

**COMMUNITY PRESERVATION FUNDING AGREEMENT BETWEEN
CITIZENS FOR AFFORDABLE HOUSING IN NEWTON DEVELOPMENT
ORGANIZATION, INC. AND THE CITY OF NEWTON
TO SUPPORT AFFORDABLE COMMUNITY HOUSING
AT 61 PEARL STREET**

This AGREEMENT made as of Aug., 16, 2011 by and between Citizens for Affordable Housing in Newton Development Organization, Inc., a Massachusetts corporation, having a usual place of business located at 1075 Washington Street, Newton, MA 02465 (hereinafter "Grantee") and the City of Newton, a municipal corporation organized and existing under the laws of the Commonwealth of Massachusetts, acting by and through its Director of Planning and Development or her designated staff, but without personal liability to her, (hereinafter the "City"); collectively, the "parties."

WITNESSETH THAT:

WHEREAS, the Grantee has purchased a multi-family building known and numbered 61 Pearl Street, Newton, Massachusetts (hereinafter "the Property"); and

WHEREAS, the Grantee intends to reduce the principal of the existing mortgage, rehabilitate the Property and create three units of permanently affordable rental housing for households whose income is up to 60 percent of area median income for the first year of occupancy and up to 65 percent of area median income thereafter; and

WHEREAS, the Grantee applied for and received approval from the Community Preservation Committee ("CPC") and the Board of Aldermen, upon the Funding Recommendation of the CPC, for funding in the amount of \$665,000.00, subject to certain conditions set forth herein; and

WHEREAS, said funding shall be by way of a deferred forgivable loan in said amount; and

WHEREAS, Grantee shall execute a Note and a Mortgage on the Property securing said Note; NOW THEREFORE, the parties do mutually agree to the following General Provisions:

****GENERAL PROVISIONS****

1. **Subject Matter.** This Agreement sets forth the terms and conditions under which the Grantee shall receive funding from the City in the amount of Six Hundred Sixty-Five Thousand (\$665,000.00) Dollars. The Grantee agrees to use such funding to create three units of permanently affordable rental housing in accordance with the terms and conditions of the approval of the Board of Aldermen (Attachment A) and the Funding Recommendation of the CPC (Attachment B) (the "Project").
2. **Conditions Prior to Receipt of Funds.** The Grantee agrees to the following conditions prior to receipt of funds:
 - (a) The three rental units shall remain subject to a Declaration of Affordable Housing

covenants executed by Grantee in connection with funding received from the HOME and Community Development Block Grant Programs, which meets the requirements in the Funding Recommendation of the CPC. This Declaration of Affordable Housing Covenants is recorded in the Middlesex South Registry of Deeds in Book 56895, Page 442. A copy is attached hereto as Exhibit C.

(b) The deed evidencing the Grantee's ownership of the Property is recorded in the Middlesex South Registry of Deeds in Book 56248, Page 126. A copy is attached hereto as Exhibit D.

(c) The Grantee shall provide evidence that it has secured all other funding sources necessary to complete the Project, including rates and terms.

(d) The Grantee shall submit a project-specific Reasonable Accommodation/Reasonable Modification Plan and an Affirmative Fair Housing Marketing Plan in accordance with Paragraph 12 herein that have both been approved in writing by the City of Newton's Housing Program Manager.

(e) The Grantee shall submit a final scope of work and executed copy of a guaranteed maximum price or not-to-exceed price contract for all rehabilitation work set forth in Grantee's CPC proposal.

(f) Grantee shall provide evidence that all building permits, which are necessary for the start of rehabilitation, have been obtained.

(g) Grantee shall have executed and delivered to the City a Note evidencing the indebtedness and a Mortgage securing the obligations under this Agreement and the Note.

3. **Release of Grant Funds.**

(a) **Request for Payment – Mortgage Balance Reduction.**

Grantee shall submit a request on its letterhead of the amount of funding provided hereunder to be used to reduce Grantee's outstanding mortgage balance. Any check issued to Grantee to reduce Grantee's outstanding mortgage balance shall be tendered forthwith to the Cambridge Savings Bank or its assignee to pay down the existing mortgage on the Property. Grantee agrees to provide evidence of receipt of such check by the Cambridge Savings Bank or its assignee within three (3) business days of receipt of a check hereunder.

(b) **Request for Payment – Developer Fee**

Grantee may request payment of the \$123,696.00 project developer fee in thirds, as follows: \$41,232.00 at closing; \$41,232.00 when one-third of eligible construction costs have been documented and reimbursed; and the final \$41,232.00 when two-thirds of eligible construction costs have been documented and reimbursed.

