



One Oak Hill Road, Fitchburg, MA 01420
(978) 348-2749

hfnem@verizon.net www.ncmhabitat.org

January 27, 2005

Community Preservation Committee
Town Hall
Acton, MA 01720

To the Members of the CPC:

After meeting with the Board of Selectmen on January 3, 2005, Habitat for Humanity has come to understand the magnitude of the challenge before us and the Town in regard to acquiring town-owned land at this time. Because Habitat will continue to seek an appropriate piece of land in Acton, whether private or public, we would like to maintain our request for \$35,000 to fund land acquisition and infrastructure for construction of a Habitat Home.

If there is a practical way to set-aside these funds for future use, that would be our request. Nancy Tavernier has suggested that the Community Housing Program Fund, which will hopefully become an Affordable Housing Trust Fund, might be the best vehicle for that set-aside. We hope to work with the ACHC and the AHA as we explore our options for bringing Acton's first Habitat home to reality. The ACHC is recommending the establishment of a Municipal Affordable Housing Trust Fund that would be under the control of a Board of Trustees appointed by the Board of Selectmen. We understand this will require a vote at the April Town Meeting. It is the intention of the ACHC to move the CPA Community Housing Funds into that Trust. We think this would be a good place for the CPA Habitat funds also.

We would like to consider the \$35,000 as a deposit toward the anticipated construction project. We know that PR will do wonders for generating the interest of land-owners in the town who might be motivated to donate land for a Habitat house. We intend to establish an Acton group of supporters who will scour the community for both land and private funds.

We look forward to working with your committee as well as interested individuals to move toward the goal of helping Acton provide affordable housing opportunities.

In partnership,

Megan Foley
Executive Director

AFFORDABLE HOUSING RESTRICTION

This Affordable Housing Restriction is created pursuant to Mass. General Laws Chapter 184, Sections 23 through 30, inclusive.

This Affordable Housing Restriction is created in order to assure the affordability of the subject property by future low and moderate income purchasers and to retain the availability of affordable housing for persons and families of low and moderate income.

The subject property is: [property description]

The owner of the subject property who is executing this restriction is: [name of Homeowner Partner].

This restriction is granted to and is for the benefit of Habitat for Humanity North Central Massachusetts, Inc., (hereinafter called "HFHNCM") and any successor non profit corporation whose purpose is to create and/or maintain the availability of affordable housing for persons and families of low and moderate income, or in the event of the dissolution of HFHNCM without assignment of its interest to any other non-profit organization, to the Inhabitants of [name of municipality].

This restriction runs with the land. It shall be effective for a period of 30 years from the date of recording in the appropriate Registry of Deeds, which period may be extended for any number of additional 20 year periods by the recording of a notice of such extension in the appropriate Registry of Deeds as set forth in M.G.L. Chapter 184, Sections 27 to 29, and shall be effective as to, and binding upon, all subsequent owners, whether by descent, devise, foreclosure, attachment and execution, tax taking, or any other form of alienation, to the extent allowable by applicable law.

The terms of this Affordable Housing Restriction may not be released, modified or amended by HFHNCM, its successors or assigns for a period of 25 years from the date of this instrument.

The terms and conditions of the Affordable Housing Restriction are:

The following definitions apply to this Affordable Housing Restriction

1. **"Home"** shall mean the property and the house constructed thereon that are conveyed to the Partner Homeowner by HFHNCM contemporaneously with this Covenant.
2. **"Original Selling Price"** shall mean the price at which HFHNCM sold the Home to Partner Homeowner
3. **"Maximum Resale Price"** shall mean the Original Selling Price, plus the value of any Improvements (as defined below) plus an amount equal to the percentage increase in the median income for the Commonwealth of Massachusetts for the period of time since the transfer of the property to the Partner Homeowner, as

published in HUD Income Limit Statistics for the Fitchburg-Leominster area for the most recent year. This percentage increase shall be applied both to the Original Selling Price and to the value of the Improvements (as defined below). In the case of improvements the increase shall be calculated only for the period from the construction of the improvement to the date of resale.

4. **"New Selling Price"** shall mean the price at which the Partner Homeowner agrees to sell the Home to a third party or to HFHNCM. This price shall in no event be greater than the "Maximum Resale Price" as defined below.
5. **"Total Equity"** shall mean the difference between the Maximum Resale Price and the outstanding balance on mortgage and note.
6. **"Improvements"** shall mean an addition to the living space of the home or an additional structure. Partner Homeowner shall maintain invoices of the costs of any improvements he makes to the Home, which will be the sole references to be used in determining the amount to be recovered by the Partner Homeowner for Home improvements.
7. **"Qualified Purchaser"** shall mean a purchaser from the Partner Homeowner who meets the income requirements as currently established by HFHNCM at the time of the proposed sale.

Right of First Refusal: During the term of this restriction, HFHNCM retains the right of first refusal in the event the Partner Homeowner chooses to sell the Home.

If HFHNCM chooses to exercise this right, the selling price of the Home to HFHNCM will be equal to the Maximum Resale Price.

In the event that HFHNCM does not exercise this right of refusal within 60 days of the Partner Homeowner notifying the President of HFHNCM in writing that he desires to sell the Home, the Partner Homeowner may sell the Home to a Qualified Purchaser for an amount not to exceed the Maximum Resale Price. Whether the Home is purchased by HFHNCM under the right of first refusal or is sold to a Qualified Purchaser, the net proceeds due to the Partner Homeowner will be determined by the Equity Sharing Provision set forth below.

