

**TOWN OF BEDFORD
HOME PROGRAM AND COMMUNITY PRESERVATION FUND AGREEMENT**

**TOTAL LOAN AMOUNT:
\$795,705.00**

This AGREEMENT made as of August 11, 2008 by and between 447 Concord LLC, (hereinafter "Borrower") a corporation organized and existing under the laws of the Commonwealth of Massachusetts, and the **TOWN OF BEDFORD**, (hereinafter the "TOWN") a municipal corporation acting by and through its Board of Selectmen.

WITNESSETH THAT:

WHEREAS the Town is currently authorized to distribute HOME Program funds in the amount of Ninety Five Thousand and Seven Hundred and Five Dollars. (\$95,705.00) in accordance with the terms of the HOME Program Mutual Cooperation Agreement by and between the municipalities of the WestMetro HOME Consortium ("Consortium"), and the Town, dated May 7, 2004, as amended, executed pursuant to the Cranston-Gonzalez National Affordable Housing Act of 1991; and

WHEREAS the Borrower, a duly qualified organization, wishes to construct 12 new affordable units of which 11 units will be HOME funded on the property located at 447 Concord Road, Bedford, MA (hereinafter "the Property") - in a manner that will fully comply with all HOME Program regulations and requirements, and Borrower agrees to use the Property for rental at affordable prices to households making up to 60% of the Area Median Income with respect to said 11 units, with a period of affordability pursuant to the terms hereunder; and

WHEREAS the Town has appropriated Seven Hundred Thousand Dollars (\$700,000.00) in Community Preservation Act funds for the creation of twelve (12) affordable units at the Property;

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 92, HOME Investments Partnership Program** (hereinafter "HOME Program regulations"), and all future amendments and revisions to the same are hereby incorporated into and made a part of this Agreement. The Borrower shall at all times comply with said HOME 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 Borrower 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. For purposes of the HOME Program loan, Borrower shall comply with HOME Program regulation **24 CFR 92.252** concerning occupancy requirements for low and moderate income housing described in Attachment B. Upon the completion of the rehabilitation project and the actual occupancy of the Property, the TOWN

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, and the Borrower will have the obligation of demonstrating such occupancy to the TOWN's reasonable satisfaction.

3. ENVIRONMENTAL REVIEW. The release of funds for all HOME-assisted projects and activities is subject to environmental review as set forth in HOME Program regulation 24 CFR 92.352. The TOWN shall not obligate HOME funds prior to compliance with the provisions of HOME Program regulation 92.352 and regulations cited therein. The TOWN will ensure a proper environmental review, which is in compliance with applicable regulations, has been conducted. Borrower shall assist as needed to complete the review.

4. LOAN FUNDS. The TOWN hereby agrees to loan the Borrower HOME Program funds in the amount of Ninety Five Thousand and Seven Hundred and Five Dollars. (\$95,705.00) and Community Preservation Act funds in the amount of Seven Hundred Thousand Dollars (\$700,000.00), as stated within Attachment A, **Loan Amount and Terms** attached hereto and made a part hereof, subject to compliance by Borrower with all terms and conditions set forth within this Agreement.

- a) **Expenditures and Loan Project Budget.** The Borrower 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 HOME Programs and incorporated into 24 CFR 92.505, "Applicability of 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", all to the extent applicable. The Borrower 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 HOME Program regulations at 24 CFR 92.504, once the project is complete, the Borrower must return any HOME Program and Community Preservation Act funds on hand, and, if applicable, any accounts receivable attributable to the use of HOME Program and Community Preservation Act funds to the TOWN.

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

- a) **Ownership, Use and Disposition of Property.** The Borrower must conform, for the duration of this Agreement as stated in Attachment B herein, with applicable property use, and program provisions of HOME regulations at 24 CFR 92.252 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

Borrower shall notify the TOWN 90 days in advance of such event with a request for review and approval. The TOWN 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 Borrower go out of existence, become incapable of running the program, or be merged with some other organization during the term of this loan, the TOWN will require Borrower to designate, subject to approval by the TOWN and Consortium, 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 Borrower is responsible for ensuring that the Property 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 Borrower shall also ensure that this project complies with such Lead-Based Paint regulations as may be adopted pursuant to HOME 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 Borrower is responsible for ensuring that the Property complies with applicable requirements of federal and state asbestos removal acts, and all future revisions and amendments to the same.

