

COMMUNITY PRESERVATION GRANT AGREEMENT
BETWEEN CAN-DO and THE CITY OF NEWTON
REGARDING RESTORATION OF 248 ELLIOT STREET

This AGREEMENT made as of May 16, 2006 by and between **Citizens for Affordable Housing in Newton Development Organization, Inc. d/b/a CAN-DO**, a Massachusetts non-profit corporation having a usual place of business located at 1075 Washington Street, Newton, MA 02465 (hereinafter "CAN-DO") and the **City of Newton**, a corporation organized and existing under the laws of the Commonwealth of Massachusetts, acting by and through its Director of Planning and Development or his designated staff, but without personal liability to him, (hereinafter the "City"), collectively, the "parties."

WITNESSETH THAT:

WHEREAS, CAN-DO has applied for and received approval from the Community Preservation Committee and Board of Alderman of the City of Newton (Board Order #97-06) for a grant of \$43,600 in order to restore the façade of 248 Elliot Street to its original exterior finish;

WHEREAS, CAN-DO will apply the grant to pay for the costs to repair and/or replace, as needed, the existing red cedar clapboards, and to perform certain other exterior work on the porch ceiling, exterior doors, and fieldstone foundations;

WHEREAS, CAN-DO has executed a historic preservation restriction covering the Building, which restriction has been approved by the Massachusetts Historic Commission and is recorded with the Middlesex South Registry of Deeds at Book 46532, Page 248 ("Restriction");

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

****GENERAL PROVISIONS****

- 1. **Subject matter.** This Agreement sets forth the terms and conditions whereby CAN-DO shall receive a grant award from the City in the amount of forty-three thousand six hundred dollars (\$43,600.00) and no cents. CAN-DO agrees to use the grant for the purpose of restoring the façade of 248 Elliot Street (the "Building") to its original exterior finish, as described in the Linden Green at 248 Elliot Street Description of Work/Cost Breakdown dated January 18, 2006 (attached hereto as **Attachment A** and made a part hereof).
- 2. **Release of Grant Funds for Construction.**
 - (a) **Request for Payment.** Following completion of any portion of the work CAN-DO shall prepare and submit requests for payment to the City. CAN-DO understands and agrees that it may not request payment from the City for any costs covered by or charged to any other funding source. Requests for payment should be addressed to:

Department of Planning and Development
City of Newton
1000 Commonwealth Avenue
Newton Centre, MA 02459

- (b) **Disbursement Procedures.** Payment of the grant funds shall be made as follows:

CAN-DO may submit periodic requests for payment, together with copies of invoices from CAN-DO's contractor(s), as portions of the restoration are completed. After inspection of the work and approval of CAN-DO's request for payment, the City shall make a periodic progress payment to CAN-DO in the amount of the invoice attributable to the completed portion of the restoration. Upon satisfactory completion of the entire restoration, CAN-DO shall submit to the City a request for payment in full of any remaining balance, together with copies of invoices from CAN-DO's contractor(s). Payment of any remaining balance shall be made to CAN-DO within thirty days, subject to final inspection and approval of the work by the City. In the event any dispute arises concerning the work, an equitable amount shall be retained pending resolution thereof.

3. **Quality of Work.** As required by the Community Preservation Act, M.G.L. chapter 44B, all restoration work shall be performed in accordance with *The Secretary of the Interior's Standards for the Treatment of Historic Properties with Guidelines for Preserving, Rehabilitating, Restoring and Reconstructing Historic Buildings* (36 C.F.R. 67 and 68), as these may be amended from time to time (hereinafter "the Secretary's Standards") and in accordance with all applicable local and state codes. CAN-DO shall so direct its contractor(s).
4. **Permits.** CAN-DO shall acquire, at its expense, all requisite permits and licenses for the performance of the restoration work hereunder.
5. **Insurance Requirements** CAN-DO shall keep the property 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** hereto.
6. **Recapture of Funds.** If CAN-DO fails to comply with the requirements of the grant, the grant funds shall revert back to the City, and CAN-DO shall be liable to repay the entire amount of the grant to the City. The City may take such steps as necessary, including legal action, to recapture such funds.
7. **Return of Unused Portion of Grant.** Any portion of the grant not used to restore the Building's façade as detailed more specifically in Attachment A shall be returned by CAN-DO to the City within six months of the date of this Agreement.
8. **Record Keeping.** CAN-DO agrees to keep such records as kept in the normal course of business and as may be required by the City with respect to the restoration of the Building's façade. The City shall have full and free access to such records with respect to utilization of the proceeds of this Agreement.
9. **Termination.** In the event CAN-DO fails to fulfill all obligations under the terms of this Agreement, including refusal of CAN-DO to comply with the Restriction, the City shall have the right, in its sole discretion, to terminate this Agreement upon written notice to CAN-DO. Upon such termination, the City shall be free to pursue any rights or remedies available at law or in equity, as well as any rights or remedies provided within this Agreement, including without limitation, recapture of funds under paragraph 6.
10. **Compliance with Applicable Laws.** CAN-DO shall comply with all applicable laws, ordinances, or codes of state and/or local governments, in performing any of the work embraced by this Agreement.

11. **Monitoring.** The City shall periodically evaluate the performance of CAN-DO and may make a determination as to whether CAN-DO is in conformance with this Agreement and has a continuing capacity to carry out the grant activities in a timely manner. At any time during normal business hours and as often as the City may deem necessary, CAN-DO 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.

12. **Successors and assigns.** The terms of this Agreement shall be binding on CAN-DO's successors and assigns. CAN-DO shall provide notice of any change in ownership of the Property to the City.

13. **Conflict of Interest; Bonus and Benefit Prohibited.**
 - (a) No member, officer, or employee of CAN-DO 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) CAN-DO 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.

14. **Indemnification.** CAN-DO 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 from the use of City 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 CAN-DO, anyone directly or indirectly employed by CAN-DO, or anyone for whose acts CAN-DO 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 CAN-DO: Executive Director
 Citizens for Affordable Housing in Newton Development Organization, Inc.
 1075 Washington Street
 Newton, MA 02465

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

- Attachment A, Linden Green at 248 Elliot Street Description of Work/Cost Breakdown
- Attachment B, Certificate of Authority
- Attachment C, State Tax Attestation
- Attachment D, Insurance Requirements

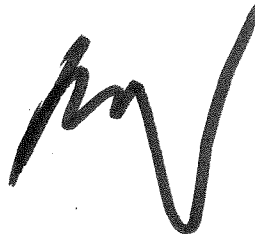
**** SIGNATORIES ****

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

CAN-DO

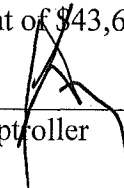
By: Josephine McNeil 5/18/06
Josephine McNeil, Executive Director Date

CITY OF NEWTON:
Reviewed and Authorized


 5-18-06

By: _____
Director of Planning & Development Date


I certify funds are available within Acct. #21B11411-5797 in the amount of \$43,600.00 for this Agreement.

By:  _____
Comptroller Date

Approved as to legal form and character

By:  5/18/06
Assistant City Solicitor Date

CONTRACT APPROVED

By:  5/23/06
Mayor Date

Attachment A

**LINDEN GREEN at 248 ELLIOT STREET
DESCRIPTION OF WORK / COST BREAKDOWN**

January 18, 2006

During deconstruction, original exterior finishes were revealed beneath existing cedar shingles, making evident that siding and some trims were applied and not original. Also hidden above masonite, the original narrow beaded ceiling remains above the unit 3 porch, but is entirely missing from the front porch of the main house facing Elliot Street.

We had been approved by the historic commission to keep and restore the current cedar shingle siding and applied trims as part of the original submission. However, additional research, assisted by the Newton History museum, has shown that the lower wing was built c1878 (not 1910), and that a sawmill existed about the turn of the century. It is believed that our entire building was shingled over early in the 1900's.

