

COPY

**PROMISSORY NOTE
COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM**

October 15, 2004

Place: Newton, MA

FOR VALUE RECEIVED CITIZENS FOR AFFORDABLE HOUSING IN NEWTON DEVELOPMENT ORGANIZATION, INC. (hereinafter the "Borrower") promises to pay to the order of the NEWTON COMMUNITY DEVELOPMENT AUTHORITY, an agency organized and existing pursuant to Chapter 705 of the Acts of 1975 and Chapter 121B of the General Laws of the Commonwealth of Massachusetts, as amended, acting by and through its Sole Member and/or designated staff, but without personal liability to the Sole Member or his staff (hereinafter the "Authority" or the "NCDA") the principal sum of TWO HUNDRED THOUSAND DOLLARS and 00/100 Dollars (\$200,000.00) with interest at the rate of ZERO percent (0%) per annum on the unpaid principal amount of this Note from the above date until the Maturity Date, as defined below. This Note is secured by a mortgage of real estate in Newton, Massachusetts, to be recorded with the Middlesex South Registry of Deeds.

1. DEFINITIONS: The terms below as used in this Note shall have the following meanings:

(a) "PREMISES" the property known and numbered 20-22 Falmouth Road, Newton, Massachusetts, as more particularly described in a Mortgage of even date by and between the Borrower and the NCDA.

(b) "COMPLETION DATE" the date on which (i) all required Certificates of Occupancy for the buildings on the Property are issued; (ii) the Borrower has provided written notification to the NCDA; and (iii) the NCDA has verified that all units are fully occupied. If the units receive Certificates of Occupancy and/or are occupied on different dates, then the Completion Date shall be the date of occupancy of the unit which is occupied last.

(c) "MATURITY DATE" the date **fifty (50) years** from the Completion Date.

(d) "NOTE TERM" the period beginning at the date set forth above and ending on the Maturity Date.

(e) "LOAN AGREEMENT" the CDBG Loan Agreement between the Borrower and the NCDA executed as of the date hereof.

(f) "MORTGAGE" the Mortgage of even date from the Borrower to the NCDA granting the NCDA a mortgage on the Premises.

(g) "DECLARATION" the Declaration of Affordable Housing Covenants of even date from the Borrower to the NCDA placing an affordable housing restriction on the Premises.

2. INDEBTEDNESS AND PAYMENT:

(a) Borrower promises to pay to the Authority or order the principal sum of TWO HUNDRED THOUSAND DOLLARS and 00/100 Dollars (\$200,00.00) ("principal") and to pay simple interest ("interest") at an annual rate of zero percent (0%) which shall accrue during the Note Term on the unpaid principal of this Note. If Borrower fails to pay the outstanding balance due on the Maturity Date, the interest shall continue to accrue at the rate stated herein until such time as Borrower makes full payment of all monies owed under this Note.

(b) All payments required by this Note shall be made at the offices of the Authority at Newton City Hall, 1000 Commonwealth Avenue, Newton, MA or at such other place as shall be designated in writing by the Authority. All payments shall be made in cash in lawful money of the United States or by certified bank check, or by such other method as determined by the Authority in its sole discretion.

If to the Authority:

Sole Member
Newton Community Development Authority
Newton City Hall
1000 Commonwealth Avenue
Newton, MA 02459

6. The Borrower hereby waives demand, protest and notice of demand and protest and notice of non-payment and all other requirements necessary to hold Borrower liable hereunder, and the Borrower hereby waives, to the extent authorized by law, any and all homestead and other exemption rights which might otherwise apply to the debt evidenced by this Note.

7. MISCELLANEOUS:

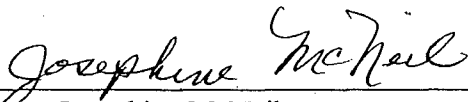
(a) The provisions of this Note are severable. If any term or provision of this Note shall be deemed to be invalid or unenforceable by a court of competent jurisdiction, such finding shall not affect the other provisions of the Note which shall remain in full force and effect.

(b) This Note may not be modified except by agreement in writing and signed by both parties.

(c) Captions contained herein are for convenience only and are not intended to become a part of this Agreement.

IN WITNESS WHEREOF, this Note has been duly executed by the undersigned as of this 15th day of October, 2004.

CITIZENS FOR AFFORDABLE HOUSING IN NEWTON DEVELOPMENT ORGANIZATION, INC.


By: Josephine McNeil
Its: Executive Director


Witness

MORTGAGE

CITIZENS FOR AFFORDABLE HOUSING IN NEWTON DEVELOPMENT ORGANIZATION, INC. (CAN-DO) a Massachusetts not-for-profit corporation located at 1075 Washington Street, Newton, MA 02465, their successors and assigns (hereinafter the "Mortgagor"), owners in fee simple of property known as 20-22 Falmouth Road, in Newton, Massachusetts (the "Property"), for consideration paid hereby grants to the Newton Community Development Authority, an agency organized and existing pursuant to Chapter 705 of the Acts of 1975 and Chapter 121B of the General Laws of the Commonwealth of Massachusetts, as amended, having an office at Newton City Hall, 1000 Commonwealth Avenue, Newton, County of Middlesex, Massachusetts, (hereinafter the "Mortgagee" or "NCDA") with Mortgage covenants that certain parcel of land and the buildings thereon now known and numbered as 20-22 Falmouth Road, Newton, Middlesex County, Massachusetts, (the "Property") together with all right, title and interest, if any, of the Mortgagor of, in and to any streets and roads abutting the above-described premises to the center lines thereof described as:

The land with the buildings thereon, situated in Newton, in said County of Middlesex, being Lot 85 on a "Plan of Parmenter Park in Waltham & Newton, Mass. Property of Thomas A. Joyce Realty Trust" made by Rowland H. Barnes and Henry F. Beal, C.E.'s, dated May 1923, recorded with Middlesex South District Deeds as Filed Plan 731, bounded:

Northwesterly by Falmouth Road fifty (50) feet;
Northeasterly by Lot 84 on said plan one hundred four and 23/100 (104.23) feet;
Southeasterly by land of owners unknown fifty and 3/100 (50.03) feet;
Southwesterly by Lot 86 on said plan one hundred five and 87/100 (105.87) feet;

Containing 5252 square feet.

The Post Office Address of the Property is 20-22 Falmouth Road, Newton, Massachusetts 02465.

The Mortgagor COVENANTS and AGREES to and with the Mortgagee as follows:

1. INCOME AND RENTAL REQUIREMENTS: From the Completion Date as defined in the Note for a period of fifty (50) years, the Mortgagor agrees that it will own and manage the Property as two units of rental housing for households whose gross annual household income is at or below 80% of area median income.

2. PAYMENT AND PERFORMANCE:

(a) This mortgage shall secure repayment of Two Hundred Thousand Dollars and No Cents (\$200,000.00) in accordance with the terms of the Note of even date between the Mortgagor and NCDA ("the Note"), the unpaid principal and interest of the Note, and all other sums provided in said Note and this Mortgage.

(b) This Mortgage shall also secure Mortgagor's performance of all agreements, conditions, provisions and stipulations of the Note, the Declaration of Affordable Housing Covenants ("Declaration"), and the Loan Agreement of even date between the Mortgagor and NCDA and this Mortgage.

3. PROPERTY CONDITION AND REPAIR:

(a) The Mortgagor shall keep the Property in good order and repair equal to the condition of the Property at the completion of project rehabilitation and in compliance with the Federal Section Eight Housing Quality Standards, reasonable wear and tear excepted, and shall make or cause to be made, as and when necessary, all repairs, renewals and replacements, structural and nonstructural, exterior and interior, ordinary and extraordinary, foreseen and unforeseen.

(b) The Mortgagor shall not allow any portion of the Property to be altered, removed or demolished without prior written consent of the NCDA. Mortgagor shall not permit the commission of waste in or about the Property, and shall not permit the Property to become deserted or abandoned.

4. INSURANCE:

(a) The Mortgagor shall keep the Property continuously insured against damage resulting from hazards (fire, windstorm, hail, explosion, riot and civil disorder, loss by aircraft and vehicles, smoke, and sprinkler damage etc.) by maintaining an adequate standard extended coverage policy provided by an insurance company authorized to do business in Massachusetts for the term of this Mortgage. All insurance policies will be in coverages and amounts as set forth in the Loan Agreement and will include replacement value coverage. The NCDA reserves the right to require additional coverage as is reasonable under the circumstances.

(b) Except as otherwise required pursuant to any Senior Mortgage, in the event of any loss covered by the insurance, the Mortgagor shall promptly proceed to make proof of the loss and take such other steps as are required to recover on the policy, and shall apply the insurance proceeds to restoration of the Property unless the NCDA determines that it is impossible or impracticable for the proceeds to be used to restore the Property for such use, and in that event the proceeds shall be used to reduce the indebtedness secured hereby. Any adjustment or settlement of loss shall require the prior written consent of the NCDA. If the Mortgagor does not proceed promptly in providing proof of loss, the NCDA at its option, may proceed to do so if approved by the holder of any Senior Mortgage, which approval shall not be unreasonably withheld. Except as otherwise required pursuant to any Senior Mortgage, the Mortgagor hereby authorizes and directs the insurers concerned to make payment directly to the NCDA, upon request of the NCDA.