8. PROJECT MANAGEMENT. The Borrower shall perform all procedures and tasks necessary to develop, design, implement and monitor the development project. Delays in implementation may lead to termination and recapture of HOME Program and Community Preservation Act funds as provided in **Paragraph 11. Termination**.

- a) **Procurement.** The Borrower 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, all to the extent applicable. *The TOWN or its designee shall review each HOME funded procurement and all proposed contracts of the Borrower, the organization, its agents, representatives and employees or designees.* Said contracts shall be maintained in the Borrower's files for review. HOME Program regulation 24 CFR 92.354 prohibit 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 Borrower 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 shall be effective as of the date first written above, and shall continue until terminated as stated herein. 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 HOME Program regulations.

10. PERFORMANCE STANDARDS. The Borrower shall meet periodically with the TOWN to ensure that the Borrower 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 HOME Program and the terms of this Agreement. **If monitoring is to be conducted by the Massachusetts Department of Housing and Community Development (DHCD) , then the Town will rely on DHCD for said monitoring, including the activities listed herein.**

11. TERMINATION.

- a) **For cause.** The TOWN shall have the right to terminate this Agreement if for any reason the Borrower:
 - i) Fails to fulfill in a timely manner the project described in this Agreement, in accordance with the HOME Program regulations and the schedule outlined in **Attachment C, Work Program and Schedule**; or
 - ii) Causes or allows HOME Program funds to be expended in violation of HOME Program regulations, as applicable; 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 TOWN as imposed by HUD.
- b) **Notice.** The TOWN may exercise the right to terminate this Agreement by written notice to the Borrower. In such case, the TOWN 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 Borrower 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 Borrower agrees to repay to the TOWN all HOME Program and Community Preservation Act funds released to the Borrower within such time period specified by HUD or such reasonable time period as specified by the TOWN and consistent with **Paragraph 12. Repayment of Project Funds and Penalties.**

12. REPAYMENT OF PROJECT FUNDS AND PENALTIES.

- a) **General.** In the event the Borrower, its agents, successors, or designees, fails to meet any HOME 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 Borrower shall repay to the TOWN or Consortium all project funds disbursed to the Borrower pursuant to this Agreement as determined by the TOWN and Consortium. The Borrower 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 TOWN shall provide written notice of such violations to the Borrower. The notice shall describe the violation and the remedial steps to be taken by the Borrower and shall establish a reasonable deadline for full compliance. In the event that the Borrower fails to cure all such violations in the manner and within the time period stated in said notice, the TOWN shall have the right to require repayment of all HOME Program and Community Preservation Act funds disbursed to the Borrower pursuant to this Agreement as specified in **Paragraph 12(a)** herein.

- c) **Legal Recourse.** In the event the Borrower fails to cure a violation of any of the provisions of this Agreement, of a HOME Program regulation or any other applicable regulation, and/or fails to cooperate with the TOWN in any matter pertaining to repayment, the TOWN 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) **Consortium Municipalities and TOWN to be Held Harmless.** The Borrower shall hold harmless and defend the TOWN, the Consortium and its Members from and against all claims for repayment of HOME Program project funds disbursed to the Borrower pursuant to this Agreement, provided that such repayment is attributable to (1) the failure of the Borrower, its agents, successors or designees, to comply with applicable HUD regulations, or (2) the failure of the Borrower, its agents, successors or designees to comply with any of the provisions of this Agreement or (3) any other act or omission of the Borrower, its agents, successors or designees. The Borrower's liability shall include the amounts disbursed pursuant to this Agreement, together with any penalties assessed by HUD or the TOWN on account of the Borrower's use of HOME Program funds disbursed for this project and any costs incurred by the TOWN 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 TOWN on account of the Borrower's use of HOME Program funds pursuant to this Agreement, the Borrower shall be required to reimburse the TOWN or Consortium in full for the amount of the penalties assessed and paid.

