

**COMMUNITY PRESERVATION FUNDING AGREEMENT
BETWEEN CITIZENS FOR AFFORDABLE HOUSING IN NEWTON DEVELOPMENT
ORGANIZATION, INC. D/B/A CAN-DO AND THE CITY OF NEWTON
TO SUPPORT AFFORDABLE COMMUNITY HOUSING AT 248 ELLIOT STREET
aka LINDEN GREEN HOMES**

This AGREEMENT made as of November 3, 2005 by and between Citizens for Affordable Housing in Newton Development Organization, Inc. d/b/a CAN-DO, a not-for-profit corporation having a usual place of business located at 1075 Washington Street, West Newton, MA 02465 (hereinafter "Grantee") and the City of Newton, a municipal 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 the property at 248 Elliot Street, Newton (hereinafter "the Property"), on which an existing historic building will be rehabilitated, preserved, and renovated into three condominium units and a new building with two condominium units will be constructed, with a total of three of the five units to be affordable housing homeownership units for individuals/households with incomes at or below 80% of the area median;

WHEREAS, one of the three affordable units will be reserved for individuals/households age 55 years or older with incomes at or below 80% of the area median;

WHEREAS, the Grantee has received loans from the Newton Community Development Authority to purchase the property at 248 Elliot Street and from The Village Bank to purchase and develop the Property;

WHEREAS, the Grantee has applied for and received approval from the Community Preservation Committee and Board of Aldermen for a deferred forgivable loan in the amount of \$575,000.00;

WHEREAS, of the \$575,000.00 loan, the Grantee will apply \$375,000.00 to reduce the existing conventional loan from the Village Bank; \$63,290.00 for historic renovations; and \$136,710.00 for soft costs related to the development of the community housing units.

WHEREAS, the Grantee will execute a Note and a Mortgage securing the Community Preservation loan; and

WHEREAS, the Grantee has also agreed to execute a Preservation Restriction Agreement to insure the historic integrity of the historic building on the property in perpetuity;

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

****GENERAL PROVISIONS****

Subject matter. This Agreement sets forth the terms and conditions where the Grantee shall receive funding from the City in the amount of Five Hundred and Seventy-Five Thousand (\$575,000.00) Dollars. The Grantee agrees to use such funding in the following manner: (a) \$375,000.00 to reduce the existing conventional loan from The Village Bank that was used to purchase the historic house currently on the site; (b) \$63,290.00 for historic renovations; and (c) \$136,710.00 for soft costs related to the development of the community housing units.

1. **Funding Amount and Terms.** The City agrees to provide Community Preservation Act funds to the Grantee in the amount of five hundred seventy-five thousand dollars and no cents (\$575,000.00) for the project known as the Linden Green Homes located at 248 Elliot Street, subject to the terms of this Funding Agreement.
 - a. **Interest Rate.** Funds will be provided in the form of a deferred forgivable loan with zero percent interest per annum that is repayable only in the circumstances set forth in Paragraph 1.b. below.
 - b. **Deferral and forgiveness.** All principal shall be forgiven and no interest shall accrue, or be due or payable at the end of the term provided that (i) each of the three (3) Affordable Units shall be sold subject to a perpetual affordable housing restriction substantially in the form of the Deed Rider attached as Exhibit C to the Local Initiative Program Regulatory Agreement and Declaration of Restrictive Covenants for Ownership Project between Borrower, the Department of Housing and Community Development (“DHCD”), and the City of Newton (“Regulatory Agreement”), which Regulatory Agreement is recorded with the Middlesex South Registry of Deeds at Book 46084, Page 394; and (ii) the provisions of the Regulatory Agreement, this Funding Agreement, Note and Mortgage (collectively, the “Loan Documents”) have been continuously satisfied as of the Maturity Date. In the event of violation of the terms of this Funding Agreement, the Note, the Mortgage, or the Regulatory Agreement, the provisions of Paragraph 6 and any additional penalties provided for in the Loan Documents shall apply.
 - c. The funding shall be secured by a mortgage on the Property.
 - d. Upon request of any of the Purchasers of the units and if the requirement of Paragraph 1 b. above have been met, the City shall provide written notice that the requirements of the Loan Documents have been satisfied.