5. TAXES AND SENIOR LIENS:

(a) Mortgagor shall pay when due all taxes, sewer and water charges, municipal liens and assessments of any kind made on the Property, and shall pay every amount of indebtedness secured by any Senior Mortgage and all liens and other encumbrances to which the lien of this Mortgage is subordinate. Upon request, Mortgagor shall supply the NCDA with evidence of such payment.

(b) This Mortgage is subject to easements and takings of record and to any Senior Mortgage set forth in section (c) below.

(c) Mortgagor specifically has the right to enter into a first mortgage with MHIC, LLC (MHIC) to secure a Note and other documents and obligations not to exceed the principal amount of \$525,000 (MHIC Mortgage). Said MHIC Mortgage will have priority over this Mortgage between Mortgagor and the NCDA and this Mortgage shall be subordinate in all respects and for all purposes to the MHIC Mortgage and all of the documents and obligations which the MHIC Mortgage secures. Mortgagor shall also have the right to replace the MHIC Mortgage in the future and to substitute a replacement first mortgage (First Mortgage) for the MHIC Mortgage and NCDA agrees to execute a subordination agreement for recording to the end that this Mortgage will be

subordinate in all respects and for all purposes to the First Mortgage. Mortgagor represents said Property is free from any other encumbrances other than the above referenced first mortgage and will remain free from any other encumbrances except as authorized in advance, in writing by the NCDA.

6. CONDEMNATION AND EMINENT DOMAIN:

(a) Upon the institution of any condemnation or taking of any part of the Property by eminent domain, or other injury to or decrease in the value of the Property by any public or quasi-public authority or corporation, Mortgagor shall give the NCDA written notice of such condemnation or taking immediately upon knowledge thereof. Mortgagor may make no settlement for the damages sustained without the prior written approval of the NCDA subject to approval of the holder of any Senior Mortgage.

(b) The NCDA shall have the right to intervene as a party to any condemnation proceeding and Mortgagor agrees to allow the NCDA to use the proceeds awarded to be credited to the NCDA's expenses related to such intervention subject to the prior rights of the holder of any Senior Mortgage. Nothing herein shall limit the rights otherwise available to the NCDA at law or in equity.

(c) In the event that such condemnation or taking makes it impossible or impracticable to continue to use the units on the Property to provide housing for persons of low and moderate income or makes it impossible or impractical for Mortgagor and/or the NCDA to comply with HUD regulations applicable to the project at the Property, all proceeds (that is, the award or agreed compensation for the damages sustained) allocable to Mortgagor shall be paid to the NCDA, except as otherwise provided in any Senior Mortgage. Such proceeds shall be applied to the total outstanding indebtedness under the Note. Mortgagor shall remain liable for the full amount remaining due under the Note. In the event that the NCDA determines that any condemnation or taking of any part of the Property does not make it impossible or impractical to use the Property as a residence for persons of low and moderate income, and complying with all applicable HUD regulations, then Mortgagor shall apply all the proceeds to the alteration, restoration or rebuilding of the Property for such use before using the proceeds for any other purpose, except as otherwise provided in any Senior Mortgage.

7. CHANGE OF OWNERSHIP:

(a) If, without the prior written consent of the NCDA, Mortgagor, its successors or assigns, causes or permits any transfer or change of ownership in the Property or any part thereof, whether by sale, exchange, conveyance of any legal or beneficial interest in, merger, consolidation or otherwise, the NCDA may, at its sole option, upon sixty (60) days written notice, declare Mortgagor in default and may exercise any of the rights and remedies provided in this Mortgage.

(b) Mortgagor understands and agrees that the NCDA will not consent to any transfer or change of ownership in the Property or any part thereof unless Mortgagor has in writing offered the Property to the NCDA at its fair market value. After the NCDA declines to purchase the Property, the NCDA may consent to the transfer in ownership of the Property to another party, if:

(i) the transfer or change of ownership is for the **greater of**: the fair market value of the Property, **OR**

(ii) a value equal to the sum of the total amount owing on the Note; plus all taxes, municipal liens, and assessments due to the NCDA; plus the total amount of indebtedness secured by any Senior Mortgage, all other liens and encumbrances to which this mortgage is subordinate, and the balance due on said mortgage in favor of the NCDA securing payment of sums due to the NCDA pursuant to the CDBG Program lien.

(ix) The violation by the Borrower of any requirements of the Housing and Community Development Act of 1974, as amended, or the violation of any HUD regulations applicable to the Property.

(x) Any of the following acts by or with respect to Mortgagor: (1) dissolution; (2) failure to pay any tax or assessment against the Property when due, unless such failure is cured within thirty (30) days of notice thereof; (3) entry of a judgment or issuance of an injunction or a warrant of attachment against the Property, which is not dismissed within ninety (90) days; (4) institution of any proceeding to abate any nuisance on the Property, which proceeding has not been dismissed within ninety (90) days from the date it is instituted; (5) failure to comply with the requirements of any applicable statute, law, ordinance, regulation or order, whether in effect on the date hereof or hereafter enacted or made by any Federal, State, municipal, or other public body, department or authority affecting the use or occupation of the Property.

(b) Upon the occurrence of an "Event of Acceleration" as defined above, the NCDA may demand payment of such principal, and other charges due from Mortgagor. If Mortgagor fails to make the payment demanded, then Mortgagor shall upon demand by the NCDA surrender possession of the Property to the NCDA, and the NCDA, or an entity designated by the NCDA in its discretion may enter the Property to continue to rent it to persons of low and moderate income, including the leasing of space, collection of rents due which after payment of all charges and expenses, may be applied to the indebtedness secured, except as otherwise provided in any Senior Mortgage. The NCDA may also dispossess, as authorized by law, any resident defaulting in the payment of any rent unless such failure is cured within 90 days of notice thereof (or such longer period as the NCDA reasonably determines may be required to cure said event).

9. NOTICE OF DEFAULT: Upon the happening of any Event of Acceleration, the NCDA shall notify Mortgagor of the particular default in writing that if Mortgagor does not cure said default by a date specified in said written notice the entire unpaid balance of the principal and interest of the Note and all other sums due the NCDA, under the Note and this Mortgage shall immediately become due and payable without any further notice. The date specified in said notice shall not be less than sixty (60) days from the date such notice is mailed. If Mortgagor fails to cure within such period, the NCDA may exercise any and all of the remedies available to the NCDA at law and in equity. The election of one available remedy shall NOT preclude the NCDA from pursuing any other remedy available at law or in equity.

10. RIGHTS AND REMEDIES:

(a) The rights and remedies of the Mortgagee as provided in this Mortgage, in the Note and any extension thereof shall be cumulative and concurrent, may be pursued separately, successively or together or both, at the sole discretion of the Mortgagee.

(b) Any failure by the NCDA to insist upon strict performance of any of the agreements, conditions and provisions of this Mortgage, the Note, the Declaration, the Loan Agreement, the Housing and Community Development Act of 1974 and/or any applicable HUD regulations shall not be deemed to be a waiver of any of the terms or provisions of this Mortgage, the Note, the Declaration, the Loan Agreement, or said Act or regulations and the NCDA shall have the right thereafter to insist upon strict performance by Mortgagor of any and all of the above.

11. RIGHT TO CURE: Upon the failure of Mortgagor to pay, when due, any taxes, municipal liens, or assessments on the Property, unless these taxes have been deferred pursuant to law, or to

make, when due, any payment upon indebtedness secured by a lien or encumbrance having priority over this Mortgage, or to keep the Property in good repair, or to keep the Property free from further liens or encumbrances, or to keep the Property insured as required by this Mortgage after notice to Mortgagor, the NCDA may, at its option, make such payment, or procure such repairs, or obtain the release of such further lien or encumbrance, or obtain such insurance. Any sum expended by the NCDA in so doing shall be immediately repaid by Mortgagor, or shall become a part of the debt secured by this Mortgage, as may be determined by the NCDA and shall bear interest at the judgment rate from the date of the NCDA's payment until the date of repayment.

12. REQUIRED NOTICES: Mortgagor shall notify the NCDA promptly of the occurrence of any of the following:

- (a) a fire or other casualty causing damage to the Property;
 - (b) receipt of notice of violation from any governmental authority relating to the structure, use or occupancy of the Property;
 - (c) receipt of notice of eminent domain proceedings or condemnation of the Property;
 - (d) any change in the use of the Property;
 - (e) commencement of any litigation affecting the Property;
 - (f) any proposed transfer or change of ownership of the Property;
 - (g) receipt of notice of default on any Senior Mortgage or other any prior lien on the Property;
- or
- (h) receipt of notice of unpaid taxes and/or assessments.

13. COMPLIANCE WITH APPLICABLE LAW: Mortgagor shall at their expense, promptly comply with the requirements of every applicable statute, law, ordinance, regulation or order, whether in effect on the date hereof or hereafter enacted or made by any Federal, State, municipal or other public body, department, bureau, officer or authority, with respect to or affecting (a) the Property, and the appurtenances thereof and/or (b) the use or occupation of the Property.

14. COSTS OF ENFORCEMENT: Mortgagor agrees to pay the NCDA's costs, expenses and reasonable attorneys' fees incurred as a result of the enforcement of any term, condition, or provision of this Mortgage, the Note, the Declaration, the Loan Agreement, the requirements of the Housing and Community Development Act of 1974, as amended, or any applicable HUD regulation.