Certification of Compliance: Compliance with the terms of the foregoing provision shall be evidenced by a Certificate of Compliance executed on behalf of the HFHNCM Board of Directors and recorded in the appropriate Registry of Deeds.

Equity Sharing Provision: During the first five (5) years of the restriction period, the Partner Homeowner will not accumulate any interest in the Total Equity. From the proceeds of a sale that occurs during these first five years, the Partner Homeowner would receive the total amount he/she had paid in principal payments to HFHNCM plus the cost of any improvements made by Partner Homeowner as defined above.

After the first five years, the Partner Homeowner will accumulate an interest in the Total Equity equal to the difference between the Maximum Resale Price and the amount equal to the outstanding balance of the mortgage.

For example, if a) the Home were originally sold to the Partner Homeowner for \$60,000; b) over the ten years since the sale the median income had increased 20%; c) \$30,000 was still owed on the mortgage; d) qualifying improvements of \$15,000 had been made to the home five years after the original sale – the Maximum Resale Price would be:

Example Original Selling Price	\$60,000
Plus 20% increase in median income adjustment	\$12,000
Plus cost of qualifying improvements	\$15,000
Plus 10% increase in median income applied to The improvements	\$ 1,500
Maximum Resale Price:	\$88,500
Home owner Equity	
New Selling Price	\$88,500
Less outstanding mortgage balance	(-) \$30,000
Balance due homeowner	\$58,500
Balance due HFHNCM	\$30,000

In the event that the Partner Homeowner improves the Home as defined above using his/her own resources/funds, then upon the sale of the Home the Partner Homeowner will recover the cost of such improvements from the proceeds of the sale as set forth above. Partner Homeowner shall maintain invoices of the costs of any improvements s/he makes to the Home, which will be the sole references to be used in determining the amount to be recovered by the Partner Homeowner for Home improvements.

By signing below, the Partner Homeowner acknowledges and agrees that because the Home was sold to the Partner Homeowner below market value, the property should remain as affordable housing for future low- and moderate-income families and that HFHNCM should recover its investment through a share of the Total Equity, and use that money toward the construction of more houses for families in need. As a good steward of the Home, after the first five years the Partner Homeowner has earned his/her share of the Total Equity.

Forced Sale: Note that in the event there is a forced sale of the Home through foreclosure, during the term of the Note and Mortgage, all interest in the Total Equity accumulated by the Partner Homeowner will be forfeited.

BY SIGNING BELOW, Partner Homeowner accepts and agrees to the terms and provisions contained in this Affordable Housing Restriction.

Witness:

Homeowner

Commonwealth of Massachusetts

[County], ss.

[date]

Then appeared the above named [name], and acknowledged the foregoing to be her/his/their free act and deed before me,

Notary Public
My Commission expires:

BY SIGNING BELOW, The following parties accept the foregoing Affordable Housing Restriction

HABITAT FOR HUMANITY NORTH CENTRAL MASSACHUSETTS, INC.

BY _____

Commonwealth of Massachusetts

[County], ss.

[date]

Then appeared the above named [name], and acknowledged the foregoing to be her/his/their free act and deed before me,

Notary Public
My Commission expires:

[3/22/04]

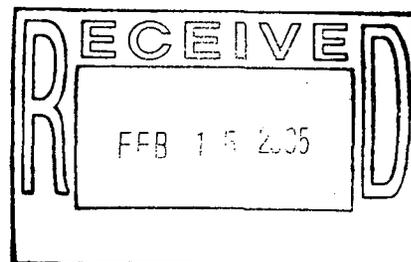


Habitat for Humanity

North Central Massachusetts

BOS
ACHC
2/18

One Oak Hill Road • Fitchburg MA 01420 • Tel. 978-348-2749
habitatncm1@aol.com • www.ncmhabitat.org • Fax 978-343-9386



February 10, 2005

Board of Selectmen
Town Hall
472 Main Street
Acton, MA 01720

Dear Members of the Board,

Thank you for your gracious reception and encouragement for a Habitat for Humanity project in Acton. Since it seems the time is not right, I respectfully request that the item to issue an RFP for disposition of the River Street property to a non-profit builder be deleted from the warrant for the April Town Meeting.

Our plan at this point is to gather current Habitat supporters and engage additional people in a Local Project Committee. This model has worked well in other communities (Littleton, Groton and Ayer) and has led to the donation of land through private individuals, land trusts and towns. I feel confident that the efforts of Acton citizens will equal those in nearby towns.

We hope to work with your Board and other town groups throughout this project. Thank you again for your consideration.

Sincerely,

Megan Foley
Executive Director



Building houses in partnership with God's people in need



Betty McManus

From: "Tavernier" <ntavern@comcast.net>
To: "Nancy Tavernier" <ntavern@comcast.net>; "Kevin McManus" <KevinM@NEHE.com>; "Betty McManus" <ahabetty@attglobal.net>; "Dan Buckley" <DJB01720@hotmail.com>; "Bob Whittlesey" <rbwhittlesey@verizon.net>; "Ryan Bettez" <bettezfamily@yahoo.com>; "Pam Shuttle" <pam.shuttle@state.ma.us>; "Bernice Baran" <Bara437853@aol.com>
Sent: Friday, February 18, 2005 10:52 AM
Subject: FW: Housing Project

FYI.