(c) **Request for Payment – Rehabilitation/Construction or Reimbursement For Other CPA-Approved Expenses.**

Following completion of any significant portion of the work on the Project, Grantee shall prepare and submit requests for payment to the City. Grantee understands and agrees that it may not request payment from the City for any costs already covered by or charged to any other funding source. Requests for payment should be addressed to:

Housing Program Manager
 Department of Planning and Development
 City of Newton
 1000 Commonwealth Avenue
 Newton Centre, MA 02459

Grantee may submit periodic requests for payment, together with copies of invoices from Grantee's contractor(s), as significant portions of the work are completed. After inspection of the work and approval of Grantee's request for payment, the City shall make a periodic progress payment to Grantee in the amount of the invoice attributable to the completed portion of the work. Upon satisfactory completion of the Project, Grantee shall submit to the City a request for payment in full of any remaining balance, together with copies of invoices from Grantee's contractor(s). Payment of any remaining balance shall be made to Grantee within thirty days, subject to final inspection and approval of the work by the City, except that the funds identified in 4(c) below shall be retained until Grantee has provided verifiable evidence of completion of construction and has presented a final report on project costs and results to the CPC. In addition, in the event any dispute arises concerning the work, an equitable amount shall be retained pending resolution thereof.

(d) **Submissions Required with Any Request for Payment.**

Grantee shall submit to the City's Housing Program Manager, for forwarding to the CPC, an initial project timeline and, along with each request for payment, a status report showing: current projected date of occupancy; tasks from the scope of work submitted in 2(e) above that are complete vs. remaining; any changes made in that scope of work in response to site conditions or requests from City inspectors or departments; and expenditures to date, in a format based on the original approved project budget (to permit clear comparison of planned and actual expenditures).

4. **Conditions Subsequent to Receipt of Funds.**

(a) Grantee shall rehabilitate the Property, originally consisting of four units, to three units of affordable rental housing, in accordance with the proposal submitted to the CPC and attached hereto as Attachment H. The units will be affordable in perpetuity to households earning up to 65% of area median income except for the first year of occupancy when tenant household incomes cannot exceed 60 percent of area median income.

(b) The Project shall provide three two-bedroom rental units. The ground floor rental unit shall be accessible to individuals with mobility impairments and shall have front and

rear entry and exit ramps. The ground floor unit shall meet the Massachusetts Architectural Access Board's Group 2B standard for wheelchair accessibility. The rental units shall be marketed in accordance with an approved Affirmative Fair Housing Marketing Plan and the City's "Guidelines for Uniform Local Resident Selection Preferences in Affordable Housing" policy, to the extent allowed by applicable state and federal fair housing laws.

(c) Prior to the release of the final \$66,000.00 (10% of grant funds), including the \$10,000.00 replacement reserve, Grantee shall submit the following to the City; a final project development cost statement, in a format based on the original approved project budget (to permit clear comparison of planned and actual expenditures); and a narrative report and presentation to the CPC on final project results.

(d) All funds shall be spent within 18 months from the date of execution of this Agreement, or by any extension of this deadline granted in writing by the Director of Planning and Development. Grantee shall return to the City's Community Preservation Fund any portion of the grant funds not used for the Project.

(e) Grantee shall reasonably assist the City in publicizing the Project and shall provide progress reports as requested by the CPC or the Board of Aldermen.

(f) Grantee shall cooperate with the City and do all things reasonably necessary to apply to the Department of Housing and Community Development of the Commonwealth of Massachusetts (DHCD) to have the three rental units included in the City's Subsidized Housing Inventory, including but not limited to, completing the necessary application and executing and recording in the Registry of Deeds, a Regulatory Agreement in a form approved by DHCD.

5. **Insurance Requirements** Grantee shall keep the property insured at all times and in such amounts as deemed reasonable and prudent in accordance with standard construction practices and in compliance with Attachment G hereof.
6. **Initial Reporting Requirement.** Before a lease is signed and prior to initial occupancy of each affordable unit, Grantee shall submit a report to the Housing Program Manager identifying the household composition (number in household) characteristics and income of the prospective tenant households.
7. **Recapture of Funds.** If the Grantee fails to comply with the requirements of this Agreement, the approval of the Board of Aldermen, or the Funding Recommendation of the CPC, then the funds shall revert back to the City's Community Preservation Fund, and the Grantee shall be liable to repay the entire amount of the funding to the City. The City may take such steps as necessary, including legal action, to recapture such funds.
8. **Record Keeping** The Grantee agrees to keep such records as are kept in the normal course of business and as may be required by the City. The City shall have full and free access to such records with respect to utilization of the proceeds of this Agreement.