15. NOTICES TO MORTGAGOR AND THE NCDA: All notices, requests or other papers required to be given or delivered to Mortgagor or the NCDA shall be sufficiently given or delivered if mailed by certified mail, return receipt requested. If notice is to be given it shall be mailed to:

If to the Mortgagor:

Citizens for Affordable Housing in Newton Development
Organization, Inc.
1075 Washington Street
West Newton, MA 02465

With a copy to:

Russell K. Dunning, Esq.
Posternak, Blankstein & Lund, LLP
800 Boylston Street
Boston, MA 02199

If to the Authority:

Sole Member
Newton Community Development Authority
Newton City Hall
1000 Commonwealth Avenue
Newton, MA 02459

16. SUCCESSORS AND ASSIGNS: The obligations contained herein shall be binding upon the successors and assigns of Mortgagor, and the term "Mortgagor" shall be deemed to include such successors and assigns. The term "the NCDA" shall be deemed to include any subsequent holder or holders of this Mortgage.

17. SEVERABILITY: The provisions of this Mortgage are severable. If any provision of this Mortgage is held to be invalid or unenforceable by a court of competent jurisdiction, the remaining provisions shall remain in full force and effect.

18. This mortgage is under the statutory condition, for any breach of which the Mortgagee shall have the power of sale. Mortgagor hereby waives and releases to the Mortgagee all rights of homestead and any other exemption rights in the mortgaged premises which it might otherwise have.

19. This Mortgage is subject to the MHIC Mortgage which MHIC Mortgage has priority over this Mortgage this Mortgage shall be subordinate in all respects and for all purposes to the MHIC Mortgage and all of the documents and obligations which the MHIC Mortgage secures.

IN WITNESS WHEREOF, Citizens for Affordable Housing in Newton Development Organization, Inc. as Mortgagor hereunto set their hands and seals this 15th day of October, 2004.

CITIZENS FOR AFFORDABLE HOUSING IN NEWTON DEVELOPMENT ORGANIZATION, INC.

By: Josephine McNeil
Josephine McNeil

Title: Executive Director

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, SS.

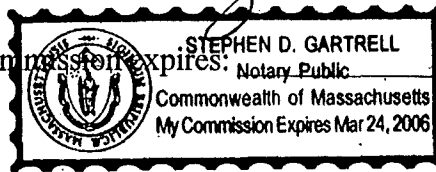
October 15, 2004

On this 15th day of October, 2004, before me, the undersigned notary public, personally appeared the above-named Josephine McNeil, proved to me through satisfactory evidence of identification, which were ~~personal knowledge~~ to be the person whose name is signed on the preceding document, and acknowledged to me that she signed it voluntarily for its stated purpose, as Josephine McNeil for Citizens for Affordable Housing in Newton Development Organization, Inc., a non-profit corporation.

Stephen D. Gartrell

Notary Public

My Commission Expires:



DECLARATION OF AFFORDABLE HOUSING COVENANTS

CITIZENS FOR AFFORDABLE HOUSING IN NEWTON DEVELOPMENT ORGANIZATION, INC. (CAN-DO), a nonprofit corporation organized under the laws of the Commonwealth of Massachusetts, having an address of **1075 Washington Street, Newton, MA 02465**, and owner in fee simple of property known as **20-22 Falmouth Road** in Newton, Massachusetts, acting by and through its **Executive Director** pursuant to a Certificate of Vote recorded herewith (the "Owner") hereby covenants and agrees for itself, its successors, heirs and assigns, that the parcel described in Exhibit A, attached hereto and incorporated herein, (hereinafter the "Property") shall be subject to the following restrictions for the benefit of the Newton Community Development Authority, having a mailing address of Newton City Hall, 1000 Commonwealth Avenue, Newton Centre, Massachusetts, 02459 (the "NCDA"), its successors and permitted assigns.

The consideration for this Declaration of Affordable Housing Covenants (hereinafter "Covenant") is a loan to the Owner from the Newton Community Development Authority, which is evidenced by a promissory note and secured by a mortgage of the Property of even date recorded herewith.

The terms of this Covenant authorized by Massachusetts General Laws, Chapter 184, §§31-33 and otherwise by law, are as follows:

1. **Purpose.** The purpose of this Covenant is to ensure that the Property will be retained as affordable housing for occupancy by low and moderate-income households as defined by the U.S. Department of Housing & Urban Development's (HUD) Community Development Block Grant (CDBG) Program. This Covenant is intended to be construed as an affordable housing restriction as defined in Section 31 of Chapter 184 of the Massachusetts General Laws which has the benefit of Section 32 of said Chapter 184.

2. **Covenants.** The Owner intends, declares and covenants on behalf of itself, its successors and assigns that these covenants, agreements, and restrictions are not merely personal covenants of the Owner and shall run with the land and shall bind the Owner, its successors and assigns and inure to the benefit of the NCDA, and its successors and assigns.

3. **Term.** For the maximum duration permitted by law with the approval of the Commonwealth of Massachusetts, pursuant to General Laws, Chapter 184, Sections 31-33, and in the event such approval is not given, for a period of fifty (50) years from the date of execution of this Covenant and for such further time thereafter (up to 99 years) as this Covenant may be lawfully extended (including without limitation extensions permitted under General Laws, Chapter 184, Section 27-30), the property shall be maintained as affordable housing as defined in paragraph 1 above.

4. **Completion Date.** The date on which all required Certificates of Occupancy for the rental units on the Property are issued and the Owner has provided written notification to the NCDA and the NCDA has verified that all units are fully occupied, as provided in the Loan Agreement of even date between the NCDA and the Owner. If the units receive Certificates of Occupancy and/or are occupied on different dates, then the Completion Date shall be the date of occupancy of the unit that is occupied last.

5. **Owner's Warranties and Representations.** During the term of this Covenant as defined in paragraph 3 beginning from the Completion Date as defined in paragraph 4 above, (hereinafter "affordability period") the Owner shall comply with the following requirements:

- A. The Owner shall provide two units containing a total of five bedrooms of rental housing at the Property which shall be rented at affordable rents as defined by the Federal Department of Housing and Urban Development. The CDBG-assisted units will comply with the following income and affordable rent requirements:
- (i) Units must be occupied by households with incomes that do not exceed 80% of the area median income for the Boston Metropolitan Statistical Area, adjusted for family size. The actual income limits are determined by HUD and published annually in the Federal Register;
 - (ii) Rents, including utilities, may not exceed 30% of the income of the renting household, except as may be permitted or required by a subsidy program with which the Owner or tenant participates, such as the Section 8 program.
 - (iii) A tenant whose income met the income limits at the time of initial occupancy, but whose income eventually exceeds 80% of the area median income, may remain in the unit, provided that the rent is adjusted so that the "over-income" tenant is paying not less than 30% of their adjusted monthly gross income for rent and utilities. As soon as the "over-income" tenant vacates the Property, the Owner must re-rent the unit to an income-eligible household.
- B. The Owner represents warrants and covenants that the determination of whether a resident meets the income requirements set forth herein shall be made by Owner at the time of the leasing of the units and thereafter at least annually on the basis of the current income of such resident. The Owner shall maintain as part of its records, copies of all leases governing the rental of the units as may be executed throughout the affordability period and all initial and annual income certification(s) by the tenant(s) of the units. At the request of the NCDA, the Owner shall provide copies of records documenting the annual and monthly gross and adjusted income of each resident occupying the units. For residents who have Section 8 certificates, the NCDA may rely on the housing assistance payment contract from the applicable housing authority in lieu of income verification by the Owner. In addition to the foregoing, Owner shall keep such additional records and prepare and submit to NCDA such reports as the NCDA may deem necessary to ensure compliance with the requirements of this Covenant and of the CDBG Program.
- C. Prior to initial occupancy of the units and annually thereafter, the Owner shall submit to the NCDA a proposed schedule of monthly rent and monthly allowances for utilities and services for the units. Such schedule shall be subject to the approval of NCDA for compliance with the requirements of applicable HUD regulations. After approval of a schedule of rent and allowances by NCDA, rents shall not be increased without either (a) a specific request by Owner for a rent increase or (b) the next annual schedule of rents and allowances. Notwithstanding the foregoing, rent increases shall be subject to the provisions of outstanding leases and shall not be implemented without at least 30 days prior written notice by Owner to the affected tenant(s).
- D. The Owner shall not demolish any part of the Property or substantially subtract from any real or personal property of the Property except in conjunction with renovation or rehabilitation of the Property or construction of a new project on the Property, in either case subject to the prior written consent of the NCDA, which consent shall not be unreasonably

withheld. The Owner shall not permit the use of any residential unit for any purpose other than housing.

E. The Owner represents, warrants and agrees that if the Property, or any part thereof, shall be damaged or destroyed, the Owner (subject to the approval of the lender(s) which will provide the financing) will use its best efforts to repair and restore the Property to substantially the same condition as existed prior to the event causing such damage or destruction, and the Owner represents, warrants and agrees that the Property shall thereafter continue to operate in accordance with the terms of this Covenant.

F. Any use of the Property or activity thereon which is inconsistent with the purpose of this Covenant is expressly prohibited. The Owner shall carry out each activity provided for in this Covenant in compliance with all applicable federal laws and regulations described in 24 CFR 570, Community Development Block Grant Program, as amended.

6. Condition of Property. By its acceptance of this Covenant, NCDA does not undertake any liability or obligation relating to the condition of the Property.

