

**COMMUNITY PRESERVATION FUNDING AGREEMENT BETWEEN
CITIZENS FOR AFFORDABLE HOUSING IN NEWTON DEVELOPMENT
ORGANIZATION AND THE CITY OF NEWTON
TO SUPPORT AFFORDABLE COMMUNITY HOUSING
AT 2148-2150 COMMONWEALTH AVENUE**

This AGREEMENT made as of August 17, 2010 by and between Citizens for Affordable Housing in Newton Development Organization d/b/a CAN-DO, a Massachusetts corporation, having a usual place of business located at 1075 Washington Street, 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 Interim Director of Planning and Development or her designated staff, but without personal liability to her, (hereinafter the "City"); collectively, the "parties."

WITNESSETH THAT:

WHEREAS, the Grantee has purchased two units of rental housing known and numbered 2148-2150 Commonwealth Avenue, Newton, Massachusetts (hereinafter "the Property"); and

WHEREAS, the Grantee intends to reduce the principal of the existing mortgage and rehabilitate two units of permanently affordable rental housing for households whose income is up to 80 percent of area median income; and

WHEREAS, the Grantee applied for and received approval from the Community Preservation Committee ("CPC") and the Board of Aldermen, upon the Funding Recommendation of the CPC, for a grant in the amount of \$375,000, subject to certain conditions set forth herein; and

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

****GENERAL PROVISIONS****

1. **Subject Matter.** This Agreement sets forth the terms and conditions under which the Grantee shall receive funding from the City in the amount of Three Hundred Seventy-Five Thousand (\$375,000.00) Dollars. The Grantee agrees to use such funding to create two units of permanently affordable rental housing in accordance with the terms and conditions of the approval of the Board of Aldermen (Attachment A) and the Funding Recommendation of the CPC (Attachment B) (the "Project").
2. **Conditions Prior to Receipt of Funds.** The Grantee agrees to the following conditions prior to receipt of funds:
 - (a) Both of the rental units are already subject to an affordable housing restriction executed by Grantee in connection with funding received from the Community Development Block Grant Program, which meets the requirements in the Funding Recommendation of the CPC. The Grantee shall submit a copy of this affordable housing restriction showing recording information.
 - (b) The Grantee shall provide a copy of the deed evidencing its ownership of the Property.
 - (c) The Grantee shall provide evidence that it has secured all other funding sources necessary to complete the Project, including rates and terms.

- (d) The Grantee shall submit a Reasonable Accommodation/Reasonable Modification plan, which has been approved in writing by the City of Newton's Housing Program Manager.
- (e) The Grantee shall submit an executed copy of a guaranteed maximum price or not-to-exceed price contract for all rehabilitation work set forth in Grantee's CPC proposal.

3. Release of Grant Funds.

(a) Request for Payment – Mortgage Balance Reduction.

Grantee shall submit a request on its letterhead of the amount of funding provided hereunder to be used to reduce Grantee's outstanding mortgage balance. Any check issued to Grantee to reduce Grantee's outstanding mortgage balance shall be tendered forthwith to The Village Bank to paydown the existing mortgage on the Property. Grantee agrees to provide evidence of receipt of such check by the Village Bank within three (3) business days of receipt of a check hereunder.

(b) Request for Payment – Rehabilitation/Construction or Reimbursement For Other CPA-Approved Expenses.

Following completion of any significant portion of the work on the Project, Grantee shall prepare and submit requests for payment to the City. Grantee understands and agrees that it may not request payment from the City for any costs already covered by or charged to any other funding source. Requests for payment should be addressed to:

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

Grantee may submit periodic requests for payment, together with copies of invoices from Grantee's contractor(s), as significant portions of the work are completed. After inspection of the work and approval of Grantee's request for payment, the City shall make a periodic progress payment to Grantee in the amount of the invoice attributable to the completed portion of the work. Upon satisfactory completion of the Project, Grantee shall submit to the City a request for payment in full of any remaining balance, together with copies of invoices from Grantee's contractor(s). Payment of any remaining balance shall be made to Grantee 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.

(c) Submissions Required with Any Request for Payment.

Grantee shall submit to the City's Housing Program Manager, for forwarding to the CPC, an initial project timeline and, along with each request for payment, a status report showing work that is complete, work remaining, expenditures and target completion date, in a format based on the original approved project budget (to permit clear comparison of planned and actual expenditures).

4. Conditions Subsequent to Receipt of Funds.

- (a)** Grantee shall rehabilitate the Property, consisting of two units of rental housing, in accordance with the proposal submitted to the CPC and attached hereto as Attachment F. The units will be affordable in perpetuity to households earning up to 80% of area median income,
- (b)** The units shall be marketed initially to homeless veterans' families who qualify for the Veterans Administration ("VA") supportive services described in Grantee's original proposal, for so long as that VA program continues. Within that target population, or if the VA program is discontinued, the units shall be marketed in accordance with the City's Guidelines for Uniform Local Resident Selection Preferences in Affordable Housing policy, to the extent allowed by applicable fair housing laws.
- (c)** Prior to the final release of funds, Grantee shall submit the following to the City: an affirmative marketing plan in accordance with Paragraph 12 herein; a final project development cost statement, in a format based on the original approved project budget (to permit clear comparison of planned and actual expenditures); and a narrative report and/or presentation to the Community Preservation Committee on final project results.
- (d)** All funds shall be spent within 18 months from the date of execution of this Agreement, or by any extension of this deadline granted in writing by the Director or Interim Director of Planning and Development. Grantee shall return to the City's Community Preservation Fund any portion of the grant funds not used for the Project.

