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Page: 1 of 7 08/12/2005 09:**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, their successors and assigns (hereinafter the "Mortgagor"), owners in fee simple of property known as 163 Jackson Road, in Newton, Massachusetts (the "Property"), for consideration paid hereby grants to the City of Newton having offices at Newton City Hall, 1000 Commonwealth Avenue, Newton, County of Middlesex, Massachusetts, (hereinafter the "Mortgagee" or "City") with Mortgage covenants that certain parcel of land and the buildings thereon now known and numbered as 163 Jackson Road and described as:

A certain parcel of land with the buildings thereon situated in Newton, being Lots No. 29 and on a plan of Jackson Terrace made by F. T. Westcott, C.E. dated October, 1908 and recorded with Middlesex South District Deeds Plan Book 175, Plan 6 and bounded and described as follows:

Beginning at a point on the easterly side of Wiltshire Court, as shown on said plan, at the division line between lots numbered 28 and 29, thence running southeasterly along said lot numbered 28 one hundred eight and 45/100 (108.45) feet more or less; thence turning and running northeasterly forty (40) feet; thence turning and running northwesterly along lot numbered 31 on said plan one hundred forty-two and 70/100 (142.70) feet more or less to sa Wiltshire Court; thence turning and running southeasterly along said Wiltshire Court fifty-feet and 86/100 (54.86) feet to the point of beginning. *file 42914 - 310*

The Post Office Address of the Property is 163 Jackson Road, Newton, Massachusetts.

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

1. **INCOME AND RENTAL REQUIREMENTS:** The Mortgagor agrees to maintain two affordable rental housing units for households whose gross annual household income is a below 50% of the area median incomes unless Section 8 subsidies are not generally available, as determined by the Director of Planning and Development, at time of initial marketing, then the two units shall be affordable to households with incomes at or below 80% of the area median income.
2. **PAYMENT AND PERFORMANCE:**
 - a. This mortgage shall secure repayment of the unpaid principal and interest of the Note of even date between the Mortgagor and the City ("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 Loan Agreement of even date between Mortgagor and City, and this Mortgage.
3. **PROPERTY CONDITION AND REPAIR:**

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- 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 Federal Section 8 Housing Quality Standards, reasonable wear and tear excepted shall make or cause to be made, as and when necessary, all repairs, renewals, replacements, structural and nonstructural, exterior and interior, ordinary, extraordinary, foreseen and unforeseen.
- b. The Mortgagor shall not allow any portion of the Property to be altered, removed, demolished without prior written consent of the City. Mortgagor shall not permit 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 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 include coverages and amounts as set forth in the Loan Agreement and will include replacement value coverage. The City 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 loss and take such other steps as are required to recover on the policy, and shall use the insurance proceeds to restoration of the Property unless the City determines that it is impossible or impracticable for the proceeds to be used to restore the Property for use, and in that event the proceeds shall be used to reduce the indebtedness set forth hereby. Any adjustment or settlement of loss shall require the prior written consent of the City. If the Mortgagor does not proceed promptly in providing proof of loss to the City 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 City, upon request of the City.

5. TAXES AND SENIOR LIENS:

- a. Mortgagor shall pay when due all taxes, sewer and water charges, municipal liens, 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 which the lien of this Mortgage is subordinate. Upon request, Mortgagor shall submit to the City 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 has granted mortgages to the following Senior Lenders: Massachusetts Housing Investment Corporation ("MHIC") dated October 18, 2004 and recorded with the Middlesex South Registry of Deeds at Book 43916 Page 314; Newton Community Development Authority dated October 18, 2004 and recorded in the Registry at Book 43916 Page 347 and Newton Community Development Auth.

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Liens"). Mortgagor represents said Property is free from any other encumbrance other than the above referenced Senior Liens and will remain free from any encumbrances except as authorized in advance, in writing by the City.

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 City 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 City subject to approval of the holder of any Senior Mortgage.
- b. The City shall have the right to intervene as a party to any condemnation proceeding and Mortgagor agrees to allow the City to use the proceeds awarded to be credited to the City'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 City 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, all proceeds (that is, the award or agreed compensation for the damages sustained) allocable to Mortgagor shall be paid to the City, 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 City determines that a 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 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 City, 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, merger, consolidation or otherwise, the City 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 City 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 City in accordance with the terms of a certain Right of Refusal Agreement between Mortgagor and City. After the City declines to purchase the Property, the City may consent to the transfer in ownership of the Property to any 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 all liens and encumbrances, whether senior or junior to this Mortgage.

