

**SoftSecond® Loan Program  
Subsidy Mortgage**

**THIS MORTGAGE** (the "SoftSecond Subsidy Mortgage") is made this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ between the Mortgagor, \_\_\_\_\_ (herein "Borrower") whose address is \_\_\_\_\_, and the Mortgagee, the Massachusetts Housing Partnership Fund Board, whose address is 160 Federal Street, 2nd floor, Boston, MA 02110 (herein "Provider").

**WHEREAS**, Borrower is indebted to Provider in the principal sum of U.S. \$\_\_\_\_\_ (FULL VALUE SUBSIDY AMOUNT) which indebtedness is evidenced by Borrower's note dated \_\_\_\_\_ (the "SoftSecond Subsidy Note"), providing for repayment of the loan under certain conditions and providing for other conditions of the loan.

**TO SECURE** to Provider the repayment under the SoftSecond Subsidy Note and the performance of the covenants and agreements of Borrower herein contained and in the SoftSecond Subsidy Agreement, of even date among Borrower, Provider, and Bank (the "SoftSecond Subsidy Agreement"), Borrower does hereby mortgage, grant and convey to Provider, with MORTGAGE COVENANTS, upon the Statutory Condition and with Statutory Power of Sale, the following described property located in the County of \_\_\_\_\_, Commonwealth of Massachusetts, which has the address of:

\_\_\_\_\_  
(Street)

\_\_\_\_\_  
(City), Massachusetts

\_\_\_\_\_  
(Zip Code) (herein "Property Address"),

as more particularly described on Exhibit A attached hereto; TOGETHER with all the buildings and improvements now or hereafter erected on the property, and all fixtures, easements, rights, licenses, appurtenances and rents, all of which shall be deemed to be and remain a part of the property covered by this SoftSecond Subsidy Mortgage; and all of the foregoing, together with said 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 that certain First Mortgage and the Second Mortgage, both of even date, by and between the Borrower and \_\_\_\_\_, (the "First Mortgage" and the "Second Mortgage") and any additional permitted encumbrances designated on the attached Exhibit B. Borrower covenants that Borrower warrants and will defend generally the title to the Property against all claims and demands, subject to encumbrances of record.

**COVENANTS.** Borrower and Provider covenant and agree as follows:

**1. Repayment.** In the event that Borrower sells or transfers the Property before the fifth anniversary of the SoftSecond Subsidy Note, the Borrower shall repay to the Provider the entire amount of the loan evidenced by the SoftSecond Subsidy Note which has been applied on Borrower's account according to the SoftSecond Subsidy Note, unless compliance with this provision is waived in writing by the

Provider. In no event, however, shall this amount, when combined with debt secured by the First Mortgage and the Second Mortgage, cause the secured debt on the Property to exceed the then applicable Fannie Mae loan to value requirements. In the event that Borrower sells or transfers the Property after the fifth anniversary of the SoftSecond Subsidy Note, Borrower shall repay to Provider the lesser of a) the amount specified above in this Section 1, or b) twenty (20%) percent of the net appreciation realized on the sale or transfer of the Property or c) the applicable amount in a) or b), above, as adjusted, if necessary, to reflect Fannie Mae requirements. For purposes of this SoftSecond Subsidy Mortgage, the term "net appreciation" shall mean the positive difference between the resale price and the purchase price of the Property, based on good faith, arm's length transactions. In the event that twenty (20%) percent of net appreciation is not greater than the amount above specified in this Section 1, the Borrower shall provide to the Provider, at the Borrower's cost, a professional real estate appraisal to support the resale price. The Provider reserves the right to base the calculation of net appreciation, for purposes of this Section, on the higher of the resale price or the appraised value of the Property.

**2. Prior Mortgages and Deeds of Trust; Charges; Liens.** Borrower shall perform all of Borrower's obligations under the First Mortgage and the Second Mortgage, both of which have priority over this SoftSecond Subsidy Mortgage, including Borrower's covenants to make payments when due. 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 SoftSecond Subsidy Mortgage, and leasehold payments or ground rents, if any.

**3. Hazard Insurance.** Borrower shall keep improvements now existing or hereafter erected on the Property insured against loss by fire, hazards included within the term "extended coverage," and such other hazards as Provider may require and in such amounts and for such periods as Provider may require, subject to the terms and conditions of the First Mortgage and the Second Mortgage.

The insurance carrier providing the insurance shall be chosen by Borrower subject to approval by Provider and any prior mortgagee or lien holder; provided, that such approval shall not be unreasonably withheld. All insurance policies and renewals thereof shall be in a form acceptable to Provider and shall include a standard mortgage clause in favor of and in a form acceptable to Provider. Provider shall have the right to hold the policies and renewals thereof, subject to the terms of any mortgage, deed of trust or other security agreement with a lien which has priority over this SoftSecond Subsidy Mortgage.

