

## TRI-PARTY AGREEMENT

THIS TRI-PARTY AGREEMENT (this "Agreement") is dated as of this \_\_\_ day of \_\_\_\_\_, 2011, among the TOWN OF ACTON (the "Town"), a municipal corporation, having an address of Town Hall, 427 Main Street, Acton, MA 01720, Attn: Town Manager, COMMON GROUND DEVELOPMENT CORPORATION ("CGDC"), a Massachusetts nonprofit corporation, having an address c/o Community Teamwork Inc., 167 Dutton Street, Lowell, MA 01852, and ACTON COMMUNITY HOUSING CORPORATION ("ACHC"), a Massachusetts nonprofit housing corporation, having an address of Town Hall, 427 Main Street, Acton, MA 01720.

### BACKGROUND

WHEREAS, the Town and CGDC entered into a certain Lease (the "Lease") dated December 18, 2006 for premises on Charter Road in Acton, Massachusetts (the "Premises"), as more particularly described in the Lease, for the redevelopment of the Towne School building and property as affordable housing (the "Project");

WHEREAS, CGDC has assigned its interest in the Lease to Towne School Limited Partnership (the "Partnership"), pursuant to an Assignment, Assumption, and Third Amendment of Lessee's Interest in Old High School Commons Lease among the Town, CGDC and the Partnership dated on or about the date hereof;

WHEREAS, CGDC is the managing member of Towne School GP, LLC, which is the general partner of the Partnership;

WHEREAS, in connection with the Partnership's financing of the Project, the Partnership has requested, and the Town has agreed, to execute, among other documents, (i) an Affordable Housing Restriction, (ii) a Regulatory Agreement and (iii) a Tax Credit Regulatory Agreement (collectively, the "Restriction Agreements") among the Partnership, the Massachusetts Department of Housing and Community Development ("DHCD") and the Town, which impose certain restrictions on the Premises and obligations on the Partnership with respect to the operation of the Project as an affordable housing development;

WHEREAS, the Restriction Agreements require that the Town to be bound by the terms and provisions thereof;

WHEREAS, as a condition to entering into the Restriction Agreements, the Town has required that CGDC agree to place certain funds into escrow for the 50-year term of the Lease (the "Term"), as more particularly described in the Lease, to be used by the Town if the Town becomes liable for any of the Partnership's obligations under the Restriction Agreements;

WHEREAS, ACHC has agreed to hold such funds in escrow, and in the event the Town becomes liable for any of the Partnership's obligations under the Restriction Agreement, ACHC has agreed to manage the Premises and, on behalf of the Town, ensure compliance with the terms and provisions of the Restriction Agreements.

NOW, THEREFORE, in consideration of the foregoing, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. Escrow Funds. Upon execution of this Agreement, CGDC shall pay to ACHC the amount of \$5,000.00 (the "Escrow Funds").

2. Agreement to Hold Escrow Funds. ACHC shall hold the Escrow Funds in escrow, in an interest bearing account, until either (a) the Town terminates the Lease due to a default of the Partnership or (b) DHCD (or any successor thereto) seeks to enforce any of the terms or provisions of the Restriction Agreements against the Town (each, a "Trigger Event"). Upon the occurrence of a Trigger Event and written notice from the Town to ACHC and CGDC thereof, ACHC shall promptly pay to the Town the full amount of the Escrow Funds (including any interest earned thereon), which the Town may use to meet its obligations under the Restriction Agreements. If, after the expiration of the Term of the Lease, a Trigger Event has not occurred, then upon written instructions from CDGC to ACHC (with a copy of the Town), ACHC shall pay to CDGC any and all Escrow Funds (including any interest earned thereon) then being held by ACHC.

3. Duties of ACHC as Escrow Agent.

(a) In the event of a dispute relating to the Escrow Funds, ACHC, in its capacity as escrow agent hereunder, shall have the right to retain all or any portion of the Escrow Funds pending the receipt of written instructions agreed to and signed by the Town and CGDC or receipt of a court order directing the distribution of the Escrow Funds after all appeals therefrom have been taken or appeals periods relating thereto have expired. In the alternative, ACHC may resign at any time by transferring the Escrow Funds to a successor escrow agent, acceptable to the Town and CGDC, which successor agrees in writing to act as escrow agent pursuant to the terms of this Agreement.

(b) To the fullest extent permitted by law, the Town and CGDC jointly and severally agree to indemnify and hold ACHC harmless for any and all costs and expenses, including reasonable attorney's fees, incurred in connection with any dispute concerning the Escrow Funds.