9. **Termination.** In the event the Grantee fails to fulfill all obligations under the terms of this Agreement, the approval of the Board of Aldermen, or the Funding Recommendation of the CPC, then the City shall have the right, in its sole discretion, to terminate this Agreement upon written notice to the Grantee. Upon such termination, the City shall be free to pursue any rights or remedies available at law or in equity, including without limitation, recapture of funds under paragraph 7.
10. **Compliance with Applicable Laws.** The Grantee shall comply with all applicable local, state and federal laws, ordinances, regulations or codes during the term of the Project.
11. **Equal Opportunity.** The Grantee shall comply with all applicable local, federal and state laws governing discrimination and equal opportunity.
12. **Fair Housing Marketing and Local Preference.** The Grantee shall adopt and implement affirmative marketing procedures for the Property consistent with the requirements of the WestMetro HOME Consortium Affirmative Marketing Plan. To the extent allowed by applicable law, the units shall be marketed and tenants shall be selected in accordance with the City's "Guidelines for Uniform Local Resident Selection Preferences in Affordable Housing".
13. **Monitoring.** The City shall annually evaluate the performance of the Grantee and may make a determination as to whether the Grantee has conformed with this Agreement and has a continuing capacity to carry out the funded activities in the manner required pursuant to this Agreement. At any time during normal business hours and as often as the City may deem necessary, Grantee shall make available all such records and documents as requested by said parties 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, personnel records, conditions of employment, and all documents relating to all matters covered by this Agreement.
14. **Successors and assigns.** The terms of this Agreement, including, but not limited to the Permanent Reporting Requirements in paragraph 6, shall be binding on the Grantee's successors and assigns. The Grantee shall promptly provide notice of any change in ownership of the Property to the City.
15. **Conflict of Interest; Bonus and Benefit Prohibited.**
 - (a) No member, officer, or employee of the City or its designees or agents, no member of the governing body of the City of Newton or the Commonwealth of Massachusetts, and no other public official of such locality or localities who exercises any functions or responsibilities with respect to the subject funding programs during his or her tenure or for one year thereafter, shall have any interest or benefit, direct or indirect, in any contract or subcontract, or in the proceeds thereof, in connection with this Agreement, including work to be performed.
 - (b) Grantee shall not pay bonus, commission, or fee for the purpose of obtaining the City's approval of or concurrence to complete the work financed in whole or in part by this Agreement.

16. **Indemnification.** The Grantee shall indemnify, hold harmless, and defend the City and its departments, officers, employees, servants, and agents from and against all actions, causes of actions, claims, demands, damages, costs, loss of services, expenses, and compensation, including attorneys' fees and interest arising out of or resulting directly from the services rendered pursuant to this Agreement, provided that any such action, cause of action, claim, demand, damage costs, loss of service, expense, compensation (1) in any way grows out of bodily injury, sickness, disease or death, or to injury to or destruction of tangible property which (2) is caused in whole or in part by any act or omission of the Grantee, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, regardless of whether or not it is caused in part by a party indemnified hereunder.
17. **Notice.** Any notice, demand, request, consent, approval, communication either party is required to give to the other party or any person shall be in writing and either served personally or sent by prepaid, first class mail to the respective addresses set forth below. Either party may change its address by notifying the other party of the change of address in writing.

To the City: Director of Planning and Development
 Planning and Development Department
 Newton City Hall
 1000 Commonwealth Avenue
 Newton Centre, MA 02459

To Grantee: Executive Director
 Citizens for Affordable Housing in Newton Development
 Organization, Inc.
 1075 Washington Street
 Newton, MA 02465

18. **Changes.** In the event that changes in the Project become necessary, including but not limited to changes in funding, scope, or duration, the Grantee shall request the change in writing. If the City agrees to such changes, they must be approved in writing by the City and incorporated into this Agreement as amendments.
19. **Other Provisions.** All other provisions, if any, are set forth within the following SCHEDULES attached hereto and made a part hereof as listed below:

Attachment A, Approval of the Board of Aldermen
 Attachment B, Approval and Funding Recommendation of the CPC
 Attachment C, Declaration of Affordable Housing Covenants
 Attachment D, Deed of Property to CAN-DO

Attachment E, Tax Attestation
 Attachment F, Clerk's Certificate and Vote
 Attachment G, Insurance Requirements

~~Attachment H, Grantee's CPC Proposal~~

On the Newton CPC website, from
<http://www.newtonma.gov/cpa/projects/pearl-st/pearl-st.htm>

Attachments A-G are included in the posted version of this agreement, but attachment H is posted separately.

Additional copies of attachments A, B, and D are also posted separately.

**** SIGNATORIES ****

IN WITNESS WHEREOF the parties hereto have executed this AGREEMENT in three sets to be effective when executed by His Honor the Mayor of the City of Newton.

