

TOWN OF LINCOLN



LINCOLN TOWN HALL
PO BOX 6353, 16 LINCOLN ROAD
LINCOLN, MA 01773
Office No. 781/259-2600
FAX No 781/259-1677

December 15, 2008

Fred Hopengarten
6 Willarch Road
Lincoln, MA 01773-5105

Dear Mr. Hopengarten:

This is in response to your letter dated November 24, 2008. Note that attached to this letter are three documents, listed below, which address the majority of your questions. I will address the remaining ones here.

Sheri McCann, CEO of CMARC, can be reached at 781-935-7057, extension 3033.

The congregate living facility purchased by CMARC is in fact exempt from property taxes. The Housing agencies involved in the decision to invest in the property did take this loss of real estate taxes into consideration when the investment was discussed. Since the house in question is a five bedroom house, if it had not been purchased by CMARC, it would most likely have been purchased by a family with children. If this were the case, any loss of property taxes due to its exempt status would be more than offset by the cost to the Town of educating those children. Therefore, we did not see the loss of property taxes to be a significant argument against the investment.

The total investment on the part of the Town was \$500,000. These funds were set aside from Community Preservation Act funds, and targeted specifically for use as Affordable Housing. According to state law, CPA funds are restricted in their use, and can not be used for operating costs, or other uses not specifically determined by the Community Preservation Act. Affordable housing is one of these approved uses. The funds were approved for use for Affordable housing at two Town Meetings, and set aside for that specific purpose.

The Town has invested in many types of affordable housing in the past. Most recently, we built three rental units on Sunnyside Lane, with an associated cost of over \$750,000. If The Town is to meet its goal of having 10% of its housing stock in affordable housing, we can not afford to expend over \$250,000 per unit. There are not enough CPA funds to get us there. Therefore, we must look at all methods available to us. The residence on Concord Road would add five units to the Town's Subsidized Housing Inventory, at a per-unit cost of \$100,000. Looked at purely from an investment view point, Town agencies involved in this decision believe this use of funds to be an effective one.

These funds are further restricted. If the use were to change, and the units were not counted by the State towards our SHI, the Town would get its investment returned to us. If the house were to be sold, the Town holds a Right of First Refusal on the property as well.

Regarding your concern that not all of our minutes have been posted in a timely fashion, the Housing Commission shares your concern. The Housing Commission, as is true of all Boards and Commissions, is run by volunteers. We are far from perfect, but try our best to serve the needs of

all the citizens of the Town. The Commission is one of several agencies which do not have dedicated staff, so taking minutes is a task that falls to a member participating in our meetings. There are times when we make decisions about how to spend our time, and sadly, typing and approving minutes is often left to last. We are aware that this is a problem that needs addressing. If a volunteer does not step forward, it is my intent to request that a paid employee be assigned to us for this purpose. Our minutes are published as soon as they are approved. Draft minutes are always available upon request. It is not illegal to publish draft minutes, but there is no requirement to do so.

At our most recent Housing Commission meeting, we discussed what we could have done to improve communications with neighbors and concerned citizens about this process. Although, as evidenced in the attached, we could not have informed the neighbors about specifics prior to the purchase, in retrospect we realize that we should have sent our own letter accompanying CMARC's letter explaining the Town's \$500,000 investment on the property.

It was our intention to be as open and informative as possible. Clearly, we could have done more. For any new affordable purchase or development, we will consider the feedback we have received from you and others.

Thank you for your interest in this matter.

Yours truly,

Renel Fredriksen
Lincoln Housing Commission

CC:

- Neighbors and abbutters on Concord, Willarch, Farrar, and Giles Roads
- Board of Selectmen
- Lincoln Housing Commission
- Lincoln Affordable Housing Trust
- Lincoln Foundation

Attachments:

1. Letter from Joel Bard, Kopelman and Paige, P.C., dated December 9, 2008
2. Letter from Sheri McCann, CMARC, dated December 4, 2008
3. CMARC Mortgage and Covenants



KOPELMAN AND PAIGE, P.C.

The Leader in Municipal Law

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December 9, 2008

Joel B. Bard
jbard@k-plaw.com

Hon. Sara Mattes and
Members of the Board of Selectmen
Lincoln Town Hall
16 Lincoln Road
P.O. Box 6353
Lincoln, MA 01773

Re: CMARC property, 259 Concord Road

Dear Members of the Board of Selectmen:

You have requested an opinion in response to several questions raised by a November 24, 2008, letter from Lincoln resident Fred Hopengarten to the Board in regard to a proposed congregate living residence (group home) at 259 Concord Road for five disabled individuals. The group home will be owned and operated by CMARC, Inc. (formerly Central Middlesex Association for Retarded Citizens).

Mr. Hopengarten states in the letter that he is forwarding questions posed by neighbors. I will address the following three questions which are legal in nature:

“Several neighbors were told by the Building Department or the Planning Department that zoning did not apply, perhaps with reference to §§6.1(a) and 6.1(b), because of CMARC’s status as a non-profit. Is this true?” “Is this an example of a claim under the so-called ‘Dover Amendment’? Could you explain the situation?”

“Please direct me to Massachusetts law or the cases which define five medically and cognitively impaired individuals living under one roof as a family.”

“In the future, would it be possible to inform a specific neighborhood that affordable housing might be coming to that neighborhood, without in any way suggesting that the affordable housing might be a home to those with disabilities.”

