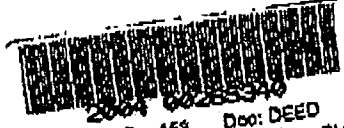


Oct. 15, 2004

12



QUITCLAIM DEED

Blk: 43916 Pg: 453 Doc: DEED
Page: 1 of 2 10/18/2004 04:11 PM

We, William R. Abbruzzese and Jean M. Abbruzzese, both of Brant Rock, Plymouth County, Massachusetts for consideration paid of \$660,000.00 grant to Citizens for Affordable Housing In Newton Development Organization, Inc. with offices at 1075 Washington Street, Newton, Middlesex County, Massachusetts

With Quitclaim Covenants

MASSACHUSETTS EXCISE TAX
Southern Middlesex District ROD # 001
Date: 10/18/2004 04:11 PM
Crt# 040720 C2215 Doc# 00266940
Fee: \$3,000.00 Cdate: \$660,000.00

Property Address: 20-22 Falmouth Road, Newton, Massachusetts

The land with the buildings thereon, situated in Newton in said County, being Lot 85 on a "Plan of Parmenter Park in Waltham & Newton, Mass. Property of Thomas A. Joyce Realty Trust" made by Rowland H. Barnes and Henry F. Beal, C.E.'s, dated May 1923, recorded with Middlesex South District Deeds as Filed Plan 731, bounded:

- NORTHWESTERLY by Falmouth Road Fifty (50) feet;
- NORTHEASTERLY by Lot 84 on said plan one hundred four and 23/100 (104.23) feet;
- SOUTHEASTERLY by land of owners unknown fifty and 3/100 (50.03) feet;
- SOUTHWESTERLY by Lot 86 on said plan one hundred five and 87/100 (105.87) feet;

Containing 5252 square feet.

For Grantor's title, see deed dated September 4, 1970 and recorded with Middlesex South Registry of Deed in Book 11886, Page 271.

The land conveyed herein is subject to a Declaration of Affordable Housing Covenants to be recorded herewith *W.R. J.M. A.*

Return to:

UNITED TRUST BANK
FEDERAL RESERVE BANK
SECURITY
Fxi*

Witness our hands and seals this 15th day of October, 2004.

William R. Abbruzzese
William R. Abbruzzese

Jean M. Abbruzzese
Jean M. Abbruzzese

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

On this 15th day of October, 2004, before me, the undersigned Notary Public, personally appeared William R. Abbruzzese and Jean M. Abbruzzese who are personally known to me/and proved to me through satisfactory evidence which was a valid Massachusetts driver's license, to be the persons whose names are signed on the preceding or attached document and acknowledged to me that they signed it voluntarily for its stated purpose.

Joseph Rossi
Joseph Rossi - Notary Public
My Commission Expires: 6/5/2009



Joseph Rossi
Joseph Rossi - Notary Public

DECLARATION OF AFFORDABLE HOUSING COVENANTS

~~OWNER—NAME~~**CITIZENS** FOR AFFORDABLE HOUSING IN NEWTON DEVELOPMENT ORGANIZATION, INC. (CAN-DO), a nonprofit corporation organized under the laws of the Commonwealth of Massachusetts, having an address of **1075 Washington Street, Newton, MA 02465**, and owner in fee simple of property known as **20-22 Falmouth Road** in Newton, Massachusetts, acting by and through its **Executive Director** pursuant to a Certificate of Vote recorded herewith (the "Owner") hereby covenants and agrees for itself, its successors, heirs and assigns, that the parcel described in Exhibit A, attached hereto and incorporated herein, (hereinafter the "Property") shall be subject to the following restrictions for the benefit of the Newton Community Development Authority, having a mailing address of Newton City Hall, 1000 Commonwealth Avenue, Newton Centre, Massachusetts, 02459 (the "NCDA"), its successors and permitted assigns.

The consideration for this Declaration of Affordable Housing Covenants (hereinafter "Covenant") is a loan to the Owner from the Newton Community Development Authority, which is evidenced by a promissory note and secured by a mortgage of the Property of even date recorded herewith.