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

If the Property is abandoned by Borrower, or if Borrower fails to respond to Provider within 30 days from the date notice is mailed by Provider to Borrower that the insurance carrier offers to settle a claim for insurance benefits, subject to the rights of the mortgagee under the First Mortgage and the Second Mortgage. Provider is authorized to collect and apply the insurance proceeds at Provider's option either to restoration or repair of the Property or to the sums secured by this SoftSecond Subsidy Mortgage.

**4. Preservation and Maintenance of Property; Owner Occupied.** 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 on a unit in a condominium or a planned unit development Borrower shall perform all of Borrower's obligations under the declaration or covenants creating or governing the condominium or planned unit development, the by-laws and regulations of the condominium or planned unit development, and constituent documents. Borrower shall use the Property as its primary residence during the term of the SoftSecond Subsidy Note so long as Borrower continues to own the Property.

**5. Protection of Provider's Security.** If Borrower fails to perform the covenants and agreements contained in this SoftSecond Subsidy Mortgage, or if any action or proceeding is commenced which materially affects Provider's interest in the Property, then Provider, at Provider's option, upon notice to Borrower, may make such appearances, disburse such sums, including reasonable attorneys' fees (including the time of any in-house counsel of lender, charged at the same rate as comparable outside attorneys), and take such action as is necessary to protect Provider's interest, and any expenses so incurred by Provider shall be secured by this SoftSecond Subsidy Mortgage.

**6. Inspection.** Provider may make or cause to be made reasonable entries upon and inspections of the Property, provided that Provider shall give Borrower notice prior to any such inspection specifying reasonable cause therefore related to Provider'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 Provider, subject to the terms and conditions of the First Mortgage and the Second Mortgage.

**8. Borrower Not Released; Forbearance By Provider 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 SoftSecond Subsidy Mortgage granted by Provider to any successor in interest of Borrower shall not operate to release, in any manner, the liability of the original Borrower and Borrower's successors in interest. Provider 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 SoftSecond Subsidy Mortgage by reason of any demand made by the original Borrower and Borrower's successors in interest. Any forbearance by Provider 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 SoftSecond Subsidy Note and this SoftSecond Subsidy Mortgage may not be transferred, assigned, or assumed without the written consent of the Provider. The covenants and agreements herein contained shall bind, and the rights hereunder shall inure to, the respective successors and assigns of Provider and Borrower. All covenants and agreements of 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 Borrower provided for in this SoftSecond Subsidy Mortgage shall be given by delivering it or by mailing such notice by certified mail addressed to Borrower at the Property Address, and (b) any notice to Provider shall be given by hand-delivery or certified mail to Provider's address stated herein or to such other address as Provider may designate by notice to Borrower as provided herein. Any notice provided for in this SoftSecond Subsidy Mortgage shall be deemed to have been given to Borrower of Provider when given in the manner designated herein.

**11. Governing Law; Severability.** This SoftSecond Subsidy 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 SoftSecond Subsidy Mortgage. In the event that any provision or clause of this SoftSecond Subsidy Mortgage or the SoftSecond Subsidy Note conflicts with applicable law, such conflict shall not affect other provisions of this SoftSecond Subsidy Mortgage or the SoftSecond Subsidy Note which can be given effect without the conflicting provision, and to this end the provisions

of this SoftSecond Subsidy Mortgage and the SoftSecond Subsidy Note are declared to be severable. As used herein, "costs," "expenses" and "attorneys' fees" (including the time of any in-house counsel of lender, charged at the same rate as comparable outside attorneys) include all sums to the extent not prohibited by applicable law or limited herein.

**12. Borrower's Copy.** Borrower shall be furnished a conformed copy of the SoftSecond Subsidy Note and of this SoftSecond Subsidy Mortgage at the time of execution or after recording of same.