13. AUDIT AND MONITORING.

- a) **Single Audit.** Borrower shall comply with **OMB Circular A-133**, including completion of a single audit if Borrower expended federal funds in excess of \$500,000. The Borrower shall be responsible for the cost of all audits performed on its records and operations pursuant to this section, and the Borrower shall not use HOME Program funds for any portion of the cost of such audits.
- b) **Monitoring.** At any time during normal business hours and as often as the TOWN, Consortium, HUD, and/or the Comptroller General of the United States may deem necessary, the Borrower and/or its subrecipient shall make available all such records and documents as requested by said parties for audit and/or monitoring. The TOWN, Consortium, 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 Borrower understands that HUD may conduct performance reviews and monitoring of the TOWN and Consortium as provided in HOME Program regulations **24 CFR 92.504** in order to examine compliance with eligibility requirements and any other applicable requirement of the HOME Program. The Borrower agrees to cooperate with HUD, the TOWN and Consortium in such reviews and monitoring and to undertake remedial action as may be required pursuant to HOME Program regulation **24 CFR 92.504, Enforcement of the agreement.**
- d) **Monitoring by the TOWN or its Designee.** During the affordability period, as described in Attachment B, Project Description, the TOWN, its designee or the Consortium shall perform on-site inspections of HOME-assisted rental housing to determine compliance with the HOME Program property standards at **24 CFR 92.251** and to verify the information

submitted by the Borrower in accordance with the requirement at 24 CFR 92.252 no less than every two (2) years. Monitoring of the project will include, but not be limited to, annual review of compliance with income requirements as outlined in **Attachment B, Project Description, Paragraph 3.** and as further detailed within the Mortgage and Promissory Note implemented for this project. The determination of whether a tenant meets the income requirements set forth herein shall be made by Borrower 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 Borrower 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 or on behalf of the tenant(s) of the units. At the request of the TOWN, the Borrower shall provide copies of records documenting the annual and monthly gross and adjusted income of each tenant occupying the units. For tenants who have Section 8 certificates, the TOWN may rely on the housing assistance payment contract from the applicable housing authority in lieu of income verification by the Borrower. In addition to the foregoing, Borrower shall keep such additional records and prepare and submit to TOWN such reports as the TOWN may deem reasonably necessary to ensure compliance with the requirements of the MassDocs Affordable Housing Restriction and Chapter 40B Regulatory Agreement ("Affordable Housing Restriction") and of the HOME Program.

14. INDEMNIFICATION. The Borrower shall indemnify, hold harmless and defend the TOWN, and the Consortium and its Members, their 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, reasonable attorneys' fees, arising out of or resulting from the use of HOME Program and Community Preservation Act 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 Borrower, anyone directly or indirectly employed by the Borrower, or anyone for whose acts Borrower may be liable, regardless of whether or not it is caused in part by a party indemnified hereunder provided, however, that no party shall be indemnified for its own gross negligence or willful misconduct.

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 HOME Program regulation 24 CFR 92.356(f), the procurement of property and services by the TOWN and the Borrower is governed by the conflict of interest provisions stated in 24 CFR 84.84 and OMB Circular A-110. At a minimum, the Borrower shall make a copy of all applicable conflict of interest provisions available to all recipients of HOME 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 HOME Program 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 HOME-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 TOWN or of the Borrower.
- d) Any exceptions to the conflict of interest provisions stated or cited herein must be approved by HUD. The Borrower shall advise the TOWN in writing as to any such exceptions granted by HUD.