X-Originating-IP: [216.20.70.194]
 User-Agent: Microsoft-Entourage/10.1.6.040913.0
 Date: Fri, 18 Feb 2005 10:38:46 -0500
 Subject: FW: Housing Project
 From: Walter Foster <wmfoster@smithduggan.com>
 To: CPC <CPC@acton-ma.gov>
 X-OriginalArrivalTime: 18 Feb 2005 15:37:25.0517 (UTC) FILETIME=[BEE74BD0:01C515CF]

To all CPC members:

Forwarded for your information and latest on the Habitat project.

Walter

----- Forwarded Message

From: Walter Foster <wmfoster@smithduggan.com>
Date: Fri, 18 Feb 2005 09:07:59 -0500
To: <j.bisognano@comcast.net>, <bos@acton-ma.gov>
Subject: Re: Housing Project

Dear Joe:

I am the Acton Board of Selectmen representative to the CPC and have been in touch with Habitat about their project. I would very much like to speak with you about the AFA's participation in the project. It sound like a great idea. Are you part of the local team formed by Habitat to oversee and execute this project in Acton? I would like to set up a time to meet with you and give you some background from the Board's perspective and work with you on this project. Let me know if you can meet on the weekend or in the evenings during the working week. Thanks for your efforts and I look forward to meeting with you.

--

Walter M. Foster
 Smith & Duggan LLP

(617) 228-4448
(h) (978) 263-7408

Dear Sirs;

My name is Joe Bisognano and I live at 4 Torrington Lane in Acton. I am also a veteran of the United States Air Force and an active member of the Air Force Association (AFA), a national organization that supports the Air Force mission and its people.

Recently, we met with the Habitat for Humanity people about a joint project in Acton. The essence of our partnership is we (AFA) will assist the Habit group build a new house for a low income family. In return, the Habit people will allow a low income military family to occupy the house.

As you've probably seen in news reports around the country, many of our brave soldiers are returning home from Iraq with lost limbs and very little money to care for themselves and their family. This joint project would give one of these veterans a chance to live in a terrific community for an affordable price.

The Habitat people indicated they have spoken to the Board about some potential land in Acton that could be available for a new home. The different spin on the original request is the designation of a military family as the ultimate occupant.

We in the AFA are very excited about the partnership with Habitat and the opportunity to do something special for our military forces. We respectfully request your support to obtain some land in Acton to make this project a reality.

We are available at your convenience to discuss this project further.

Thanks in advance for your consideration.

Regards,

Joe
978-263-9812

----- End of Forwarded Message

EXTRA INFO. 4/4/06 - 1

ARTICLE 30

MEMORANDUM

TO: Don P Johnson, Town Manager
FROM: Stephen D. Anderson, Town Counsel
RE: Acton/2006 ATM: Application of Massachusetts Constitution's Anti-Aid Amendment to ATM Article 30
DATE: April 4, 2006

One member of the Finance Committee has inquired as to the validity of 2006 ATM Article 30 under the Massachusetts Constitution's Anti-Aid Amendment.¹ Following the procedures specified herein, I conclude that Article 30 does not violate the Anti-Aid Amendment.

Article 30 provides as follows (emphasis added):

To see if the Town will vote to authorize the Board of Selectmen to transfer the real property shown as parcel 46 on Map H-3A of the 2005 edition of the Town Atlas, which land is currently held for general municipal purposes or for other specific municipal purposes for which it has heretofore been devoted, from the tax title custodian to the Board of Selectmen for the purpose of conveyance, and **to authorize the Board of Selectmen to convey such land for affordable housing purposes on such terms and conditions and for such consideration, which may be non-monetary consideration, as the Selectmen may determine,** or take any other action relative thereto.

¹ The Anti-Aid Amendment, Article 46, § 2, of the Amendments to the Massachusetts Constitution, as rewritten in 1974 by article 103 of the Amendments, provides as follows (emphasis added):

No grant, appropriation or use of public money or property or loan of credit shall be made or authorized by the Commonwealth or any political subdivision thereof for the purpose of founding, maintaining or aiding any infirmary, hospital, institution, primary or secondary school, or charitable or religious undertaking which is not publicly owned and under the exclusive control, order and supervision of public officers or public agents authorized by the Commonwealth or federal authority or both, except that appropriations may be made for the maintenance and support of the Soldiers' Home in Massachusetts and for free public libraries in any city or town and to carry out legal obligations, if any, already entered into; and no such grant, appropriation or use of public money or property or loan of public credit shall be made or authorized for the purpose of founding, maintaining or aiding any church, religious denomination or society. Nothing herein contained shall be construed to prevent the Commonwealth from making grants-in-aid to private higher educational institutions or to students or parents or guardians of students attending such institutions.

The Summary for Article 30 in the Warrant reads as follows (emphasis added):

This article transfers control of a 0.6-acre parcel of town-owned land at 74 River Street to the Board of Selectmen so that they may convey it to a third party. **The Selectmen's stated intent is to offer this land for the non-profit development of a single or two-family affordable home, such as that envisioned by the local chapter of Habitat for Humanity North Central Massachusetts, Inc.** Such a cooperative, nonprofit affordable housing development strategy will result in all site housing counting toward the Town's state mandated requirement for affordable housing units, as compared to a market-rate offering of the parcel whereby a 40B proposal could result in the development of three market-rate units for every one affordable unit. Cost benefits may also be realized by volunteer support, contributions and community involvement. The 74 River Street parcel is located in the South Acton Smart Growth district and within walking distance of the South Acton village center and public transportation.