(c) The duties and responsibilities of ACHC, as escrow agent, shall be limited to those expressly set forth Sections 2 and 3 of this Agreement.

(d) ACHC, in its sole discretion, may institute legal proceedings of any kind, including, but not limited to, a legal proceeding in any court of competent jurisdiction, to determine the obligations of the parties hereunder and to deposit the Escrow Funds in such court; and upon such deposit and institution of legal proceedings, the duties of ACHC shall be fully terminated and ACHC shall be fully discharged from all such duties. ACHC shall not be required to institute or defend any administrative, arbitral, judicial or other action or legal process involving any matter referred to herein which in any manner affects it or its duties or liabilities hereunder unless and until it has received full indemnity as it shall in its sole discretion require

against any and all claims, liabilities, judgments, attorneys' fees and other costs and expenses of any and every kind in relation thereto.

(e) In taking any action hereunder, ACHC shall be protected and may rely upon any notice, paper or document or signature believed by it to be genuine or upon any evidence deemed by it to be sufficient. In no event shall ACHC be liable for any act performed or omitted to be performed by it hereunder in the absence of gross negligence or willful misconduct, and in no event shall it be liable or responsible for any failure of any banking institution in which the Escrow Funds is deposited to pay such Escrow Funds at ACHC's direction.

(f) CGDC shall deliver to ACHC an executed form W-9 for reporting the interest income from the Escrow Funds.

4. Management of Premises. If a Trigger Event occurs, and if the Town so requests, ACHC agrees to manage the Premises on behalf of the Town until the Town can procure an acceptable property manager to ensure the Town's compliance with all of its obligations under the Restriction Agreements. The Town shall pay ACHC a commercially reasonable management fee for its services, to be mutually agreed to by the Town and ACHC.

5. ACHC Payment to the Town. If a Trigger Event occurs, and in addition to the Escrow Funds paid by CGDC, ACHC agrees to pay to the Town, within fifteen (15) days of said Trigger Event, the amount of \$5,000.00.

6. Notice. All notices or other communications which may be or are required to be served or given hereunder shall be in writing and shall: (A) be delivered in hand; or (B) sent by registered or certified mail, postage prepaid, return receipt requested; or (C) delivered by an overnight delivery service, at the addresses set forth in the first paragraph of this Agreement. Notices shall be deemed given: (1) upon deposit with the U.S. Postal Service if mailed in the manner aforesaid; or (2) upon receipt or refusal to receive by the addressee if delivered by hand or overnight delivery service. By giving to the other parties written notice thereof, the parties hereto and their respective successors and assigns shall have the right from time to time and at any time during the term of this Agreement to change their respective addresses effective upon receipt by the other parties of such notice.

7. Miscellaneous. This Agreement constitutes full and final expression of the agreement between the parties and contains all terms of their agreement. This Agreement shall be interpreted, construed, applied and enforced in accordance with the laws of The Commonwealth of Massachusetts. If any provision of this Agreement shall be held or deemed to be, or shall in fact be, invalid, inoperative or unenforceable because of the conflict of such provision with any constitution or statute or rule or public policy or for any other reason, such circumstance shall not have the effect of rendering any other provision or provisions herein contained invalid, inoperative or unenforceable, but this Agreement shall be reformed and construed as if such invalid, inoperative or unenforceable provision had never been contained herein and such provision reformed so that it would be valid, operative and enforceable to the maximum extent permitted. This Agreement is binding upon and shall inure to the benefit of the parties hereto, and their respective successors and assigns. This Agreement may only be

amended by a written instrument, clearly designated to be an amendment, signed by all parties. This Agreement may be executed in a number of identical counterparts, each of which for all purposes is deemed an original, and all of which constitute collectively one Agreement.

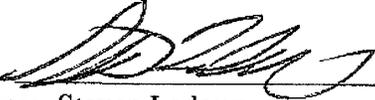
*[Signature Page Follows]*

EXECUTED under seal as of the date first written above.

TOWN:

TOWN OF ACTON

By:



Name: Steven Ledoux

Title: Town Manager

CGDC:

COMMON GROUND DEVELOPMENT  
CORPORATION

By: \_\_\_\_\_

Name:

Title:

ACHC:

ACTON COMMUNITY HOUSING  
CORPORATION

By:



Name:

Nancy E. Tavernier

Title:

President, ACHC