5. Insurance Requirements Grantee 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 E hereof.

6. Permanent Reporting Requirements. Prior to the lease of each affordable unit, Grantee shall submit a report to the Housing Program Manager identifying the household composition (number in household) characteristics and income of the prospective tenant.

7. Recapture of Funds. If the Grantee fails to comply with the requirements of this Agreement, the approval of the Board of Aldermen, or the Funding Recommendation of the CPC, then 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.

8. 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.

9. **Termination.** In the event the Grantee fails to fulfill all obligations under the terms of this Agreement, the approval of the Board of Aldermen, or the Funding Recommendation of the CPC, then 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, including without limitation, recapture of funds under paragraph 7.
10. **Compliance with Applicable Laws.** The Grantee shall comply with all applicable local, state and federal laws, ordinances, regulations or codes during the term of the Project.
11. **Equal Opportunity.** The Grantee shall comply with all applicable local, federal and state laws governing discrimination and equal opportunity.
12. **Fair Housing Marketing and Local Preference.** The Grantee shall adopt and implement affirmative marketing procedures for the Property consistent with the requirements of the WestMetro HOME Consortium Affirmative Marketing Plan. To the extent allowed by applicable law, the units shall be marketed and tenants shall be selected in accordance with the City's Guidelines for Uniform Local Resident Selection Preferences in Affordable Housing.
13. **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.
14. **Successors and assigns.** The terms of this Agreement, including, but not limited to the Permanent Reporting Requirements in paragraph 6, shall be binding on the Grantee's successors and assigns. The Grantee shall promptly provide notice of any change in ownership of the Property to the City.
15. **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.

16. **Indemnification.** The Grantee shall indemnify, hold harmless, and defend the City and its departments, officers, employees, servants, and agents from and against all actions, causes of actions, claims, demands, damages, costs, loss of services, expenses, and compensation, including attorneys' fees and interest arising out of or resulting directly from the services rendered pursuant to this Agreement, provided that any such action, cause of action, claim, demand, damage costs, loss of service, expense, compensation (1) in any way grows out of bodily injury, sickness, disease or death, or to injury to or destruction of tangible property which (2) is caused in whole or in part by any act or omission of the Grantee, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, regardless of whether or not it is caused in part by a party indemnified hereunder.

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

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

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

18. **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.

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


- Attachment A, Approval of the Board of Aldermen
- Attachment B, Approval and Funding Recommendation of the CPC
- Attachment C, Certificate of Authority
- Attachment D, State Tax Attestation
- Attachment E, Insurance Requirements
- Attachment F, Grantee's CPC Proposal

**** SIGNATORIES ****

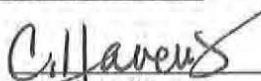
IN WITNESS WHEREOF the parties hereto have executed this AGREEMENT in three sets to be effective when executed by His Honor the Mayor of the City of Newton.

GRANTEE:

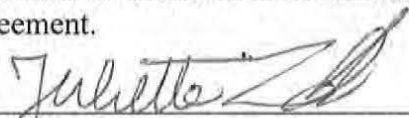
Citizens for Affordable Housing in Newton Development Organization, Inc.
d/b/a CAN=DO

By: 
Its: Executive Director


CITY OF NEWTON:

By: 
Candace Havens
Interim Director of Planning and Development

I certify funds are available in the amount of \$375,000 in Account 21C11416-5797 for this Agreement.

By: 
Comptroller of Accounts

Approved as to legal form and character

By: 
Assistant City Solicitor

CONTRACT APPROVED

By: 
Setti D. Warren, Mayor

8/17/10
Date

**Attachment A
Approval of the Board of Aldermen**

**Attachment B
Funding Recommendation of the CPC**

Attachment C
Certificate of Authority

1. I hereby certify that I am the Clerk/Secretary of:
Citizens For Affordable Housing III
Newton Development Organization, Inc. corporation; and that
(insert name of corporation)
2. Josephine McNeil is the duly elected
(insert name of officer who signed contract)
Executive Director of said corporation; and that
(insert title of officer)
3. on July 23, 2010 at a duly authorized meeting of the Board of
(insert date of meeting)*

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

Josephine McNeil, Executive Director of this corporation
(insert name and title of officer) (NOTE: Should be same as No. 2 above)

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:


(Signature of Clerk or Secretary)

Name:

Deanna Reid
(Please print or type name of Clerk/Secretary)

DATE:

8/25/2010
(insert date Certificate signed by Clerk or Secretary)**

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

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

**Attachment D
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.
Name of Grantee

Federal Identification Number
or Social Security Number

8/25/2010
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 E

Insurance

1. General. Grantee, and contractors and subcontractors engaged by Grantee, its agents or designees to perform the site work and construction work, shall, at all times, be required to maintain insurance coverage consistent with the character of the Project. Grantee 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 include 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. Grantee 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 structures, an amount of the proceeds equal to the amount of the grant distributed to Grantee 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, Grantee shall restore the Property unless Grantee and the City determine that it is impossible or impractical to do so.

**Attachment F
Grantee's CPC Proposal.**