1. **Application of Anti-Aid Amendment to Disposition Town-Owned Property**

In *Benevolent & Protective Order of Elks, Lodge No. 65 v. Planning Bd. of Lawrence*, 403 Mass. 531, 553-554 (1988), the Supreme Judicial Court held in no uncertain terms that a transaction of the type contemplated here does not violate the Anti-Aid Amendment:

The plaintiffs claim that selling parcel B of the project area to Emerson College as redeveloper violates the anti-aid amendment. Because the sale price is less than the city's cost to acquire the property, the plaintiffs argue that the sale involves a grant of public money to a nonpublic institution. We disagree. No public aid can be involved where a private institution pays fair market value for public property. *Opinion of the Justices*, 374 Mass. [836] at 856-857, 371 N.E.2d 1349 [1970].² See *Brooks v. Boston*, 334 Mass. 285, 286, 135 N.E.2d 13 (1956).³

² In *Opinion of the Justices to the House of Representatives*, 374 Mass. 843, 856-857 (1978), the SJC opined as follows with respect to the constitutionality of a pending bill authorizing the transfer to Boston University of the City of Boston's interest in the Franklin Institute and the City's and the Commonwealth's interest in accumulating bequest, which was established under Benjamin Franklin's will and which was to be distributed in 1991:

The city of Boston and the Commonwealth each have the power to dispose of part of the Franklin Fund in 1991. This Fund was established by a private bequest of Benjamin Franklin. Thus the Franklin Fund is not "public money." Boston and the Commonwealth could, therefore, give their portions of this Fund to Boston University without violating art. 46.

Under the bill, the city of Boston would also transfer its title to the Franklin Institute. With one exception, the assets of the Franklin Institute have been acquired and

Significantly, in Acton's case, Article 30 authorizes the Board of Selectmen to convey the River Street land "for affordable housing purposes on such terms and conditions and for such consideration, which may be non-monetary consideration, as the Selectmen may determine." The Town acquired the property as a gift in 1980 pursuant to ATM Warrant Article 25 (Exhibit A) by deed dated October 13, 1980, recorded at Book 14100, Page 121 (Exhibit B). While the land may be a buildable lot today by virtue of the construction of the nearby Town sewer, its value for purposes of the Anti-Aid Amendment is judged as affected by the restrictions placed on the land by the Selectmen for affordable housing purposes at the time of its disposition.

As the Court stated in *Benevolent & Protective Order of Elks, Lodge No. 65 v. Planning Bd. of Lawrence*, 403 Mass. 531, 553-554 (1988):

The judge, after considering the numerous restrictions the disposition agreement and the urban renewal plan imposed on parcel B, found that the sale price to Emerson College is the fair market value. The judge was entitled to rely on the disposition appraisal commissioned by the LRA, and the testimony of that appraiser. The LRA's appraiser considered comparable sales of residentially zoned land and took into account the restrictions the LRA placed on the property. The other appraisals introduced in evidence did not account for the decrease in value caused by the restrictions. **Restrictions on use, development, and resale of property under an urban renewal plan**

maintained through private gifts, including the Franklin bequest and the Carnegie donation. For the reasons stated above, transfer of these assets to Boston University would not violate art. 46. The only exception to the use of private funds for the acquisition of the assets of the Franklin Institute was the purchase of the site on which the Institute is located with money from the city's publicly raised general funds. Under the terms of art. 46, the transfer of title to the land to Boston University might be prohibited. However, the bill provides in s 4 for the payment by Boston University of the fair value of this land. Since fair value would be paid for the portion of the Franklin Institute which was acquired through the *857 use of public funds, no violation of art. 46 would result from the transfer of this asset.

³ In *Brooks v. City of Boston*, 334 Mass. 285, 287 (1956), the SJC upheld the constitutionality of Statute 1955, c. 36, § 1, which read as follows: "The board of park commissioners of the city of Boston, with the approval of the mayor, is hereby authorized to sell and convey to the Hebrew Home for Aged a charitable corporation organized and existing under the laws of the Commonwealth, a certain parcel of land containing nine acres, more or less, bounded by Centre street and Walter street in the West Roxbury section of said city, and known as Joyce Kilmer Park, held by said city for public park purposes." The Court observed that "the city has been expressly authorized to sell and convey the locus to the Hebrew Home for Aged. The statute has been accepted by the city council. There is nothing in the record which supports the argument of the petitioners that the making of the conveyance mentioned in c. 36 would violate art. 46, § 2, of the Amendments to our Constitution forbidding the use of public money or property for sectarian purposes. The city held the park only in its municipal capacity as an agency of the government for the benefit of the general public subject to the power of the Legislature to authorize its sale." *Id.* at 286-287.

affect the fair market value of property in much the same way as do easements, zoning restrictions, and other development restraints. The judge properly considered these restrictions, and his finding as to fair market value was warranted by the evidence. There was no violation of the anti-aid amendment. Because public funds are not being used to aid Emerson College, we need not analyze the proposed transaction in terms of the three criteria enunciated in *Commonwealth v. School Comm. of Springfield*, 382 Mass. 665, 675, 417 N.E.2d 408 (1981).

2. Disposition of Town-Owned Property

To dispose of town-owned property under G.L. c. 40, § 15, the officer having charge of the land must notify the selectmen that the land is no longer required for public purposes, and Town Meeting by a two thirds vote must authorize the conveyance of the land and specify the minimum amount to be paid for such conveyance. Thereafter, the selectmen may, for such amount or a larger amount, and upon such other terms as the selectmen shall consider proper, convey the land.

Under the Uniform Procurement Act, G.L. c. 30B, § 16(c), a “governmental body shall solicit proposals prior to ... disposing of, by sale or rental to any person, real property or any interest therein, **determined in accordance with paragraph (b) [of § 16] to exceed twenty-five thousand dollars in value**” (emphasis added). This section “shall not apply to the rental of residential property to qualified tenants by a housing authority or a community development authority.” No similar exemption exists for the conveyance of a fee interest in real property to a non-profit builder of affordable housing.

Under Section 16(b), the Town "shall determine the value of the property through procedures customarily accepted by the appraising profession as valid." Under Section 16(a), the Town can "declare the property available for disposition and shall specify the restrictions, if any, that it will place on the subsequent use of the property."

As in the *Lawrence* case, it is the value of the property **as restricted** that controls:

- If the value of the property determined under Section 16(b), and restricted for affordable housing use under Section 16(a), is less than or equal to \$25,000, then Chapter 30B's RFP requirements would not apply.
- If the value of the property determined under Section 16(b), and restricted for affordable housing use under Section 16(a), is greater than \$25,000, then Chapter 30B's RFP requirements would apply.

In addition, under Section 16(g), if the Town "decides to dispose of property at a price less than the value as determined pursuant to paragraph (b), the governmental body shall publish notice of its decision in the central register, explaining the reasons for

its decision and disclosing the difference between such value and the price to be received."

Accordingly, before the Selectmen can convey the property to Habitat or anyone else, the following procedure should be followed:

1. There must be a finding by the current custodian that the land is no longer required for public purposes. A proposed finding is attached.
2. A 2/3 Town Meeting vote is required to authorize the disposition of the town-owned parcel of land for affordable housing purposes. The motion should specify the minimum amount to be paid for such conveyance. A proposed finding is attached.
3. Prior to disposition, the Selectmen shall specify the restrictions which shall govern the disposition and reuse of the property, which in this case contemplate (a) the construction of one single-family or two-family home within a time certain, (b) the imposition in perpetuity of an affordable housing restriction under a Deed Rider to be promulgated by the Selectmen, and (c) the imposition of a right of reverter to the Town in the deed to ensure that the Grantee in fact develops the land in accordance with the terms of the disposition and the affordable housing restriction.
4. Prior to disposition, the Selectmen shall determine the value of the property as so restricted through procedures customarily accepted by the appraising profession as valid
5. If the value of the property as so determined is less than or equal to \$25,000, then the Selectmen may dispose of the property without an RFP.
6. If the value of the property as so determined is greater than \$25,000, then the Selectmen must dispose of the property in accordance with Chapter 30B's RFP requirements. (Habitat may or may not be the successful bidder in response thereto.)
7. In either case, the Town must receive a payment in lieu of taxes from the Grantee, calculated in accordance with G.L. c. 44, § 63A.⁴

⁴ Chapter 44, Section 63A, covering sales of public land and payment of taxes provides as follows:

Section 63A. Whenever in any fiscal year a town, which term, as used in this section, shall include a city, shall sell any real estate, the board or officer executing the deed therefor in the name and behalf of the town shall, as a condition precedent to the power to deliver such deed, receive from the grantee as a payment in lieu of taxes allocable to the days ensuing in said fiscal year after the date of such deed, a sum which shall be equal to

such portion of a pro forma tax computed as hereinafter provided as would be allocable to the days aforesaid if such pro forma tax were apportioned pro rata according to the number of days in such fiscal year; provided, however, that whenever the said real estate shall be sold between January second and June thirtieth of the fiscal year, the town shall also receive an additional amount equal to the entire pro forma tax computed as hereinafter provided and allocable as a payment in lieu of taxes for the next succeeding fiscal year. Such pro forma tax shall be computed by applying the town's tax rate for the fiscal year of the sale, or, if such rate is not known, the town's tax rate for the fiscal year next preceding that of the sale, to the sale price after crediting any exemption to which, if the deed had been executed and delivered on January first of such next preceding fiscal year, the grantee would have been entitled under section five of chapter fifty-nine. A recitation in the deed that there has been full compliance with the provisions of this section shall be conclusive evidence of such fact. Sums received under this section shall not be subject to section sixty-three of this chapter or to section forty-three of chapter sixty, but shall be credited as general funds of the town.

Notice of Determination Under G.L. c. 40, §15

The undersigned Board of Selectmen, being the custodian and board in charge of the real property shown as parcel 46 on Map H-3A of the 2005 edition of the Town Atlas, which was acquired by the Town as a gift in 1980 pursuant to ATM Warrant Article 25 (Exhibit A) by deed dated October 13, 1980 and recorded in the Middlesex South District Registry of Deeds at Book 14100, Page 121 (Exhibit B) finds and declares that:

- This property is currently held for general municipal purposes;
- This property is no longer needed for the purpose(s) for which it was acquired, and
- This property or interests therein may be conveyed by the Town if so desired.