17. EQUAL OPPORTUNITY. The Borrower shall comply with all applicable federal and state laws governing discrimination and equal opportunity. In particular, the Borrower shall ensure compliance with HOME Program regulation **24 CFR 92.350** 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 Borrower shall affirmatively further fair housing consistent with the Town of Bedford's Consolidated Strategy and Plan and with HOME Program regulation **24 CFR 92.351**.
- b) **Affirmative Marketing.** The Borrower shall adopt and implement affirmative marketing procedures for the Property consistent with the requirements of the WestMetro HOME Consortium **Affirmative Marketing Plan**. The Borrower shall summarize these procedures in an Affirmative Marketing Plan, subject to review and approval by the TOWN. The Plan shall be submitted to the TOWN for review and approval within one month of the date of this Agreement.

19. LIENS. The Borrower represents that any 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 a ninety-nine (99) year lease entered into between the TOWN and the Borrower.

20. DISPLACEMENT AND RELOCATION. In accordance with HOME Program regulation **24 CFR 92.353, Displacement, Relocation and Acquisition**, the TOWN 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 TOWN will take responsibility for the preparation of all required notices to tenants, calculation of relocation assistance, etc to ensure compliance with Uniform Relocation Act and the Real Property Acquisition Policies Act of 1970. The Borrower shall work with the TOWN as needed to ensure compliance with **92.353**.

21. LABOR STANDARDS. The Borrower 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 the HOME Program regulation **24 CFR 92.354**. 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 Borrower shall require certification as to compliance with the provisions of this paragraph as required by the TOWN pursuant to HOME Program regulation 92.354. The Davis/Bacon Act applies to HOME funded rehabilitation projects of twelve (12) or more units.

22. CHANGES. In the event that changes in the project become necessary, including but not limited to changes in funding, scope, or duration, the Borrower shall submit a written request for TOWN's approval of such changes. If the TOWN agrees to such changes, the changes must be approved in writing by the TOWN and incorporated into this Agreement as amendments.

23. RECORDS. The Borrower shall maintain all applicable records for its project(s) consistent with HOME Program regulations 24 CFR 92.508 Recordkeeping. In addition the Borrower, upon reasonable prior notice by TOWN, shall make available copies of all such records as may be requested by the TOWN.

24. REPORTS. The Borrower shall cooperate with the TOWN in providing all data and information specific to its project in such formats and time frame as required by the TOWN and HUD. The Borrower shall submit all data required for the Project Completion report to the TOWN within 30 days of Project Completion, as defined in Attachment B.

25. FAITH-BASED ORGANIZATIONS.

- a) The Borrower may not engage in inherently religious activities as part of this HOME Loan 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 Borrower shall not, in operating the HOME Loan Project, discriminate against a program beneficiary or prospective program beneficiary on the basis of religion or religious belief.
- c) HOME 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 92.257. Where a structure is used for both eligible and inherently religious activities, HOME funds may not exceed the cost of those portions of the acquisition, construction, or rehabilitation that are attributable to the HOME Loan Project. HOME funds may not be used for improvements to sanctuaries, chapels, or other rooms that are used as a principal place of worship.

26. ASSIGNABILITY. The Borrower shall not assign any interest in this Agreement and shall not transfer any interest in the same without the TOWN's prior written consent which shall not be unreasonably withheld or delayed. Without any limitation of the foregoing, Borrower may, with the TOWN's written consent, assign its interests hereunder to another development entity owned or under common control with the Borrower

27. OBLIGATIONS. The TOWN shall not be obligated to grant any HOME Program funds to the Borrower unless and until the same are received by the TOWN from the Consortium. The TOWN may be obligated to the Borrower only to the extent that such funds are actually released

from the Consortium. The Town shall be obligated per the terms of the Mutual Cooperation Agreement to return to the Consortium's Local HOME Trust Funds, any funds recaptured from Borrower under the provisions of this Agreement, including but not limited to the provisions of Sections 11 and 12 above.