With additional funds, we could restore the exterior to its original detail as follows:

Siding **\$ 29,473.00**

Remove and dispose of existing red cedar shingle siding to reveal original red cedar clapboard siding. Assess Condition. Repair and/ or replace, as needed, red cedar clapboards to match original coursing and weather exposure. On bare sheathing, install 15 pound felt under new red cedar clear vertical grain clapboard siding, attached with stainless steel siding nails. On c1840 dormers, remove all siding to sheathing to properly flash dormers to roof, remove 1/2"x2" trims applied over original corner boards, repair trims as needed and install new red cedar clapboard to match original coursing and weather.
(Includes restoring and deleading attic window to unheated space on front elevation.)

Beaded porch ceiling **\$ 1,699.00**

Install 1x3 t&g beaded ceiling on the front porch to match that uncovered at the side porch
(It was specified to be 1x6; so this is an upgrade)

Exterior Doors **\$ 2,300.00**

Replace a recently installed 3' wide six panel exterior door at ell (keep original frame and trims) with a four panel clear vertical grain fir door, matching the applied raised panel design of the original doors. Upgrade unit 3 front entry door to same design.

Fieldstone Foundations **\$ 10,128.00**

By uncovering sections of the fieldstone foundation walls to original and revised grade elevations along portions of west, east and south elevations, it is evident that additional cleaning, pointing and sealing of joints is necessary.

Additional Restoration Construction Costs: **\$ 43,600.00**

Attachment B
Certificate of Authority
(Non-Profit Corporation)
and
List of Officers and Directors

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

Citizens For Affordable Housing in Newton Development Organization, Inc and that
d/b/a CAN-DO (Print name of corporation)

2. Josephine McNeil is the duly elected
(Print name of officer who signs the contract)

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

3. on Sept. 15, 2005 at a duly authorized meeting of the Board of Directors
(insert date of meeting) *

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

Josephine McNeil, Executive Director of this
(Print name and title of officer who signs the contract, as in number 2 above)

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

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

ATTEST: Andrea K
(signature of Clerk/Secretary)

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

DATE: May 16, 2006
(insert date Certificate signed by Clerk/Secretary)**

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

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

CAN-DO

OFFICERS

Mary Benner, President
Andrea Karis, Clerk
Kenneth H. Sinclair, Treasurer

BOARD OF DIRECTORS

Including Officers

Mike Ciolino

Jane Eisenstark

William Hicks

April L. McCabe

Kevin McCormick

Lee O'Connell

Deanna Reid

Lesley Sneddon

Philip Vance

**Attachment C
State Tax Attestation**

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

Josephine McNeil
Signature

Citizens for Affordable Housing in Newton Development Organization, Inc.

Federal Identification Number
or Social Security Number

5/15/2006
Date

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

**Attachment D
Insurance**

1. General. CAN-DO, and contractors and subcontractors engaged by CAN-DO, its agents or designees to perform the Building's exterior restoration, shall, at all times, be required to maintain insurance coverage consistent with the character of the project. CAN-DO agrees to keep copies of each policy and certificate on file, and to provide such copies to the City upon request.

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

Workmen's Compensation Employer's 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 included coverage for:

- Independent contractor's liability
- Products and completed operations liability for a period of not less than one year
- Broad form property damage liability
- Contractual liability

2. Property Insurance.

a. Hazard Insurance. CAN-DO shall keep the property continuously insured against damages resulting from hazards by maintaining an adequate extended coverage policy. In the event of distribution of hazard insurance proceeds in lieu of restoration or repair following loss to the Building, an amount of the proceeds equal to the amount of the grant distributed to CAN-DO by the City under the terms of this agreement are hereby assigned and shall be paid to the City.

b. 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, CAN-DO shall restore the property unless CAN-DO and the City determine that it is impossible or impractical to do so.