\_\_\_\_, 2019, before me, the undersigned notary public, personally appeared James Feiner, proved to me through satisfactory evidence of identification, which were \_\_\_\_\_, 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, as Chair of the Chilmark Housing Committee.

\_\_\_\_\_  
[Notary Public/ print name: \_\_\_\_\_]

My commission expires: