



*Doc-9*

**MORTGAGE**

**CITIZENS FOR AFFORDABLE HOUSING IN NEWTON DEVELOPMENT ORGANIZATION, INC.** (CAN-DO) a Massachusetts not-for-profit corporation located at 1075 Washington Street, Newton, MA 02465, its successors and assigns (hereinafter the "Mortgagor"), owners in fee simple of property known as **54 Eddy Street, in Newton, Massachusetts** (the "Property"), for consideration paid hereby grants to the Newton Community Development Authority, an agency organized and existing pursuant to Chapter 705 of the Acts of 1975 and Chapter 121B of the General Laws of the Commonwealth of Massachusetts, as amended, having an office at Newton City Hall, 1000 Commonwealth Avenue, Newton, County of Middlesex, Massachusetts, (hereinafter the "Mortgagee" or "NCDA") with Mortgage covenants that certain parcel of land and the buildings thereon now known and numbered as **54 Eddy Street, Newton, Middlesex County, Massachusetts**, (the "Property") together with all right, title and interest, if any, of the Mortgagor of, in and to any streets and roads abutting the above-described premises to the center lines thereof and more particularly described in Exhibit A, Property Description, attached hereto.

The Mortgagor COVENANTS and AGREES to and with the Mortgagee as follows:

**1. PAYMENT AND PERFORMANCE:**

(a) This mortgage shall secure repayment of **Six Hundred Ninety Thousand Two Hundred Fifty Dollars and No Cents (\$690,250.00)** in accordance with the terms of the Note of even date between the Mortgagor and NCDA ("the Note"), the unpaid principal and interest of the Note, and all other sums provided in said Note and this Mortgage.

(b) This Mortgage shall also secure Mortgagor's performance of all agreements, conditions, provisions and stipulations of the Note, the Declaration of Affordable Housing Covenants ("Declaration"), and the Loan Agreement of even or near date between the Mortgagor and NCDA and this Mortgage.

**2. INCOME AND RENTAL REQUIREMENTS:** From the Completion Date as defined in the Note for a period of thirty (30) years, the Mortgagor agrees that it will own and manage the Property as two units of rental housing: one (1) three-bedroom unit as rental housing for households whose gross annual household income is at or below 80 percent of the Boston-Cambridge-Quincy MSA area median income, and one (1) two-bedroom unit as rental housing for households whose gross annual household income is at or below 50 percent of the Boston-Cambridge-Quincy MSA area median income.

**3. PROPERTY CONDITION AND REPAIR:**

(a) The Mortgagor shall keep the Property in good order and repair equal to the condition of the Property at the completion of project rehabilitation and in compliance with the Federal Section Eight Housing Quality Standards, reasonable wear and tear excepted, and shall make or cause to be made, as and when necessary, all repairs, renewals and replacements, structural and nonstructural, exterior and interior, ordinary and extraordinary, foreseen and unforeseen.

(b) The Mortgagor shall not allow any portion of the Property to be altered, removed or demolished without prior written consent of the NCDA. Mortgagor shall not permit the commission of waste in or about the Property, and shall not permit the Property to become deserted or abandoned.

#### **4. INSURANCE:**

(a) The Mortgagor shall keep the Property continuously insured against damage resulting from hazards (fire, windstorm, hail, explosion, riot and civil disorder, loss by aircraft and vehicles, smoke, and sprinkler damage etc.) by maintaining an adequate standard extended coverage policy provided by an insurance company authorized to do business in Massachusetts for the term of this Mortgage. All insurance policies will be in coverages and amounts as set forth in the Loan Agreement and will include replacement value coverage. The NCDA reserves the right to require additional coverage as is reasonable under the circumstances.