GRANTEE:

Citizens for Affordable Housing in Newton Development Organization, Inc.

By: Josephine McNeil
Josephine McNeil,
Its: Executive Director

CITY OF NEWTON:

By: Candace Havens
Candace Havens
Director of Planning and Development

I certify funds are available in the amount of \$665,000 in Account 21C11413-5797 for this Agreement.

21C11413-5797 (2P)

By: Juliette
Comptroller of Accounts

Approved as to legal form and character

By: Robert J. ...
Assistant City Solicitor

CONTRACT APPROVED

By: Setti D. Warren
Setti D. Warren, Mayor

5.16.11
Date

Attachment A
Approval of the Board of Aldermen

CITY OF NEWTON
IN BOARD OF ALDERMEN

May 2, 2011

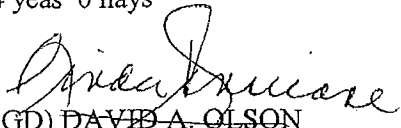
ORDERED:


That, in accordance with the recommendations of the Community Preservation Committee through its Chairman, Nancy Grissom; the Committee on Community Preservation through its Chairman Alderman Susan Albright; and the Finance Committee through its Chairman Alderman Leonard J. Gentile, the sum of six hundred sixty-five thousand five hundred dollars (\$665,500) is hereby appropriated from the fiscal 2011 community housing and general reserves of the Community Preservation Fund to the control of the Planning and Development Department, to create three units of permanently affordable rental housing at 61 Pearl Street in Newton Corner, as detailed in the Newton Community Preservation Committee's February 2011 funding recommendation to the Board of Aldermen, be and is hereby approved as follows:

From: CPA 2011 General Reserve
(21R10498-5790)..... \$665,500

To: 61 Pearl St. Housing
(21C11418-5797)..... \$665,500

Under Suspension of Rules
Readings Waived and Approved
24 yeas 0 nays


(SGD) DAVID A. OLSON
acting City Clerk


(SGD) SETTI D. WARREN
Mayor

Date: 5/11/11

Attachment B
Funding Recommendation of the CPC

City of Newton



Setti D. Warren
Mayor

City of Newton, Massachusetts Community Preservation Committee



DOCKET
ITEM NO.

45-11

FUNDING RECOMMENDATION

date: 14 February 2011
to: The Honorable Board of Aldermen
from: Community Preservation Committee
re: for 61 PEARL STREET (community housing)

PROJECT GOALS & ELIGIBILITY

This project will convert an 1870s building in Newton Corner from 4 rental units with a total of 5 bedrooms to 3 deed-restricted rental units with a total of 6 bedrooms. The 3 reconfigured units will be permanently affordable to households with 65 percent of area-wide median income, and the first-floor unit will meet the Massachusetts Architectural Access Board's Group 2B standard for wheelchair accessibility.

The interior scope of work includes but is not limited to: de-leading; adding insulation where feasible; integrating the rear two-floor addition into the main building to create 3 single-floor units; making the first-floor unit fully accessible; and reconfiguration, repairs, or partial replacement of wiring, plumbing, support piers, foundation sills, and water/sewer lines.

The exterior scope of work includes but is not limited to: repair and partial replacement of roofing; construction of a "cricket" to improve drainage between the roofs of the main building and rear addition; and adding wheelchair ramps on the first floor. The project will slightly reduce the site's impermeable area and will have no significant visual impact on the neighborhood or streetscape.

The project is eligible for funding under the Community Preservation Act as the creation of affordable housing. It satisfies the CPA's emphasis on using previously developed sites for affordable housing, as well as priorities set by Newton's *Comprehensive Plan*, *Community Preservation Priorities & Funding Guidelines*, and *Consolidated Plan for Housing & Community Development*.

RECOMMENDED FUNDING

On 19 January 2011 by a unanimous vote of 8-0 (member Steve Fauteux absent), the Community Preservation Committee recommended that \$665,500 be appropriated to the control of the Director of Planning & Development for this project, including \$500 for a CPC-required site sign acknowledging support from Newton's Community Preservation Fund. All funds should be drawn first from the fy11 community housing reserve, then from the general reserve, and allocated 100% as community housing. The following summary budget is provided solely as background; a detailed budget is attached.