The terms of this Covenant authorized by Massachusetts General Laws, Chapter 184, §§31-33 and otherwise by law, are as follows:

1. **Purpose.** The purpose of this Covenant is to ensure that the Property will be retained as affordable housing for occupancy by low and moderate-income households as defined by the U.S. Department of Housing & Urban Development's (HUD) Community Development Block Grant (CDBG) Program. This Covenant is intended to be construed as an affordable housing restriction as defined in Section 31 of Chapter 184 of the Massachusetts General Laws which has the benefit of Section 32 of said Chapter 184.
2. **Covenants.** The Owner intends, declares and covenants on behalf of itself, its successors and assigns that these covenants, agreements, and restrictions are not merely personal covenants of the Owner and shall run with the land and shall bind the Owner, its successors and assigns and inure to the benefit of the NCDA, and its successors and assigns.
3. **Term.** For the maximum duration permitted by law with the approval of the Commonwealth of Massachusetts, pursuant to General Laws, Chapter 184, Sections 31-33, and in the event such approval is not given, for a period of thirty (30) years from the date of execution of this Covenant and for such further time thereafter (up to 99 years) as this Covenant may be lawfully extended (including without limitation extensions permitted under General Laws, Chapter 184, Section 27-30), the property shall be maintained as affordable housing as defined in paragraph 1 above.
4. **Completion Date.** The date on which all required Certificates of Occupancy for the rental units on the Property are issued and the Owner has provided written notification to the NCDA and the NCDA has verified that all units are fully occupied, as provided in the Loan Agreement of even date between the NCDA and the Owner. If the units receive Certificates of Occupancy and/or are occupied on different dates, then the Completion Date shall be the date of occupancy of the unit that is occupied last.
5. **Owner's Warranties and Representations.** During the term of this Covenant as defined in paragraph 3 beginning from the Completion Date as defined in paragraph 4 above, (hereinafter "affordability period") the Owner shall comply with the following requirements:

- A. The Owner shall provide two units containing a total of five bedrooms of rental housing at the Property which shall be rented at affordable rents as defined by the Federal Department of Housing and Urban Development. The CDBG-assisted units will comply with the following income and affordable rent requirements:
- (i) Units must be occupied by households with incomes that do not exceed 80% of the area median income for the Boston Metropolitan Statistical Area, adjusted for family size. The actual income limits are determined by HUD and published annually in the Federal Register;
 - (ii) Rents, including utilities, may not exceed 30% of the income of the renting household, except as may be permitted or required by a subsidy program with which the Owner or tenant participates, such as the Section 8 program.
 - (iii) A tenant whose income met the income limits at the time of initial occupancy, but whose income eventually exceeds 80% of the area median income, may remain in the unit, provided that the rent is adjusted so that the "over-income" tenant is paying not less than 30% of their adjusted monthly gross income for rent and utilities. As soon as the "over-income" tenant vacates the Property, the Owner must re-rent the unit to an income-eligible household.
- B. The Owner represents warrants and covenants that the determination of whether a resident meets the income requirements set forth herein shall be made by Owner at the time of the leasing of the units and thereafter at least annually on the basis of the current income of such resident. The Owner shall maintain as part of its records, copies of all leases governing the rental of the units as may be executed throughout the affordability period and all initial and annual income certification(s) by the tenant(s) of the units. ~~Within 60 days after the end of each calendar year of occupancy of the units, At the request of the NCDA, the Owner shall provide to the NCDA annual reports~~copies of records documenting ~~consisting of certifications regarding~~ the annual and monthly gross and adjusted income of each resident occupying the units. ~~With respect to a resident that moved to a unit in the prior year, the annual report shall also include certification regarding the annual and monthly gross and adjusted incomes of any such residents at the time of their initial occupancy of the unit. The annual reports shall be in a form approved by the NCDA and shall contain such supporting documentation as the NCDA shall reasonably require.~~ For residents who have Section 8 certificates, the NCDA may rely on the housing assistance payment contract from the applicable housing authority in lieu of ~~a certification~~ income verification by the Owner. In addition to the foregoing, Owner shall keep such additional records and prepare and submit to NCDA such ~~additional~~ reports as the NCDA may deem necessary to ensure compliance with the requirements of this Covenant and of the CDBG Program.
- C. Prior to initial occupancy of the units and annually thereafter, the Owner shall submit to the NCDA a proposed schedule of monthly rent and monthly allowances for utilities and services for the units. Such schedule shall be subject to the approval of NCDA for compliance with the requirements of applicable HUD regulations. After approval of a schedule of rent and allowances by NCDA, rents shall not be increased without either (a) a specific request by Owner for a rent increase or (b) the next annual schedule of rents and allowances. Notwithstanding the foregoing, rent increases shall be subject to the provisions

of outstanding leases and shall not be implemented without at least 30 days prior written notice by Owner to the affected tenant(s).

