

HOUSING COVENANT

THIS HOUSING COVENANT (“Covenant”) is entered into this ___ day of June, 2022, by and between XXXXXXXX, having a mailing address of (“Owner”); and Merry Farm LLC, a Massachusetts limited liability company, having a mailing address of c/o Jeffrey Byrne DuBard, 301 S. Gate Road, Vineyard Haven, MA 02568 (“Seller”).

WHEREAS, high real estate values on the Island of Martha’s Vineyard make ownership there of year-round housing unattainable by persons of moderate income and means, resulting in a housing crisis. These persons are priced out of the housing market;

WHEREAS, strong demand for profitable short-term vacation rentals of Island housing has diminished the stock of year-round rental availability, resulting in insufficient available housing to maintain the year-round community of teachers, service providers, police, nurses, and workers needed for the Island’s economy to function;

WHEREAS, the income and means of the resident working community on the Island is no match for the fortunes made off-Island driving the demand for seasonal housing, pushing upward the costs of the limited supply of housing in the rental and ownership markets;

WHEREAS, this housing Covenant is imposed by a private Seller on a residential dwelling and land which abuts land owned by Seller;

WHEREAS, Owner purchased from Seller, for consideration less than its fair market value, the real property located at XXX Merry Farm Road in West Tisbury, Massachusetts, as more particularly described in a deed (the “Deed”) dated _____, 2022, and recorded with the Dukes County Registry of Deeds in Book ____, Page _____ (the “Premises”);

WHEREAS, Owner has committed to reside at the Premises year-round, and not to rent the Premises on a seasonal or short-term basis;

WHEREAS, the purpose of this Covenant is to address the housing crisis, to some small degree, by maintaining the Premises in year-round use by Island residents, passing on to future owners of the Premises the favorable terms of purchase enjoyed by Owner, and limiting the pool of possible purchasers and tenants of the Premises to persons and households whose income and assets do not exceed certain levels;

NOW THEREFORE, for good and valuable consideration, including the purchase of the Premises by Owner for less than its fair market value, the receipt and sufficiency of which consideration are hereby acknowledged, the Owner, including his/her/their heirs, successors and assigns, hereby grants this Covenant to the Seller and covenants and agrees that the Premises shall be subject to the following terms, conditions, and other

matters set forth herein (collectively the “restrictions”), which are imposed for the benefit of, and shall be enforceable by Seller, and their successors and assigns.

1. Eligible Purchaser: As used in this Covenant, “Eligible Purchaser” shall mean an individual or household who at the time of qualification has an annual income equal to or less than 240% of the median household income for Dukes County as calculated and adjusted for household size from time to time by HUD, and owning assets with value not in excess of an amount equal to eighty (80%) of the appraised value of the Premises, and which individual or household has been qualified and approved by the Seller in writing to own the Premises in accordance with the restrictions of this Covenant. Said individual or household must provide to Seller) such certifications as to income, assets, and residency as Seller may require for it to determine eligibility as an Eligible Purchaser. To be considered an Eligible Purchaser, the individual or household must intend to occupy and thereafter must occupy the Premises as his, her or their principal residence, and thereafter an Eligible Purchaser must occupy the Premises as his, her or their principal residence for at least eleven (11) months of each calendar year.

Vacation rental, short-term or seasonal rental of the Premises, and any use of the Premises or activity thereon inconsistent with exclusive year-round residential use is prohibited.

For purposes of this Covenant, household size is determined as the number of bedrooms plus one, i.e., a two bedroom house shall be deemed appropriate for a three person household for the purposes of income eligibility and price setting; a three bedroom house shall be deemed appropriate for a four person household; a four bedroom house shall be deemed appropriate for a five person household; and a five bedroom house shall be deemed appropriate for a six person household.

2. Resale and Transfer Procedure: When the Owner, their successors, or assigns, shall desire to sell, dispose of or otherwise convey the Premises, or any portion thereof, the Owner shall notify Seller of the Owner’s intention to so convey the Premises. The Premises shall be marketed for sale by Owner expressly subject to the terms and conditions of this Covenant and be sold to an Eligible Purchaser for an amount which shall not exceed that which the hypothetical credit-worthy Eligible Purchaser, having a household size appropriate for the Premises, is able to pay in accordance with the limitations contained in provision No. 1 hereof (the “Eligible Purchaser Price”).