(b) Except as otherwise required pursuant to any Senior Mortgage, in the event of any loss covered by the insurance, the Mortgagor shall promptly proceed to make proof of the loss and take such other steps as are required to recover on the policy, and shall apply the insurance proceeds to restoration of the Property unless the NCDA determines that it is impossible or impracticable for the proceeds to be used to restore the Property for such use, and in that event the proceeds shall be used to reduce the indebtedness secured hereby. Any adjustment or settlement of loss shall require the prior written consent of the NCDA. If the Mortgagor does not proceed promptly in providing proof of loss, the NCDA at its option, may proceed to do so if approved by the holder of any Senior Mortgage, which approval shall not be unreasonably withheld. Except as otherwise required pursuant to any Senior Mortgage, the Mortgagor hereby authorizes and directs the insurers concerned to make payment directly to the NCDA, upon request of the NCDA.

#### **5. TAXES AND SENIOR LIENS:**

(a) Mortgagor shall pay when due all taxes, sewer and water charges, municipal liens and assessments of any kind made on the Property, and shall pay every amount of indebtedness secured by any Senior Mortgage and all liens and other encumbrances to which the lien of this Mortgage is subordinate. Upon request, Mortgagor shall supply the NCDA with evidence of such payment.

(b) This Mortgage is subject to easements and takings of record and to any Senior Mortgage set forth in section (c) below.

(c) Mortgagor specifically has the right to enter into a first mortgage with **The Village Bank** to secure a Note and other documents and obligations not to exceed the principal amount of **\$120,000** (The Village Bank Mortgage). The Village Bank Mortgage will have priority over this Mortgage between Mortgagor and the NCDA and this Mortgage shall be subordinate in all respects and for all purposes to The Village Bank Mortgage and all of the documents and obligations which The Village Bank Mortgage secures. The Mortgagor represents said Property is free from any other encumbrances other than the above referenced first mortgage and will remain free from any other encumbrances except as authorized in advance, in writing by the NCDA.

**6. CONDEMNATION AND EMINENT DOMAIN:**

(a) Upon the institution of any condemnation or taking of any part of the Property by eminent domain, or other injury to or decrease in the value of the Property by any public or quasi-public authority or corporation, Mortgagor shall give the NCDA written notice of such condemnation or taking immediately upon knowledge thereof. Mortgagor may make no settlement for the damages sustained without the prior written approval of the NCDA subject to approval of the holder of any Senior Mortgage.

(b) The NCDA shall have the right to intervene as a party to any condemnation proceeding and Mortgagor agrees to allow the NCDA to use the proceeds awarded to be credited to the NCDA's expenses related to such intervention subject to the prior rights of the holder of any Senior Mortgage. Nothing herein shall limit the rights otherwise available to the NCDA at law or in equity.

(c) In the event that such condemnation or taking makes it impossible or impracticable to continue to use the units on the Property to provide housing for persons of low and moderate income or makes it impossible or impractical for Mortgagor and/or the NCDA to comply with HUD regulations applicable to the project at the Property, all proceeds (that is, the award or agreed compensation for the damages sustained) allocable to Mortgagor shall be paid to the NCDA, except as otherwise provided in any Senior Mortgage. Such proceeds shall be applied to the total outstanding indebtedness under the Note. Mortgagor shall remain liable for the full amount remaining due under the Note. In the event that the NCDA determines that any condemnation or taking of any part of the Property does not make it impossible or impractical to use the Property as a residence for persons of low-and moderate-income, and complying with all applicable HUD regulations, then Mortgagor shall apply all the proceeds to the alteration, restoration or rebuilding of the Property for such use before using the proceeds for any other purpose, except as otherwise provided in any Senior Mortgage.

**7. CHANGE OF OWNERSHIP:**

(a) If, without the prior written consent of the NCDA, Mortgagor, its successors or assigns, causes or permits any transfer or change of ownership in the Property or any part thereof, whether by sale, exchange, conveyance of any legal or beneficial interest in, merger, consolidation or otherwise, the NCDA may, at its sole option, upon sixty (60) days written notice, declare Mortgagor in default and may exercise any of the rights and remedies provided in this Mortgage.