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- c. 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 City, the City may at its discretion require that Mortgagor pay to the City, in addition to the total amount of unpaid principal of the Note and all other sums due under the Note on this Mortgage, an amount equal to ten percent (10%) of the net proceeds from the sale of the Property after payment of liens, encumbrances and taxes.
- d. This paragraph notwithstanding, Mortgagor understands and agrees that the City may at its discretion consent to a proposed transfer if the prospective new owner agrees in writing to adhere to all agreements, conditions and provisions of the Note, this Mortgage or the City's Affordable Rent Policy, and 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 City 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 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 any 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 City;
 - (iii) Nonperformance beyond any applicable notice and cure period of any agreement, condition or provision of this Mortgage, the Note or the Loan Agreement;
 - (iv) Failure of Mortgagor to perform an agreement or condition in any instrument creating a lien on the Property, or any other mortgage or instrument creating a lien on the Property, or any part thereof, which has priority over this Mortgage;
 - (v) The City'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 City 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, which is not previously approved by the City 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 City, 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 the City;
 - (ix) Any of the following acts by or with respect to Mortgagor: (1) dissolution of Mortgagor; (2) failure to pay any tax or assessment against the Property when due, and such failure is not cured within thirty (30) days of notice thereof; (3) entry of a judgment or issuance of an injunction or a warrant of attachment against Mortgagor, which is not dismissed within ninety (90) days; (4) institution of a 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;

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hereafter enacted or made by any Federal, State, municipal, or other 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 City 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 City surrender possession of the Property to the City, and the City, or an entity designated by the City 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 charges and expenses may be applied to the indebtedness secured, except as otherwise provided in any Senior Mortgage. The City 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 City reasonably determines may be required to cure said event).

9. NOTICE OF DEFAULT: Upon the happening of any Event of Acceleration, the City shall notify Mortgagor of the particular default in writing that if Mortgagor does not cure said default by the date specified in said written notice the entire unpaid balance of the principal and interest on the Note and all other sums due the City, 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 City may exercise any and all of the remedies available to the City at law and in equity. The election of one available remedy shall NOT preclude the City 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 together or both, at the sole discretion of the Mortgagee.

(b) Any failure by the City to insist upon strict performance of any of the agreed conditions and provisions of this Mortgage, the Note, and the Loan Agreement shall not be deemed to be a waiver of any of the terms or provisions of this Mortgage, the Note, or the Loan Agreement and the City shall have the right thereafter to insist upon strict performance by Mortgagor of 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 all liens or encumbrances, or to keep the Property insured as required by this Mortgage after notice to Mortgagor, the City may, at its option, make such payment, or procure such repairs, or obtain release of such further lien or encumbrance, or obtain such insurance. Any sum expended by the City in so doing shall be immediately repaid by Mortgagor, or shall become a part of the indebtedness secured by this Mortgage, as may be determined by the City and shall bear interest at the judgment rate from the date of the City's payment until the date of repayment.

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12. REQUIRED NOTICES: Mortgagor shall notify the City promptly of the occurrence 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 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 in Property; and
- g. receipt of notice of default on any Senior Mortgage or other any prior lien on the Property; and
- 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 other governmental 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 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 City's costs, expense and reasonable attorneys' fees incurred as a result of the enforcement of any term, condition or provision of this Mortgage, the Note, or the Loan Agreement.

15. NOTICES TO MORTGAGOR AND THE CITY: All notices, requests or other communications required to be given or delivered to Mortgagor or the City shall be sufficiently given or delivered if mailed by certified mail, return receipt requested. If notice is to be given it shall be mailed to:

If to the Mortgagor:

Citizens for Affordable Housing in Newton Development
Organization, Inc.
1075 Washington Street
West Newton, MA 02465

If to the City of Newton:

Newton City Hall
1000 Commonwealth Avenue
Newton, MA 02459

16. SEVERABILITY: The provisions of this Mortgage are severable. If any provision of this Mortgage is held to be invalid or unenforceable by a court of competent jurisdiction, the remaining provisions shall remain in full force and effect.