2. **Conditions Prior to Receipt of Funds.** The Grantee agrees to the following conditions prior to receipt of funds:

(a) Grantee shall execute a Preservation Restriction Agreement which satisfies the requirements of G.L. c. 184, sec. 32 and shall be a perpetual restriction preserving certain key features of the historic building and its immediate setting, all as more specifically set forth in such Preservation Restriction Agreement;

(b) The Grantee shall execute a Note evidencing the indebtedness and a Mortgage securing the obligations under (i) this Agreement; (ii) the Regulatory Agreement; (iii) the Note; and (iv) the Preservation Restriction Agreement.

(c) Grantee shall comply with the fund release procedure set forth in Attachment C.

3. **Conditions Subsequent to Receipt of Funds.**

(a) Within twenty (20) days of execution of this Agreement, the City shall deliver to the Grantee a check in the amount of \$375,000.00 payable to The Village Bank. Within seven days of receipt of said check, the Grantee shall deliver said check to said Bank. Within fourteen days of delivery of said check to said Bank, Grantee shall submit a receipt to the City, evidencing receipt by the Bank of said check.

(b) Grantee shall construct and sell three (3) Affordable Units at affordable prices to low/moderate income first-time homebuyers who have annual household incomes at or below 80% of area median income;

(c) One of the three Affordable Units shall be reserved for persons 55 years of age or older who are income eligible;

(d) Each of the three (3) Affordable Units shall be sold subject to a perpetual affordable housing restriction substantially in the form of the Deed Rider attached as Exhibit C to the Regulatory Agreement;

(e) The form of affordable housing restriction shall be acceptable to DHCD and City and shall satisfy the requirements of G.L. c. 184, §32 and shall be a perpetual restriction preserving the Property's affordable housing homeownership units for households whose annual household income is at or below 80% of area median income;

(f) Grantee shall comply with all terms and conditions of a Preservation Restriction Agreement between Borrower and the City, dated _____, 2005;

(g) Grantee shall comply with all terms and conditions of this Funding Agreement, Note and Mortgage;

(h) Borrower shall comply with all terms and conditions of the Regulatory Agreement; and

(i) Borrower shall diligently pursue the completion of the Project.

4. **Insurance Requirements.**

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. 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.

5. **Permanent Reporting Requirements.** As each affordable unit is sold, Grantee shall submit a report to the City as to the use and occupancy of the Property and the income level of the purchasers of such unit.
6. **Recapture of Funds.** If the Grantee fails to comply with the requirements of this Agreement, the Note, Mortgage, or Regulatory Agreement, the funds shall revert back to the City's Community Preservation Fund, and the Grantee shall be liable to repay the entire amount of the funding to the City. The City may take such steps as necessary, including legal action, to recapture such funds.

In the alternative, at the sole option of the City, the City may elect to exercise its right, pursuant to the Note executed herewith, to purchase the Property from Grantee for one (\$1.00) dollar, in full satisfaction of Grantee's repayment obligations hereunder.

Any portion of the loan not used to pay down the loan from The Village Bank or for construction and preservation costs, shall be returned by the Grantee to the City by the later to occur of: (i) six months from the date of this Agreement; or (ii) the date upon which a Certificate of Occupancy has been issued for the last condominium unit.

7. **Record Keeping.** The Grantee agrees to keep such records as are kept in the normal course of business and as may be required by the City. The City shall have full and free access to such records with respect to utilization of the proceeds of this Agreement.
8. **Termination.** In the event the Grantee fails to fulfill all obligations under the terms of this Agreement, including refusal to comply with the Preservation Restriction Agreement, 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 the Note, Mortgage, Regulatory Agreement or this Agreement, including without limitation, recapture of funds under paragraph 6.
9. **Compliance with Applicable Laws.** The Grantee shall comply with all applicable laws, ordinances, or codes of state and/or local governments, in the construction, operation, and maintenance of the Property.
10. **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 funded activities in the manner required pursuant to this Agreement. 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.

11. **Successors and assigns.** The terms of this Agreement, including, but not limited to the Permanent Reporting Requirements in Paragraph 5, shall be binding on the Grantee's successors and assigns. The Grantee shall promptly provide notice of any change in ownership of the Property to the City.
12. **Conflict of Interest; Bonus and Benefit Prohibited.**
 - (a) No member, officer, or employee of the City 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.
13. **Free from Encumbrances.** It is agreed and represented that the Property is free from any attachments, tax liens, mechanic liens or any other encumbrances, except for (i) a mortgage granted to The Village Bank dated December 30, 2003 and recorded with the Middlesex South Registry of Deeds at Book 41708, Page 145; and (ii) a mortgage granted to the Newton Community Development Authority dated September 24, 2004 and recorded with said Registry at Book 43769, Page 1.
14. **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.
15. **Notice.** Any notice, demand, request, consent, approval, communication either party is required to give to the other party or any person shall be in writing and either served personally or sent by prepaid, first class mail to the respective addresses set forth below. Either party may change its address by notifying the other party of the change of address in writing.