7. Instruments to Enforce Covenant. The NCDA is authorized to record or file any notices or instruments appropriate to ensuring the enforceability of this Covenant; and the Owner on behalf of itself and its successors and assigns appoints the NCDA its attorney-in-fact to execute, acknowledge and deliver any such instruments on its behalf. Without limiting the foregoing, the Owner and its successors and assigns agree to execute any such instruments upon request. The Owner and the NCDA intend that the restrictions arising hereunder take effect upon the date hereof, and to the extent enforceability by any person ever depends upon the approval of governmental officials, such approval when given shall relate back to the date hereof regardless of the date of actual approval or the date of filing or recording of any instrument evidencing such approval.

8. Covenants to be Referenced in Deed. Except as provided in the Subordination and Foreclosure Section 9 below, these restrictive covenants shall be contained or referenced in any deed of conveyance of the subject Property or any other instruments conveying a non-leasehold interest in the Property or any part thereof and shall be equally binding on any subsequent owner of the title thereto whether acquired by grant, sale or any other means and such subsequent owner shall comply with this restriction for the remaining duration of said restriction.

9. Subordination and Foreclosure. Any first mortgage on the Property ("First Mortgage") granted, or to be granted in the future, to a state or national bank, state or federal savings and loan association, cooperative bank, mortgage company, trust company, insurance company or other institutional or commercial lender, or public or quasi-public lender, including, without limitation, MHIC, LLC (any of the foregoing a "Senior Lender"), has, and shall have in the future, priority over this Covenant and this Covenant shall be subordinate in all respects and for all purposes to any First Mortgage and to all of the documents and obligations which such First Mortgage secures without the necessity of any additional subordination by NCDA. Upon request, however, NCDA agrees to execute a subordination reflective of its agreement as stated herein.

Notwithstanding anything herein to the contrary, if a Senior Lender, shall acquire the Property by reason of foreclosure or similar remedial action under the provisions of its First Mortgage or upon conveyance of the Property in lieu of foreclosure, and provided that Senior Lender has given NCDA not less than sixty (60) days' prior written notice of its intention to foreclose upon its First Mortgage or to accept a conveyance of the Property in lieu of foreclosure, then the rights and

restrictions herein contained shall not apply to such Senior Lender upon such acquisition of the Property or to any purchaser of the Property from such Senior Lender, and such Property shall thereafter be free from all such rights and restrictions for all future purchasers or mortgagees of the Property; provided, however, that such rights and restrictions contained herein shall not lapse if the Property is acquired through foreclosure or deed in lieu of foreclosure by (i) Owner or (ii) any entity in which Owner has a direct financial interest (a "Related Party"). For the purposes of this paragraph, an affidavit, duly recorded and executed under the penalties of perjury, by Senior Lender or by the purchaser from Senior Lender indicating that, to the best of Senior Lender's knowledge or purchaser's knowledge, as applicable, the purchaser is not a Related Party shall be conclusive evidence that such purchaser is not a Related Party.

Upon receipt of Senior Lender's advance written notice of its intention to foreclose as set forth above, NCDA shall have the option but not the obligation to cure any and all defaults and assume the mortgage at full value without recourse or warranty.

10. **Notices.** All notices required under this Covenant shall be deemed to have been received if mailed, postage prepaid to the following:

For the NCDA:

Sole Member
Newton Community Development Authority
City Hall, 1000 Commonwealth Avenue
Newton, MA 02459

For Owner:

Citizens for Affordable Housing in Newton
Development Organization, Inc.
1075 Washington Street
Newton, MA 02465

With a copy to:

Russell K. Dunning, Esq.
Posternak, Blankstein & Lund, LLP
800 Boylston Street
Boston, MA 02199

11. Enforcement.

- A. The rights hereby granted shall include the right of NCDA to enforce this Covenant by appropriate legal proceedings and to obtain injunctive and other equitable relief against any violations, including without limitation relief requiring restoration of the Property to its condition prior to any such violation (it being agreed that the NCDA will have no adequate remedy at law), and such restoration shall be in addition to, and not in limitation of, any other rights and remedies available to the NCDA. The Owner covenants and agrees to reimburse NCDA all reasonable costs and expenses (including without limitation reasonable counsel fees) incurred in enforcing this Covenant or in taking reasonable measures to cure any violation hereof, provided that a violation of this Covenant is acknowledged by Owner or determined by a court of competent jurisdiction to have occurred.
- B. Without limitation on any other rights or remedies of the NCDA, its successors and assigns, the NCDA shall be entitled to the following remedies, which shall be cumulative and not mutually exclusive:

- (i) specific performance of the provisions of this Covenant, which shall be the preferred remedy;
- (ii) voiding of any rental arrangement that violates this Covenant;
- (iii) in the case of any rental arrangement where the Owner is found to have violated willfully or in bad faith, then money damages for charges in excess of rents permissible under this Covenant;
- (iv) If any action is brought to enforce this Covenant, the prevailing party shall be entitled to reasonable attorneys' fees and other costs of bringing such action, in addition to any other relief or remedy to which such party may be entitled.
- (v) The Owner hereby grants to the NCDA and its duly authorized representatives the right to enter upon the Property upon reasonable notice for the purpose of enforcing the restrictions contained in this Covenant and to take any reasonable and appropriate action under the circumstances to cure any violation of the provisions of this Covenant. Notwithstanding the definition of Owner hereinbefore contained, the rights of enforcement for violations of this Covenant shall survive any subsequent sale or transfer of the Property.

12. **Certificate.** Any party may rely on a certificate signed by the Owner and the NCDA as to any facts relative to this Covenant.

13. **Governing Law.** This Covenant shall be governed by the laws of the Commonwealth of Massachusetts. Any amendments to this Covenant must be in writing and executed by all of the parties hereto. If any provision of this Covenant shall to any extent be held invalid, the remainder shall not be affected.

IN WITNESS WHEREOF the said Citizens for Affordable Housing in Newton Development Organization, Inc. has caused its corporate seal to be hereto affixed and these present to be signed, acknowledged and delivered in its name and behalf by Josephine McNeil, Executive Director, its duly authorized representative, this 15th day of October, 2004.

Citizens for Affordable Housing in Newton Development Organization, Inc.

By: Josephine McNeil
Josephine McNeil, Executive Director

10/15/04
Date

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, SS.

October 15, 2004

On this 15th day of October, 2004, before me, the undersigned notary public, personally appeared the above-named Josephine McNeil, proved to me through satisfactory evidence of identification, which were PERSONAL KNOWLEDGE, to be the person whose name is signed on the preceding document, and acknowledged to me that she signed it voluntarily for its stated purpose, as Josephine McNeil for Citizens for Affordable Housing in Newton Development Organization, Inc., a non-profit corporation.

Stephen D. Gartrell
Notary Public

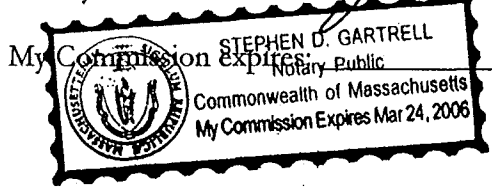


EXHIBIT A
PROPERTY DESCRIPTION

The land with the buildings thereon, situated in Newton, in said County of Middlesex, being Lot 85 on a "Plan of Parmenter Park in Waltham & Newton, Mass. Property of Thomas A. Joyce Realty Trust" made by Rowland H. Barnes and Henry F. Beal, C.E.'s, dated May 1923, recorded with Middlesex South District Deeds as Filed Plan 731, bounded:

Northwesterly by Falmouth Road fifty (50) feet;

Northeasterly by Lot 84 on said plan one hundred four and 23/100 (104.23) feet;

Southeasterly by land of owners unknown fifty and 3/100 (50.03) feet;

Southwesterly by Lot 86 on said plan one hundred five and 87/100 (105.87) feet;

Containing 5252 square feet.

The Post Office Address of the Property is 20-22 Falmouth Road, Newton, Massachusetts 02465.

**NEWTON COMMUNITY DEVELOPMENT AUTHORITY
CDBG LOAN AGREEMENT**

This AGREEMENT made as of October 15, 2004 and between **CITIZENS FOR AFFORDABLE HOUSING IN NEWTON DEVELOPMENT ORGANIZATION, INC. (CAN-DO)**, (hereinafter "Subgrantee") a corporation organized and existing under the laws of the Commonwealth of Massachusetts, and the **NEWTON COMMUNITY DEVELOPMENT AUTHORITY**, (hereinafter the "NCDA") an agency organized and existing pursuant to the Chapter 705 of the Acts of 1975, and Chapter 121B of the General Laws of the Commonwealth of Massachusetts, as amended, acting by and through its Sole Member and/or designated staff but without personal liability to the Sole Member and/or the staff.