TOWN OF ACTON, MASSACHUSETTS,
By its Board of Selectmen,

Peter K. Ashton, Chairman

F. Dore' Hunter

Lauren S. Rosenzweig

Walter M. Foster

Andrew D. Magee

V10-15

DR 17100 10721

MASSACHUSETTS QUITCLAIM DEED SHORT FORM (INDIVIDUAL) 19

I, THOMAS F. LITRENTA

of Acton, Middlesex

County, Massachusetts

for consideration of less than ONE HUNDRED (\$100.00)..... Dollars paid, grant to TOWN OF ACTON, its successors and assigns (address of Grantee: Town Hall, P.O. Box 236, Acton, Massachusetts) for municipal purposes

with QUITCLAIM COVENANTS

~~the land in~~

A certain parcel of land located on the Northerly side of River Street in Acton, Middlesex County, Massachusetts, and being shown as Lot A on a plan entitled "Plan of land in South Acton, Massachusetts", owned by Thor Realty Corporation, Everett M. Brooks Company, Civil Engineers, dated August 31, 1963 and recorded with Middlesex South District Deeds in Book 11466, Page 212, and bounded and described as follows:

Beginning at the Southeasterly corner thereof on the Northerly side of River Street and at Lot B as shown on said plan and thence running NORTH 57° 12' 45" WEST, 150 feet by said River Street to an iron pipe set in a stone wall at land formerly of William E. Stearns;

Thence turning and running NORTH 14° 23' 15" EAST by land of said Stearns, 203.90 feet to the center of a stone bound as shown on said plan;

Thence turning and running SOUTH 74° 40' EAST, 115.56 feet by land formerly of Mary E. Gates, 115.56 feet to a stone bound at said Lot B;

Thence turning and running SOUTH 8° 13' 33" WEST, 89.66 feet to a point;

Thence turning and running NORTH 76° 46' 27" WEST, 45.59 feet to a point;

Thence turning and running SOUTH 13° 13' 33" WEST, 39 feet to a point;

Thence turning and running SOUTH 76° 46' 27" EAST, 49 feet to a point;

Thence turning and running SOUTH 8° 13' 33" WEST, 122 feet to the point of beginning. The last five (5) courses being by Lot B as shown on said

plan being 27,141 square feet of land, more or less, and being Lot A on said plan however otherwise bounded, measured or described.

For grantor's title see deed from Thor Realty Corporation, dated April 28, 1970 and recorded with said Deeds in Book 11825, Page 598.

Witness my...hand and seal this...13th.....day of ...October..... 19.80.

Thomas F. Litrenta
Thomas F. Litrenta

The Commonwealth of Massachusetts

Middlesex, ss. October 13, 19 80

Then personally appeared the above named Thomas F. Litrenta

and acknowledged the foregoing instrument to be his free act and deed, before me

Arrested J. Fennell
Notary Public
My commission expires *July 20* 19 82
NOTARY PUBLIC

Property Affected: 72 River Street, Acton, Middlesex County, Massachusetts

03116-80 AM 11:41 1810E-MA10

MASSACHUSETTS
 Statute Form of
Quitclaim Deed
 (INDIVIDUAL)

Thomas F. Litrenta
 TO
 Town of Acton

at o'clock and minutes m.
 Received and entered with
 Book Page Deeds
 Attest: Register

FROM THE OFFICE OF

RETURN TO →

SAMUEL NARCUS, LEGAL STATIONER
 BOSTON, MASS.
 FORM 19

REVISED CHAPTER 497 - 1969

RECORDED & ENTERED
 MIDDLESEX COUNTY
 DEPT. OF DEEDS
 SOUTH DISTRICT

(Please print or type)

Norman F. Cohen, Esq.
 Palmer's Deeds
 Boston, MA 02108

BR 11-11-11

(THE FOLLOWING IS NOT A PART OF THE DEED, AND IS NOT TO BE RECORDED)

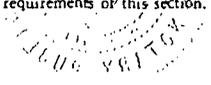
CHAPTER 183, SECTION 11, GENERAL LAWS

A deed in substance following the form entitled "Quitclaim Deed" shall when duly executed have the force and effect of a deed in fee simple to the grantee, his heirs and assigns, to his and their own use, with covenants on the part of the grantor, for himself, his heirs, executors, administrators and successors, with the grantee, his heirs, successors and assigns, that at the time of the delivery of such deed the premises were free from all encumbrances made by him, and that he will, and his heirs, executors and administrators shall, warrant and defend the same to the grantee and his heirs and assigns forever against the lawful claims and demands of all persons claiming by, through or under the grantor, but against none other.

(*Individual—Joint Tenants—Tenants in Common—Tenants by the Entirety.)

CHAPTER 183 SEC. 6 AS AMENDED BY CHAPTER 497 OF 1969

Every deed presented for record shall contain or have endorsed upon it the full name, residence and post office address of the grantee and a recital of the amount of the full consideration thereof in dollars or the nature of the other consideration therefor, if not delivered for a specific monetary sum. The full consideration shall mean the total price for the conveyance without deduction for any liens or encumbrances assumed by the grantee or remaining thereon. All such endorsements and recitals shall be recorded as part of the deed. Failure to comply with this section shall not affect the validity of any deed. No register of deeds shall accept a deed for recording unless it is in compliance with the requirements of this section.