To the City: Director of Planning and Development
 Planning and Development Department
 City Hall
 1000 Commonwealth Avenue
 Newton Centre, MA 02459

To Grantee: Executive Director
 Citizens for Affordable Housing in Newton Development
 Organization, Inc.
 1075 Washington Street
 Newton, MA 02465

16. 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.

**** SIGNATORIES ****

IN WITNESS WHEREOF the parties hereto have executed this Agreement in three sets to be effective when executed by His Honor the Mayor of the City of Newton.

GRANTEE:

Citizens for Affordable Housing in Newton Development Organization, Inc.
d/b/a CAN-DO

By: Josephine McNeil
Josephine McNeil
Its: Executive Director

CITY OF NEWTON

By: Michael Kruse
Michael Kruse
Director of Planning and Development

I certify funds are available in the amount of \$63,290 in Account 21B11408-R5797 (Historic Preservation) and in the amount of \$575,000 in Account 21C11408-R5797 (Community Housing) for this Agreement.

By: Comptroller of Accounts

Approved as to legal form and character

By: Assistant City Solicitor


CONTRACT APPROVED

By: Mayor

11/03/05
Date

**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

Citizens for Affordable Housing in Newton Development Organization, Inc.

Name of Contractor (Agency)

Federal Identification Number
or Social Security Number

Date

11/03/05

*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
Processing and Release of Project Funds/Description of Work

1. **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 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. 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.
- b. For projects involving construction, the detailed application for payment, broken down by applicable costs categories/trades area, shall be prepared and signed by the contractor and architect and verified by the Grantee. If this document and the invoice are in order, the Grantee shall approve the invoice and forward them to the City under the Grantee's letterhead.

The request for payment should be addressed to:

Michael Duff
Newton Housing Rehabilitation Fund
492 Waltham Street
Newton Centre, MA 02465

2. **Description of Work.** Grantee agrees to use the funds for the following rehabilitation work as described in Grantee's application:

(a) *Historic Restoration Work:*

Historic restoration is limited to the building exterior, and includes the following elements:

Repair and replacement of existing building siding and trims, on the 1840 main house and the East (street) and South elevations of the 1900 lower wing;

Replacement of windows to match the existing wood windows in all details, including glazing patterns and relation ship to exterior trims;

Restructuring the existing front columned porch so as to provide separate structural support within the fluted columns, which will be restored and reinstalled as non structural trim;

Repair and replacement of existing wood gutters, fascia and eave details;

Restoration of the east facing porch on the 1900 section to its original condition;

Rebuilding (a false) chimney on the main house to its original detail, but using thin bricks over a constructed base;

Repair of the original puddingstone and fieldstone retaining wall along Linden street.

(b) *General Construction Work:*

EXISTING BUILDING

In addition to the specific historic renovation listed above, the existing two family house will be renovated and added to the rear to create three - two story units. Two will be two-bedroom, two-story units; the third unit in the center section (original ell) will have one bedroom. All units will have a second egress to a terrace at grade. There will be three parking spaces.

NEW BUILDING:

At the lower section of the site a new building will be constructed - a mirror image duplex, and two parking spaces will be provided for each unit. Both units will have three bedrooms and 2.5 baths in two and a half stories; the finished attic will contain the third bedroom and second bath. Each unit will have a rear egress to a grade level terrace, and two off street parking spaces.

3. **Quality of Work.** All work shall be performed in accordance with all applicable local and state codes. In connection with the foregoing, Grantee shall direct its contractor(s) to perform all labor in a workmanlike and professional manner.
4. **Inspection.** Grantee shall make the Property available for inspection by the City, or any public authority such as the fire department, upon reasonable advance notice. If any work is partially or wholly inaccessible for purposes of inspection, the City shall have the right to require Grantee to exhume and display such work, as necessary to carry out proper inspection, at Grantee's sole expense.
5. **Permits.** Grantee shall acquire, at its expense, all requisite permits and licenses for the performance of the rehabilitation work hereunder.
6. **Disbursement Procedure.**
 - a. **Periodic Payment.** As any distinct portion of the rehabilitation work is completed, Grantee shall submit a Request for Payment signed by the Grantee, together with copies of invoices from Grantee's contractor(s). After inspection and approval by the City, the City shall process a periodic progress payment, in an amount equal to eighty percent of that portion of the work attributable to such completed work.
 - b. **Final Payment.** After satisfactory completion of the entire rehabilitation work, and upon the City's inspection and approval, the City shall make payment in full within thirty (30) days.

