

COMMUNITY PRESERVATION GRANT AGREEMENT
AFFORDABLE HOUSING AT 18-20 CAMBRIA ROAD
BETWEEN CAN-DO and THE CITY OF NEWTON

This AGREEMENT made as of September 29, 2003 by and between Citizens for Affordable Housing in Newton Development Organization, Inc. dba CAN-DO, a non-profit organization having a usual place of business located at 1075 Washington Street, Newton, MA 02465 (hereinafter "Grantee") and the City of Newton, a corporation organized and existing under the laws of the Commonwealth of Massachusetts, acting by and through its Director of Planning and Development or his designated staff, but without personal liability to him, (hereinafter the "City"), collectively, the "parties."

WITNESSETH THAT:

WHEREAS, the Grantee purchased a two-family dwelling at 18-20 Cambria Road in West Newton (hereinafter "the Property"), which is being rehabilitated into two affordable housing rental units for families with Section 8 certificates and households at or below 80% area median income;

WHEREAS, the Grantee has applied for and received approval from the Community Preservation Committee and Board of Alderman for a grant of \$200,000 for the creation of two units of permanently affordable housing at 18-20 Cambria Road;

WHEREAS, the Grantee will apply the grant and additional funding to reduce the loan from Auburndale Co-Operative Bank to \$325,000 and for construction costs in the rehabilitation of the Property;

WHEREAS, the Grantee has signed an affordable housing restriction (hereinafter the "Covenant") which will permanently require that the property be used as affordable housing for occupancy by households with 80 % or less of the median income;

WHEREAS, the Covenant had been recorded in the Registry of Deeds and approved by the Department of Housing and Community Development; and

NOW THEREFORE, the parties do mutually agree to the following General Provisions and Attachments:

****GENERAL PROVISIONS****

1. **Subject matter.** This Agreement sets forth the terms and conditions where the Grantee shall receive a grant award from the City in the amount of two-hundred thousand (\$200,000.00). The Grantee agrees to use the grant for the purpose of paying down \$75,000.00 of the \$400,000.00 loan from Auburndale Co-operative Bank, and using the remaining \$125,000.00 for construction costs in the rehabilitation of the Property.
2. **Conditions Prior to Receipt of Funds.** The Grantee agrees to the following contingencies prior to the receipt of funds:
 - (a). Grantee agrees that the Property will be used for two permanently protected affordable rental units for families with household incomes at or below 80% area median income and all the conditions of the Covenant shall be met;
 - (b). The Covenant has been approved by the Department of Housing and Community Development and recorded in the Registry of Deeds.
3. **Release of Grant Funds for Construction.**

(a) **Request for Payment.** Following completion of any portion of the work the Grantee shall prepare and submit requests for payment to the City. The Grantee understands and agrees that it may not request payment from the City for any costs covered by or charged to any other funding source. The City will not advance funds to the Grantee under any circumstances. The request for payment should be addressed to:

Stephen D. Gartrell
Department of Planning and Development
City of Newton
1000 Commonwealth Avenue
Newton Centre, MA 02459

(b) **Payments.** After inspection of the work and approval of a request for payment by the City, a periodic progress payment will be made in an amount equal to eighty percent of that portion of the compensation amount attributable to the portion completed. In any event, upon satisfactory completion of the entire work, payment in full shall be made within thirty (30) days of completion, subject to final inspection and approval of the work by the City. In the event any dispute arises concerning the work, an equitable amount shall be retained pending resolution thereof.

4. **Use of Grant Funds for Mortgage and Reporting.**
Within thirty (30) day of execution of this Agreement and receipt of the approval of DHCD of the Declaration of Affordable Housing Covenants, the City shall deliver a check in the amount of \$75,000.00 payable to the Auburndale Co-operative Bank to the Grantee. Within seven days of receipt of said check, the Grantee shall deliver said check to said Bank. Within fourteen days of delivery of said check to said Bank, Grantee shall submit a receipt to the City.
5. **Insurance Requirements.**
The Grantee shall provide the City with a Certificate of Insurance in the amount of \$1,000,000 or greater covering General Liability including Bodily Injury, Property Damage, and Personal Injury. The City shall be named as an additional insured on this certificate.
6. **Permanent Reporting Requirements.** On July 1 of every year, Grantee shall submit a report to the City as to the use and occupancy of the premises and the income level of the tenants.
7. **Recapture of Funds.** If the Grantee fails to comply with the requirements of the grant, the grant funds shall revert back to the City, and the Grantee shall be liable to repay the entire amount of the grant to the City. The City may take such steps as necessary, including legal action, to recapture such funds.
8. **Return of Unused Portion of Grant.** Any portion of the grant not used to pay down the loan from Auburndale Co-Operative Bank or for construction costs, shall be returned by the Grantee to the City within six months of the date of this Agreement.
9. **Record Keeping.** The Grantee agrees to keep such records as kept in the normal course of business and as may be required by the City with respect to the repayment of the loan to Auburndale Co-Operative Bank financed in part with the aid of these public funds. The Authority shall have full and free access to such records with respect to utilization of the proceeds of this Agreement.
10. **Termination.** In the event the Grantee fails to fulfill all obligations under the terms of this Agreement, including refusal to comply with the Covenant, the City shall have the right, in its sole discretion, to terminate this Agreement upon written notice to the Grantee. Upon such termination,

the City shall be free to pursue any rights or remedies available at law or in equity, as well as any rights or remedies provided within this Agreement, including without limitation, recapture of funds under paragraph 4.

