

COMMUNITY PRESERVATION LOAN AGREEMENT
AFFORDABLE HOUSING AT 20-22 FALMOUTH ROAD
BETWEEN CAN-DO and THE CITY OF NEWTON

This AGREEMENT made as of August 11th, 2005 by and between Citizens for Affordable Housing in Newton Development Organization, Inc. d/b/a 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 20-22 Falmouth Road in West Newton (hereinafter "the Property"), which is being rehabilitated into two affordable housing rental units for households at or below 80% area median income and rented at affordable prices, all as set forth more particularly herein;

WHEREAS, the Grantee has applied for and received approval from the Community Preservation Committee and Board of Alderman for a loan of \$275,000.00 for the creation of two units of permanently affordable housing at 20-22 Falmouth Road;

WHEREAS, the Grantee will apply the loan to pay down the loan from the Massachusetts Housing Investment Corporation (MHIC) by \$237,500.00 and use the remaining \$37,500.00 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 loan award from the City in the amount of two hundred seventy-five thousand dollars and no cents (\$275,000.00). The Grantee agrees to use the loan for the purpose of paying down \$237,500.00 of the loan from MHIC and using the remaining \$37,500.00 for construction costs in the rehabilitation of the Property. Funds will be provided in the form of a deferred forgivable loan with zero percent interest per annum that is only repayable if the terms of the deed restriction are violated.
2. **Conditions Prior to Receipt of Funds.** The Grantee agrees to the following conditions prior to the receipt of funds:
 - a. Grantee agrees that to the extent that Section 8 subsidies are generally available (as determined by the Director of Planning and Development) at the time of the initial marketing of the two units at 20-22 Falmouth Road, such units shall be affordable to households with incomes at or below 50% of the area median income and shall be bound by a permanent deed restriction reflecting such income limitations; provided, however, if Section 8 subsidies are not generally

available at such time, then the two units shall be affordable to households with incomes at or below 80% of the area median income in perpetuity and shall be bound by a permanent deed restriction reflecting such income limitation.

- b. Grantee agrees that the rents for these units will not exceed the rent limits established by the City of Newton Community Development Program Affordable Rents Policy to individuals and households whose income does not exceed eighty percent (80%) of the area median family income for the Greater Boston area. The Grantee agrees that the rents will not require individuals and householdsto pay more than thirty percent (30%) of their total income for housing expenses.
 - c. The Covenant has been approved by the Department of Housing and Community Development and recorded in the Registry of Deeds.
 - d. Grantee will secure the other funding sources necessary for project feasibility prior to requisition of Community Preservation Act funds.
 - e. Grantee shall grant the City of Newton an unsubordinated right of first refusal to purchase the Property upon any future sale, transfer or conveyance of the Property.
3. **Work Schedule.** Work shall commence no later than 31 December 2005 and shall be completed no later than 31 December 2006 or such other date(s) as may be approved in writing by the Director of Planning and Development. In the event of failure to meet the project start or completion dates as stated herein or as approved by the Director of Planning and Development, any remaining funds in the project account shall be returned to the Newton Community Preservation Fund.
4. **Project Completion.** Promptly after substantial completion of the Project, the Grantee shall submit to the Community Preservation Committee a final project development cost statement. If such final development costs are less than the development budget on which the Community Preservation Committee based its funding recommendation, then the Community Preservation Committee reserves the right to require the Grantee to remit to the City's Community Preservation Fund all or a portion of such surplus.
5. **Release of Loan 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.