WITNESSETH THAT:

WHEREAS the City of Newton (hereinafter the "City") under the provisions of Title I of the Housing and Community Development Act of 1977, as amended, has approved a grant of Community Development Block Grant Program funds (hereinafter "CDBG Program") from the United States Department of Housing and Urban Development (hereinafter "HUD") to the NCDA;

WHEREAS the NCDA is authorized to loan the subgrantee **TWO HUNDRED THOUSAND DOLLARS and NO CENTS (\$200,000.000)** in accordance with the terms of the Memorandum of Understanding by and between the City of Newton and the NCDA, dated November 7, 1995, as amended; and

WHEREAS the Subgrantee, a duly qualified nonprofit organization, has represented that it has the administrative capacity to acquire the property located at 20-22 Falmouth Road in Newton, MA (hereinafter "the Property") that will fully comply with all CDBG Program regulations and requirements, and that the Property will be rented at affordable prices to low and moderate income families, with a period of affordability of no less than fifty (50) years;

NOW THEREFORE, in consideration of the mutual promises contained herein, the parties hereby agree as stated within the General Provisions and attachments as follows:

**** GENERAL PROVISIONS ****

1. FEDERAL REGULATIONS. The provisions of **24 CFR Part 570, Community Development Block Grants** (hereinafter "CDBG Program regulations"), and all future amendments and revisions to the same are hereby incorporated into and made a part of this Agreement. The Subgrantee shall at all times comply with said CDBG Program regulations, and shall comply with other related federal, state and local statutes and regulations, Executive Orders, OMB Circulars, and all future revisions and amendments to the same. The Subgrantee shall become familiar with all of the foregoing requirements as applicable and shall ensure that the project complies in all respects.

2. LOW AND MODERATE INCOME BENEFIT. Subgrantee shall comply with CDBG Program regulation **24 CFR Part 570.208** concerning occupancy requirements for low and moderate income housing described in Attachment B. Upon the issuance of a Certificate of Occupancy for the Property and the actual occupancy of the Property, the NCDA shall have the right to determine that the Property is occupied for the term of this Agreement by qualified low and moderate income persons paying affordable rents as defined by HUD and stated in Attachment B herein.

3. ENVIRONMENTAL REVIEW. The release of funds for all CDBG-assisted projects and activities is subject to environmental review as set forth in CDBG Program regulation **24 CFR 570.604**. The NCDA

shall not obligate CDBG funds prior to compliance with the provisions of CDBG Program regulation 570.604 and the statutes and regulations cited therein. The NCDA will conduct an environmental review in compliance with applicable regulations. Subgrantee shall assist the NCDA as needed to complete the review.

4. **LOAN FUNDS.** The NCDA hereby agrees to loan the Subgrantee CDBG Program funds in the amount of TWO HUNDRED THOUSAND DOLLARS and NO CENTS (\$200,000.00), as stated within **Attachment A, Loan Amount and Terms** attached hereto and made a part hereof, subject to compliance by Subgrantee with all terms and conditions set forth within this Agreement.

- a) **Expenditures and Loan Project Budget.** The Subgrantee agrees that expenditures under this loan shall be limited to those costs directly related to the implementation of this loan project consistent with **Attachment A**, attached hereto and made a part hereof. Said expenditures shall meet the eligibility standards set by HUD, in its various regulations concerning the operation of the CDBG Program and incorporated into 24 CFR 570.502, "Uniform Administrative Requirements", and shall meet the principles and standards of cost allowability as set forth within **OMB Circular A-122, "Cost Principles for Non-Profit Organizations"** and 24 CFR 84, "Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations". The Subgrantee shall also comply with standards for the financial record keeping and management systems applicable as described in **Attachment C, Processing and Release of Project Funds**.
- b) **Reversion of Assets.** In accordance with CDBG Program regulations at 24 CFR 570.503, once the Grant Project is complete, the Subgrantee must return any CDBG Program funds on hand as well as any accounts receivable attributable to the use of CDBG funds to the NCDA.

5. **CDBG PROJECT.** The Subgrantee shall perform and carry out the project described in **Attachment B, Project Description**, in a satisfactory manner as determined reasonably by the NCDA. The Subgrantee shall comply with the requirements of the CDBG Program regulations applicable to the project. The Subgrantee shall require each written agreement executed with a subrecipient or other entity to contain provisions requiring compliance with the CDBG Program regulations.

- a) **Ownership, Use and Disposition of Property.** The Subgrantee must conform, for the duration of this Agreement as stated in **Attachment B** herein, with applicable property use, and program provisions of CDBG regulations at 24 CFR 570.503 and associated circulars and statutes.
 - i. If at any time during the period of this Agreement the Property is sold or otherwise conveyed or converted to a use other than that mentioned in **Attachment B** herein, the Subgrantee shall notify the NCDA 90 days in advance of such event with a request for review and approval. The NCDA and the Associate Director for Housing and Community Development shall review the proposed change of use and shall make a determination whether said change is eligible and acceptable. If not approved, after an opportunity to cure, **Paragraph 12. Repayment of Project Funds and Penalties** shall apply.
 - ii. Should Subgrantee go out of existence, become incapable of running the program, or be merged with some other organization during the term of this loan, the NCDA will require Subgrantee to designate, subject to approval by the NCDA, another credible organization to take over the supervision of the Property and see that it continues in use for the purpose stated in **Attachment B**.

6. **LEAD-BASED PAINT.** The Subgrantee is responsible for ensuring that the Property at all times complies with applicable requirements of the Lead-Based Paint Poisoning Prevention Act, 42 U.S.C. 4821, et. seq.; Residential Lead-Based Paint Hazard Reduction Act of 1992 and all future revisions and amendments to the same. The Subgrantee shall also ensure that this project complies with such Lead-Based Paint regulations as may be adopted pursuant to CDBG Program regulations and with the requirements of the Massachusetts Lead Paint Statute, M.G.L. c.111, ss190-199A and all future revisions and amendments to the same.

7. ASBESTOS REMOVAL. The Subgrantee is responsible for ensuring that the Property at all times complies with applicable requirements of federal and state asbestos removal acts, and all future revisions and amendments to the same.

8. PROJECT MANAGEMENT. The Subgrantee shall perform all procedures and tasks necessary to develop, design, implement and monitor the specified housing development project. Delays in implementation may lead to termination and recapture of CDBG funds as provided in **Paragraph 11. Termination.**

- a) **Procurement.** The Subgrantee agrees to fully comply with applicable requirements as referenced in **24 CFR 84.40 – 48, 84.84 and OMB Circular A-110** for nonprofit subrecipients. The NCDA or its designee shall review each CDBG funded procurement and all proposed contracts of the Subgrantee, the organization, its agents, representatives and employees or designees. Said contracts shall be maintained in the Subgrantee's files for review. CDBG Program regulation **24 CFR 570.609** prohibits the use of debarred firms and requires certain certifications for covered subrecipient transactions consistent with **24 CFR 24, Appendix B**. **No funds** may be released for contracts which have not been procured in accordance with these requirements.
- b) **Purchase of Recycled Materials.** The Subgrantee shall comply with **the Resource Conservation and Recovery Act, Section 6002** in the design of projects and use of designated recycled items, to the extent applicable.

9. DURATION. This Agreement, made as of the date first written above, shall be effective upon the date stipulated in **Attachment B, Project Description**, and shall continue until terminated as stated therein. Project activities shall be undertaken and completed as specified by said **Attachment B** in an expeditious manner so as to ensure completion consistent with the purposes of this Agreement and with CDBG Program regulations.

10. PERFORMANCE STANDARDS. The Subgrantee shall meet periodically with the NCDA to ensure that the Subgrantee is: 1.) completing the project activities according to the Schedule outlined in **Attachment B, Project Description**; and 2.) complying with all relevant local, state and federal regulations relating to the CDBG Program and the terms of this Agreement.

11. TERMINATION.

- a) **For cause.** The NCDA shall have the right to terminate this Agreement if for any reason the Subgrantee:
 - i. Fails to fulfill in a timely manner the project described in this Agreement, in accordance with the CDBG Program regulations and the schedule outlined in **Attachment B, Project Description**;
 - or
 - ii. Causes or allows CDBG Program funds to be expended in violation of CDBG Program regulations; or
 - iii. Violates any provision of this Agreement and fails to cure the same as provided in **Paragraph 12(b)**; or
 - iv. Refuses to accept conditions/directives administered by the NCDA as imposed by HUD.
- b) **Notice.** The NCDA may exercise the right to terminate this Agreement by written notice to the Subgrantee. In such case, the NCDA shall issue the notice of termination not less than 15 days prior to the effective date of such termination as stated in the notice starting with the date that the notice is issued. The notice shall be delivered to the Subgrantee by hand or by certified mail, returned receipt requested. In the event this Agreement is terminated for cause, **Paragraph 12. Repayment of Project Funds and Penalties** shall apply.

- c) **Cancellation.** In the event a project is cancelled for any reason, the Subgrantee agrees to repay to the NCDA all CDBG funds released to the Subgrantee within such time period specified by HUD or such reasonable time period as specified by the NCDA and consistent with **Paragraph 12. Repayment of Project Funds and Penalties.**

12. REPAYMENT OF PROJECT FUNDS AND PENALTIES.

- a) **General.** In the event the Subgrantee, its agents, successors, or designees, fails to meet any CDBG Program regulation or provision of this Loan Agreement, and such failure continues after the opportunity to cure as stated in **Paragraph (b)** of this provision, then the Subgrantee shall repay to the NCDA all project funds disbursed to the Subgrantee pursuant to this Agreement as determined by the NCDA. The Subgrantee shall also comply with **Paragraph 4(b), Reversion of Assets,** above.
- b) **Opportunity to Cure.** In the event of a violation of any of the provisions of this Loan Agreement, the NCDA shall provide written notice of such violations to the Subgrantee. The notice shall describe the remedial steps to be taken by the Subgrantee and shall establish the deadline for full compliance. In the event that the Subgrantee fails to cure all such violations in the manner and within the time period stated in said notice, the NCDA shall have the right to require repayment of all CDBG funds disbursed to the Subgrantee pursuant to this Agreement as specified in **Paragraph 12(a)** herein.
- c) **Legal Recourse.** In the event the Subgrantee fails to cure a violation of any of the provisions of this Agreement, of a CDBG program regulation or any other applicable regulation, and/or fails to cooperate with the NCDA in any matter pertaining to repayment, the NCDA reserves the right to take such steps as necessary in order to protect its ability to fulfill its obligations to HUD, including but not limited to legal action.
- d) **NCDA to be Held Harmless.** The Subgrantee shall hold harmless and defend the NCDA from and against all claims for repayment of CDBG project funds disbursed to the Subgrantee pursuant to this Agreement, provided that such repayment is attributable to (1) the failure of the Subgrantee, its agents, successors or designees, to comply with applicable HUD regulations, or (2) any of the provisions of this Agreement or (3) any other act or omission of the Subgrantee, its agents, successors or designees. The Subgrantee's liability shall include the amounts disbursed pursuant to this Agreement, together with any penalties assessed by HUD or the NCDA on account of the Subgrantee's use of CDBG funds disbursed for this project and any costs incurred by the NCDA in recovering sums owed pursuant to this paragraph, including but not limited to attorneys' fees.
- e) **Penalties.** In the event that HUD assesses penalties against the NCDA on account of the Subgrantee's use of CDBG funds pursuant to this Agreement, the Subgrantee shall be required to reimburse the NCDA in full for the amount of the penalties assessed.