If more than one Eligible Purchaser is located, for the purchase of the Premises, Merry Farm LLC shall determine, in its sole discretion, who is the Eligible Purchaser entitled to the conveyance of the Premises.

3. Resale and Transfer Restrictions: The Premises or any interest therein shall not at any time be sold, transferred, or otherwise conveyed by the Owner, or by Owner’s successors and assigns except as otherwise herein provided. No such attempted sale, transfer, or other conveyance shall be valid, unless a certificate is recorded, signed and

acknowledged by Seller certifying that the conveyance is in compliance with the restrictions contained in this Covenant (“Compliance Certificate”).

Any good faith purchaser of the Premises, any lender or other party taking a security interest in the Premises, and any other third party may rely upon such a Compliance Certificate as conclusive evidence of the matters stated therein.

4. Restrictions to Run with the Premises, Duration of Restrictions: The Owner agrees and acknowledges that the restrictions in this Covenant are essential to the fulfillment of the purposes of this Covenant and are conditions and restrictions on the use of the Premises which shall run with the land and be binding upon and enforceable against the Owner, the Owner's successors and assigns and any party holding title to the Premises.

The rights of Merry Farm LLC to enforce the terms, conditions, and restrictions of this Covenant are attached to and run with the land owned by Merry Farm LLC, its successor and assigns, which land abuts the Premises and benefits from the restrictions, and shall endure for a term of 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 the 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.

5. Enforcement: (a) The rights hereby granted shall include the right of Seller to enforce this Covenant independently by appropriate legal proceedings and to obtain injunctive and other appropriate relief on account of any violation, it being agreed that there may be no adequate remedy at law for such violation, and shall be in addition to, and not in limitation of, any other rights and remedies available Seller.

(b) Without limiting any other rights or remedies of the Seller, or their successors and assigns, in the event of any sale, conveyance, or other transfer or occupancy of the Premises in violation of the provisions of this Covenant, the Seller shall be entitled to the following remedies, which shall be cumulative and not mutually exclusive:

- (i) specific performance of the provisions of this Covenant;
- (ii) the right to void any contract for the sale of the Premises, and any sale, conveyance or other transfer of the Premises in violation of the provisions of this Covenant in the absence of a Compliance Certificate, , by an action in equity to enforce this Covenant.

(c) In addition to the foregoing, the Owner agrees and shall be obligated to pay all fees and expenses (including legal fees) of the Seller in the event of successful enforcement action is taken against the Owner or the Owner's successors or assigns.

6. Notice: Any notices, demands, or requests that may be given under this Covenant shall be sufficiently serviced if given in writing and by hand delivered or posted in the United States mail by registered or certified mail addressed to the Seller and Owner at the addresses written above, or such other addresses as may be specified by either party by such notice.

7. Severability: If any provisions hereof or the application thereof to any person or circumstances shall come, to any extent, to be invalid or unenforceable, the remainder hereof, or the application or 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.

8. INDEPENDENT COUNSEL: THE OWNER ACKNOWLEDGES THAT HE, SHE OR THEY HAVE READ THIS DOCUMENT IN ITS ENTIRETY AND HAS HAD THE OPPORTUNITY TO CONSULT LEGAL AND FINANCIAL ADVISORS OF HIS, HER OR THEIR CHOOSING REGARDING THE EXECUTION, DELIVERY AND PERFORMANCE OF THE OBLIGATIONS HEREUNDER.

9. Waiver: The waiver by the Seller of any right hereunder, or the failure of either to take action with respect to any breach of any provisions herein contained, shall not be deemed to be a waiver of such right, term, covenant, condition, provision, restriction, reservation, lien or other matter, or subsequent breach of same, or of any other term, covenant, condition, provision, restriction, reservation, obligation, lien or other matter herein contained.

10. Captions: All captions, headings or titles used in this Covenant are intended solely for convenience of reference and shall not affect that which is set forth in any of the provisions hereof.

11. Modifications and Amendments: This Covenant may only be modified, altered or amended by an agreement in writing executed and duly acknowledged by the parties hereto.

12. Binding Agreement: This Covenant shall bind and inure to the benefit of the parties hereto and their successors and assigns as are permitted by this Covenant.

13. Singular Includes Plural: Unless the context requires a contrary construction, the singular shall include the plural and the plural the singular; and the masculine, feminine or neuter shall include the masculine, feminine and neuter.

14. Choice of Law: This agreement shall be governed by, construed in accordance with, and enforced under the laws of the Commonwealth of Massachusetts.

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