17. This mortgage is under the statutory condition, for any breach of which the Mortgagees have the power of sale. Mortgagor hereby waives and releases to the Mortgagee all right of homestead and any other exemption rights in the mortgaged premises which it might otherwise have.

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IN WITNESS WHEREOF, Citizens for Affordable Housing in Newton Development Organization, Inc. as Mortgagor hereunto set their hands and seal this 11 day of August, 2005

CITIZENS FOR AFFORDABLE HOUSING IN NEWTON DEVELOPMENT ORGANIZATION, INC.

By: Josephine McNeil
Josephine McNeil

Title: _____
Executive Director


COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, SS.

August 11, 2005

On this 11th day of August, 2005, before me, the undersigned notary public, personally appeared Josephine McNeil, acting for Citizens for Affordable Housing in Newton Development Organization, Inc., proved to me through satisfactory evidence of identification, which was/were [type of evidence] Positive recollection, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that she signed it voluntarily, in such capacity, for its stated purpose.

[NOTARY SEAL]

Emma Walsh
Notary Public
Name (Print) _____
My commission expires _____


Emma Walsh
Attest: 11/7/2005

COPY

Date: August 11, 2005
Place: Newton, Massachusetts

PROMISSORY NOTE

FOR VALUE RECEIVED, CITIZENS FOR AFFORDABLE HOUSING IN NEWTON DEVELOPMENT ORGANIZATION, INC. (called the "Borrower"), promises to pay to the order of the City of Newton (called the "City"), the sum of two hundred and seventy-five thousand dollars and no cents (\$275,000.00) and to pay simple interest on the unpaid principal amount of this Note (as hereinafter defined) at the rate of zero (0%) percent per annum until paid in full.

Deferral and Cancellation

Borrower shall have no obligation to pay the principal, interest, or any other outstanding charges due hereunder for the term of this Note; provided that:

- (1) Borrower maintains two affordable rental housing units for the property at 163 Jackson Road ("Property") for households with incomes at or below 50% of the area median income unless Section 8 subsidies are not generally available at time of initial marketing, then the two units shall be affordable to households with incomes at or below 80% of the area median income; and
- (2) Borrower gives the Authority a written notice of the continued use of the Property for such low- and moderate-income housing on or before July 1 of each year;
- (3) Borrower complies with the terms of the Loan Agreement between Borrower and the City, of even date; and
- (4) Borrower complies with the terms of the Declaration of Affordable Housing Covenants, dated October 18, 2004 and recorded with Middlesex South District Registry of Deeds in Book 43916, Page 355.

City's Right to Purchase

Notwithstanding the foregoing, if, however, the Owner receives a bona fide offer to purchase the Property or Bank intends to foreclose on the Property or to accept a deed in lieu of foreclosure, then the City may exercise its right of first refusal on the Property, all as more specifically set forth in a certain Right of First Refusal Agreement of even date to be recorded with the Middlesex South Registry of Deeds.

Security

This Promissory Note is secured by a Mortgage of even date on real property located at 163 Jackson Road, Newton to be recorded at the Middlesex South District Registry of Deeds.

Events of Acceleration

In addition to a change in use, the City's right to purchase the Property as set forth above and/or acceleration of this Note shall be triggered if any of the following events occur:

1. A transfer or change in ownership of the Property, without the City's prior written approval; or
2. Failure of Borrower to pay any tax or assessment when due or failure to comply with the requirement of every applicable statute, law, ordinance, regulation or order whether in effect on the date of this Note or hereafter enacted or made by any Federal, State, municipal, or other public body affecting the use or occupation of the Property.

3.
senior l.

payment on any loan or comply with any provision of a
property.

Attorney's

If suit is instituted by the City to recover on this Note, the Borrower agrees to pay all costs of such collection, including reasonable attorneys' fee and court costs.

Notices

Borrower shall promptly notify City of the occurrence of any of the following: a fire or other casualty damage to the Property; receipt of notice of violation from any governmental authority relating to the use, structure or occupancy of the Property; receipt of notice of eminent domain proceedings or condemnation of the Property; any change in the use of the Property; commencement of any litigation affecting the Property, except for termination of tenancies and other litigation where amounts in dispute do not exceed \$25,000; any proposed transfer or change in the ownership of the Property; or receipt of notice of default on any prior lien.