As explained below, it is my opinion that the case law under the Dover Amendment, G.L.c. 40A, 3 allows a group home residence, such as CMARC’s, to be located anywhere in the Town. Second, the definition of “family” does affect the legal analysis of the CMARC proposal. Third, under the federal Fair Housing laws and the Massachusetts Antidiscrimination Law, any requirement of prior notice of proposed affordable housing locations would be problematic and, further, could expose the Town to civil rights sanctions.

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I understand the relevant facts to be as follows: CMARC, Inc., is a Massachusetts nonprofit corporation, recognized as a tax-exempt charity by the federal Internal Revenue Service under 26 U.S.C. § 501 (c) (3). Its corporate purposes include: “to develop or improve the quality of classes, recreational activities, community care facilities, workshops, jobs, and many other programs for the retarded; . . . to initiate pilot projects in education, health, and job training; . . . to operate training centers for the retarded . . .” CMARC has owned and operated homes similar to that intended for 259 Concord Road in thirteen communities for over fifteen years.

I have been informed that the programs to be provided for the intended residents of 259 Concord Road include: support to assist the residents in becoming productive, and independent members of their communities; ongoing, individualized training in community living and safety skills and financial and money management; health and nutrition education; and relationship development. I understand that the individuals who will reside at 259 Concord Road are five people in their 20’s with developmental disabilities who have recently graduated from high school and are interested in living as adults in a home of their own. They will work during the day, but need assistance and training in a variety of life skills. Residents also take part together in traditional household tasks such as meal preparation, cleaning, and household chores. The home at 259 Concord Road will be utilized in the manner of a traditional single-family home, with each resident having his or her own bedroom, but all sharing common kitchen, laundry, and bathroom facilities. Minor physical alterations to the home may be necessary to accommodate physical disabilities, but CMARC has not to date submitted any building permits applications.

I will respond to the legally related concerns beginning with the Dover Amendment issues:

- (1) *Massachusetts Zoning Act, Dover Amendment, G.L. c. 40A, § 3*

The use of land by a nonprofit institution for an educational purpose is largely exempt from local zoning requirements by the so-called Dover Amendment, G.L. c. 40A, § 3. The relevant section of the Zoning Act states: “No zoning ordinance or by-law shall regulate or restrict the use of land or structures. . . for educational purposes on land owned or leased . . . by a nonprofit educational corporation.”

In my opinion, the courts have made it very clear that congregate living facilities like that proposed for 259 Concord Road qualify as educational uses under the Dover Amendment. *Fitchburg Housing Auth. v. ZBA of Fitchburg*, 380 Mass. 869, 873–75 (1980). See *Watros v. Greater Lynn Mental Health & Retardation Assn.*, 421 Mass. 106, 115 (1995); *Campbell v. City Council of Lynn*, 415 Mass. 772, 776–77 (1993). The court in the *Fitchburg Housing Authority* case held as follows:

This court . . . has long recognized “education” as “a broad and comprehensive term.” . . . [W]e accepted as a definition of education “the process of developing and training the

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powers and capabilities of human beings,” and embraced the idea that education is the process of preparing persons “for activity and usefulness in life.” The proposed facility would fulfill a significant educational goal in preparing its residents to live by themselves outside the institutional setting. Instruction in the activities of daily living is neither trivial nor unnecessary to these persons. . . . Inculcating a basic understanding of how to cope with everyday problems and to maintain oneself in society is incontestably an educational process. That is the dominant purpose of the proposed facility.

380 Mass. 869, 873–75 (citations omitted). *See Whitkin v. Ottavini*, 15 Land Ct. Rptr. 86, 90 (2007) (appropriate life skills training includes “coping with learning and emotional difficulties, independent living, self-care, job seeking, budgeting, and making use of community resources . . .”).

In addition, in my opinion, the courts have readily found the operators of facilities similar to that proposed by CMARC to be nonprofit educational institutions, even when they are also involved in other activities. *Gardner-Athol Area Mental Health Assn. v. Zoning Bd. of Appeals of Gardner*, 401 Mass. 12, 15–16 (1987). In the *Gardner-Athol* case, the court stated:

There is nothing in G.L. c. 40A, § 3, . . . that requires that education be the dominant purpose or primary activity of a nonprofit corporation in order that it may qualify as a nonprofit educational corporation under § 3. . . . The proper test in deciding whether a nonprofit corporation is an educational one is whether its articles of organization permit it to engage in educational activities, a question easily answered by a review of documents filed with the State.

Moreover, while the Dover Amendment would allow an override of local zoning use requirements, the Town has expressly chosen to incorporate Dover Amendment-qualified uses within the Zoning By-law. Lincoln Zoning By-law § 6.1 (g) expressly allows, in the Single Family Residence District, educational uses pursuant to G.L. c. 40A, § 3. Therefore, in my opinion, a congregate living facility for disabled adults with an educational component is a permitted use in the Lincoln Single Family Residence district under both the Dover amendment and the Town’s Zoning By-law.

(2) *Meaning of “family” in the Lincoln Zoning By-law*

Even if the congregate living proposal for 259 Concord Road did not qualify as a permitted use under the Dover amendment, it would qualify as a single family dwelling under the Lincoln Zoning By-law.

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The primary permitted use in Lincoln's Single Family Residence Zone, where 259 Concord Road is located, is "one building containing one dwelling unit used as a single family residence." Zoning By-law § 6.1 (a). The Lincoln Zoning By-Law does not include a definition of "family."¹

The courts have construed the meaning of "family" broadly where, as in Lincoln, a zoning bylaw does not define the term:

Given contemporary realities, in the absence of a definition of "family" or a provision restricting "single family" use to occupancy by persons related by blood, marriage, or adoption, the term "single family use" is broad enough to include at least occupancy of a dwelling by a reasonable number of unrelated people who choose to share a single family structure, living together as a single housekeeping unit in a family-like situation.

Hall v. Zoning Board of Appeals of Edgartown, 28 Mass. App. Ct. 249, 256 (1989) (footnote omitted).

Moreover, even if the Lincoln Zoning By-law, by incorporating the common law definition as stated in *Hall*, did not treat households of unrelated individuals as families, federal fair housing law would likely override a more restrictive definition of "family" to the extent that it excluded congregate living for the disabled. *See City of Edmonds v. Oxford House, Inc*, 514 U.S. 725, 737-38 (1995). Further, it is my opinion that the Dover Amendment would exempt a qualifying home from a restrictive definition of "family". In any event, the residents of the congregate living home proposed for 259 Concord Road meet the definition of "family" as used in the Zoning By-law because they form a single housekeeping unit.

(3) *Pre-Purchase Notice*

Mr. Hopengarten's letter appears to recognize that it would likely violate Fair Housing laws to require notifications to neighbors in advance of the possible siting of housing for disabled individuals, including congregate living arrangements similar to those proposed for 259 Concord Road. *See Larkin v. State of Michigan*, 89 F.3d 285, 292 (6th Cir. 1996); *Potomac Group Home Corporation v. Montgomery County*, 823 F. Supp. 1285, 1296 (D. Md. 1993).² The letter asks if a neighborhood can be

¹ Sections 14.3.8 & 14.3.9 contain a definition of "family member" that explicitly restricts its application to the context of accessory apartments.

² The requirement that a prospective provider of group home services to the elderly must notify neighbors and civic organizations of the type of disabilities of the persons who will live in the group home and must invite neighbors to comment is not imposed upon any family residential unit nor on any other properly zoned residential unit in the County besides group homes for the disabled. As such, it is facially invalid The neighbor notification rule, and defendants' proffered justifications for it, necessarily assume that people with disabilities are different from people

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advised in advance if affordable housing might be located in the neighborhood without suggesting that the housing might include residents with disabilities.

In my opinion, any local requirement for pre-purchase notification of affordable housing generally would similarly run afoul of both the federal Fair Housing Act Amendments Act, (“FHAA”) 42 U.S.C. §§ 3600–31, and the Massachusetts Antidiscrimination Law, G.L. c. 151B. Any building or land-use regulation that requires special procedures for forms of housing largely used by the disabled will raise federal fair housing concerns:

If a statute “incidentally catch[es] within its net some unrelated groups of people without handicaps, such as juveniles or ex-criminal offenders, that live in supervised housing arrangements,” it may be facially discriminatory under the FHAA. That “discrimination ‘because of’ handicap is frequently directed at an effect or manifestation of a handicap,” such as assisted or supervised living, rather than the handicap itself does not nullify the discrimination. Nevada’s group home statute is largely directed at assisted or supervised living, and the inclusion of some non-handicapped class living in assisted housing does not neutralize the statute’s facial discrimination.

Nevada Fair Housing Center, Inc. v. Clark County, 565 F. Supp. 2d 1178, 1185 (D. Nev. 2008) (citations omitted) (invalidating state group home statute). Because affordable housing is frequently utilized by the disabled (as in the proposal for 259 Concord Road), pre-purchase or pre-construction notice requirements would likely raise concerns under the FHAA.

Moreover, the Massachusetts Anti-Discrimination Law protects a much broader range of classes than does federal law. Massachusetts General Laws c. 151B, § 4 (10), specifically prohibits housing discrimination “against any individual who is a recipient of federal, state, or local public assistance, including medical assistance, or who is a tenant receiving federal, state, or local housing subsidies, including rental assistance or rental supplements, because the individual is such a recipient, or because of any requirement of such public assistance, rental assistance, or housing subsidy program.” Courts are likely to apply case law about disability-based discrimination by analogy to protect the state-law-based civil rights of individuals receiving housing subsidies. It is therefore my opinion that any notice requirements singling out affordable housing for special pre-purchase or pre-construction notice requirements is likely to be treated as a violation of state law.

without disabilities and must take special steps to “become a part of the community.” This requirement is equally as offensive as would be a rule that a minority family must give notification and invite comment before moving into a predominantly white neighborhood. The obvious result of these notifications to neighbors is the antithesis of the professed “integration” goal of defendants. Indeed, notices of this sort galvanize neighbors in their opposition to the homes.

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Conclusion

On the basis of these cases, applicable state and federal statutes, and the wording of the Zoning By-law, it is my opinion that the proposed use of 259 Concord Road for congregate housing as proposed by CMARC is a permitted use. Moreover, any special pre-purchase or pre-construction requirements (including notice to neighbors) would likely pose serious questions and possibly invoke state and federal civil rights laws. I note that the FHAA, in particular, permits significant civil penalties and reimbursement of attorneys' fees if an administrative judge or court finds a violation of the statute. 42 U.S.C. § 3612. In my opinion, the serious financial consequences that the Town would face for a potential violation of the FHAA warrant extreme caution in singling out housing for the disabled for any form of special scrutiny.

Please do not hesitate to contact me if you have any further questions regarding this matter

Very truly yours,

A handwritten signature in black ink, appearing to read "Joel B. Bard". The signature is stylized and cursive.