- c. **Payments payable to Grantee.** All such payments shall be made payable to Grantee.
- d. **Release of checks.** When released by the City, checks will be transmitted by mail. The City reserves the right to hold release of the final project payment, pending satisfaction of all terms of this Agreement.

7. **Financial Recordkeeping Requirements.**

- a. **Financial records.** The Grantee shall at minimum have a cash receipts register and cash disbursements register for Community Preservation Program funds. All Community Preservation Program funds and transactions must be clearly identifiable. Copies of checks issued with Community Preservation Program funds must be forwarded to the City 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 Grantee 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 City.

Attachment D
Insurance Requirements

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"), for consideration paid hereby grants to the City of Newton, a municipal corporation having offices at Newton City Hall, 1000 Commonwealth Avenue, Newton, County of Middlesex, Massachusetts, (hereinafter the "Mortgagee" or "City") with Mortgage covenants that certain parcel of land and the buildings thereon now known and numbered as 248 Elliot Street, Newton, and to any streets and roads abutting the above-described premises to the center lines thereof and more specifically described as:

The land with the buildings thereon in that part of Newton called Newton Upper Falls containing 17,596 square feet, more or less and bounded and described as follows:

Beginning at the junction of the Southerly line of Elliot Street and easterly line of Linden Street and thence running easterly on the southerly line of Elliot Street One Hundred Twenty Seven and $\frac{1}{2}$ (127-1/2) feet to a bound; thence South 19 degrees West by land quitclaimed by Otis Pettee and others to George Pettee, one hundred sixty-eight (168) feet to a bound; thence Westerly Seventy-four and $\frac{1}{3}$ (74-1/3) feet to Linden Street; and thence North 2 degrees East on the easterly line of said Linden Street to the point of beginning.

For title reference see Deed from Donald E. Robinson to CAN-DO dated December 30, 2003, and recorded with Middlesex South District Registry of Deeds, Book 41708, Page 142.

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

1. PAYMENT AND PERFORMANCE:

- a. This mortgage shall secure repayment of five hundred and seventy-five thousand dollars and no cents (\$575,000.00) in accordance with the terms of the Note of even date between the Mortgagor and the City ("the Note") and all other sums provided in said Note and this Mortgage.
- b. The Mortgagor will apply \$375,000.00 of the loan amount to reduce its existing acquisition and construction loan from The Village Bank that was used to purchase the historic house currently on the site; \$63,290.00 of the loan amount for historic renovations, and the remaining \$136,710.00 for soft costs related to the development of the community housing units.
- c. Three (3) of the homeownership units (hereinafter the "Affordable Units") will be sold at affordable prices to low/moderate income first-time homebuyers who have annual household incomes at or below 80% of area median income.
- d. One of the three Affordable Units shall be reserved for persons 55 years of age or older who are income eligible.
- e. Each of the three (3) Affordable Units shall be sold subject to a perpetual affordable housing restriction substantially in the form of the Deed Rider attached as Exhibit C to the Local Initiative Program Regulatory Agreement and Declaration of Restrictive Covenants for Ownership Project between Borrower, the Department of Housing and

Community Development ("DHCD"), and the City of Newton ("Regulatory Agreement"), which Regulatory Agreement is recorded with the Middlesex South Registry of Deeds at Book 46084, Page 394.

- f. The form of affordable housing restriction shall be acceptable to DHCD and the City and shall satisfy the requirements of G.L. c. 184, §32 and shall be a perpetual restriction preserving the Property's affordable housing homeownership units for households whose annual household income is at or below 80% of area median income.
- g. Borrower complies with all terms and conditions of a Preservation Restriction Agreement between Borrower and the City, dated _____, 2005.
- h. Borrower complies with all terms and conditions of the Note and Funding Agreement between Borrower and the City, of even date.
- i. Borrower complies with all terms and conditions of the Regulatory Agreement.
- j. Borrower is diligently pursuing the completion of the Project.
- k. Pursuant to the terms of the Note and the Funding Agreement, Mortgagee's obligation to release this Mortgage is contingent upon the Mortgagor's ensuring that all five units have been sold and the Mortgagor providing evidence of the recording of a Declaration of Affordable Housing Covenants for each of the Affordable Units. Notwithstanding the foregoing, Mortgagee agrees to grant a partial release of this Mortgage upon the sale of each housing unit as to such unit only; provided however, that in the case of the sale of an Affordable Unit, Mortgagor provides evidence to Mortgagee that such Affordable Unit will be conveyed subject to a perpetual affordable housing restriction, in form as more specifically set forth above.