City shall provide written notice to Borrower of any default hereunder and thereafter the Borrower shall have 60 days in which to cure such alleged default before the City shall become entitled to pursue any remedies hereunder. Such 60 day period may be extended upon evidence of Borrower's good faith efforts to take steps to cure such alleged default during such 60 day period.

Waiver

Notice of presentment, demand for payment, protest and notice of demand for payment and protest are hereby waived.

IN WITNESS WHEREOF, this Promissory Note has been duly executed by the undersigned.

Citizens for Affordable Housing in Newton Development Organization, Inc.

Josephine McNeil
By Josephine McNeil, Executive Director

Margaret Wilson
Witness

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RIGHT OF FIRST REFUSAL AGREEMENT

This Right of First Refusal Agreement (the "Agreement") is made and entered into as August 11, 2005, by and between Citizens for Affordable Housing in Newton Development Organization, a non-profit corporation ("Owner") and the City of Newton, a municipal corporation ("Optionee").

WHEREAS, the Owner developed, financed, will maintain, and operate a 2-unit multifamily apartment development intended for rental to low-income tenants located at 163 Jackson Road in Newton, MA (the "Project");

WHEREAS, the Owner applied for and received Community Preservation Act funding from Optionee, which funding commitment was conditioned upon Owner granting Optionee unsubordinated right of first refusal to purchase the Project so that Optionee may insure that Project continues as affordable housing in perpetuity;

WHEREAS, the Owner desires to give, grant, bargain, sell and convey to Optionee certain rights of first refusal to purchase the Project on the terms and conditions set forth here

WHEREAS, the holders of the various mortgages (the "Lenders") on the Project from time to time shall consent to such right of first refusal and agree to subordinate their security interests to such right as herein set forth;

NOW, THEREFORE, in consideration of the foregoing, of the mutual promises of the parties hereto and of other good and valuable consideration, the receipt and sufficiency of which the parties hereto acknowledge, the parties heroby agree as follows:

1. **Right of First Refusal.** The Owner hereby grants to Optionee a right of first refusal (the "Right of First Refusal") to purchase all right, title and interest held by the Owner in the Project, at the time, for the price and subject to such other terms and conditions as are set forth below. This Right of First Refusal shall be considered to be a covenant running with the land. The Project is legally described in Exhibit A attached hereto.

2. **Exercise of Right of First Refusal.**

(a) In the event that (i) the Owner receives a bona fide offer to purchase the Project, or (ii) Lender intends to foreclose on the Project or to accept a deed in lieu of foreclosure ("Offer"), the Owner, or Lender, as appropriate, shall give Optionee notice of its receipt of such Offer to purchase the Project (the "Offer Notice"). Optionee shall have a period of ninety (90) days from the date of receipt of the Offer Notice to elect to exercise its Right of First Refusal by delivering written notice to the Owner or Lender of its election to do so (the "Election Notice"). All costs of the exercise of the Right of First Refusal, including without limitation any filing

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(b) If Optionee fails to deliver the Election Notice within ninety (90) days receipt of the Offer Notice, or if such Election Notice is delivered but Optionee does not consummate the purchase of the Project within one hundred twenty (120) days from the date delivery of the Election Notice, then its Right of First Refusal shall terminate. Thereafter, the Owner shall be permitted to sell the Project free of the Right of First Refusal and the Lenders shall be permitted to foreclose the Project and accept a deed-in-lieu of foreclosure, in each case free of the Right of First Refusal.

(c) The closing on the sale of the Project shall take place at the time and place set forth in the Election Notice (the "Closing") but not later than one hundred twenty (120) days after the date of delivery of the Election Notice.

(d) The Owner and the Lenders shall have the right to record an Affidavit stating that proper notice was given to the City under this Agreement and that the City either not elect to exercise its option to purchase the property, or the City exercised its option but did not purchase the property within the required one hundred twenty (120) days. The recording of this Affidavit shall be prima facie evidence that the right of first refusal has terminated and is no longer in force and effect.