11. **Compliance with Applicable Laws.** The Grantee shall comply with all applicable laws, ordinances, or codes of state and/or local governments, in performing any of the work embraced by this Agreement.
12. **Monitoring.** The City shall periodically evaluate the performance of the Grantee and may make a determination as to whether the Grantee has conformed with this Agreement and has a continuing capacity to carry out the grant activities in a timely manner. At any time during normal business hours and as often as the City may deem necessary, Grantee shall make available all such records and documents as requested by said parties for audit and/or monitoring. The City may examine and make copies of such records and may audit all contracts, procurement records, invoices, materials, payrolls, personnel records, conditions of employment, and all documents relating to all matters covered by this Agreement.
13. **Successors and assigns.** The terms of this Agreement, including, but not limited to the Permanent Reporting Requirements in Paragraph 4, shall be binding on the Grantee's successors and assigns. The Grantee shall provide notice of any change in ownership of the Property to the City.
14. **Conflict of Interest; Bonus and Benefit Prohibited.**
 - (a) No member, officer, or employee of the Authority or its designees or agents, no member of the governing body of the City of Newton or the Commonwealth of Massachusetts, and no other public official of such locality or localities who exercises any functions or responsibilities with respect to the subject funding programs during his or her tenure or for one year thereafter, shall have any interest or benefit, direct or indirect, in any contract or subcontract, or in the proceeds thereof, in connection with this Agreement, including work to be performed.
 - (b) Grantee shall not pay bonus, commission, or fee for the purpose of obtaining the City's approval of or concurrence to complete the work financed in whole or in part by this Agreement.
15. **Free from Encumbrances.** It is agreed and represented that the Property is free from any attachments, tax liens, mechanic liens or any other encumbrances. For the purpose of this Agreement, the mortgage held by Auburndale Cooperative Bank dated December 19, 2002 recorded with the Middlesex South Registry of Deeds, in Book 37427 Page 582, the mortgage held by the Newton Community Development Authority dated December 19, 2002, recorded with Middlesex South Registry of Deeds in Book 37427, Page 602, or a refinancing of said mortgage lowering the mortgage loan to \$325,000.00, and the mortgage held by the Newton Community Development Authority dated July 22, 2003 and recorded as instrument number 1330 of July 23, 2003 shall not be considered an encumbrance.
16. **Indemnification.** The Grantee shall indemnify, hold harmless, and defend the City and its departments, officers, employees, servants, and agents from and against all actions, causes of actions, claims, demands, damages, costs, loss of services, expenses, and compensation, including attorneys' fees and interest arising out of or resulting directly from the services rendered pursuant to this Agreement, provided that any such action, cause of action, claim, demand, damage costs, loss of service, expense, compensation (1) in any way grows out of bodily injury, sickness, disease or death, or to injury to or destruction of tangible property which (2) is caused in whole or in part by any act or omission of the Grantee, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, regardless of whether or not it is caused in part by a party indemnified hereunder.

- 17. **Notice.** Any notice, demand, request, consent, approval, communication either party is required to give to the other party or any person shall be in writing and either served personally or sent by prepaid, first class mail to the respective addresses set forth below. Either party may change its address by notifying the other party of the change of address in writing.

To the City: Associate Director for Housing and Community Development
 Planning and Development Department
 City Hall
 1000 Commonwealth Avenue
 Newton Centre, MA 02459

To Grantee: Executive Director
 CAN-DO
 1075 Washington Street
 Newton, MA 02465

- 18. **Other Provisions.** All other provisions, if any, are set forth within the following SCHEDULES hereto and made a part hereof as listed below:

Attachment A, Certificate of Authority
 Attachment B, State Tax Attestation
 Attachment C, Insurance Requirements

**** SIGNATORIES ****

IN WITNESS WHEREOF the parties hereto have executed this Agreement in three sets of the day first written above effective when executed by His Honor the Mayor in the City of Newton.

GRANTEE: CAN-DO

By: Josephine McNeil
 Executive Director

CITY OF NEWTON:
 Reviewed and Approved

By: [Signature]
 Director of Planning & Development

I certify funds are available within Acct. #21C114B -5797 in the amount of \$200,000 for this Agreement.