- D. The Owner shall not demolish any part of the Property or substantially subtract from any real or personal property of the Property except in conjunction with renovation or rehabilitation of the Property or construction of a new project on the Property, in either case subject to the prior written consent of the NCDA, which consent shall not be unreasonably withheld. The Owner shall not permit the use of any residential unit for any purpose other than housing.
- E. The Owner represents, warrants and agrees that if the Property, or any part thereof, shall be damaged or destroyed, the Owner (subject to the approval of the lender(s) which will provide the financing) will use its best efforts to repair and restore the Property to substantially the same condition as existed prior to the event causing such damage or destruction, and the Owner represents, warrants and agrees that the Property shall thereafter continue to operate in accordance with the terms of this Covenant.
- F. Any use of the Property or activity thereon which is inconsistent with the purpose of this Covenant is expressly prohibited. The Owner shall carry out each activity provided for in this Covenant in compliance with all applicable federal laws and regulations described in 24 CFR 570, Community Development Block Grant Program, as amended.

6. **Condition of Property.** By its acceptance of this Covenant, NCDA does not undertake any liability or obligation relating to the condition of the Property.

7. **Instruments to Enforce Covenant.** The NCDA is authorized to record or file any notices or instruments appropriate to ensuring the enforceability of this Covenant; and the Owner on behalf of itself and its successors and assigns appoints the NCDA its attorney-in-fact to execute, acknowledge and deliver any such instruments on its behalf. Without limiting the foregoing, the Owner and its successors and assigns agree to execute any such instruments upon request. The Owner and the NCDA intend that the restrictions arising hereunder take effect upon the date hereof, and to the extent enforceability by any person ever depends upon the approval of governmental officials, such approval when given shall relate back to the date hereof regardless of the date of actual approval or the date of filing or recording of any instrument evidencing such approval.

8. **Covenants to be Referenced in Deed.** Except as provided in the Subordination and Foreclosure Section 9 below, these restrictive covenants shall be contained or referenced in any deed of conveyance of the subject Property or any other instruments conveying a non-leasehold interest in the Property or any part thereof and shall be equally binding on any subsequent owner of the title thereto whether acquired by grant, sale or any other means and such subsequent owner shall comply with this restriction for the remaining duration of said restriction.

9. **Subordination and Foreclosure.** Any first mortgage on the Property ("First Mortgage") granted, or to be granted in the future, to a state or national bank, state or federal savings and loan association, cooperative bank, mortgage company, trust company, insurance company or other institutional or commercial lender, or public or quasi-public lender, including, without limitation, MHIC, LLC (any of the foregoing a "Senior Lender"), has, and shall have in the future, priority over this Covenant and this Covenant shall be subordinate in all respects and for all purposes to any First Mortgage and to all of the documents and obligations which such First Mortgage secures without

the necessity of any additional subordination by NCDA. Upon request, however, NCDA agrees to execute a subordination reflective of its agreement as stated herein.

Notwithstanding anything herein to the contrary, if a Senior Lender, shall acquire the Property by reason of foreclosure or similar remedial action under the provisions of its First Mortgage or upon conveyance of the Property in lieu of foreclosure, and provided that Senior Lender has given NCDA not less than sixty (60) days' prior written notice of its intention to foreclose upon its First Mortgage or to accept a conveyance of the Property in lieu of foreclosure, then the rights and restrictions herein contained shall not apply to such Senior Lender upon such acquisition of the Property or to any purchaser of the Property from such Senior Lender, and such Property shall thereafter be free from all such rights and restrictions for all future purchasers or mortgagees of the Property; provided, however, that such rights and restrictions contained herein shall not lapse if the Property is acquired through foreclosure or deed in lieu of foreclosure by (i) Owner or (ii) any entity in which Owner has a direct financial interest (a "Related Party"). For the purposes of this paragraph, an affidavit, duly recorded and executed under the penalties of perjury, by Senior Lender or by the purchaser from Senior Lender indicating that, to the best of Senior Lender's knowledge or purchaser's knowledge, as applicable, the purchaser is not a Related Party shall be conclusive evidence that such purchaser is not a Related Party.