6. **Use of Loan Funds for Mortgage and Reporting.** Within thirty (30) days of execution of this Agreement the City shall deliver a check to the Grantee in the amount of \$237,500.00 payable to MHIC. 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 to the City documentation acknowledging receipt of said check by Bank.
 7. **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.
 8. **Permanent Reporting Requirements.** On July 1 of every year, Grantee shall submit a report to the City as to the use, occupancy of the premises, rent being charged, and the income level of the tenants.
 9. **Recapture of Funds.** If the Grantee fails to comply with the requirements of the loan, the loan funds shall revert back to the City's Community Preservation Fund, and the Grantee shall be liable to repay the entire amount of the loan to the City. The City may take such steps as necessary, including legal action, to recapture such funds.
 10. **Return of Unused Portion of Loan.** Any portion of the loan not used to pay down the loan from MHIC or for construction costs shall be returned by the Grantee to the City within six months of the date of this Agreement.
 11. **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 MHIC 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.
 12. **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 7.
- 13. 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.
14. **Equal Opportunity.** The Grantee shall comply with all applicable federal and state laws governing discrimination and equal opportunity.
 15. **Fair Housing Marketing and Local Preference.** The Grantee shall adopt and implement affirmative marketing procedures for the Property consistent with the requirements of the WestMetro HOME Consortium Affirmative Marketing Plan, the adopted City fair housing plan for all affordable housing projects. To the extent allowed by applicable law, the units shall be marketed in accordance

with the City's Local Preference Policy as adopted by the Newton Housing Partnership as part of the Fair Housing Plan FY06.

- 16. 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 loan 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.
- 17. Changes.** In the event that changes in the project become necessary, including but not limited to changes in funding, scope, or duration, the Grantee shall request the change in writing. If the City agrees to such changes, they must be approved in writing by the City and incorporated into this Agreement as amendments.
- 18. Successors and assigns.** The terms of this Agreement, including, but not limited to the Permanent Reporting Requirements in Paragraph 6, shall be binding on the Grantee's successors and assigns. The Grantee shall provide notice of any change in ownership of the Property to the City.
- 19. 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.
- 20. Free from Encumbrances.** It is agreed and represented that the Property is free from any attachments, tax liens, mechanic liens or any other encumbrances, other than the following mortgages: Massachusetts Housing Investment Corporation ("MHIC") dated October 18, 2004 and recorded with the Middlesex South Registry of Deeds at Book 43916 Page 456; Newton Community Development Authority dated October 18, 2004 and recorded in said Registry at Book 43916 Page 490, and Newton Community Development Authority dated May 20, 2005 and recorded in said Registry at Book 45218 Page 183.
- 21. 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.

22. Notice. Any notice, demand, request, consent, approval, or 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

23. 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: Citizens for Affordable Housing in Newton Development Organization, Inc.

By: *Josephine McNeil*
Executive Director

CITY OF NEWTON
Reviewed and Authorized
By: *[Signature]*
Director of Planning & Development

I certify funds are available within Acct. 2111409^{R5797} in the amount of \$275,000 for this Agreement.

By: *[Signature]*
Comptroller of Accounts

Approved as to legal form and character

By: *[Signature]*
Assistant City Solicitor

CONTRACT APPROVED

By: *[Signature]*
Mayor

8/2/05
Date

**Attachment A
Certificate of Authority
(Non-Profit Corporation)
and**

List of Officers and Directors

I hereby certify that I am the Clerk/Secretary of:

_____ ; and that
(Print name of corporation)

_____ is the duly elected
(Print name of officer who signs the contract)

_____ of said corporation; and that
(Print title of officer who signs the contract)

on _____ at a duly authorized meeting of the Board of Directors
*(insert date of meeting) **

of said corporation, at which all the Directors were present or waived notice, it was voted that

_____ of this
(Print name and title of officer who signs the contract, as in number 2 above)
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; and that

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/Secretary)

NAME: _____
(printed or typed name of Clerk/Secretary)

DATE: _____
*(insert date Certificate signed by Clerk/Secretary)***

* This date must be on or before the date of the contract and the date the corporate officer signs.

** This date must be on or after the date that the corporate officer signs the contract.

**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. *

Signature

Name of Contractor (Agency)

Federal Identification Number
or Social Security Number

Date

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

Attachment C