3. **Purchase Price.** The Project's purchase price under the Right of First Refusal (the "Purchase Price") shall be the sum of the outstanding principal, accrued interest, any prepayment penalty and any other amounts due under all mortgage documents relating to the Project, whether or not such amounts are due upon sale, as of the date of Closing.

4. **Payment of Purchase Price.** The Purchase Price shall be paid at Closing in one of the following methods:

(a) The payment of all cash or immediately available good funds at Closing, first to the holder of the first mortgage on the Project, in the amount due under the first mortgage loan; and the remainder to the parties entitled to receive such monies in the order of their priority;

or

(b) The assumption of any assumable Mortgage Loans. Any Purchase Price balance remaining after the assumption of the Mortgage Loans shall be paid by Optionee to the Owner in immediately available funds.

5. **Conveyance and Condition of the Property.** The Owner's right, title and interest in the Project shall be conveyed by quitclaim deed, subject to such liens, encumbrances and parties in possession as shall exist as of the date of Closing. Optionee shall accept the Property "as is," without any warranty or representation as to the condition thereof whatsoever.

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habitability, or otherwise and no indemnity for hazardous waste or other conditions with respect to the Project will be provided.

6. **Transfer.** This Right of First Refusal may be transferred by Optionee to the Newton Community Development Authority, the Newton Housing Authority, or a non-profit organization provided that such transferee continues the Project as housing for low and moderate income households.

7. **Notice.** Notices required or permitted under the Agreement shall be given and be deemed delivered if sent to Optionee at 1000 Commonwealth Avenue, Newton, MA, 02459 or to the Owner at 1075 Washington Street, Newton, MA 02465, to NCDA at 1000 Commonwealth Avenue, Newton, MA 02459 and to the first mortgagee at the address set forth in its mortgagee.

8. **Severability of Provisions.** Each provision of this Agreement shall be considered severable, and if for any reason any provision that is not essential to the effectuation of the basic purposes of the Agreement is determined to be invalid and contrary to any existing or future law, such invalidity shall not impair the operation of or affect those provisions of the Agreement that are valid.

9. **Amendments.** This Agreement shall not be amended except by written agreement between Optionee and the Owner with the Consent of the Lenders.

10. **Governing Law.** This Agreement shall be construed and enforced in accordance with the laws of the Commonwealth of Massachusetts, without regard to principles of conflict of law.

11. **Headings.** All headings in this Agreement are for convenience of reference only. Masculine, feminine, or neuter gender, shall include all other genders, the singular shall include the plural, and vice versa as the context may require.

12. **Counterparts.** This Agreement may be executed in several counterparts, each of which shall be deemed to be an original and all of which together shall constitute one agreement binding on all parties hereto, notwithstanding that all parties shall not have signed the same counterpart.

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IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the first stated above,

OWNER:
Citizens for Affordable Housing in Newton Development Organization

By: *Josephine McNeil*
Its: DEPUTY DIRECTOR

OPTIONEE:
City of Newton

By: *David Cohen*
Its: Mayor

Commonwealth of Massachusetts

Middlesex County, ss

On this 10th day of August, 2005, before me, the undersigned notary public, personally appeared David B. Cohen, Mayor acting for the City of Newton, proved to me through satisfactory evidence of identification, which was/were (type of evidence) PERSONAL IDENTIFICATION to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he signed voluntarily, in his capacity, for its stated purpose.

[NOTARY SEAL]



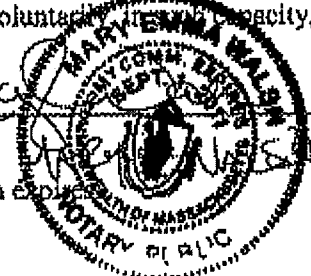
David B. Cohen
Notary Public
Name (Print):
My commission expires:

Commonwealth of Massachusetts

Middlesex County, ss.

On this 11th day of August, 2005, before me, the undersigned notary public, personally appeared *Josephine McNeil*, as DEPUTY DIRECTOR of Citizens for Affordable Housing in Newton Development Organization, Inc., proved to me through satisfactory evidence of identification, which was/were (type of evidence) PERSONAL IDENTIFICATION, to be the person whose name is signed on the preceding attached document, and acknowledged to me that she signed it voluntarily, in her capacity, for its purpose.