Upon receipt of Senior Lender's advance written notice of its intention to foreclose as set forth above, NCDA shall have the option but not the obligation to cure any and all defaults and assume the mortgage at full value without recourse or warranty.

10. Notices. All notices required under this Covenant shall be deemed to have been received if mailed, postage prepaid to the following:

For the NCDA:	Sole Member Newton Community Development Authority City Hall, 1000 Commonwealth Avenue Newton, MA 02459
For Owner:	Citizens for Affordable Housing in Newton Development Organization, Inc. 1075 Washington Street Newton, MA 02465
With a copy to:	Russell K. Dunning, Esq. Posternak, Blankstein & Lund, LLP 800 Boylston Street Boston, MA 02199

11. Enforcement.

- A. The rights hereby granted shall include the right of NCDA to enforce this Covenant by appropriate legal proceedings and to obtain injunctive and other equitable relief against any violations, including without limitation relief requiring restoration of the Property to its condition prior to any such violation (it being agreed that the NCDA will have no adequate remedy at law), and such restoration shall be in addition to, and not in limitation of, any other rights and remedies available to the NCDA. The Owner covenants and agrees to reimburse NCDA all reasonable costs and expenses (including without limitation reasonable counsel fees) incurred in enforcing this Covenant or in taking reasonable measures to cure

any violation hereof, provided that a violation of this Covenant is acknowledged by Owner or determined by a court of competent jurisdiction to have occurred.

B. Without limitation on any other rights or remedies of the NCDA, its successors and assigns, the NCDA shall be entitled to the following remedies, which shall be cumulative and not mutually exclusive:

- (i) specific performance of the provisions of this Covenant, which shall be the preferred remedy;
- (ii) voiding of any rental arrangement that violates this Covenant;
- (iii) in the case of any rental arrangement where the Owner is found to have violated willfully or in bad faith, then money damages for charges in excess of rents permissible under this Covenant;
- (iv) If any action is brought to enforce this Covenant, the prevailing party shall be entitled to reasonable attorneys' fees and other costs of bringing such action, in addition to any other relief or remedy to which such party may be entitled.
- (v) The Owner hereby grants to the NCDA and its duly authorized representatives the right to enter upon the Property upon reasonable notice for the purpose of enforcing the restrictions contained in this Covenant and to take any reasonable and appropriate action under the circumstances to cure any violation of the provisions of this Covenant. Notwithstanding the definition of Owner hereinbefore contained, the rights of enforcement for violations of this Covenant shall survive any subsequent sale or transfer of the Property.

12. **Certificate.** Any party may rely on a certificate signed by the Owner and the NCDA as to any facts relative to this Covenant.

13. **Governing Law.** This Covenant shall be governed by the laws of the Commonwealth of Massachusetts. Any amendments to this Covenant must be in writing and executed by all of the parties hereto. If any provision of this Covenant shall to any extent be held invalid, the remainder shall not be affected.

IN WITNESS WHEREOF the said **Citizens for Affordable Housing in Newton Development Organization, Inc.** has caused its corporate seal to be hereto affixed and these present to be signed, acknowledged and delivered in its name and behalf by **Josephine McNeil, Executive Director**, its duly authorized representative, this **15th** day of **October, 2004**.

Citizens for Affordable Housing in Newton Development Organization, Inc.

By: _____ Date _____
Josephine McNeil, Executive Director

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, SS.

October 15, 2004

On this **15th** day of **October, 2004**, before me, the undersigned notary public, personally appeared the above-named **Josephine McNeil**, proved to me through satisfactory evidence of identification, which were _____, 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.

Notary Public

My Commission expires: _____

EXHIBIT A
PROPERTY DESCRIPTION

The land with the buildings thereon, situated in Newton, in said County of Middlesex, being Lot 85 on a "Plan of Parmenter Park in Waltham & Newton, Mass. Property of Thomas A. Joyce Realty Trust" made by Rowland H. Barnes and Henry F. Beal, C.E.'s, dated May 1923, recorded with Middlesex South District Deeds as Filed Plan 731, bounded:

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Southeasterly by land of owners unknown fifty and 3/100 (50.03) feet;
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Containing 5252 square feet.

The Post Office Address of the Property is 20-22 Falmouth Road, Newton, Massachusetts 02465.