28. 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, (to be provided by Borrower at closing)

Attachment F, State Tax Attestation

Attachment G, Certificate of Authority

29. **FUNDING INSTRUMENTS USED.** The Borrower shall use the following legal instruments, subject to the prior review and approval of the TOWN:

- MassDocs Loan Agreement
- MassDocs Promissory Note – HOME Investment Partnerships Program (The Town of Bedford)
- MassDocs Promissory Note – Community Preservation Act Funds
- MassDocs Leasehold Mortgage, Security Agreement, and Conditional Assignment of Leases and Rents
- MassDocs Affordable Housing Restriction and Chapter 40B Regulatory Agreement

30. **OTHER DOCUMENTS.** The provisions of that certain MassDocs Loan Agreement between Borrower and The Commonwealth of Massachusetts acting by and through the Department of Housing and Community Development, acting for itself and as agent for the TOWN and for the Massachusetts Housing Partnership Fund Board, and the Affordable Housing Restriction are incorporated herein. In the event any provision of said MassDocs Loan Agreement or Affordable Housing Restriction and a provision of this Agreement conflict, the provision of said MassDocs Loan Agreement or Affordable Housing Restriction, as applicable, shall govern.

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 Town.

447 Concord Road LLC By Its Manager, R & I Realty Corp

BY: *Irma M Schretter*
 Name Title
 IRMA M SCHRETTER President Date

TOWN OF BEDFORD

BY: _____
Title Date

BY: _____
Title Date

BY: _____
Title Date

BY: _____
Title Date

BY: _____
Title Date

Approved as to Form.

Town Counsel

Date

**HOME PROGRAM AND COMMUNITY PRESERVATION FUND AGREEMENT
ATTACHMENT A, LOAN AMOUNT AND TERMS**

1. LOAN. The TOWN agrees to provide HOME Program funds to the Borrower in the amount of Ninety Five Thousand and Seven Hundred and Five Dollars. (\$95,705.00) in HOME Program funds and Community Preservation Act funds to the Borrower in the amount of Seven Hundred Thousand Dollars (\$700,000.00) 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.** Seven Hundred Ninety Five Thousand and Seven Hundred and Five Dollars. (\$795,705.00) at zero percent interest (0%) per annum.
- b) **Term.** Thirty years from the date of project completion (projected to be September 30, 2009).
- c) **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 the provisions of this Loan Agreement, Note, Mortgage and Affordable Housing Restriction, all of even date herewith, have been continuously satisfied as of the Maturity Date.
- d) **Security.** *The loan shall be secured by a mortgage on the Property and an Affordable Housing Restriction.*

**HOME PROGRAM AND COMMUNITY PRESERVATION FUND AGREEMENT
ATTACHMENT B, PROJECT DESCRIPTION**

1. PROJECT DESCRIPTION. The HOME Loan provided under this Agreement will assist new construction of 11 affordable units, to be developed to serve households making up to 60% of median income. The project is to be carried out in compliance with HOME Program regulations. HOME-assisted units are comprised of 8 two-bedroom units and 3 three-bedroom units. The remaining affordable unit is not HOME-assisted.

2. LOCATION. The Property is located at: 447 Concord Road, Bedford, Massachusetts.

3. PROPERTY STANDARDS. The Borrower hereby certifies that it shall comply with the following for the term of the affordability period:

- 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, set forth in HUD regulations at 24 CFR 982.401 and all other property standards as defined in HOME Program regulation 24 CFR 92.251.

4. QUALIFICATION AS AFFORDABLE HOUSING. The HOME Program funds provided under this Agreement must meet the occupancy and affordability requirements set forth in HOME Program regulation 24 CFR 92.252. The HOME-assisted units will comply with the income and affordable rent requirements as defined below. This includes, but is not limited to the following:

- a) Units must be occupied by households with incomes that do not exceed 80% of the current area median income for the Boston Metropolitan Statistical Area or other statistical area designated by HUD, adjusted for family size. Ninety percent of HOME funds used for rental housing must be used for units occupied by tenants whose annual incomes do not exceed 60% of area median income. The actual income limits are determined by HUD and published annually in the Federal Register;

- b) February 2008 Adjusted HOME Income Limits:

<u>Number in Family</u>	<u>50% of area median income</u>	<u>60% of area median income</u>	<u>80% of area median income</u>
1	\$30,050	\$36,060	46,300
2	\$34,300	\$41,160	\$52,950
3	\$38,600	\$46,320	\$59,550
4	\$42,900	\$51,480	\$66,150
5	\$46,350	\$55,620	\$71,450
6	\$49,750	\$59,700	\$76,750
7	\$53,200	\$63,840	\$82,050
8	\$56,650	\$67,980	\$87,350

- c) 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 more 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.

d) The HOME-assisted units are defined "Floating" under the HOME rules, that is, the HOME-assisted unit shall float amongst all units at the Property (the "HOME units"), but shall include eight (8) two-bedroom and three (3) three-bedroom units.

e) **Project type:** The development is a 3 structure, 14-unit townhouse community comprised of one, two and three bedroom units. The eleven HOME-assisted units are comprised of 8 two-bedroom units and 3 three-bedroom units.

f) **HOME assisted unit:** HOME funds will be used for pre-development and development expenses. The Town's HOME loan amount combined with the Massachusetts HOME loan amount is less than the HOME maximum per-unit subsidy limit for two and three-bedroom units.

g) **HOME Rent:** The maximum rent for the Home units is published annually. The current maximum High-HOME rent for 2-bedroom units is \$1,233.00 and 3-bedroom units is \$1,415.00 and the current maximum Low-HOME rent for 2-bedroom units is \$965.00 and 3-bedroom units is \$1,115.00. Of the 11 HOME-assisted units, 7 of the units may be rented at the High-HOME Rent to households at 60% or less Area Median Income, and at least 4 units must be rented at the Low-Home Rent to households at 50% or less Area Median Income. The number of HOME-Assisted units for each bedroom size will be proportional to the total number of units in the project, and the number of Low-HOME rent units for each bedroom size will also be proportional (rounded up) to the total bedroom size mix .

h) **Project Completion Report:** Upon completion of the Project, the Borrower shall notify the TOWN that the Project is complete and submit a Project Completion Report documenting the following information:

i) That the municipal Building Inspector has signed the final building permit evidencing completion of the work; and

ii) That a certificate has been executed by the Borrower's architect or project manager for the Project stating that the Property complies with 1) all laws, codes, ordinances, and regulations and 2) the housing quality standards referenced in Section 4 above; and

iii) That the TOWN has verified that all work is complete and all units are fully occupied.

i) **Affordability period:** The Property must remain affordable for a minimum of *thirty (30) years* following the date of project completion and project completion data is entered into the Department of Housing and Urban Development Information and Disbursement Information System through the Consortium. Both Borrower and TOWN intend that these covenants, agreements, and restrictions shall be in effect for perpetuity. The Borrower acknowledges that the TOWN intends to seek approval of the Commonwealth of Massachusetts, pursuant to General Laws, Chapter 184, Sections 31-33. However, in the event that such approval is not given, the term shall be for a period of thirty (30) years from the date of execution of the Affordable Housing Restriction and for such further time thereafter (up to 99 years) as the Affordable Housing Restriction may be lawfully extended (including without limitation extensions permitted under General Laws, Chapter 184, Section 27-30).

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

5. **PROJECT SCHEDULE.** The Borrower shall endeavor to complete the Project described in this attachment by the following target dates.

<i>Proposed schedule</i>	<i>Activity</i>
<i>Inform ward aldermen and immediate abutters of proposed plans:</i>	<i>Done</i>
<i>Pre-development (design, zoning, permitting):</i>	<i>Done</i>
<i>Acquisition:</i>	<i>Done</i>
<i>Rehabilitation/ construction:</i>	<i>8/15/2008</i>
<i>Marketing/ outreach:</i>	<i>4/15/2009</i>
<i>Identify expected date of project completion:</i>	<i>9/30/2009</i>

**HOME PROGRAM AND COMMUNITY PRESERVATION FUND AGREEMENT
ATTACHMENT C, PROCESSING AND RELEASE OF PROJECT
FUNDS/DESCRIPTION OF WORK**

1. METHOD OF PAYMENT. The TOWN will receive at time of closing a lump sum payment of the HOME Program funds as specified in Attachment A, Loan Amount and Term, consistent with the disbursement procedure set forth in Paragraph 6, below.