13. AUDIT AND MONITORING.

- a) **Single Audit.** Subgrantee shall comply with **OMB Circular A-133**, including completion of a single audit if Subgrantee expended federal funds in excess of \$500,000 in the fiscal year. The Subgrantee shall be responsible for the cost of all audits performed on its records and operations pursuant to this section, and the Subgrantee shall not use CDBG funds for any portion of the cost of such audits.
- b) **Monitoring.** At any time during normal business hours and as often as the NCDA, HUD, and/or the Comptroller General of the United States may deem necessary, the Subgrantee and/or its subrecipient shall make available all such records and documents as requested by said parties for audit and/or monitoring. The NCDA, HUD, and/or the Comptroller General may examine and make copies from 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.

- c) **HUD Performance Reviews and Monitoring.** The Subgrantee understands that HUD may conduct performance reviews and monitoring of the NCDA as provided in CDBG Program regulations 24 CFR 570.900 – .901 in order to examine compliance with eligibility requirements and any other applicable requirement of the CDBG Program. The Subgrantee agrees to cooperate with HUD and the NCDA in such reviews and monitoring and to undertake remedial action as may be required pursuant to CDBG Program regulation 24 CFR 570.910, **Corrective and remedial actions.**
- d) **Monitoring by the NCDA or its Designee.** The NCDA or its designee will perform periodic monitoring of the project. Monitoring of the project will include, but not be limited to, review of compliance with income requirements as outlined in **Attachment B, Project Description, Paragraph 3.** and as further detailed within the Deed Restriction implemented for this project.

14. INDEMNIFICATION. The Subgrantee shall indemnify, hold harmless and defend the NCDA, its agents and employees, from and against all claims arising from any latent or patent defects in any work performed or services provided pursuant to this Agreement and all claims, damages, losses, and expenses including, but not limited to, attorneys' fees, arising out of or resulting from the use of CDBG funds disbursed pursuant to this Agreement, including claims attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property, provided that such claim, damage, loss or expense is caused in whole or in part by any negligent act or omission of the Subgrantee, anyone directly or indirectly employed by the Subgrantee, or anyone for whose acts Subgrantee may be liable, regardless of whether or not it is caused in part by a party indemnified hereunder.

15. INSURANCE. The property shall be insured at all times and in such amounts as deemed reasonable and prudent in accordance with standard construction practices and in compliance with **Attachment D** herein.

16. CONFLICT OF INTEREST.

- a) In accordance with CDBG Program regulation 24 CFR 570.611, the procurement of property and services by the NCDA and the Subgrantee is governed by the conflict of interest provisions stated in 24 CFR 84.84 and **OMB Circular A-110.** The Subgrantee shall comply with all applicable federal and state conflict of interest rules and shall ensure compliance with the same by all subrecipients as defined in CDBG Program regulation 24 CFR 570.500 or other persons designated to receive CDBG funds pursuant to this Agreement. At a minimum, the Subgrantee shall make a copy of all applicable conflict of interest provisions available to all recipients of CDBG Program funds.
- b) No persons described in **Paragraph (c)** of this section who exercise or have exercised any functions or responsibilities with respect to activities assisted with CDBG funds or who are in a position to participate in a decision-making process or gain inside information with regard to these activities, may obtain a financial interest or benefits from a CDBG-assisted activity, or have an interest in any contract, subcontract or agreement with respect thereto, or the proceeds thereunder, either for themselves or those with whom they have family or business ties, during their tenure or for one year thereafter.
- c) The conflict of interest provisions of **Paragraph (b)** of this section shall apply to the following persons: any person who is an employee, agent, consultant, officer, elected or appointed official of the City of Newton, the NCDA or of the Subgrantee.
- d) Any exceptions to the conflict of interest provisions stated or cited herein must be approved by HUD in accordance with CDBG Program regulation 24 CFR 570.611 (d). The Subgrantee shall advise the NCDA in writing as to any such exceptions granted by HUD.

17. EQUAL OPPORTUNITY. The Subgrantee shall comply with all applicable federal and state laws governing discrimination and equal opportunity. In particular, the Subgrantee shall ensure compliance with CDBG Program regulation 24 CFR 570.601 and .602 and the following statutes and executive orders

pertaining to **Equal Opportunity**: Fair Housing Act; Executive Order 11063 (Equal Opportunity in Housing); Civil Rights Act of 1964, Title VI (Nondiscrimination in Federally Assisted Programs); Age Discrimination Act of 1975; Rehabilitation Act of 1973, Section 504; Exec. Order 11246 (Equal Employment Opportunity); Housing and Urban Development Act of 1968, Section 3; Exec. Orders 11625 and 12432 (Minority Business Enterprise); Exec. Order 12138 (Women's Business Enterprise).

18. FAIR HOUSING.

- a) **General.** The Subgrantee shall affirmatively further fair housing consistent with the City of Newton's Consolidated Strategy and Plan and with **24 CFR 570.601**.
- b) **Affirmative Marketing.** The Subgrantee shall adopt and implement affirmative marketing procedures for the Property consistent with the requirements of the Newton Community Development Block Grant Program and WestMetro HOME Consortium **Affirmative Marketing Plan**. The Subgrantee shall summarize these procedures in an Affirmative Marketing Plan, subject to review and approval by the NCDA. The Plan shall be submitted to the NCDA for review and approval within one month of the date of this Agreement.

20. LIENS. The Subgrantee represents that the Property benefiting through installation or construction of improvements as part of the loan project is free from any attachments, tax liens, mechanics liens or any other encumbrances other than mortgages agreed to by the NCDA and City.

21. DISPLACEMENT AND RELOCATION. In accordance with **24 CFR 570.606**, the **Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 and Section 104(d) of the Housing and Community Development Act of 1974**, Subgrantee shall assure that all reasonable steps to minimize the displacement of persons as a result of this project have been taken. If displacement cannot be avoided, the Subgrantee shall comply with **570.606**, including preparation and maintenance of all necessary displacement and relocation plans and documentation.

22. LABOR STANDARDS. The Subgrantee shall comply with and/or ensure compliance with all applicable state and federal labor laws and regulations, including but not limited to the **Davis/Bacon Act, 40 U.S.C. 276a-5 et. seq.**, as applicable pursuant to CDBG Program regulation **24 CFR 570.603**. Compliance with said regulation shall include, but shall not be limited to maintaining all required documentation and implementing all labor compliance procedures such as: screening contractors for debarment, on-site labor interviews, pre-construction meeting and instructions, etc. The Subgrantee shall require certification as to compliance with the provisions of this paragraph as required by the NCDA pursuant to CDBG Program regulation **570.603**. The Davis/Bacon Act applies to CDBG funded rehabilitation projects of eight (8) or more units.

23. CHANGES. In the event that changes in the project become necessary, including but not limited to changes in funding, scope, or duration, the Subgrantee shall request the change in writing. If the NCDA agrees to such changes, they must be approved in writing by the NCDA and incorporated into this Agreement as amendments.

24. RECORDS. The Subgrantee shall maintain all applicable records for its project(s) consistent with CDBG Program regulations **24 CFR 84.85 and 24 CFR 570.506 Records to be maintained**. In addition the Subgrantee shall make available copies of all such records as may be requested by the NCDA.

25. REPORTS. The Subgrantee shall cooperate with the NCDA in providing all data and information specific to its project in such formats and time frame as required by the NCDA and HUD. The Subgrantee shall submit all data required for the Project Completion report to the NCDA within 30 days of Project Completion.

26. FAITH-BASED ORGANIZATIONS.

- a) The Subgrantee may not engage in inherently religious activities as part of the Grant Project unless the activities are offered separately, in time or location, from the programs or services funded by the Grant Project, and participation is voluntary for the beneficiaries of the Grant Project.
- b) The Subgrantee shall not, in operating the Grant Project, discriminate against a program beneficiary or prospective program beneficiary on the basis of religion or religious belief.
- c) CDBG Program funds may not be used for the acquisition, construction, or rehabilitation of structures to the extent that those structures are used for inherently religious activities. They may be used for these purposes only to the extent that those structures are used for conducting eligible activities under 24 CFR 570.201. Where a structure is used for both eligible and inherently religious activities, CDBG funds may not exceed the cost of those portions of the acquisition, construction, or rehabilitation that are attributable to the Grant Project. CDBG funds may not be used for improvements to sanctuaries, chapels, or other rooms that are used as a principal place of worship.