Joel B. Bard

JBB/rs

cc: Town Administrator



PEOPLE WITH DISABILITIES DIRECTING THEIR OWN LIVES AND DESTINIES

EMPLOYMENT • INDEPENDENCE • EMPOWERMENT

December 4, 2008

Ms. Renel Fredriksen
Chair, Housing Commission
Town Offices
16 Lincoln Road
Lincoln, Ma 01773

Dear Renel:

As always, I am grateful for your help in developing the home for the young adults graduating from high school. We are extremely excited, along with the potential residents and their families about the home opening in the very near future.

I will attempt to answer the questions that have been raised about the letter sent to the neighbors of the home on Concord Road. In using the term "I" to describe the purchaser of the home, it was not my intention to mislead but rather to personalize the issue. I was attempting to let the abutters know that I would be completely involved and accessible to them as neighbors rather than as the representative of a company which would simply move people in and then have little to no contact. I like to think that each of our homes is like my own. I want it to be carefully maintained and efficiently operated. I am very personally involved and was attempting to convey that message in my letter. I will seriously consider this feedback as CMARC develops additional homes in other communities.

As for the letter that was mailed, the list was obtained by CMARC on line from the Lincoln assessors rolls. Information was requested for Concord Road only and not for the side streets. As I have become more familiar with the neighborhood, I have realized that some of the homes on the side streets should have been included since they are quite close. As I have said, I am happy to answer any questions that arise and talk to anyone about the home. Please feel free to give my name out and my phone number to all who request it.

I hope that this answers the questions posed. Let me know if anything further is needed. Thank you.

Sincerely,

A handwritten signature in cursive script that reads "Sheri Mc Cann".

Sheri Mc Cann
President and CEO

JAMES J. MAWN
MARY ELIZABETH MAWN
JAMES J. MAWN
SHARON L. RUSSELL
CATHERINE E. DURKIN

THOMAS M. MAWN, JR.
1966-1995

MAWN AND MAWN, P.C.

ATTORNEYS AT LAW
NORTHERN BANK & TRUST BUILDING
215 LEXINGTON STREET - SUITE #2
WOBURN, MASSACHUSETTS 01801
(781) 933-6650
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November 10, 2008

Ms. Anita Scheipers
Assistant Town Administrator
Lincoln Affordable Housing Trust
Town of Lincoln
16 Lincoln Road
Lincoln, MA 01773

**Re: CMARC, INC.
259 Concord Road, Lincoln**

Dear Ms. Scheipers:

I enclose herewith the following with regard to the entitled matter:

1. Original Mortgage, which has been recorded with Middlesex South District Registry of Deeds in Book 51836, Page 406; and
2. Original Right of First Refusal, which has been recorded in Book 51836, Page 415.

Very truly yours,
MAWN AND MAWN, P.C.

By Barbara E. Mearls
Barbara E. Mearls

Enclosures

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MORTGAGE

28th

THIS MORTGAGE (the "Mortgage") is made this 1 day of October, 2008 between the mortgagor, CMARC, Inc. a Massachusetts corporation having its usual place of business at 147 New Boston Street, Woburn, MA 01801 (the "Mortgagor") and the Town of Lincoln Affordable Housing Trust (the "Mortgagee") having an address of, 16 Lincoln Road, P.O. Box 6353, Lincoln, MA 01773

I. Background and Granting Clause

Mortgagor is indebted to Mortgagee in the principal sum of Five Hundred Thousand and 00/100 (\$500,000.00) (the "Grant"), which indebtedness is evidenced by that certain Grant Agreement dated as of October 8, 2008, providing for repayment of the Grant under certain conditions and providing for other conditions of the Grant.

TO SECURE to Mortgagee the Mortgagor's repayment obligations under the Grant Agreement and the performance of the covenants and agreements of Mortgagor contained in this Mortgage, Mortgagor does hereby mortgage, grant and convey to Mortgagee, with MORTGAGE COVENANTS, upon the STATUTORY CONDITION and with the STATUTORY POWER OF SALE the real property located at 259 Concord Road, Lincoln, Middlesex County, Massachusetts more particularly described on Exhibit A attached hereto;

TOGETHER with all the buildings and improvements now or hereafter erected on such real property, and all fixtures, easement, rights, licenses, appurtenances and rents, all of which shall be deemed to be and remain a part of the property covered by this Mortgage; and all of the foregoing, together with said real property are hereinafter referred to as the "Property."

Mortgagor covenants that Mortgagor is lawfully seized of the estate hereby conveyed and has the right to mortgage, grant and convey the Property, and that the Property is unencumbered by mortgages, other than the mortgage(s), if any, listed on Exhibit B attached hereto (the "Senior Mortgage"). Mortgagor warrants and covenants to defend generally the title to the Property against all claims and demands, subject to encumbrances of record. Mortgagor covenants that Mortgagor shall use the Property as a group home containing no more than five (5) beds constituting "community housing" listed on the Subsidized Housing Inventory ("SHI") maintained by the Department of Housing and Community Development ("DHCD").

II. Covenants

Mortgagor and Mortgagee covenant and agree as follows:

1. Repayment

The Grant shall become immediately due and payable upon the sale of the Property or a change in the use of the Property that results in the removal of this

259 Concord Road, Lincoln

community housing from the SHI. Mortgagor agrees to perform all the covenants and agreements contained in the Grant Agreement and this Mortgage. The covenants limiting use of the Premises as a group home shall terminate in the event of a foreclosure of the Senior Mortgage.

Failure to exercise an option under the default provisions of the Grant Agreement shall not constitute a waiver of the right to exercise the same at any subsequent time, and the occurrence of any of the events enumerated in the Grant Agreement, shall become, or may be declared to be, immediately due and payable, are in this Mortgage called "events of default."