2. **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 Funding Agreement and will include replacement value coverage. The City 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 insurance, the Mortgagor shall promptly proceed to make proof of 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 City 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 City. If the Mortgagor does not proceed promptly in providing proof of loss, the City 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 City, upon request of the City.
- c. Hazard Insurance: The Property will be developed and sold as condominiums. So long as the condominium owners' association maintains, with a generally accepted insurance carrier, a "master" or "blanket" policy on the Property which is satisfactory to the City and which

provides insurance coverage in the amounts, for the periods, and against the hazards the City requires, including fire and hazards included within the term "extended coverage" then CAN-DO's obligation to maintain hazard insurance coverage on the Property is deemed satisfied to the extent that the required coverage is provided by the owners' association policy. CAN-DO shall give the City prompt notice of any lapse in hazard insurance coverage. In the event of a distribution of hazard insurance proceeds in lieu of restoration or repair following a loss to the Property, whether to the Affordable Unit(s) or common elements and subject to the rights of any senior lender, any proceeds payable to CAN-DO are hereby assigned and shall be paid to the City for application to the sums secured by this Mortgage and the Note, with any excess paid to CAN-DO.

- d. Mortgagor's obligations under Paragraph 2(a)-(c) shall terminate upon release of this Mortgage in accordance with Paragraph 1(k).

3. **COMPLIANCE WITH CONDOMINIUM CONSTITUENT DOCUMENTS:** CAN-DO shall perform all of CAN-DO's obligations under the condominium's Constituent Documents. The "Constituent Documents" are the: (i) Declaration, Master Deed, or any other document which creates the condominiums; (ii) by-laws; (iii) code of regulations; and (iv) other equivalent documents. CAN-DO shall promptly pay, when due, all dues and assessments imposed pursuant to the Constituent Documents. CAN-DO's obligations under this Paragraph 3 shall terminate upon release of the mortgage in accordance with Paragraph 1(k) above.

4. **TAXES:** CAN-DO 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, CAN-DO shall supply the City with evidence of such payment.

5. **LIENS:** CAN-DO has entered into mortgages with The Village Bank and the Newton Community Development Authority for the acquisition of the Property (collectively, the "Senior Mortgage"). Said Senior Mortgage will have priority over this Mortgage. CAN-DO represents the Property is free from any other mortgages other than the Senior Mortgage and will remain free from any other encumbrances except as authorized in advance, in writing by the City.

6. **INSPECTION OF PREMISES:** The City and any persons authorized by the City shall have the right at any time, upon reasonable notice to CAN-DO, to enter the Property at a reasonable hour to inspect and photograph its condition and state of repair.

7. **CONDEMNATION AND EMINENT DOMAIN:**

(a) Upon 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, CAN-DO hereby assigns, transfers and sets over to the City, subject to prior assignment to the holder of the Senior Mortgage, all rights of CAN-DO to any award or payment in respect of (i) any taking of all or a portion of the Property as a result of condemnation or eminent domain and (ii) any damage to the Property due to governmental action, but not resulting in a taking of any portion of the Property. CAN-DO hereby agrees to

file and prosecute its claim or claims for any such award or payment in good faith and with due diligence and cause the same to be collected and paid over to the City, and hereby irrevocably authorizes and empowers the City, if CAN-DO does not so prosecute its claim, in the name of CAN-DO or otherwise, to collect and receive any such award or payment and to file and prosecute such claims. All proceeds received by the City with respect to such taking or damage shall be applied in the City's reasonable discretion and in such order as the City shall determine; provided, however, if the holder of the Senior Mortgage determines to apply available proceeds to reconstruction of the Property, the City shall consent to such application. CAN-DO may make no settlement for the damages sustained without the prior written approval of the City subject to approval of the holder of the Senior Mortgage.