Motion on Article 30 – Transfer Real Property – 74 River Street

Mr. Magee moves that the Town authorize the transfer of the real property shown as parcel 46 on Map H-3A of the 2005 edition of the Town Atlas, from its current custodian to the Board of Selectmen for the purpose of conveyance, and authorize the conveyance of that property as set forth in the Article, provided that the minimum amount to be paid for such conveyance shall be the value of the property as restricted by the Selectmen for affordable housing purposes, which value shall be determined through procedures customarily accepted by the appraising profession as valid

Nancy T.
ACHC Box



Habitat for Humanity[®]

North Central Massachusetts

One Oak Hill Road • Fitchburg, MA 01420 • Tel: 978.348.2749
hfhncm@verizon.net • www.ncmhabitat.org • Fax: 978.343.9386

October 10, 2008

Nancy Tavernier, Chair
Acton Community Housing Corporation
Acton Town Hall
472 Main Street
Acton, MA 01720

Re: 82 River Street – Monitoring Agent

Dear Ms. Tavernier:

By a Quitclaim Deed dated March 1, 2007 from the Town of Acton (the “Town”) to Habitat for Humanity, North Central Massachusetts, Inc. (“Habitat”) that is recorded with the Middlesex South Registry of Deeds at Book 49069, Page 374 (the “Habitat Deed”), the Town conveyed to Habitat title to the property at 82 River Street (previously known as 74 River Street) (the “Premises”). Pursuant to the Habitat Deed, the Premises is subject to an affordable housing restriction, including a requirement that all subsequent transfers of the Premises be subject to a deed rider (the “Deed Rider”) substantially in the form attached to the Habitat Deed. The Deed Rider requires that a monitoring agent (the “Monitoring Agent”) be appointed to ensure that any re-sales of the affordable housing on the Premises comply with the terms of the affordable housing restriction to be placed on the property by Habitat in accordance with the requirements of the Habitat Deed.

The Acton Board of Selectmen (the “Board”) voted to approve Habitat, Acton Community Housing Corporation (“ACHC”) and the Massachusetts Department of Housing and Community Development (“DHCD”) collectively as the Monitoring Agent. With the approval of DHCD and the Town, Habitat has conveyed the Premises to Marcos Severiano Souza and Silvia Lopes de Souza, as tenants by the entirety (the “Grantees”) pursuant to the terms of a Quitclaim Deed dated September 27, 2008 and recorded with the Middlesex South Registry of Deeds at Book 51734, Page 334 (the “Souza Deed”) which incorporates a deed rider substantially in the form of the deed rider attached to the Habitat Deed.

ACHC and Habitat have agreed that Habitat will initially take primary responsibility, as between Habitat and ACHC, as the Monitoring Agent, but that if the Town determines that Habitat is not satisfactorily carrying out its duties as Monitoring Agent, ACHC may take primary responsibility instead. By this letter agreement (the “Agreement”), ACHC and Habitat desire to memorialize this arrangement.

Set forth below are the terms and conditions of the agreement between Habitat and ACHC:

BOST_791908.1
BOST_793861.1

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1. Monitoring Agent. Habitat shall take primary responsibility as the Monitoring Agent. Habitat agrees to perform the duties of the Monitoring Agent as set forth in the affordable housing restriction and the "Acton Connection" requirements, each as set forth in the Souza Deed.

2. Change of Primary Responsibility. In the event that the Town determines at any time that Habitat has failed to perform the monitoring duties as Monitoring Agent, the Town shall provide written notice of such failure to perform to Habitat (the "Failure Notice"), which Failure Notice shall include specific statements demonstrating Habitat's failure to perform its monitoring duties. Within thirty (30) days after receipt of the Failure Notice, Habitat shall either affirmatively waive its status as primary Monitoring Agent or provide the Town with a notice that Habitat is in compliance with its monitoring duties (the "Response Notice") and a response to the allegations set forth in the Failure Notice. Within thirty (30) days after receipt of the Response Notice, the Town shall either provide a notice to Habitat that rescinds the Failure Notice, in which case Habitat shall continue to serve as primary Monitoring Agent, or a notice that ACHC will be assuming primary responsibility, as between Habitat and ACHC, as the Monitoring Agent, (the "ACHC Notice"). Upon receipt of the ACHC Notice, Habitat shall take all reasonable steps and cooperate with the Town and ACHC as ACHC assumes and performs its responsibilities as the primary Monitoring Agent.

3. Notice. Notices and other communications required by this Agreement shall be in writing and delivered by hand against receipt or sent by recognized overnight delivery service or by certified or registered mail, postage prepaid, with return receipt requested, or by electronic mail or telecopy. Notices shall be deemed delivered on the date of actual receipt, one (1) day after deposit with a recognized overnight delivery service or three (3) days after deposit with the United States Postal Service. All notices shall be addressed as follows:

Habitat: Habitat for Humanity North Central Massachusetts, Inc.
1 Oak Hill Road
Fitchburg, MA 01420
Attention: Executive Director

With a copy to: Foley & Lardner LLP
111 Huntington Avenue
Boston, MA 02199
Attention: David Y. Bannard, Esq.