61 Pearl Street Development Budget

Sources		Uses	
City of Newton		Acquisition or mortgage reduction	\$ 780,000
federal housing funds (CDBG, HOME)	\$ 480,000	Construction (incl. 10% contingency)	\$ 354,949
Private foundations	\$ 50,000	General development/soft costs (incl. 5% contingency & relocation)	\$ 101,355
Bank loan	\$ 175,000	Replacement reserve	\$ 10,000
CP Funds	\$ 665,500	Site sign (required by CPC)	\$ 500
		Developer overhead/fee (approximately 10%)	\$ 123,696
TOTAL	\$ 1,370,500	TOTAL	\$ 1,370,500

Contact: Alice Ingerson, Program Manager, aingerson@newtonma.gov (ph 617.796.1144)

SPECIAL ISSUES CONSIDERED by the CPC

Overall Cost & Location The perfect rehabilitation project for affordable housing would have: 1. a building purchased at the lowest possible price, in 2. a village-center location, served by public transit and within walking distance of schools, shopping, places of worship and workplaces; and that 3. is well-insulated, has no lead paint, requires no or few repairs to meet building codes, and has a wheelchair-accessible first floor, or minimum-cost options for adding such accessibility.

Properties with this perfect combination of features are rare (or nonexistent) in Newton, but the property for this project has 1., 2., and as much or more of 3. than most of Newton's small, historic, multi-family buildings. 1: The final purchase price for the property was supported by two appraisals. 2.: The presentation made at the CPC's public mapped the property's proximity to many village-center amenities. Both appraisals and the presentation are available online (see attachments list). The paragraph below discusses issue 3.

Special Costs: Relocation & Accessibility The requested public subsidy of \$381,667 per unit for this project is approximately 13% higher than Newton's previous per-unit maximum of \$337,500. The proposal does include \$20,800 for federally required relocation assistance to current tenants and \$111,319 of construction to provide a higher level of accessibility than is required by existing regulations. Excluding these costs, the requested subsidy per unit is about the same as the previous maximum (see attached table comparing recent projects).

Population Served The proposal's operating budget assumes initial occupation by households at 60% of area-wide median income, and after that by households at 65%. In practice, CAN-DO expects this project to serve households at 50% of median income, based on its own past success in finding tenants with housing vouchers (Section 8), which are available only to these lower-income households.

Economic Sustainability As with most projects developed by CAN-DO, the operating budget for this project allows the accumulation of only minimal cash reserves. The initial funding request therefore includes \$10,000 to capitalize a replacement reserve. To supplement such reserves, in the past CAN-DO has also requested and received federal housing funds through the City of Newton for major repairs or rehabilitation needed several years after initial project completion.

Developer Fee & Organizational Finances This project's budget includes a 10% developer fee. This is at the lower end of industry standards for small-scale, rental projects, but higher than CAN-DO has sometimes accepted in the past. Newton's Planning & Development Board has urged CAN-DO to include standard fees in all its development proposals to ensure the organization's viability. Financial information submitted for the P&D Board's December 2010 meeting, including operating budgets for CAN-DO as an organization and for all its rental properties, is online (see attachments list).

ADDITIONAL RECOMMENDATIONS

The Community Preservation Committee further recommends

1. **Spending authority:** That all funds be appropriated to the spending authority of the Director of Planning and Development
2. **Grant agreement:** That all funds be disbursed through a legally binding grant agreement, which includes but is not limited to:
 - ♦ pre-conditions for the initial release of funds, such as proof that all other funds needed to complete the project have been committed; construction contracts confirming that the committed funds are sufficient to complete the project; all required building permits; final approval and filing of the affordable housing deed restriction; and City approval of the project's affirmative marketing plan
 - ♦ procedures for the release of construction funds on a reimbursement basis only, and of funds for other project purposes, including the developer fee
 - ♦ requirements to assist in publicizing the project and to provide progress reports as requested by the Community Preservation Committee or Board of Aldermen
 - ♦ pre-conditions for releasing the final 10 percent of funds, including verified completion of construction & a final report/presentation on project costs & results to the CPC
3. **Deadlines:** That all funds be spent within 18 months after they become available, or by any extension of that deadline granted in writing by the Director of Planning and Development

4. Return of unspent funds: That any CP funds not used for the purposes stated in the attached proposal or this recommendation be returned to the Newton Community Preservation Fund.

KEY OUTCOMES

The Community Preservation Committee will evaluate this project based on these key outcomes:

1. on-time, within-budget completion of the scope of construction described in the proposal and its attached supplemental information
2. initial occupancy within 2 months of completion, and continued occupancy in perpetuity, by households with up to 65% of the area-wide median income

ATTACHMENTS

(delivered to the clerks of the Committee on Community Preservation and Finance Committee)

NOTE: Most attachments listed are available from the project webpage below. Any attachment not already online is available by request -- see contact information at www.newtonma.gov/cpa.