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

(c) In the event that such condemnation or taking makes it impracticable for CAN-DO to comply with the terms of the Funding Agreement or Regulatory Agreement; or makes it impracticable for CAN-DO and/or the City 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 CAN-DO shall be paid to the City, except as otherwise provided in the Senior Mortgage. Such proceeds shall be applied to the total outstanding indebtedness under the Note. CAN-DO and/or its assigns and successors shall remain liable for the full amount remaining due under the Note, provided, however, that nothing herein shall prevent the City from forgiving payment of such amount remaining due. In the event that the City determines that any condemnation or taking of any part of the Property does not make it impossible or impracticable to use the Affordable Units for residences for persons of low- and moderate-income, while still complying with the terms of the Funding Agreement and Regulatory Agreement, then CAN-DO 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 the Senior Mortgage.

8. CHANGE OF OWNERSHIP: Except as otherwise provided in paragraph 1 above, CAN-DO shall not transfer, convey or assign any interest in the Property. Notwithstanding the foregoing, the City may in its sole discretion consent to a proposed transfer if the prospective owner agrees in writing to adhere, and if the City determines that the prospective owner is capable of adhering to all agreements, conditions and provisions of the Note, this Mortgage, the Funding Agreement and the Regulatory Agreement.

9. EVENTS OF ACCELERATION (DEFAULT):

The balance owing on the Note, and all other sums owing to the CITY by CAN-DO which are secured by this Mortgage shall immediately become due and payable if any of the following events (called "events of acceleration") occur:

(a) CAN-DO's failure to comply with any of the conditions in Paragraph 1(a) through (j).

(b) Insolvency, the appointment of a receiver or liquidator for CAN-DO or property of CAN-DO, assignment for the benefit of creditors or the filing of a petition of insolvency or bankruptcy of CAN-DO;

(c) Failure of CAN-DO to perform an agreement or condition in the Senior Mortgage or any other mortgage or instrument creating a lien on the Property, or any part thereof, which lien has priority over the lien of this Mortgage;

(d) The CITY's discovery of an incorrect statement by CAN-DO, or a failure by CAN-DO to disclose a relevant fact in an application or other document given to the CITY for purpose of the grant secured hereby or any extension thereof.

(e) Any of the following acts by or with respect to CAN-DO: (1) dissolution; (2) failure to pay any tax or assessment against the Property when due, unless such failure is cured within 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 the 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.

10. NOTICE OF DEFAULT:

Upon the happening of any Event of Acceleration, the City shall notify Mortgagor of the particular default in writing. Said written notice shall identify the particular violation(s) at issue and state that the Borrower has thirty (30) days from the date of said written notice to cure said violation(s) or such longer period as the City reasonably determines may be required to cure said violation, provided that the Borrower commences said cure within said thirty (30) day period and diligently and expeditiously completes said cure. If at the end of said thirty (30) day period or said extended period the Mortgagor has failed to cure, the total amount of the unpaid principal, and any other outstanding charges shall become due and payable immediately without notice or demand, or at City's option, City may exercise its Right to Purchase under Paragraph 5 of the Note.

11. RIGHTS AND REMEDIES:

- (a) The rights and remedies of the Mortgagee as provided in this Mortgage, the Funding Agreement, the Regulatory Agreement and 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 City to insist upon strict performance of any of the agreements, conditions and provisions of this Mortgage, the Note, the Funding Agreement or the Regulatory Agreement shall not be deemed to be a waiver of any of the terms or provisions of this Mortgage, the Note, the Funding Agreement, or the Regulatory Agreement and the City shall have the right thereafter to insist upon strict performance by Mortgagor of any and all of the above.

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.

This mortgage is under the STATUTORY CONDITION, for any breach of which the Mortgagee shall have the STATUTORY POWER OF SALE.

IN WITNESS WHEREOF, Citizens for Affordable Housing in Newton Development Organization, Inc. as Mortgagor hereunto set their hands and seal this 3rd day of November, 2005.

By: Josephine McNeil
Josephine McNeil
Title: Executive Director

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, ss.

November 3, 2005

On this 3rd day of November 2005 before me, the undersigned notary public, personally appeared Josephine McNeil, proved to me through satisfactory evidence of identification, which were personal means, to be the person whose name is signed on the proceeding document, and acknowledged to me that she signed it voluntarily for its stated purpose, as Executive Director of Citizens for Affordable Housing in Newton Development Organization, Inc. d/b/a CAN-DO, Inc. a non-profit corporation.