2. **Prior Mortgages; Charges; Liens.** Mortgagor shall perform all of Mortgagor's obligations under the Senior Mortgage, if any, including Mortgagor's covenants to make payments when due. Mortgagor shall pay or cause to be paid all taxes, assessments and other charges, fines and impositions attributable to the Property, which may attain a priority over this Mortgage, but this clause shall not be deemed to preclude Mortgagor from contesting the validity or amount of such taxes, assessments, charges, fines or impositions, which may be paid under protest.

3. **Hazard Insurance.** Mortgagor shall keep improvements now existing or hereafter erected on the Property insured against loss by fire, hazards included within the term "extended coverage," for such periods as Mortgagee may require, subject to the terms and conditions of the Senior Mortgage.

All insurance policies and renewals thereof shall include a standard mortgage clause in favor of Mortgagee. Mortgagee shall have the right to hold the policies and renewals thereof, subject to the terms of any mortgage or other security agreement with a lien, which has priority over this mortgage.

In the event of loss, Mortgagor shall give prompt notice to the insurance carrier and to the Mortgagee. Mortgagee may make proof of loss if not made promptly by Mortgagor.

If the Property is abandoned by Mortgagor, or if Mortgagor fails to respond to Mortgagee within 30 days from the date notice is mailed by Mortgagee to Mortgagor that the insurance carrier offers to settle a claim for insurance proceeds, subject to the rights of the mortgagee under the Senior Mortgage, Mortgagee is authorized to collect and apply the insurance proceeds at Mortgagee's option either to restoration or repair of the Property or to the sums secured by this Mortgage.

4. **Preservation and Maintenance of Property.** Mortgagor shall keep the Property in good repair and shall not commit waste or permit impairment or deterioration of the Property.

5. **Protection of Mortgagee's Security.** If Mortgagor fails to perform the covenants and agreements contained in this Mortgage, or if any action or proceeding is commenced by third parties which materially affects Mortgagee's interest in the Property, the Mortgagee, at Mortgagee's option, upon notice to Mortgagor, may disburse such sums and take such actions as are necessary to protect Mortgagee's interest, and any expenses so incurred by Mortgagee, including reasonable attorney's fees, shall be repaid immediately upon Mortgagee's demand by Mortgagor to Mortgagee, and shall be secured by this Mortgage, provided that Mortgagor shall have the right to defend itself in such action or proceeding.
6. **Inspection.** Mortgagee may make or cause to be made reasonable entries upon and inspections of the Property, provided that Mortgagee shall give Mortgagor notice prior to any such inspection specifying reasonable cause therefor related to Mortgagee's interest in the Property.
7. **Condemnation.** The proceeds of any award or claim for damages, direct or consequential, in connection with any condemnation or other taking of the Property, or part thereof, or for conveyance in lieu of condemnation are hereby assigned and shall be paid to the Mortgagee to the extent of the amount of the outstanding Loan, as provided in the Grant Agreement, subject to the terms and conditions of the Senior Mortgage, if any.
8. **Mortgagor Not Released; Forbearance By Mortgagee Not a Waiver.** Extension of the time for payment or modification of the conditions of the terms for payment of the sums secured by this Mortgage granted by Mortgagee to any successor in interest of Mortgagor shall not operate to release, in any manner, the liability of the original Mortgagor and Mortgagor's successors in interest. Mortgagee shall not be required to commence proceedings against such successor or refuse to extend time for payment or otherwise modify amortization of the sums secured by this Mortgage by reason of demand made by the original Mortgagor and Mortgagor's successors in interest. Any forbearance by Mortgagee in exercising any right or remedy hereunder, or otherwise afforded by applicable law, shall not be a waiver of or preclude the exercise of any such right or remedy.
9. **Successors and Assigns Bound; Joint and Several Liability; Co-signers.** The Mortgagor's interest under the Grant Agreement and this Mortgage may not be transferred, assigned, or assumed without the written consent of Mortgagee. The covenants and agreement herein contained shall bind, and the rights hereunder shall insure to, the respective successors and assigns of Mortgagee and Mortgagor. All covenants and agreements of Mortgagor shall be joint and several.
10. **Notice.** Except for any notice required under applicable law to be given in

another manner, (a) any notice to Mortgagor provided for in this Mortgage shall be given by delivering it or by mailing such notice by certified mail addressed to Mortgagor at Mortgagor's Address above or to such other address Mortgagor may designate by notice to Mortgagee as provided herein, with a copy by certified mail to the Senior Mortgagee at the address provided by the Senior Mortgagee and (b) any notice to Mortgagee shall be given by hand-delivery or certified mail to Mortgagee's address stated herein or to such other address Mortgagee may designate by notice to Mortgagor as provided herein. Any notice provided for in this Mortgage shall be deemed to have been given to Mortgagor or Mortgagee when given in the manner designated herein.

11. Governing Law; Severability. This Mortgage shall be governed by the laws of the Commonwealth of Massachusetts. The foregoing sentence shall not limit the applicability of Federal law to this Mortgage. In the event that any provision or clause of this Mortgage, or the Grant Agreement conflicts with applicable law, such conflict shall not affect other provisions of this Mortgage or the Grant Agreement which can be given effect without the conflicting provision, and to this end the provisions of this Mortgage and the Grant Agreement are declared to be severable. As used herein, "costs," "expenses," and "attorneys' fees" include all sums to the extent not prohibited by applicable law or limited herein.