[NOTARY SEAL]



Josephine McNeil
Notary Public
Name (Print):
My commission expires:

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Subordination and Consent

The undersigned hereby consent to the foregoing Agreement as of the date first set forth hereinabove and agree to subordinate its financing as evidenced by a Mortgage, dated as of October 15, 2004 and recorded with the Middlesex County South Registry of Deeds at Boc 43916, Page 314 in accordance with the terms of the foregoing Agreement, which Mortgage due on sale.

MHIC, LLC

By: Massachusetts Housing Investment Corporation, Managing Member

By: *Eunice M. Harps*

Name: Eunice M. Harps
Its: Director of Credit Operations

Commonwealth of Massachusetts

Suffolk, ss

On this 17th day of July, 2005, before me, the undersigned notary public, personally app Eunice M. Harps, Director of Credit Operations, acting for Massachusetts Housing Investment Corporation, proved to me through satisfactory evidence of identification, which was personal knowledge, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that she signed it voluntarily, in such capacity, for its stated purpose, as Managing Member of MHIC, LLC.

[NOTARY SEAL]

Marianne M. Horan

Notary Public

Name (Print):

My commission expires:

MARIANNE M. HORAN
Notary Public
Commonwealth of Massachusetts
My Commission Expires
January 10, 2008

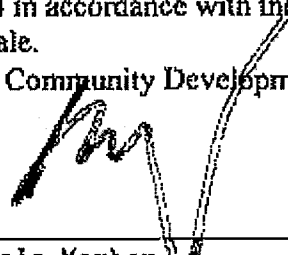
Subordination and Consent of Subordinate Mortgage

The undersigned hereby consent to the foregoing Agreement as of the date first set forth hereinabove and agree to subordinate its financing as evidenced by a Mortgage, dated as of October 15, 2004 and recorded with the Middlesex County South Registry of Deeds at Boc 43916, Page 347 in accordance with the terms of the foregoing Agreement, which Mortgage due on sale.

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The undersigned also hereby consent to the foregoing Agreement as of the date first set forth hereinabove and agree to subordinate its financing as evidenced by a Mortgage, recorded M 20, 2005 with said Registry in Book 45218, Page 174 in accordance with the terms of the foregoing Agreement, which Mortgages are due on sale.

Newton Community Development Authority



By: _____
Its: Sole Member

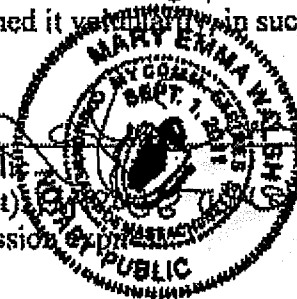
Commonwealth of Massachusetts

Middlesex County, ss

On this 2nd day of August, 2005, before me, the undersigned notary public, persona appeared Michael Kruse, as Sole Member of Newton Community Development Authority, proved to me through satisfactory evidence of identification, which was/were [type of evidence] Personal records, to be the person whose name is signed on the preceding attached document, and acknowledged to me that he signed it voluntarily in such capacity, its stated purpose.

[NOTARY SEAL]

Notary Public
Name (Print)
My commission expires



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EXHIBIT A
LEGAL DESCRIPTION OF
PROJECT REAL ESTATE

A certain parcel of land with the buildings thereon situated in Newton, being Lots No. 29 and 30 on a plan of Jackson Terrace made by F. T. Westcott, C.E. dated October, 1908 and recorded with Middlesex South District Deeds Plan Book 175, Plan 6 and bounded and described as follows:

Beginning at a point on the easterly side of Wiltshire Court, as shown on said plan, at the division line between lots numbered 28 and 29, thence running southeasterly along said lot numbered 28 one hundred eight and 45/100 (108.45) feet more or less; thence turning and running northeasterly forty (40) feet; thence turning and running northwesterly along lot numbered 31 on said plan one hundred forty-two and 70/100 (142.70) feet more or less to said Wiltshire Court; thence turning and running southeasterly along said Wiltshire Court fifty feet and 86/100 (54.86) feet to the point of beginning.

For title see deed from Walter Tobin, Trustee of Tobin Nominee Trust recorded with said E. in Book 43916, Page 310.

The Post Office Address of the Premises is 163 Jackson Road, Newton, Massachusetts 0215


Edw. C. O.
Att. Secy. Middlesex