2. DESCRIPTION OF WORK. Borrower agrees to use the funds to assist with the acquisition price, pre-development and development of the property.

3. QUALITY OF WORK. All work shall be performed in accordance with the regulations of the U.S. Department of Housing and Urban Development and all applicable local and state codes. In connection with the foregoing, Borrower shall direct its contractor(s) to:

- a) Perform all labor in a workmanlike and professional manner; and
- b) Use new materials for the work unless otherwise approved by TOWN.

4. INSPECTION. Borrower shall make the Property available for inspection by TOWN, 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, TOWN shall have the right to require Borrower to exhume and display such work, as necessary to carry out proper inspection, at Borrower's sole expense.

5. PERMITS. Borrower shall acquire, at its expense, all requisite permits and licenses for the performance of the rehabilitation work hereunder.

6. DISBURSEMENT PROCEDURE

At time of closing of this HOME Loan, TOWN will disburse a check in the full amount of the loan made payable to Borrower.

7. FINANCIAL RECORDKEEPING REQUIREMENTS.

- a) **General.** The Borrower must have financial management systems conforming to 24 CFR 84, Subpart C – Post Award Requirements.
- b) **Financial records.** The Borrower shall at minimum have a cash receipts register and cash disbursements register for HOME Program funds. All HOME Program funds and transactions must be clearly identifiable. Copies of checks issued with HOME Program funds must be forwarded to the TOWN 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 Borrower 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 TOWN.

**HOME PROGRAM AND COMMUNITY PRESERVATION FUND AGREEMENT
ATTACHMENT D, INSURANCE**

1. GENERAL. The Borrower, and contractors and subcontractors engaged by the Borrower, its agents, or designees to perform HOME Program-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 TOWN and Consortium as an additional insured party. Each policy and certificate shall provide for at least twenty (20) days notice of cancellation or termination to the TOWN. Certificates shall be provided to the TOWN by the Borrower at the time of execution of this Agreement and thereafter immediately upon demand. All renewal certificates shall be delivered to the TOWN 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 Borrower shall ensure that all engineers and architects engaged by the Borrower 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. PROPERTY INSURANCE.

- a) *Construction Phase.* No later than 15 days prior to commencement of any construction and thereafter until construction is completed, Borrower 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 TOWN, which approval shall not be unreasonably withheld.

b) [Reserved]

c) **Hazard Insurance.** Borrower 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 Borrower are hereby assigned and shall be paid to the TOWN for application to the sums secured by the subject Mortgage and Promissory Note, with any excess to be paid to Borrower.

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, Borrower shall restore the property unless Borrower and the Authority determine that it is impossible or impractical to do so.

HOME PROGRAM AND COMMUNITY PRESERVATION FUND 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: *James M. Streeton*
President of *RFI Realty Corp.*
Manager of 47 Concord LLC

039 24 6 8 9 3
**Soc. Secur. Number
(Volun. or Mand. if Applicable)

Date: _____

* 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.

**HOME PROGRAM AND COMMUNITY PRESERVATION FUND AGREEMENT
ATTACHMENT G, CERTIFICATE OF AUTHORITY**

CERTIFICATE OF AUTHORITY

I hereby certify that I am the President of R&I Realty Corp., the manager of 447 Concord Road LLC, and that pursuant to the Operating Agreement of said 447 Concord Road LLC, I am authorized to execute contracts and bonds in the name and on behalf of said Limited Liability Company, and in particular a **HOME PROGRAM AND COMMUNITY PRESERVATION FUND AGREEMENT** with the TOWN OF BEDFORD, MASSACHUSETTS dated August 11, 2008, and such execution in the Limited Liability Company's name and on its behalf shall be valid and binding upon said Limited Liability Company. I further certify that such authorization is in full force and effect as of the date set forth below.

ATTEST: *Irma M Schretter*

Print Name: Irma M Schretter
R & I Realty Corp.

DATE: _____
(insert date Certificate signed)