Mary Emma Walsh
Notary Public
My Commission Expires _____


COPY

Date: November 3, 2005
Place: Newton, Massachusetts

PROMISSORY NOTE

FOR VALUE RECEIVED, the undersigned (called the "Borrower"), promises to pay to the order of the City of Newton (called the "City"), the sum of five hundred and seventy five thousand dollars (\$575,000.00) and to pay simple interest on the unpaid principal amount of this Note (as hereinafter defined) at the rate of zero (0%) percent per annum until paid in full. All payments required by this Note shall be made in cash in lawful money of the United States or by certified bank check at the offices of the City at Newton City Hall, 1000 Commonwealth Avenue, Newton, Massachusetts or at such other place as shall be designated by the City.

1. Definitions:

- (a) "Affordable Units": three homeownership units to be sold at affordable prices to low/moderate income first-time homebuyers who have annual household incomes at or below 80% of the area median income. One of the Affordable Units shall be reserved for persons 55 years of age or older who are also income eligible.
- (b) "Project", the housing development project to be located on the Property, known as 248 Elliot Street, which will consist of five (5) units of housing, including three (3) affordable homeownership units and two (2) market rate units.
- (c) "Term", the term beginning on the date hereof through and including the Maturity Date.
- (d) "Maturity Date", the date on which all of the units in the Project have been sold.

2. Deferral

Borrower shall have no obligation to pay the principal, interest, or any other outstanding charges due hereunder for the term of this Note; provided that:

- (a) Borrower shall construct and sell three (3) Affordable Units at affordable prices to low/moderate income first-time homebuyers who have annual household incomes at or below 80% of area median income;
- (b) One of the three Affordable Units shall be reserved for persons 55 years of age or older who are income eligible;
- (c) Each of the three (3) Affordable Units shall be sold subject to a perpetual affordable housing restriction substantially in the form of the Deed Rider attached as Exhibit C to the Local Initiative Program Regulatory Agreement and Declaration of Restrictive Covenants for Ownership Project between Borrower, the Department of Housing and Community Development ("DHCD"), and the City of Newton ("Regulatory Agreement"), which Regulatory Agreement is recorded with the Middlesex South Registry of Deeds at Book 46084, Page 394. Evidence of the recording of such deed rider for each Affordable Unit shall be provided by Borrower to City;
- (d) The form of affordable housing restriction shall be acceptable to DHCD and the City and shall satisfy the requirements of G.L. c. 184, §32 and shall be a perpetual restriction preserving the Property's affordable housing homeownership units for households whose annual household income is at or below 80% of area median income;

- (e) Borrower complies with all terms and conditions of a Historic Preservation Restriction Agreement between Borrower and the City, dated November 3, 2005; and
- (f) Borrower complies with all terms and conditions of the Funding Agreement between Borrower and the City, of even date;
- (g) Borrower complies with all terms and conditions of the Regulatory Agreement; and
- (h) Borrower is diligently pursuing the completion of the Project.

3. Cancellation

The City shall cancel Borrower's obligation to pay the principal and any other outstanding charges due under this Note if on the Maturity Date the City determines that Borrower has fully complied with all the terms and conditions of this Note, the Mortgage, the Funding Agreement, the Historic Preservation Agreement, and the Regulatory Agreement. In the event the City cancels Borrower's obligation hereunder, the City shall notify Borrower in writing, by registered or certified mail, on or before the date thirty (30) days after the Maturity Date. Such written notice shall serve as evidence of the City's exercise of its right to forgive the repayment of the principal and any other outstanding charges due under this Note.

4. Noncompliance

If at any time during this Note Term, the Borrower is not in full compliance with all the terms and conditions of this Note, the Funding Agreement, the Mortgage, the Regulatory Agreement, the Historic Preservation Agreement, and all applicable statutes, laws, ordinances, rules, regulations and orders, whether in effect on the date of this Note or hereafter enacted or made by a Federal, State, municipal, or other public body, department, bureau, officer, or authority, the City shall give the Borrower written notice of this failure to comply. Said written notice shall identify the particular violation(s) at issue and state that the Borrower has thirty (30) days from the date of said written notice to cure said violation(s) or such longer period as the City reasonably determines may be required to cure said violation, provided that the Borrower commences said cure within said thirty (30) day period and diligently and expeditiously completes said cure. If at the end of said thirty (30) day period or said extended period the Borrower is not in compliance, the total amount of the unpaid principal, and any other outstanding charges of this Note shall become due and payable immediately without notice or demand, or at City's option, City may exercise its Right to Purchase under Paragraph 5.