ACHC: Acton Community Housing Corporation
Acton Town Hall
472 Main Street
Acton, MA 01720

Town: The Town of Acton
472 Main Street
Acton, MA 01720
Attention: Town Manager

With a copy to: Anderson & Krieger LLP
One Canal Park, Suite 200
Cambridge, MA 02141
Attention: Stephen Anderson, Esq.

4. Counterparts. This Agreement may be executed in any number of counterparts which, when taken together, shall constitute a single, binding instrument.

5. Successors and Assigns. This Agreement shall be binding upon and the benefits thereof shall inure to the parties hereto and their respective successors and assigns. Except as expressly provided in this Agreement, this Agreement shall not be assignable by either party without the prior written consent of the other party which consent shall be granted or denied in the sole discretion of the party whose consent is required.

If you agree to the foregoing terms and conditions, please so indicate by signing the enclosed copy of this letter agreement where indicated below and returning it to me, in which case this Agreement shall be binding and effective on Habitat and ACHC as of the date of the transfer of title to the Premises, September 27, 2008.

HABITAT FOR HUMANITY NORTH CENTRAL MASSACHUSETTS, INC.

By: 
Title: President & Treasurer

Accepted and agreed:

ACTON COMMUNITY HOUSING CORPORATION

By:  Date: October 24, 2008
Title: Chair

TOWN OF ACTON

By:  Date: October 25, 2008
Title: Town Manager

cc: Steven Ledoux, Acton Town Manager
Ryan Pace, Esq.

October 20, 2008

WRITER'S DIRECT LINE
617.342.4033
dbannard@foley.com EMAIL

CLIENT/MATTER NUMBER
999400-2199

VIA HAND DELIVERY

Nancy Tavernier
Chair
Acton community Housing Corporation
Town Hall
472 Main Street
Acton, MA 01720

Re: 82 River Street - Monitoring Agent

Dear Ms. Tavernier:

As you know, Foley & Lardner LLP represents Habitat for Humanity, North Central Massachusetts, Inc. ("Habitat"). Habitat recently completed construction of and transferred title to a home and land located at 82 River Street in Acton (the "Premises"). The Premises is intended to be part of the Town of Acton's (the "Town") affordable housing inventory. As required by the Commonwealth's Department of Housing and Community Development ("DHCD"), the deed transferring title to the Premises is subject to a deed rider that includes restrictions on all subsequent transfers of the Premises in order to preserve it as affordable housing. These restrictions are overseen and monitored by a monitoring agent (the "Monitoring Agent").

The Town's Board of Selectmen have approved the designation of Habitat and DHCD, jointly, as the Monitoring Agent, but have also required that if Habitat does not satisfactorily carry out its duties as Monitoring Agent, then Acton Community Housing Corporation ("ACHC") shall succeed Habitat as Monitoring Agent. The enclosed letter agreement reflects Habitat's and ACHC's agreement with respect to this arrangement. As this arrangement was a requirement of the Town's Board of Selectmen and as any replacement of Habitat as Monitoring Agent would require action by the Town, this letter agreement also requires the signature of the Town Manager, on behalf of the Town.

Please review this letter agreement and, if it is acceptable to you, please sign all three counterparts on behalf of ACHC where indicated, and provide all three counterparts to Steven Ledoux, the Town Manager, for his signature, along with the attached cover letter explaining this matter. Once Mr. Ledoux has signed the letter agreement and returned the executed counterparts to me, I will send executed originals to Habitat and ACHC.

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TAMPA

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FOLEY & LARDNER LLP

Steven Ledoux
October 20, 2008
Page 2

Should you have any questions or comments or if I may be of assistance in any way, please do not hesitate to contact me. Thank you very much for your attention to this matter.

Very truly yours,

A handwritten signature in black ink, appearing to read 'David Y. Bannard', written over the closing text.

David Y. Bannard

cc: Megan Foley
Ryan Pace, Esq.



FOLEY & LARDNER LLP

ATTORNEYS AT LAW

111 HUNTINGTON AVENUE
BOSTON, MASSACHUSETTS 02199
617.342.4000 TEL
617.342.4001 FAX
foley.com

November 7, 2008

WRITER'S DIRECT LINE
617.342.4033
dbannard@foley.com EMAIL

CLIENT/MATTER NUMBER
999400-2199

Megan Foley
Executive Director
Habitat for Humanity, North Central
Massachusetts, Inc.
One Oak Hill Road
Fitchburg, MA 014420

Nancy Tavernier
Chair
Acton Community Housing Corporation
Town Hall
472 Main Street
Acton, MA 01720

Re: 82 River Street - Monitoring Agent

Dear Ms. Foley & Ms. Tavernier:

I am please to enclose to each of you a fully executed counterpart of a letter agreement reflecting Habitat's and ACHC's agreement with respect to the Monitoring Agent arrangement. I understand that Steven Ledoux has retained the third counterpart on behalf of the Town of Acton. I will provide a copy of this letter agreement to DHCD, along with a full package of the closing papers, to ensure that the home at 82 River Street is added to Acton's affordable housing inventory.

Should you have any questions or comments or if I may be of assistance in any way, please do not hesitate to contact me. Thank you very much for your attention to this matter.

Very truly yours,

David Y. Bannard

cc: Ryan Pace, Esq.
(w/ encl.)

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