

## REVENUE SHARING AGREEMENT

This Revenue Sharing Agreement ("Sharing Agreement") is made as of the ~~5<sup>th</sup>~~ <sup>5<sup>th</sup></sup> day of ~~January~~ <sup>FEBRUARY</sup> 2007 by and between the City of Newton, a municipal corporation with an address of City Hall, 1000 Commonwealth Avenue, Newton, MA 02459, acting by and through its Director of Planning and Development, but without personal liability to him ("City"), and Covenant Commonwealth Newton, Inc., with an address of 34 Washington Street, Brighton, MA 02135 ("Developer").

WHEREAS, Developer intends to purchase and develop land known and numbered 27-29 and 35 Commonwealth Avenue in accordance with and subject to the rights and conditions contained in a certain Comprehensive Permit issued pursuant to G.L.c. 40B, §§ 20-23 by the City of Newton Zoning Board of Appeals and the plans referred to therein; and

WHEREAS, by the terms of the Comprehensive Permit, Developer will rehabilitate or construct 15 units which will be affordable to low and moderate income homebuyers (the "Project"); and

WHEREAS, Developer, in conjunction with the project sponsor, B'nai B'rith Housing New England, applied to the City's Community Preservation Committee ("CPC") for the appropriation of \$1,200,000 of Community Preservation Act ("CPA") funding to assist in the acquisition and creation of such affordable housing; and

WHEREAS, as a condition of receipt of the CPA funding, the CPC and Developer agreed to a revenue sharing proposal as set forth more particularly herein;

NOW THEREFORE, in consideration of the agreements hereinafter set forth, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Terms not otherwise defined in this Agreement shall have the meaning set forth in a certain Regulatory Agreement for Comprehensive Permit Projects in Which Funding is Provided through a Non-Governmental Entity between Developer, City, and the Massachusetts Housing Finance Agency ("Regulatory Agreement").
2. Developer and City agree to share Allowable Profit from the Project in accordance with the schedule set forth in Exhibit A, attached hereto and made a part hereof.
3. The Developer shall provide sales data for both market rate and affordable units on a monthly basis to City's Director of Planning & Development, together with monthly revenue and expenditure reports showing all sources and uses of funds, for the term of this Agreement.

4. The Developer shall keep such records as are kept in the normal course of business and make its books and records available to City upon request for audit and/or monitoring. The City may examine and make copies of such records and may audit all contracts, procurement records, invoices, materials, payrolls, and any other documents or records necessary or relevant to determine compliance with this Agreement.

5. The term of this Agreement shall be the earlier to occur of: (i) the receipt by the City's CPA Fund from Developer or its designee of \$300,000.00 in revenue sharing; or (ii) the determination of the City, in its sole discretion, pursuant to its receipt, review and approval of the final Cost and Income Certification, as defined in paragraph 4(b) of the Regulatory Agreement, that all monies available to be paid under this Agreement have been paid by Developer to City.

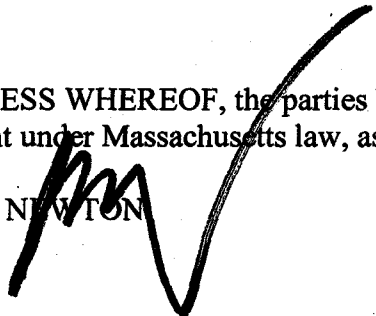
6. Failure to pay any amount due hereunder or failure to provide adequate and sufficient evidence, acceptable to City in its sole discretion, of inability to pay all or any part of the amount due hereunder shall constitute a default under the Mortgage, an Event of Acceleration under the Note, and a breach of the Funding Agreement, all between City and Developer of even date.

7. All notices, demands, and other communications made hereunder shall be in writing and given by hand; by Federal Express, Express Mail, or any other nationally recognized overnight delivery service; by facsimile (provided a copy is also sent via first class mail); or by certified or registered first class mail, return receipt requested, postage prepaid; and addressed to the intended recipient at its notice address, as specified above. Each of the foregoing addresses may be changed upon fifteen (15) days' prior written notice given by any of the foregoing prescribed methods. All notices shall be deemed to have been given, delivered, and received on the earlier of (i) actual receipt or (ii) the tender of delivery by one of the above prescribed methods during normal business hours at the specified address.

8. This Agreement shall be governed by the laws of the Commonwealth of Massachusetts and shall inure to the benefit of, and be binding upon, the undersigned and their respective successors and assigns. Except as otherwise expressly provided herein, the rights of the parties to enforce the provisions of this Agreement shall not at any time be prejudiced or impaired (i) by any act or failure to act on the part of any of the parties, including, without limitation, any forbearance, waiver, consent, compromise, amendment, extension or renewal with respect to Developer's obligations hereunder or (ii) by noncompliance by the Developer with the terms of this Agreement. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

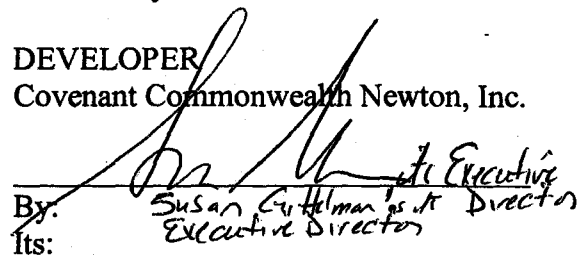
IN WITNESS WHEREOF, the parties hereto have executed this Agreement as a sealed instrument under Massachusetts law, as of the date and year first above written.

CITY OF NEWTON



Michael Kruse  
Director of Planning & Development

DEVELOPER  
Covenant Commonwealth Newton, Inc.

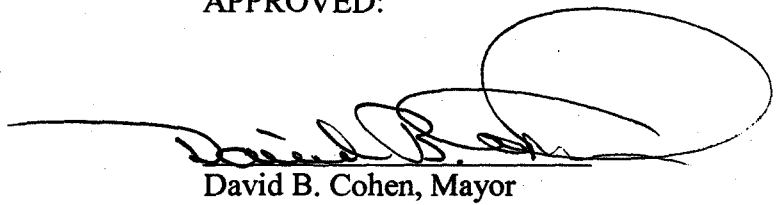


By: Susan G. Helman, Executive Director  
Its: Executive Director



Assistant City Solicitor

APPROVED:



David B. Cohen, Mayor

## EXHIBIT A

Developer agrees to pay City's CPA Fund up to \$300,000 according to the following revenue sharing distribution schedule:

Allowable Profit shall be divided in the following order of priority:

- 1) The first \$500,000 shall be reimbursement of overhead and related costs payable to Developer or its designee.
- 2) The next \$1,000,000 shall be Developer's Fee payable to Developer or its designee.
- 3) The next \$600,000 shall be divided pro rata between the City's CPA Fund and the Developer.
- 4) The next \$507,089 shall be Developer's Fee payable to Developer or its designee.
- 5) The balance, if any, shall be paid to the City's CPA Fund if the City's CPA Fund has not yet received \$300,000 pursuant to the distribution priority above. At such time as Developer has paid \$300,000 to the City's CPA Fund, any remaining balance may be shared pro rata with other public lenders, if required by such lenders.