<i>attachment</i>	<i>starts on page</i>
web page for 61 Pearl Street proposal, from www.newtonma.gov/cpa/projects.htm	1
Links to all major documents in chronological order, including most attachments below and the following additional long documents <i>not</i> attached here: <ul style="list-style-type: none"> ♦ appraisals ♦ purchase & sale agreement ♦ home inspector's report ♦ CAN-DO financials (incl. fy09 financial statements submitted with original proposal and current info. submitted for Planning & Development Board's Dec 2010 mtg) 	
attached documents from City bodies & City staff:	
♦ table comparing per-unit subsidies for recent Newton housing projects	2
♦ Newton Housing Partnership letter to the CPC	3
♦ City of Newton Housing staff memo to the CPC	5
♦ HOME consultant report (subsidy layering analysis)	11
attached documents from proposal sponsor:	
♦ original proposal, with support petition and photos	14
♦ updated development & operating budgets	38
♦ deed, as confirmation of purchase price & site control	41
♦ public hearing presentation, including updated photos, floor plans & neighborhood maps	43
♦ detailed scope of work, incl. statement about accessibility & highlighting of the project's "green" elements; final p. is a generic diagram of architectural "cricket" (will be used in this project to improve roof drainage)	63
attached documents from Newton citizens: emails & letters about the proposal (not posted online)	68
attached document from state government: first page of Massachusetts Architectural Access Board accessibility standards for multi-family buildings, from www.mass.gov/Eeops/docs/dps/aab_regs/521009.pdf	73

Attachment C
Declaration of Affordable Housing Covenants



DECLARATION OF AFFORDABLE HOUSING COVENANT

8 pgs
AG

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 61 Pearl Street 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 at the Middlesex South District Registry of Deeds.

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 and Urban Development's (HUD) Community Development Block Grant (CDBG) and HOME Programs. 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 fifty (50) years from the date 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 by the City of Newton Inspectional Services Department 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 CDBG and HOME Program Loan Agreement of even

date between the NCDAs and the Owner. If the units receive Certificates of Occupancy and 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 three units of rental housing at the Property which shall be rented at HOME Program rents as defined by the United States Department of Housing and Urban Development for the fifteen (15) year period of HOME affordability. The HOME-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 60% of the area median income for the Boston-Cambridge-Quincy, MA-NH Metropolitan Statistical Area, adjusted for family size for the first year of occupancy. After the first year of occupancy, the units must be occupied by households with incomes that do not exceed 65% of the area median income for the Boston-Cambridge-Quincy, MA-NH 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 65% 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.

(iv) After the expiration of the fifteen (15) year period of HOME affordability, units must be occupied by households with incomes that do not exceed 80% of the area median income for the Boston-Cambridge-Quincy, MA-NH Metropolitan Statistical Area, adjusted for family size.

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. At the request of the NCDAs, the Owner shall provide copies of records documenting the annual and monthly gross and adjusted income of each resident

occupying the units. For residents who have Section 8 certificates or vouchers from the Massachusetts Rental Voucher Program, the NCDA may rely on the housing assistance payment contract from the applicable housing authority in lieu of income verification by the Owner. In addition to the foregoing, Owner shall keep such additional records and prepare and submit to NCDA such reports as the NCDA may deem necessary to ensure compliance with the requirements of this Covenant and of the CDBG and HOME Programs.

- 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 and 24 CFR Part 92, the HOME Investment Partnership 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.** 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. **Foreclosure.** At least 60 days prior to the foreclosure auction sale by a lender or other transfer in lieu of foreclosure, the lender shall notify the NCDA of its intent to so foreclose and shall allow the NCDA the option/opportunity to assume the mortgage. In the event of such assumption of the mortgage, the Owner shall not further pledge or hypothecate said Property and the Owner's recapture of any equity it may have shall be deferred until such time as the Property is sold. If the option is exercised, the NCDA may direct the sale of the Property at any time during the period of affordability and shall undertake to sell the property within a reasonable period of time after the expiration of the affordability period. In the event of such a sale, the monies received shall be applied first to any and all encumbrances outstanding with respect to the property in order of priority, next to the costs of sale, then to repay the NCDA and/or the City of Newton for any amounts expended on the assumption of the mortgage. Any sums remaining after the above payments shall then be paid to the person or entity which was Owner of record prior to assumption of the mortgage, in full satisfaction of its equity interest in the Property.

In the event the NCDA chooses not to exercise its option to assume the mortgage referenced above, then the affordability restriction created hereunder shall terminate upon foreclosure or by instrument in lieu of foreclosure, provided that the holder of the mortgage gives the NCDA not less than 60 days prior written notice of the mortgagee's intention to foreclose upon the Property or to accept an instrument in lieu of foreclosure. Thereafter, if at any time following foreclosure or other transfer in lieu of foreclosure but still during the term of affordability, as defined in paragraph 3, the Owner of Record prior to foreclosure, any subsidiary thereof, or any newly formed entity that includes the former Owner or those with whom s/he or it has had family or business ties obtains ownership interest in the Property, the affordability period shall be revived in accordance with its original term.