5. City's Right to Purchase

Notwithstanding the foregoing, if, however, during the term of this Note any of the conditions in Paragraph 2 (a-h) are not met, and if the unpaid balance is not repaid by the Borrower, then the City shall have the right, but not the obligation, to purchase the Property for one (\$1.00) dollar in consideration of the cancellation of the entire unpaid balance of this Note. Borrower agrees to deliver to the City a good and sufficient quitclaim deed for the Property within thirty (30) days of receipt of written notice of the City's intention to exercise this right of purchase. If the City does not exercise its right to purchase, then the entire unpaid balance of this Note hereon shall become due and payable, in lawful money of the United States, at the office of the Director of Planning and Development, 1000 Commonwealth Avenue, Newton, Massachusetts or at such other place as shall be designated by the City.

6. Security

This Promissory Note is secured by a Mortgage of even date on real property located at 248 Elliot Street, Newton which Mortgage shall be recorded at the Middlesex South Registry of Deeds.

7. Events of Acceleration

The City's right to purchase the Property as set forth above and/or acceleration of this Note shall be triggered immediately, subject to the time periods for notice and cure in Paragraph 4, if any of the following events occur:

- (a) Any of the conditions in Paragraph 2 (a) through (h) are not met;
- (b) A transfer or change in ownership or use of the Property, without the City's prior written approval, other than the anticipated sale of the five condominium units upon completion of the Project; or
- (c) Failure of Borrower to pay any tax or assessment when due or failure to comply with the requirement of every applicable statute, law, ordinance, regulation or order whether in effect on the date of this Note or hereafter enacted or made by any Federal, State, municipal, or other public body affecting the use or occupation of the Property.
- (d) Failure of Borrower to make payment on any loan or comply with any provision of a senior loan which is secured by the Property.
- (e) A failure to disclose or a misstatement by the Borrower of a material fact or information in an application or other document given to the City for the purpose of the grant secured hereby or any deferral or cancellation of this Note.
- (f) Insolvency, appointment of receiver/liquidator for Borrower, an assignment for the benefit of creditors of the Borrower or the filing of a petition of insolvency or bankruptcy of the Borrower.

8. Attorney's Fees/Costs

If suit is instituted by the City to recover on this Note, the Borrower agrees to pay all costs of such collection, including reasonable attorneys' fee and court costs.

9. Notices

Borrower shall promptly notify City of the occurrence of any of the following: a fire or other casualty damage to the Property; receipt of notice of violation from any governmental authority relating to the use, structure or occupancy of the Property; receipt of notice of eminent domain proceedings or condemnation of the Property; any proposed change in the use of the Property; commencement of any litigation affecting the Property, except for litigation where amounts in dispute do not exceed \$25,000; any proposed transfer or change in the ownership of the Property, other than the anticipated sale of the five condominium units upon completion of the Project; or receipt of notice of default on any prior lien.

Notice to the Borrower as required in this Note shall be given by mailing such notice by certified mail, return receipt requested to:

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

Notice to the City as required in this Note shall be given by mailing such notice by certified mail, return receipt requested, to:

City of Newton Law Department
1000 Commonwealth Avenue
Newton, MA 02459

10. Costs

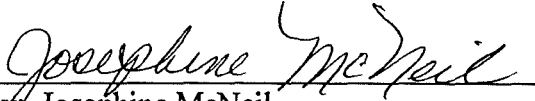
Borrower agrees to pay all costs of collection of this Note including reasonable attorneys' fees and court costs if this Note is not paid promptly when due and/or the Borrower fails to comply with the terms of the Mortgage, Funding Agreement, Historic Preservation Agreement and Regulatory Agreement, and the same is given to any attorney for collection, whether suit be brought or not.

11. Waiver

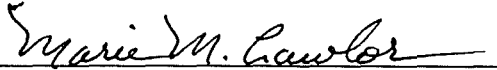
Notice of presentment, demand for payment, protest and notice of demand for payment and protest are hereby waived.

IN WITNESS WHEREOF, this Promissory Note has been duly executed by the undersigned.

Citizens for Affordable Housing in Newton Development
Organization, Inc. d/b/a/ CAN-DO, Inc.



By: Josephine McNeil
Its: Executive Director



Witness