(b) Mortgagor understands and agrees that the NCDA will not consent to any transfer or change of ownership in the Property or any part thereof unless Mortgagor has in writing offered the Property to the NCDA at its fair market value. After the NCDA declines to purchase the Property, the NCDA may consent to the transfer in ownership of the Property to another party, if:

(i) the transfer or change of ownership is for the **greater of**: the fair market value of the Property, **OR**

(ii) a value equal to the sum of the total amount owing on the Note; plus all taxes, municipal liens, and assessments due to the NCDA; plus the total amount of indebtedness secured by any Senior Mortgage, all other liens and encumbrances to which this mortgage is subordinate, and the balance due on said mortgage in favor of

the NCDA securing payment of sums due to the NCDA pursuant to the CDBG Program lien.

(c) In the alternative, the NCDA may consent to the transfer and change in ownership if the party to receive title to the Property agrees to pay the NCDA directly an amount equal to the **greater of the following:**

- (i) the total sum owing on the Note; **OR**
- (ii) the fair market value of the Property less all taxes, municipal liens and assessments due to the NCDA; and less also the total amount of indebtedness secured by any Senior Mortgage and all other liens and encumbrances to which this mortgage is subordinate.

(d) In the event that Mortgagor does transfer or change the ownership of the Property at any time prior to the discharge of this Mortgage with or without the prior written consent of the NCDA, the NCDA may at its discretion require that Mortgagor pay to the NCDA, in addition to the total amount of unpaid principal of the Note and all other sums due under the Note and this Mortgage, an amount equal to ten percent (10%) of the net proceeds from the sale after payment of liens, encumbrances and taxes. Also CDBG regulation 570.503(b)(8) requires recapture of any appreciation due to improvements funded with CDBG funds.

(e) This paragraph 7 notwithstanding, Mortgagor understands and agrees that the NCDA may in its discretion consent to a proposed transfer if the prospective new owner agrees in writing to adhere, and if the NCDA determines that the prospective new owner is capable of adhering, to all agreements, conditions and provisions of the Note, this Mortgage, the Declaration, and the Loan Agreement, and the Housing and Community Development Act of 1974, as amended, or if the CDBG Program is no longer in effect, then the requirements of the City of Newton's Affordable Rent Policy.

#### **8. EVENTS OF ACCELERATION (DEFAULT):**

(a) The balance owing on the Note, and all other sums owing to the NCDA by Mortgagor which are secured by this Mortgage shall immediately become due and payable if any of the following events (called "Events of Acceleration") occur:

- (i) Insolvency, the appointment of a receiver or liquidator for Mortgagor or property of Mortgagor, assignment for the benefit of creditors or the filing of a petition of insolvency or bankruptcy of Mortgagor, or the dissolution of Mortgagor;
- (ii) Failure of Mortgagor to pay any installment of principal and interest, or other charges due on the Note which shall have become due, within sixty (60) days of the due date, no deferral or extension of payment having been granted by the NCDA;
- (iii) Nonperformance beyond any applicable notice and cure period by Mortgagor of any agreement, condition or provision of this Mortgage, the Note, the Declaration, the Loan Agreement, or of a violation of any HUD regulation applicable to said Property;
- (iv) Failure of Mortgagor to perform an agreement or condition in any Senior Mortgage or any other mortgage or instrument creating a lien on the Property, or any part thereof, which has priority over this Mortgage;
- (v) The NCDA's discovery of an incorrect statement by Mortgagor, or a failure by Mortgagor to disclose a relevant fact in an application or other document given to the NCDA for purpose of the loan secured hereby or any extension thereof;

(vi) A transfer or change in ownership of the Property or any part of it , if not previously approved by the NCDA as provided in Paragraph 7 above;

(vii) Use of the Property at any time during the term of this Mortgage, without the prior written consent of the NCDA, in a manner inconsistent with the use of the Property for housing persons of low and moderate income;

(viii) Placing a lien or encumbrance on Property without the prior consent of NCDA;

(ix) The violation by the Borrower of any requirements of the Housing and Community Development Act of 1974, as amended, or the violation of any HUD regulations applicable to the Property.