12. Breach; Remedies. Subject to the terms and conditions of the Senior Mortgages, if any, upon Mortgagor's breach of the STATUTORY CONDITION or any covenant or agreement of Mortgagor in the Grant Agreement, , or this Mortgage, including the covenant to pay when due any sums secured by this Mortgage, Mortgagee, prior to acceleration, shall give notice to Mortgagor and Senior Mortgagee as provided in paragraph 10 hereof specifying; (1) the breach; (2) the action required to cure such breach; (3) a date, not less than 30 days from the date the notice is mailed to Mortgagor, by which a breach must be cured; and, if a non-monetary breach cannot be entirely cured within 30 days, the date by which cure of the non-monetary breach must have begun and (4) that failure to cure such breach on or before the date specified in the notice may result in acceleration of the sums secured by this Mortgage and sale of the Property. The notice shall further inform Mortgagor of the right to reinstate after acceleration and the right to bring a court action to assert the nonexistence of a default or any other defense of Mortgagor to acceleration and sale.

If the breach is not cured by Mortgagor or Senior Mortgagee on or before the date specified in the notice, Mortgagee, at Mortgagee's option, may declare all of the sums secured by this Mortgage to be immediately due and payable without further demand and may invoke the STATUTORY POWER OF SALE and any other remedy permitted by applicable law. Mortgagee shall be entitled to collect all reasonable costs and expenses incurred in pursuing the remedies provided in this paragraph 12, including, but not limited to, reasonable attorneys fees, all of which shall be secured by this Mortgage.

If Mortgagee invokes the STATUTORY POWER OF SALE, Mortgagee shall mail a copy of a notice of sale to Mortgagor, and to any other person required by applicable law, in the manner provided by applicable law. Mortgagee shall publish the notice of sale and the Property shall be sold in the manner prescribed by applicable law. Mortgagee or Mortgagee's designee may purchase the property at any sale. The proceeds of the sale shall be applied in the following order: (a) to all reasonable costs and expenses of the sale, including reasonable attorneys' fees and costs of title evidence; (b) to all sums secured by any mortgage with a lien which has priority over this Mortgage; (c) to all sums secured by this Mortgage; and (d) the excess, if any, to the person or persons legally entitled thereto.

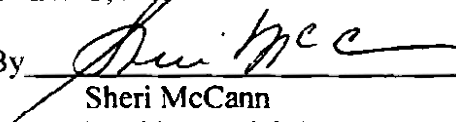
13. Mortgagor's Right to Reinstate. Notwithstanding Mortgagee's acceleration of the sums secured by this Mortgage due to Mortgagor's breach, subject to the terms and conditions of the Senior Mortgages, Mortgagor shall have the right to have any proceedings begun by Mortgagee to enforce this Mortgage discontinued at any time prior to the earlier to occur of (i) sale of the Property pursuant to the Statutory Power of Sale contained in this Mortgage or (ii) entry of a judgment enforcing this Mortgage if: (a) Mortgagor cures all breaches of any covenants or agreements of Mortgagor contained in the Grant Agreement, and this Mortgage; (b) Mortgagor pays all reasonable expenses incurred by Mortgagee in enforcing the covenants and agreements of Mortgagor contained in the Grant Agreement, and this Mortgage and in enforcing Mortgagee's remedies as provided in paragraph 12 hereof, including, but not limited to, reasonable attorneys' fees; and (c) Mortgagor takes such action as Mortgagee may reasonably require to assure that the lien of this Mortgage, Mortgagee's interest in the Property, and Mortgagor's obligation to pay the sums secured by this Mortgage shall continue unimpaired. Upon such payment and cure by Mortgagor, the Grant Agreement, this Mortgage and the obligations secured hereby shall remain in full force and effect as if no acceleration had occurred.

14. Release. Upon the expiration of the term of the Grant Agreement or upon proper payment of all sums secured by this Mortgage, Mortgagee shall discharge this Mortgage. Mortgagor shall pay all costs of recordation. The discharge of this Mortgage shall terminate any all restrictions on use contained herein.

WITNESS THE EXECUTION HEREOF AS A SEALED INSTRUMENT THIS 28th
DAY OF October, 2008.

CMARC, Inc.

By



Sheri McCann

~~President and CEO~~

Executive Director

By


Name:

Title:

COMMONWEALTH OF MASSACHUSETTS

Middlesex County, ss.

On this 28th day of October, 2008, before me, the undersigned Notary Public, personally appeared Sheri McCann, Executive Director, proved to me through satisfactory evidence of identification, which were personal knowledge Massachusetts driver's license, to be the person whose name(s) is/are signed on the preceding or attached document, and acknowledged to me that he/she/they signed it voluntarily for its stated purpose on behalf of CMARC.


Notary Public
My Commission Expires: _____

[SEAL]



CATHERINE E. DURKIN
NOTARY PUBLIC
COMMONWEALTH OF MASSACHUSETTS
MY COMMISSION EXPIRES JANUARY 18, 2013

EXHIBIT "A"

Property Description

The land in Lincoln, Middlesex County, Massachusetts, with the buildings thereon, being shown as Lot B on a plan entitled "Plan of Subdivision of Land in Lincoln, Mass. belonging to Bridget J. Murphy," dated April 1947, H. W. Clark, Engineer, recorded with Middlesex South District Registry of Deeds as Plan No. 1965 of 1947 in Book 7233, Page 271. Reference is made to said plan for a more particular description of said lot.

Containing 43,536 square feet of land according to said plan.

Subject to a 40 foot right of way for the benefit of Lot A as shown on Plan #1965 of 1947 recorded in Book 7233, Page 271.