By: [Signature]
 Comptroller of Accounts

Approved as to legal form and character

By: Catherine L. Farrell
Assistant City Solicitor

CONTRACT APPROVED

By: David B. [Signature]
Mayor

10/15/03
Date

[Signature]

**Certificate of Authority
and
List of Officers and Directors**

List of *Officers* of the Board of Directors/Trustees

Names	Titles
Theodore Hess-Mahan	President
Dana T. Hatton	Clerk
Lesley Sneddon	Treasurer

List of Board of Directors/Trustees

Names	
Dana T. Hatton	Lee Ann Spataro
R. Clark Turner	Lesley Sneddon
April L. McCabe	Jane Eisenstark
Michael Benn	Carol Favreau
Kenneth H. Sinclair	
Theodore Hess-Mahan	

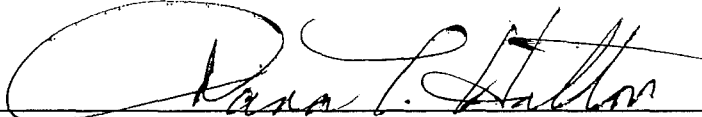
CERTIFICATE OF AUTHORITY - CORPORATE

1. I hereby certify that I am the Clerk of: **Citizens for Affordable Housing in Newton Development Organization, Inc. d/b/a CAN-DO** corporation;
2. and that **Josephine McNeil** is the duly elected, **Executive Director** of said corporation; and that;
3. on July 21, 2003 at a duly authorized meeting of the Board of Directors of said corporation, at which a quorum of the Directors were present, it was voted that **Josephine McNeil, Executive Director** of this corporation

be and hereby is authorized to execute contracts and bonds in the name and on behalf of said corporation, and affix its Corporate Seal thereto, and such execution of any contract of obligation in this corporation's name on its behalf, with or without the Corporate Seal, shall be valid and binding upon this corporation, **see attached Vote**; and that

4. the above vote has not been amended or rescinded and remains in full force and effect as of the date set forth below.

ATTEST:


(Signature of Clerk or Secretary)

Name: **Dana T. Hatton**

(Please print or type name of Clerk/Secretary)

DATE: 10/1/03

(insert date Certificate signed by Clerk or Secretary)**

VOTE

That the Corporation authorizes either the Executive Director or the President
To execute the Grant Agreement and any other documents necessary in connection with
the grant of \$200,000 from the City of Newton's Community Preservation Committee.

**Attachment B
State Tax Attestation**

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

Josephine McNeil
Signature

CAN-DO
Name of Contractor (Agency)

Federal Identification Number
or Social Security Number

10/1/03
Date

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

ACORD™ CERTIFICATE OF LIABILITY INSURANCE DATE (MM/DD/YYYY)
09/29/2003

PRODUCER (508)656-1400 FAX (508)656-1499
Charles River Insurance Brokerage, Inc.
 5 Whittier Street
 4th Floor
 Framingham, MA 01701

INSURED **Citizens for Affordable Housing in Newton Dev**
DBA: CAN DO
 1075 Washington Street
 West Newton, MA 02465
 617-964-3593

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.

INSURERS AFFORDING COVERAGE	NAIC #
INSURER A: United States Liability Ins.	
INSURER B:	
INSURER C:	
INSURER D:	
INSURER E:	

COVERAGES
 THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR ADD'L LTR INSET	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS								
A	GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC	CL1126248	08/27/2003	08/27/2004	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Per occurrence) \$ 50,000 MED EXP (Any one person) \$ 5,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$								
	AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> NON-OWNED AUTOS				COMBINED SINGLE LIMIT (Per accident) \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$								
	GARAGE LIABILITY <input type="checkbox"/> ANY AUTO				AUTO ONLY - EA ACCIDENT \$ OTHER THAN AUTO ONLY: EA ACC \$ AGG \$								
	EXCESS/UMBRELLA LIABILITY <input type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE DEDUCTIBLE RETENTION \$				EACH OCCURRENCE \$ AGGREGATE \$ \$ \$								
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? If yes, describe under SPECIAL PROVISIONS below OTHER				<table border="1"> <tr> <td>NO STATU-TORY LIMITS</td> <td>OTH-ER</td> </tr> <tr> <td>E.L. EACH ACCIDENT</td> <td>\$</td> </tr> <tr> <td>E.L. DISEASE - EA EMPLOYEE</td> <td>\$</td> </tr> <tr> <td>E.L. DISEASE - POLICY LIMIT</td> <td>\$</td> </tr> </table>	NO STATU-TORY LIMITS	OTH-ER	E.L. EACH ACCIDENT	\$	E.L. DISEASE - EA EMPLOYEE	\$	E.L. DISEASE - POLICY LIMIT	\$
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E.L. EACH ACCIDENT	\$												
E.L. DISEASE - EA EMPLOYEE	\$												
E.L. DISEASE - POLICY LIMIT	\$												

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS
RE: 18-20 Cambria St. Newton MA 02465
Newton Community Development Authority is listed as an additional insured

CERTIFICATE HOLDER

Newton Community Development Authority
 Newton City Hall
 1000 Commonwealth Ave
 Newton, MA

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT. BUT FAILURE TO MAIL SUCH NOTICE SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES.

AUTHORIZED REPRESENTATIVE
Gerald J Kennedy