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:

Executive Director

Citizens for Affordable Housing in Newton Development Organization, Inc.

1075 Washington Street

Newton, MA 02465

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 31st day of March, 2011.

Citizens for Affordable Housing in Newton Development Organization, Inc.

By: Josephine McNeil Date 3/31/2011
Josephine McNeil, Executive Director

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, SS.

March 31, 2011

On this 31st day of March, 2011, before me, the undersigned notary public, personally appeared the above-named Josephine McNeil, proved to me through satisfactory evidence of identification, which were personally known, 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.



Marie Marie Gilton
Notary Public

My Commission expires: 2/15/13

**EXHIBIT A
PROPERTY DESCRIPTION**

61 Pearl Street, Newton, MA

That certain parcel of land, together with the buildings thereon, situated in Newton, Middlesex County, Massachusetts, being presently numbered 61 Pearl Street, shown as Lot 12 in Section 70, Book 16, on a plan from 1946 Atlas of the City of Newton, containing 7300 square feet and bounded and described as follows:

- SOUTHERLY by said Pearl Street, one hundred (100) feet;
- WESTERLY by land now or formerly of Emerson, eighty (80) feet;
- NORTHERLY by land now or formerly of Laffie by a line parallel with Pearl Street, sixty-five (65) feet;
- EASTERLY by a line parallel with Carleton Street, twenty (20) feet;
- NORTHERLY by a line parallel with Pearl Street, thirty-five (35) feet; and
- EASTERLY again by Carleton Street, sixty (60) feet.

Be any or all measurements or contents more or less, or however otherwise bounded, measured or described.

Being the same premises conveyed to Owner by deed dated December 14, 2010 of Margaret Murray, Trustee of the 61 Pearl Nominee Trust, u/d/t April 30, 2009 recorded with the Middlesex Registry of Deeds at Book 56248, Page 125.

Attachment D
Deed

Da



Bk: 56248 Pg: 125 Doc: DEED
Page: 1 of 2 01/07/2011 03:40 PM

QUITCLAIM DEED

MASSACHUSETTS EXCISE TAX
Southern Middlesex District FOD # 001
Date: 01/07/2011 03:40 PM
Ctrl# 149208 11929 Doc# 00006433
Fee: \$3,556.80 Cons: \$780,000.00

I, Margaret Murray, Trustee of the 61 Pearl Nominee Trust, u/d/t April 30, 2009,
pursuant to the Trustee certificate recorded herewith,

for consideration paid of Seven Hundred Eighty Thousand and 00/100 (\$780,000.00) US
Dollars,

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

With Quitclaim Covenants

That certain parcel of land, together with the buildings thereon, situated in Newton,
Middlesex County, Massachusetts, being presently numbered 61 Pearl Street, shown as
Lot 12 in Section 70, Block 16, on a plan from 1946 Atlas of the Newton, containing
7300 square feet and bounded and described as follows:

61 Pearl St
Newton

- SOUTHERLY by said Pearl Street, one hundred (100) feet;
- WESTERLY by land now or formerly of Emerson, eighty (80) feet;
- NORTHERLY by land now or formerly of Laffie by a line parallel with Pearl
Street, sixty-five (65) feet;
- EASTERLY by a line parallel with Carleton Street, twenty (20) feet;
- NORTHERLY again by a line parallel with Pearl Street, thirty-five (35) feet; and
- EASTERLY again by Carleton Street, sixty (60) feet.

Be any or all measurements or contents more or less, or however otherwise bounded,
measured or described.

Being the same premises conveyed to Grantor as recorded with the Middlesex Registry of
Deeds in Book 53292, Page 25.

Witness my hand and seal this day of 14 December 2010.

By: Margaret Murray
Margaret Murray, Trustee

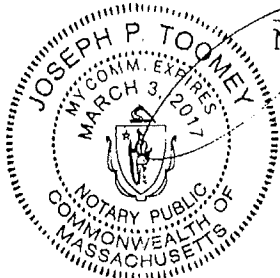
COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss.

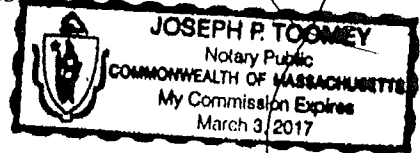
December 14 2010

On this 14th day of December 2010, before me, the undersigned notary public, personally appeared Margaret Murray, as Trustee aforesaid, and proved to me through satisfactory evidence of identification, which was a state-issued driver's license to be the person whose name is signed on the preceding or attached document, and acknowledged to me she signed it voluntarily for its stated purpose.