27. ASSIGNABILITY. The Subgrantee shall not assign any interest in this Agreement and shall not transfer any interest in the same.

28. OBLIGATIONS. The NCDA shall not be obligated to grant any funds to the Subgrantee unless and until the same are received from the City. No NCDA funds are obligated under the terms of this Agreement, only such funds as are received from the City's CDBG Program. The NCDA may be obligated to the Subgrantee only to the extent that funds are actually released from the CDBG Program.

29. OTHER PROVISIONS/ATTACHMENTS. All other provisions are set forth within the following attachments which are hereby incorporated into this Agreement:

- Attachment A, Loan Amount and Terms
- Attachment B, Project Description
- Attachment C, Processing and Release of Project Funds
- Attachment D, Insurance
- Attachment E, Certificate of Authority
- Attachment F, State Tax Attestation

30. FUNDING INSTRUMENTS USED. The Subgrantee shall use the following legal instruments, subject to the prior review and approval of the NCDA:

- CDBG Loan Agreement
- CDBG Promissory Note
- CDBG Mortgage
- CDBG Declaration of Affordable Housing Covenants

SIGNATORIES

IN WITNESS WHEREOF the parties hereto have made this Agreement in triplicate as of the day first written above effective upon the date executed by the Sole Member of the Newton Community Development Authority.

Citizens for Affordable Housing in Newton Development Organization, Inc.

BY: Josephine McNeil 10/15/04
Name Date

NEWTON COMMUNITY DEVELOPMENT AUTHORITY

[Signature] 10-15-04
Sole Member Date

Approved as to Form.

[Signature] 10/15/04
Assistant City Solicitor Date

**CDBG LOAN AGREEMENT
ATTACHMENT A, LOAN AMOUNT AND TERMS**

1. LOAN. The NCDA agrees to provide CDBG Program funds to the Subgrantee in the amount of TWO HUNDRED THOUSAND DOLLARS and NO CENTS (\$200,000.00) for the project described in **Attachment B, Project Description**, said amount to be subject to the terms of this Loan Agreement and attachments thereto.

2. LOAN TERMS.

- a) **Interest Rate.** Zero percent (0%) per annum.
- b) **Term.** Fifty (50) years from the Completion Date as defined in the Note.
- c) **Deferral and forgiveness.** Principal and interest on the loan shall accrue, but not be due and payable until the end of the term. All accrued principal and interest shall be forgiven at the end of the term provided that the provisions of this Loan Agreement, Note, Mortgage and Declaration of Restrictive Covenants, all of even date herewith, have been continuously satisfied.
- d) The loan shall be secured by a second mortgage on the Property and a Declaration of Affordable Housing Covenants.

**CDBG LOAN AGREEMENT
ATTACHMENT B, PROJECT DESCRIPTION**

1. **PROJECT DESCRIPTION.** The Loan provided under this Agreement will assist with the acquisition of the Property, which consists of two units of rental housing for long-term occupancy by low- and moderate-income households in compliance with CDBG Program regulations.
2. **LOCATION.** The Property is located at: **20-22 Falmouth Road, Newton, Massachusetts.**
3. **CURRENT HOUSEHOLD INCOME LIMITS** effective February 1, 2004.

<u>Number in Family</u>	<u>50% of area median income</u>	<u>80% of area median income</u>
1	\$28,950	\$46,300
2	\$33,100	\$52,950
3	\$37,200	\$59,550
4	\$41,350	\$66,150
5	\$44,650	\$71,450
6	\$47,950	\$76,750
7	\$51,520	\$82,050
8 or more	\$54,600	\$87,350

4. **PROPERTY STANDARDS.** The Subgrantee hereby certifies that it shall comply with the following:
 - a) Applicable local codes, state and federal laws, including but not limited to, rehabilitation standards, building codes and zoning ordinances.
 - b) The requirements of the HUD Section 8 Housing Quality Standards for the duration of the Loan Term.

5. **QUALIFICATION AS AFFORDABLE HOUSING.** The CDBG funds provided under this Agreement must meet the occupancy and affordability requirements set forth in CDBG Program regulations 24 CFR 570.208. This includes, but is not limited to the following:

Project type: Rental housing

Rent: The rent for CDBG assisted units may not exceed Fair Market Rent as established annually by HUD.

Affordability period: The Property must remain affordable for a minimum of fifty (50) years following the date of full occupancy of the CDBG-assisted project as evidenced by (1) issuance of a Certificate of Occupancy for the unit(s) and (2) receipt of written notice by NCDA from the Subgrantee certifying that the CDBG-assisted property has been fully occupied by eligible occupants. If there is more than one unit and the units receive Certificates of Occupancy and/or are occupied on different dates, then Project Completion shall be the date of full occupancy of the unit which is occupied last.

Compliance: Income, rent levels, and occupancy of CDBG assisted units may be verified annually, or more often if necessary, at the discretion of the NCDA for compliance with CDBG Program regulations. The Subgrantee shall provide all information requested by the NCDA within five (5) days of request.

6. **PROJECT SCHEDULE.** The Subgrantee shall endeavor to complete the CDBG project described in this attachment by the following target dates:

Contract Number: N0537

Proposed schedule

October 15, 2004

November 2004 through April 2005

May 2005

June 2005

Activity

Acquisition of property

Rehabilitation

Full occupancy

Project Completion Report submitted to the City

CDBG LOAN AGREEMENT
ATTACHMENT C, PROCESSING AND RELEASE OF PROJECT FUNDS

1. METHOD OF PAYMENT. The NCDA agrees to request drawdown and release the CDBG Program funds as specified in **Attachment A, Loan Amount and Term**, consistent with the procedure outlined in **Paragraph 2, Disbursement Procedure**, as follows.

2. DISBURSEMENT PROCEDURE.

- a) **Invoice.** The Subgrantee shall prepare an invoice on its letterhead with the following information: invoice number, date, name of project, contract number, type and amount of expenditure, and authorized signature.
- b) For projects involving construction, the detailed application for payment, broken down by applicable cost categories/trades area, shall be prepared and signed by the contractor and architect and verified by the Subgrantee or its designee. If this document and the invoice are in order, the Subgrantee shall approve the invoice and forward them to the NCDA under the Subgrantee's letterhead.
- c) **Requisition for CDBG funds.** After review and approval of the Subgrantee invoice, the NCDA will prepare a Consortium requisition for CDBG funds, using standard procedures. Incomplete requisitions or requisitions not in full conformance with CDBG Program regulations **will be returned to the Subgrantee**. After review and approval, the NCDA will process the requisition for payment through its accounts payable system.
- d) **Contingency requirement.** If applicable, the NCDA shall retain 10% of the CDBG funds associated with reimbursement for construction costs until such work is complete and passes a final inspection by the NCDA or its designee determining compliance with the terms of this Agreement and all applicable federal state, and local building regulations.
- e) **Release of checks.** When released by the NCDA, checks will be transmitted to the designated payees by mail. The NCDA reserves the right to hold release of the final project payment, pending satisfaction of all terms of this Agreement.

3. FINANCIAL RECORDKEEPING REQUIREMENTS.

- a) **General.** The Subgrantee must have financial management systems conforming to **24 CFR 84, Subpart C – Post Award Requirements**.
- b) **Financial records.** The Subgrantee shall at minimum have a CDBG funds cash receipts register and cash disbursements register. All CDBG funds and transactions must be clearly identifiable. Copies of checks issued with CDBG funds must be forwarded to the NCDA as requested. Subsidiary records shall be maintained for each contract signed and shall, at minimum, include contract price, dates and amounts of payments and running balance. The Subgrantee agrees to provide such financial reports and additional source documentation and to comply with such reasonable additional financial control procedures as may be required by the NCDA.

**CDBG LOAN AGREEMENT
ATTACHMENT D, INSURANCE**

1. GENERAL. The Subgrantee, and contractors and subcontractors engaged by the Subgrantee, its agents, or designees to perform CDBG-assisted projects shall, at all times, be required to maintain insurance coverage consistent with the character of the project. Each certificate of insurance as required herein shall name the NCDA as an additional insured party. Each policy and certificate shall provide for at least twenty (20) days notice of cancellation or termination to the NCDA. Certificates shall be provided to the NCDA by the Subgrantee at the time of execution of this Agreement and thereafter immediately upon demand. All renewal certificates shall be delivered to the NCDA at least thirty (30) days before expiration of the existing policy.