**13. Breach; Remedies.** Subject to the terms and conditions of the First Mortgage and the Second Mortgage, upon Borrower's breach of the Statutory Condition or any covenant or agreement of Borrower in the SoftSecond Subsidy Note, the SoftSecond Subsidy Agreement or this SoftSecond Subsidy Mortgage that is capable of being cured, including the covenant to pay when due any sums secured by this SoftSecond Subsidy Mortgage, Provider, prior to acceleration shall give notice to Borrower as provided in paragraph 10 hereof specifying; (1) the breach; (2) the action required to cure such breach if capable of being cured; (3) a date, not less than 10 days from the date the notice is mailed to Borrower, by which such breach must be cured, and (4) 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 SoftSecond Subsidy Mortgage and sale of the Property. The notice shall further inform 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 Borrower to acceleration and sale. If such breach is not cured on or before the date specified in the notice, Provider, at Provider's option, may declare all of the sums secured by this SoftSecond Subsidy Mortgage to be immediately due and payable without further demand and may invoke the STATUTORY POWER OF SALE and any other remedies permitted by applicable law. Provider shall be entitled to collect all reasonable costs and expenses incurred in pursuing the remedies provided in this paragraph 13, including, but not limited to, reasonable attorneys' fees (including the time of any in-house counsel of lender, charged at the same rate as comparable outside attorneys), all of which shall be secured by this SoftSecond Subsidy Mortgage. If Provider invokes the STATUTORY POWER OF SALE, Provider shall mail a copy of a notice of sale to Borrower, and to any other person required by applicable law, in the manner provided by applicable law. Provider shall publish the notice of sale and the Property shall be sold in the manner prescribed by applicable law. Provider or Provider'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 (including the time of any in-house counsel of lender, charged at the same rate as comparable outside attorneys) and costs of title evidence; (b) to all sums secured by this SoftSecond Subsidy Mortgage; and (c) the excess, if any, to the person or persons legally entitled thereto.

**14. Borrower's Right to Reinstate.** Notwithstanding Provider's acceleration of the sums secured by this SoftSecond Subsidy Mortgage due to Borrower's breach, subject to the terms and conditions of the First Mortgage and the Second Mortgage, Borrower shall have the right to have any proceedings begun by Provider to enforce this SoftSecond Subsidy Mortgage discontinued at any time prior to the earlier to occur of (i) sale of the Property pursuant to the Statutory Power of Sale contained in this SoftSecond Subsidy Mortgage, or (ii) entry of a judgment enforcing this SoftSecond Subsidy Mortgage if: (a) Borrower pays Provider all sums secured hereby which would be then due under this SoftSecond Subsidy Mortgage and the SoftSecond Subsidy Note had no acceleration occurred; (b) Borrower cures all breaches of any other covenants or agreements of Borrower contained in the SoftSecond Subsidy Note, the SoftSecond Subsidy Agreement or this SoftSecond Subsidy Mortgage to the extent capable of being cured; (c) Borrower pays all reasonable expenses incurred by Provider in enforcing the covenants and agreements of Borrower contained in this SoftSecond Subsidy Mortgage, and in

enforcing Provider's remedies as provided in paragraph 13 hereof, including, but not limited to, reasonable attorneys' fees (including the time of any in-house counsel of lender, charged at the same rate as comparable outside attorneys); and (d) Borrower takes such action as Provider may reasonably require to assure that the lien of this SoftSecond Subsidy Mortgage, Provider's interest in the Property and Borrower's obligation to pay the sums secured by this Soft Second Subsidy Mortgage shall continue Provider's interest in the Property and Borrower's obligation to pay the sums secured by this SoftSecond Subsidy Mortgage shall continue unimpaired. Upon such payment and cure by Borrower, the SoftSecond Subsidy Note, this SoftSecond Subsidy Agreement, this SoftSecond Subsidy Mortgage and the obligations secured hereby shall remain in full force and effect as if no acceleration had occurred.

**15. Release.** Upon the expiration of the term of the SoftSecond Subsidy Note or upon proper payment of all sums secured by this SoftSecond Subsidy Mortgage, Provider shall discharge this SoftSecond Subsidy Mortgage without cost to Borrower. Borrower shall pay all costs of recordation, if any.

**16. Statutory Condition.** This SoftSecond Subsidy Mortgage is upon the STATUTORY CONDITION and upon the further condition that all covenants and agreements on the part of the Mortgagor herein undertaken shall be kept and fully and seasonably performed and that no breach of any other of the conditions specified herein shall be permitted, for any breach of which conditions, the Mortgagee shall have the STATUTORY POWER OF SALE.

**IN WITNESS WHEREOF**, Borrower has executed this SoftSecond Subsidy Mortgage under seal.

\_\_\_\_\_  
Borrower

\_\_\_\_\_  
Borrower

The SoftSecond Subsidy Note secured by the SoftSecond Subsidy Mortgage is in the amount of \$\_\_\_\_\_ (Full Value Subsidy Amount), and has a term of thirty years or date of sale or transfer or foreclosure sale of the Property, whichever first occurs.

**COMMONWEALTH OF MASSACHUSETTS**

\_\_\_\_\_, ss

\_\_\_\_\_, 200\_\_\_\_\_

On this \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_\_\_ before me the undersigned notary public, personally appeared the above-named \_\_\_\_\_, and proved to me by satisfactory evidence of identification, consisting of: [circle one] (a driver's license) (a passport) (my personal knowledge) (other: \_\_\_\_\_), to be the person whose name is signed on the preceding or attached document, and acknowledged to me that s/he signed it voluntarily for its stated purpose.

\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_

**EXHIBIT A**

(Property Description—See attached)

**EXHIBIT B**

(Permitted Encumbrances—See attached)