Subject to and together with the benefit of an easement recorded with said Deeds at Book 20800, Page 59 as affected Amendment of Easement, recorded in Book 35825, Page 535.

For title reference, see deed from Kevin P. Skillern and Jane C. Wei recorded herewith.

Mortgage to Northern Bank & Trust Company of even date in the original principal amount of \$550,000.00 recorded herewith.

SENIOR MORTGAGE

EXHIBIT B

REGISTRY OF DEEDS
SOUTHERN DISTRICT
ATTEST:
Augustine C. Brown
REGISTER



2008 00174575

Bk: 51836 Pg: 415 Doc: CERT
Page: 1 of 3 10/28/2008 03:08 PM

Right of First Refusal

AGREEMENT made as of October 28, 2008, by and between CMARC, INC., Inc. a Massachusetts corporation having its usual place of business at 147 New Boston Street, Woburn, MA 01801 (the "Grantor") and the Town of Lincoln Affordable Housing Trust (the "Grantee") having an address of, 16 Lincoln Road, P.O. Box 6353, Lincoln, MA 01773

WITNESSETH:

For good and valuable consideration in the amount of One and 00/100 (\$1.00) Dollar paid, the receipt and sufficiency whereof is hereby acknowledged, the Grantor agrees that the Grantor will not sell all or any portion of or any interest the Grantor has in and to the land located at 259 Concord Road Lincoln, Middlesex County, Massachusetts, and described in a deed recorded with Middlesex South District Registry of Deeds in Book 51836, Page 385, or the buildings or other improvements now or hereafter erected on said land (collectively "the Premises") unless: (a) in the event the Grantor has received a bona fide offer to purchase the same; (b) the Grantor has given the Grantee by written notice (which shall be deemed to be duly given when mailed by registered mail addressed to the Grantee at the address set forth above or to such other address or addresses as the Grantor may specify by written notice to the Grantee) stating the name and address of the offeror and the terms and conditions of said bona fide offer and the encumbrances subject to which the Premises, or any part thereof, are to be conveyed and containing an offer by the Grantor to sell the same to the Grantee on the same terms and conditions as said bona fide offer; and (c) the Grantee has not, within 60 days after the giving of such notice, mailed or otherwise given the Grantor written notice that the Grantee elects to purchase the same in accordance with said offer.

In the event the Grantee elects to purchase, the Premises shall be conveyed upon the same terms and conditions of the bona fide offer by a good and sufficient Quitclaim Deed conveying a good and clear record and marketable title thereto (with the exception of any matters affecting title to the Premises prior to Grantor's ownership thereof) free from all encumbrances except as stated in said bona fide offer and such deed shall be delivered and the consideration paid at the Middlesex South District Registry of Deeds at 10 o'clock a.m. on the 120th day or next business day after the date of the giving of such notice of election to purchase.

In the event that the Grantee shall not give such notice of election to purchase within the time above specified or in the event that the Grantee shall, after giving such notice, fail to complete such purchase as hereinabove provided, then the Grantor shall be free thereafter to sell and convey the Premises or such part thereof covered by the offer to the offeror named in the Grantor's notice at a price not lower than that specified therein, but the Grantor shall not sell or convey the Premises or any part thereof to any other person or at any lower price without again offering the same to the Grantee. If the Grantor shall make and record with said Deeds an affidavit stating that (1) a certain conveyance by it is made pursuant to a bona fide offer to purchase; (2) it has given notice to the Grantee in connection with such conveyance as required by the provisions of this paragraph; (3) it has not received written notice of election to purchase given by the Grantee in accordance with the provisions of this paragraph or that the Grantee who had given notice of election to purchase has failed to complete the same in accordance with said

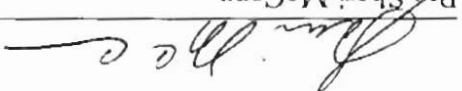
provisions, as the case may be; and (4) such conveyance is made to the person named in such notice at a price not lower than that therein stated; then such affidavit shall be conclusive evidence of compliance with the requirements of this paragraph with respect to such conveyance in favor of the grantee therein and all persons claiming by, through or under such Grantor.

Grantor agrees to execute a waiver of this Right of First Refusal in the event that the proposed sale is a sale to a qualified operator, acceptable to the Town of Lincoln, who shall continue the use of the Premises as a group home qualifying for inclusion in the Department of Housing and Community Development's Subsidized Housing Inventory.

The provisions hereof shall not be construed to apply to the mortgage to Northern Bank & Trust Company recorded herewith, or to bona fide mortgages to recognized lending institutions of the Premises, or any part thereof, or to sales or other proceedings for the foreclosure thereof. The Right of First Refusal shall terminate upon the earlier of: (a) the foreclosure of a Senior Mortgage on the premises, or (b) the discharge or foreclosure of the mortgage granted to the Town of Lincoln Affordable Housing Trust by CMARC, INC. recorded herewith. Further, the provisions hereof shall not be construed to apply to easements to any municipality or utility company required for the installation and/or maintenance of drainage, sewage, electric, gas, water and electric lines and appurtenances to and from the Premises

WITNESS the execution hereof under seal as of the day and year first above written.