The following coverage will be required at the minimum amounts indicated below:

WORKMENS' COMPENSATION EMPLOYERS LIABILITY	Statutory coverage \$100,000 Coverage B
COMPREHENSIVE GENERAL LIABILITY BODILY INJURY	\$500,000 each occurrence \$1,000,000 aggregate
PROPERTY DAMAGE	\$500,000 each occurrence \$1,000,000 aggregate

NOTE: The Comprehensive General Liability policy must include coverage for:

- * Independent contractor's liability
- * Products and completed operations liability for a period not less than one year following completion of the contract.
- * Broad form property damage liability
- * X (Explosives), C (Collapse), and U (Underground) hazards liability, if applicable
- * Personal injury liability for all coverage
- * Contractual liability

2. PROFESSIONAL LIABILITY. The Subgrantee shall ensure that all engineers and architects engaged by the Subgrantee in any and all aspects relative to the project identified in **Attachment B, Project Description** shall carry the following minimum amounts of insurance:

PROFESSIONAL LIABILITY (Errors/Omissions)	\$1,000,000 each occurrence \$1,000,000 aggregate
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3. AUTOMOBILE LIABILITY. (Owned/non-owned vehicles) Requirements for this coverage shall be determined on a case by case basis, subject to mutual agreement of the NCDA and the Subgrantee consistent with the following coverages and limits:

PROPERTY DAMAGE	\$100,000 each occurrence \$100,000 aggregate
BODILY INJURY	\$250,000 each occurrence \$500,000 aggregate

4. PROPERTY INSURANCE.

- (a) **Rehabilitation Phase.** No later than 15 days prior to commencement of any rehabilitation and thereafter until construction is completed, Subgrantee shall provide evidence of Builder's Risk insurance covering the Property. Said insurance will be in such amounts as deemed reasonable and prudent in accordance with standard construction practices and consistent with this Attachment, subject to the approval of the NCDA, which approval shall not be unreasonably withheld.
- (b) [Reserved]
- (c) **Hazard Insurance.** Subgrantee shall keep the property continuously insured against damages resulting from hazards by maintaining an adequate extended coverage policy. In the event of a distribution of hazard insurance proceeds in lieu of restoration or repair following loss to the Property, any proceeds payable to Subgrantee are hereby assigned, subject to the terms of any Senior Mortgage, and shall be paid to the NCDA for application to the sums secured by the subject CDBG Mortgage and Note, with any excess to be paid to Subgrantee.
- (d) [Reserved]
- (e) **Restoration or Repair of Property.** In the event of fire, hazard or other similar occurrence resulting in the partial or total loss of the Property, Subgrantee shall restore the property unless Subgrantee and the Authority determine that it is impossible or impractical to do so.

**CDBG LOAN AGREEMENT
ATTACHMENT E, CERTIFICATE OF AUTHORITY**

See attached.

**CDBG LOAN AGREEMENT
ATTACHMENT F, STATE TAX ATTESTATION**

LEGISLATION ENACTED BY THE COMMONWEALTH OF MASSACHUSETTS, EFFECTIVE JULY 1, 1983 REQUIRES THAT THE ATTESTATION BELOW BE SIGNED.

ATTESTATION

Pursuant to M.G.L. Ch. 62C, Sec. 49A, I certify under the penalties of perjury that I, to my best knowledge and belief, have filed all state tax returns and paid all state taxes required under law.

By: Josephine McNeil
President Executive Director
Citizens for Affordable Housing
in Newton Development Organization, Inc.

**Soc. Secur. Number
(Volun. or Mand. if Applicable)

Date: 10/15/04

* Approval of a contract or other agreement will not be granted unless this certification clause is signed by the applicant.

** Your social security number will be furnished to the Massachusetts Department of Revenue to determine whether you have met tax filing or tax payment obligations. Providers who fail to correct their non-filing or delinquency will not have a contract or other agreement issued, renewed, or extended. This request is made under the authority of Mass. G. L. C. 62C, S. 49A.

CERTIFICATE OF VOTE OF THE BOARD OF DIRECTORS

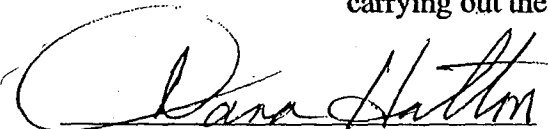
I, Dana Hatton, Clerk of Citizens for Affordable Housing in Newton Development Organization, Inc. d/b/a CAN-DO (the "Corporation") hereby certify that the following is a true copy of votes taken at the Meeting of the Board of Directors held October 3rd, 2004 at the Corporation's offices at 1075 Washington Street, West Newton, Massachusetts.

A quorum being present upon motion duly made and seconded it was:

VOTED: That the Corporation authorize the President or Treasurer or Executive Director (each acting alone) to execute all applications, notes, mortgages, construction loan agreements, affordable housing restrictions, and other customary financing documents necessary in connection with the borrowing of \$200,000.00 from the Newton Community Development Authority for the acquisition of the real estate located at 20-22 Falmouth Road in Newton, Massachusetts (the "Premises") and, thereafter, to renovate the existing structures and perform such other construction as may be necessary to create rental units which will be rented to households earning less than 80% of area median income (the "Project").

VOTED: That the Corporation authorize the President or Treasurer or Executive Director (each acting alone) to execute all applications, notes, mortgages, affordable housing restrictions, and other customary financing documents necessary in connection with a loan in the amount up to \$200,000.00 from the Newton Community Development Authority for the Project.

VOTED: That the President or the Treasurer or Executive Director (each acting alone) be and hereby are authorized to act on behalf of the Corporation in executing any and all documents, instruments or certifications usual, customary or necessary for successfully completing the Project and for carrying out the votes herein taken.



Dana Hatton, Clerk

Date: October 3rd 2004

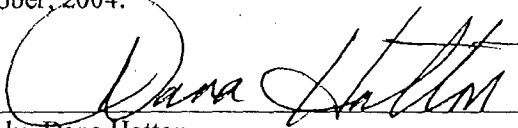
**CITIZENS FOR AFFORDABLE HOUSING IN NEWTON
DEVELOPMENT ORGANIZATION, INC.**

CLERK'S CERTIFICATE

The undersigned, Dana Hatton, hereby certifies on behalf of Citizens for Affordable Housing in Newton Development Organization, Inc., d/b/a CAN-DO, a Massachusetts corporation (the "Corporation"), that she is the duly elected and acting Clerk of the Corporation and that:

1. Attached hereto as Exhibit A is a true and complete copy of the Articles of Organization of the Corporation, which Articles of Organization have not been amended and which are, as of the date hereof, in full force and effect.
2. Attached hereto as Exhibit B is a true, correct and complete copy of the By-Laws of the Corporation, as amended, of the date hereof, which remain in full force and effect; and
3. Kenneth Sinclair is the duly qualified and acting President of the Corporation; Jane Eisenstark is the duly qualified and acting Treasurer of the Corporation and Josephine McNeil is the duly qualified and acting Executive Director of the Corporation.

IN WITNESS WHEREOF, the undersigned has, on behalf of the Corporation, executed this Certificate as a sealed instrument this 3rd day of October, 2004.



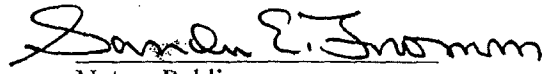
Clerk: Dana Hatton

Commonwealth of Massachusetts

Middlesex, ss.

October 3rd, 2004

On this 3rd day of October, 2004, before me, the undersigned notary public, personally appeared the above-named Dana Hatton, Clerk of Citizens for Affordable Housing in Newton Development Organization, Inc., proved to me through satisfactory evidence of identification, which was/were her MA Driver's License to be the person whose name is signed on the preceding or attached document, and acknowledged to me that she signed it as her free act and deed, and as the free act and deed of Citizens for Affordable Housing in Newton Development Organization, Inc., for its stated purpose.



Notary Public
My Commission Expires: August 9, 2007

ACORDDATE (MM/DD/YY)
10/15/2004

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

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.

COMPANIES AFFORDING COVERAGE

COMPANY A United States Liability Ins.
 COMPANY B
 COMPANY C
 COMPANY D

INSURED
 Citizens for Affordable Housing in Newton Dev
 DBA: CAN DO
 1075 Washington Street
 West Newton, MA 02465

THIS IS TO CERTIFY THAT 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. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

CO LTR	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	COVERED PROPERTY	LIMITS
A	<input checked="" type="checkbox"/> PROPERTY CAUSES OF LOSS	TBD	10/15/2004	10/15/2005	<input checked="" type="checkbox"/> BUILDING	\$ 346,500
	<input checked="" type="checkbox"/> BASIC				<input type="checkbox"/> PERSONAL PROPERTY	\$
	<input type="checkbox"/> BROAD				<input type="checkbox"/> BUSINESS INCOME	\$
	<input type="checkbox"/> SPECIAL				<input type="checkbox"/> EXTRA EXPENSE	\$
	<input type="checkbox"/> EARTHQUAKE				<input type="checkbox"/> BLANKET BUILDING	\$
	<input type="checkbox"/> FLOOD				<input type="checkbox"/> BLANKET PERS PROP	\$
					<input type="checkbox"/> BLANKET BLDG & PP	\$
		\$				
	INLAND MARINE TYPE OF POLICY				\$	
	CAUSES OF LOSS				\$	
	<input type="checkbox"/> NAMED PERILS				\$	
	<input type="checkbox"/> OTHER				\$	
	CRIME TYPE OF POLICY				\$	
					\$	
					\$	
	BOILER & MACHINERY				\$	
					\$	
	OTHER					

LOCATION OF PREMISES/DESCRIPTION OF PROPERTY
 00001/ 163 Jackson Rd Newton, MA 02465

SPECIAL CONDITIONS/OTHER COVERAGES
 Certificate Holder is named as Mortgagee.

Newton Community Development Agency
 1000 Commonwealth Ave.
 Newton, MA 02459

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING COMPANY WILL ENDEAVOR TO MAIL 20 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 COMPANY, ITS AGENTS OR REPRESENTATIVES.

AUTHORIZED REPRESENTATIVE

[Signature]