(x) Any of the following acts by or with respect to Mortgagor: (1) dissolution; (2) failure to pay any tax or assessment against the Property when due, unless such failure is cured within thirty (30) days of notice thereof; (3) entry of a judgment or issuance of an injunction or a warrant of attachment against the Property, which is not dismissed within ninety (90) days; (4) institution of any proceeding to abate any nuisance on the Property, which proceeding has not been dismissed within ninety (90) days from the date it is instituted; (5) failure to comply with the requirements of any applicable statute, law, ordinance, regulation or order, whether in effect on the date hereof or hereafter enacted or made by any Federal, State, municipal, or other public body, department or authority affecting the use or occupation of the Property.

(b) Upon the occurrence of an "Event of Acceleration" as defined above, the NCDA may demand payment of such principal, and other charges due from Mortgagor. If Mortgagor fails to make the payment demanded, then Mortgagor shall upon demand by the NCDA surrender possession of the Property to the NCDA, and the NCDA, or an entity designated by the NCDA in its discretion may enter the Property to continue to rent it to persons of low-and moderate-income, including the leasing of space, collection of rents due which after payment of all charges and expenses, may be applied to the indebtedness secured, except as otherwise provided in any Senior Mortgage. The NCDA may also dispossess, as authorized by law, any resident defaulting in the payment of any rent unless such failure is cured within 90 days of notice thereof (or such longer period as the NCDA reasonably determines may be required to cure said event).

**9. NOTICE OF DEFAULT:** Upon the happening of any Event of Acceleration, the NCDA shall notify Mortgagor of the particular default in writing that if Mortgagor does not cure said default by a date specified in said written notice the entire unpaid balance of the principal and interest of the Note and all other sums due the NCDA, under the Note and this Mortgage shall immediately become due and payable without any further notice. The date specified in said notice shall not be less than sixty (60) days from the date such notice is mailed. If Mortgagor fails to cure within such period, the NCDA may exercise any and all of the remedies available to the NCDA at law and in equity. The election of one available remedy shall NOT preclude the NCDA from pursuing any other remedy available at law or in equity.

**10. RIGHTS AND REMEDIES:**

(a) The rights and remedies of the Mortgagee as provided in this Mortgage, in the Note and any extension thereof shall be cumulative and concurrent, may be pursued separately, successively or together or both, at the sole discretion of the Mortgagee.

(b) Any failure by the NCDA to insist upon strict performance of any of the agreements, conditions and provisions of this Mortgage, the Note, the Declaration, the Loan Agreement, the Housing and Community Development Act of 1974 and/or any applicable HUD regulations shall not be deemed to be a waiver of any of the terms or provisions of this Mortgage, the Note, the Declaration, the Loan Agreement, or said Act or regulations and the NCDA shall have the right thereafter to insist upon strict performance by Mortgagor of any and all of the above.

**11. RIGHT TO CURE:** Upon the failure of Mortgagor to pay, when due, any taxes, municipal liens, or assessments on the Property, unless these taxes have been deferred pursuant to law, or to make, when due, any payment upon indebtedness secured by a lien or encumbrance having priority over this Mortgage, or to keep the Property in good repair, or to keep the Property free from further liens or encumbrances, or to keep the Property insured as required by this Mortgage after notice to Mortgagor, the NCDA may, at its option, make such payment, or procure such repairs, or obtain the release of such further lien or encumbrance, or obtain such insurance. Any sum expended by the NCDA in so doing shall be immediately repaid by Mortgagor, or shall become a part of the debt secured by this Mortgage, as may be determined by the NCDA and shall bear interest at the judgment rate from the date of the NCDA's payment until the date of repayment.