CMARC, INC., a Massachusetts corporation



By: Sheri McCann
Its President/Executive Director

By: _____
Its President/Executive Director

TOWN OF LINCOLN, MASSACHUSETTS

COMMUNITY PRESERVATION ACT GRANT AGREEMENT

THIS GRANT AGREEMENT (this "Agreement") is entered into on this 8th day of October, 2008, by and between the Town of Lincoln Affordable Housing Trust and having a usual place of business at Lincoln Town Hall, 16 Lincoln Road, P.O. Box 6353, Lincoln, MA 01773 (the "AHT"), and CMARC, ^{Inc.} a Massachusetts corporation having a usual place of business at 147 New Boston Street, Woburn, MA 01801 (the "Recipient"), collectively the "Parties."

WHEREAS, the Recipient is the buyer of certain property located at 259 Concord Road, Lincoln, Massachusetts, described in a Purchase and Sale Agreement dated _____
September 2008 (the "Property"); and

WHEREAS, the Recipient submitted an application to the AHT for funds provided to the AHT under G.L. c.44B, §1, et seq., the Community Preservation Act (the "CPA"), in the amount of \$500,000.00 for the purchase and rehabilitation of the Property for use as a group home for five adults (the "Proposal"); and

WHEREAS, the AHT on October 8, 2008 voted to approve funds to be granted to the Recipient in the amount of \$500,000.00 for community housing purposes, a copy of which vote is attached hereto as Exhibit A and incorporated herein.

NOW THEREFORE, the Parties hereby mutually agree to the following terms and conditions:

Agreement

1. Subject Matter: This Agreement sets forth the terms and conditions by which the Recipient shall receive funds for the Project:

The sum of \$500,000 shall be used solely for the purpose of purchase and rehabilitation of the Property.

2. Mortgage: The Recipient agrees that: (i) the Property will be used as a group home containing no more than five (5) beds constituting "community housing" under the CPA to be included on the Subsidized Housing Inventory ("SHI") maintained by the Department of Housing and Community Development ("DHCD"); (ii) prior to the receipt of any Funds, the Recipient shall execute and deliver to the AHT a second mortgage substantially in the form attached hereto as Exhibit B securing the amount of \$500,000 to be due and payable upon the sale of the Property or a change of use resulting in the loss of units on the SHI (the "Mortgage"); and (iii) the Recipient shall provide the assent of Northern Bank & Trust Company, the holder of the first mortgage on the Property (the "Senior Mortgage"), to the grant of this Mortgage and the grant of a right of

first refusal. In the event of a foreclosure of the Senior Mortgage, the requirement for use of the Premises as a group home contained herein shall terminate and be of no further force and effect.

3. Right of First Refusal. The Recipient agrees to grant to the AHT a right of first refusal in the form attached hereto as Exhibit C said right to be triggered by the Recipient's intent to sell the Property. Said Right of First Refusal shall be recorded with Middlesex South District Registry of Deeds. In the event of a foreclosure of the Senior Mortgage, the Right of First Refusal attached hereto, shall not apply to the foreclosing mortgagee and shall be of no further force and effect upon foreclosure of the Senior Mortgage.

4. General Provisions: The Recipient agrees to the following general provisions:

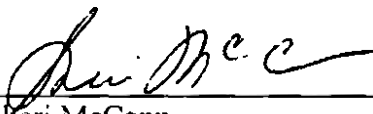
- (a) Contact: The contact person responsible for administration of the group home for the Recipient shall be Sheri McCann, ~~President and CEO~~* of CMARC, or such other person designated in writing to the Town of Lincoln (the "Town") by the Recipient. *Executive Director
- (b) Independent Status: The Recipient acknowledges and agrees that it is acting in the capacity of an independent contractor, and shall not be considered an employee or agent of the Town for any purpose.
- (c) Compliance with Applicable Laws: The Recipient shall comply with all applicable laws, ordinances or codes of federal, state and/or local governments, in performing any of the work covered under this Agreement, such provisions being incorporated herein by reference, and shall be responsible for obtaining all necessary licenses, permits, and approvals required in connection with the use of the Property as a group home. The Recipient shall indemnify and hold the Town harmless for and against any and all fines, penalties or monetary liabilities incurred by the Town as a result of the failure of the Recipient to comply with the previous sentence, which obligation shall survive the expiration or termination of this Agreement.
- (d) Notice: Any and all notices, or other communications required or permitted under this Agreement shall be in writing and delivered by hand or mailed postage prepaid, return receipt requested, by registered or certified mail or by other reputable delivery service, to the Parties at the addresses set forth on Page 1 or furnished from time to time in writing hereafter by one Party to the other Party. Any such notice or correspondence shall be deemed given when so delivered by hand, if so mailed, when deposited with the U.S. Postal Service or, if sent by private overnight or other delivery service, when deposited with such delivery service.

- (e) Severability: If any term or condition of this Agreement or any application thereof shall to any extent be held invalid, illegal or unenforceable by a court of competent jurisdiction, the validity, legality, and enforceability of the remaining terms and conditions of this Agreement shall not be deemed affected thereby unless one or both Parties would be substantially or materially prejudiced.

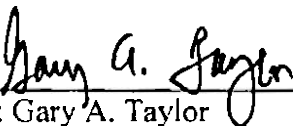
- (f) Governing Law: This Agreement shall be governed by, construed and enforced in accordance with the laws of the Commonwealth of Massachusetts, and the Recipient submits to the jurisdiction of any of its appropriate courts for the adjudication of disputes arising out of this Agreement.

IN WITNESS THEREOF, the Parties hereto have executed this Grant Agreement effective on the day written above:

CMARC, INC.

By: 
Name: Sheri McCann
Title: ~~President and CEO~~ Executive Director

Town of Lincoln Affordable Housing Trust:

By: 
Name: Gary A. Taylor
Title: Chairman