My Commission Expires:



Joseph P. Toomey
Notary Public:



Attachment E
State Tax Attestation

Pursuant to Massachusetts General Laws Chapter 62C Section 49A, I certify under the penalties of perjury that I, to my best knowledge and belief, have filed all Massachusetts tax returns and paid all Massachusetts taxes required under law. *

Signature

Name of Grantee

Federal Identification Number
or Social Security Number

Date

*Legislation enacted by the Commonwealth of Massachusetts, effective July 1, 1983, requires that the above Attestation be signed by all contractors doing business with municipalities.

Attachment F
Clerk's Certificate and Vote

CITIZENS FOR AFFORDABLE HOUSING IN NEWTON DEVELOPMENT ORGANIZATION, INC.

CERTIFICATE OF AUTHORITY - CORPORATE

The undersigned hereby certifies on behalf of Citizens for Affordable Housing in Newton Development Organization, Inc., d/b/a CAN-DO a Massachusetts corporation (the Corporation), that she is the duly elected and acting Clerk of the Corporation and that:

1. Attached hereto as Exhibit A is a true, correct and complete copy of certain Votes taken at a Meeting of the Board of Directors of the Corporation on July 13, 2011 and said Votes have not been revised, rescinded, amended or otherwise modified and, as of the date hereof, are in full force and effect; and
2. Jane Eisenstark is the duly qualified and acting President of the Corporation; Kenneth Sinclair is the duly qualified and acting Treasurer of the Corporation and Josephine McNeil is the dully qualified and acting Executive Director of the Corporation.



Clerk: Deanna Reid

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss

July 27, 2011

On the 27th day of July, 2011, before me, the undersigned notary public, personally appeared Deanna Reid proved to me through satisfactory evidence of identification, which was personally known to be the person whose name is signed on the preceding document and acknowledged that she signed it voluntarily for its stated purpose, as Clerk of Citizens for Affordable Housing in Newton Development Organization Inc. d/b/a CAN-DO.



Notary Public

My commission expires:

July 18, 2014

EXHIBIT A

I, Deanna Reid, Clerk of Citizens for Affordable Housing in Newton Development Organization, Inc. d/b/a CAN-DO hereby certify that the following is a true copy of votes taken at the Meeting of the Board of Directors held on July 13, 2011 at the offices of CAN-DO at 1075 Washington Street, West Newton, Massachusetts.

A quorum being present upon motion duly made and seconded it was:

VOTED: That the Corporation authorize either the Executive Director or the President to execute the funding agreement and all notes, mortgages and other customary financing documents necessary in connection with a Forgivable Deferred loan in the amount of \$665,000.00 from the Newton Community Preservation Committee. \$205,000 of said loan shall be for the purpose of paying down an existing loan from The Cambridge Savings Bank relating to the property at 61 Pearl Street, Newton, MA.; \$94,118 of said loan shall be used for the purpose of paying developer fees and overhead and the remainder shall be used for hard and soft costs relating to the renovations on said property.

Attachment G

Insurance

1. General. Grantee, and contractors and subcontractors engaged by Grantee, its agents or designees to perform the site work and construction work, shall, at all times, be required to maintain insurance coverage consistent with the character of the Project. Grantee agrees to keep copies of each policy and certificate on file, and to provide such copies to the City upon request.

The following coverage will be required at the minimum amounts indicated below:

Workmen's Compensation Employer's Liability	Statutory Coverage \$100,000 Coverage B
Comprehensive General Liability Bodily Injury	\$500,000 each occurrence \$1,000,000 aggregate
Property Damage	\$500,000 each occurrence \$1,000,000 aggregate

NOTE: The comprehensive General Liability policy must included coverage for:

- Independent contractor's liability
- Products and completed operations liability for a period of not less than one year
- Broad form property damage liability
- Contractual liability

2. Property Insurance.

a. Hazard Insurance. Grantee shall keep the Property continuously insured against damages resulting from hazards by maintaining an adequate extended coverage policy. In the event of distribution of hazard insurance proceeds in lieu of restoration or repair following loss to the structures, an amount of the proceeds equal to the amount of the grant distributed to Grantee by the City under the terms of this AGREEMENT are hereby assigned and shall be paid to the City.

b. Restoration or Repair of Property. In the event of fire, hazard or other similar occurrence resulting in the partial or total loss of the Property, Grantee shall restore the Property unless Grantee and the City determine that it is impossible or impractical to do so.

**Attachment H
Grantee's CPC Proposal**

Original proposal & revised budgets, etc. on which the Newton CPC funding recommendation & this grant agreement are based, are posted separately on the Newton CPC website, from

<http://www.newtonma.gov/cpa/projects/pearl-st/pearl-st.htm>