**12. REQUIRED NOTICES:** Mortgagor shall notify the NCDA promptly of the occurrence of any of the following:

- (a) a fire or other casualty causing damage to the Property;
- (b) receipt of notice of violation from any governmental authority relating to the structure, use or occupancy of the Property;
- (c) receipt of notice of eminent domain proceedings or condemnation of the Property;
- (d) any change in the use of the Property;
- (e) commencement of any litigation affecting the Property;
- (f) any proposed transfer or change of ownership of the Property;
- (g) receipt of notice of default on any Senior Mortgage or other any prior lien on the Property; or
- (h) receipt of notice of unpaid taxes and/or assessments.

**13. COMPLIANCE WITH APPLICABLE LAW:** Mortgagor shall at their expense, promptly comply with the requirements of every applicable statute, law, ordinance, regulation or order, whether in effect on the date hereof or hereafter enacted or made by any Federal, State, municipal or other public body, department, bureau, officer or authority, with respect to or affecting (a) the Property, and the appurtenances thereof and/or (b) the use or occupation of the Property.

**14. COSTS OF ENFORCEMENT:** Mortgagor agrees to pay the NCDA's costs, expenses and reasonable attorneys' fees incurred as a result of the enforcement of any term, condition, or



Locus: 54 Eddy Street, Newton, Massachusetts

IN WITNESS WHEREOF, Citizens for Affordable Housing in Newton Development Organization, Inc. as Mortgagor hereunto set their hands and seals this 28<sup>th</sup> day of MARCH 2013.

**CITIZENS FOR AFFORDABLE HOUSING IN NEWTON DEVELOPMENT ORGANIZATION, INC.**

By: Josephine McNeil  
Josephine McNeil

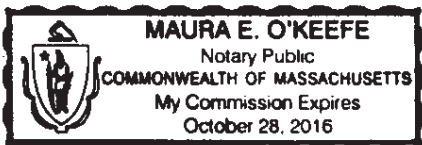
Title: Executive Director

**COMMONWEALTH OF MASSACHUSETTS**

MIDDLESEX, SS.

March 28, 2013

On this 28<sup>th</sup> day of MARCH, before me, the undersigned notary public, personally appeared the above-named **Josephine McNeil**, proved to me through satisfactory evidence of identification, which were PERSONAL KNOWLEDGE to be the person whose name is signed on the preceding document, and acknowledged to me that she signed it voluntarily for its stated purpose, as **Josephine McNeil for Citizens for Affordable Housing in Newton Development Organization, Inc.**, a non-profit corporation.



[Signature]  
Notary Public  
My Commission expires: 10/28/16



**EXHIBIT A**  
**PROPERTY DESCRIPTION**  
**54 Eddy Street, Newton, Massachusetts**

The land in Newtonville, Middlesex County, Massachusetts and bounded and described as follows:

A certain parcel of land with the buildings thereon, situated in the part of said Newton formerly called Newtonville, being Lot 16 on a plan of land in Newtonville, owned by William L. Waugh and James S. Wilson, dated December 6, 1909, and recorded with Middlesex South District Deeds, at end of Book 3489 and bounded and described as follows:

- WESTERLY:** by Eddy Street, forty-one and 25/100 (41.24) feet;  
**NORTHERLY:** by Lot 69 on a plan of lots in Newtonville belonging to the Harrington Estate, Irving T. Farnham, engineer, dated April 26, 1906, and recorded with said deeds, Book 179, Plan 8, one hundred forty-two and 78/100 (142.78) feet;  
**EASTERLY:** on Lot 12 on said first mentioned plan, forty-two and 09/100 (42.09) feet;  
and  
**SOUTHERLY:** on lot 15 on said first mentioned plan, one hundred thirty-four and 28/100 (134.28) feet.

Containing 5,715 square feet more or less.

For Owner's title see Deed of Margaret Frances Murray, Trustee of The Helen M. Hallaran Trust – 2005, to Citizens for Affordable Housing In Newton Development Organization, Inc., recorded with Middlesex South District Registry of Deeds at Book 59642, Page 224.