

Town of Lexington

HOME PROJECT FUNDING AGREEMENT

This AGREEMENT made as of Aug 22, __, 2013, by and between the Lexington Housing Authority, a Massachusetts Housing Authority, organized and existing under the laws of the Commonwealth of Massachusetts, located at 1 Countryside Village, Lexington, MA (hereinafter the "Grantee") and the Town of Lexington acting by and through its Town Manager (hereinafter the "Town").

WITNESSETH THAT:

WHEREAS the Town is authorized to distribute funds in accordance with the terms of the Mutual Cooperation Agreement (the "MCA") by and between the Towns of Bedford, Belmont, Brookline, Concord, Framingham, Lexington, Lincoln, Natick, Needham, Sudbury, Watertown and Wayland, and the Cities of Newton and Waltham (said municipalities collectively, hereinafter referred to as the "Consortium"), and the Town, dated May 7, 2004, as amended, executed pursuant to the Cranston-Gonzalez National Affordable Housing Act of 1991;

WHEREAS the City of Newton is the representative member of the Consortium ("Representative Member");

WHEREAS the Grantee is a duly qualified Housing Authority and

WHEREAS the Grantee has represented that it has the capacity to administer the HOME project described in **Attachment A** (the "Project") and that the Project will fully comply with all HOME Program regulations and requirements.

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 Investment Partnerships 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 Grantee shall at all times comply with said HOME Program regulations, and shall comply with other related Federal and State statutes and regulations, Executive Orders, OMB Circulars, and all future revisions and amendments to the same. The Grantee shall become thoroughly 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.**

Grantee shall comply with HOME Program regulation **24 CFR 92.252** concerning occupancy requirements for low and moderate income rental housing described in **Attachment A**. Upon the issuance of a Certificate of Occupancy for the affordable units described in Attachment A and prior to the actual occupancy of each of the affordable units, the Town shall have the right to determine that each Affordable Unit is occupied for the term of this Agreement by qualified low- and moderate-income persons paying affordable rents as defined by HUD.

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 **92.352**. The Town shall not obligate HOME funds prior to compliance with the provisions of HOME Program regulation **92.352** and the statutes and regulations cited therein. The Grantee shall cooperate with and assist the Town in preparing all project environmental documentation including, but not limited to the Statutory Checklist with complete compliance documentation. The Town shall transmit the required information to the Consortium prior to requesting project set-up in HUD's Integrated Disbursement and Information System (IDIS).

Notwithstanding any provision of this Agreement, the parties hereto agree and acknowledge that this Agreement does not constitute a commitment of funds or site approval, and that such commitment of funds or approval may occur only upon satisfactory completion of environmental review and receipt by the participating jurisdiction, of a release of funds from the U.S. Department of Housing and Urban Development under 24 CFR Part 58. The parties further agree that the provision of any funds to the project is conditioned on the participating jurisdiction determination to proceed with, modify or cancel the project based on the results of a subsequent environmental review.

4. **PROJECT FUNDS.**

(a) The Town agrees to provide the Grantee HOME Program funds as stated within **Attachment A** attached hereto and made a part hereof and for the purposes described in **Attachment A**, subject to the Grantee's compliance with all terms and conditions as set forth within this Agreement.

(b) **Expenditures.** The Grantee shall limit expenditures to eligible costs in accordance with HOME Program regulations 92.2 and

92.206 and as described in **Attachment A** and shall meet the principles and standards of cost allowability stated in 92.301(a)(2) and the current OMB Circular A-122, "Cost Principles for Non-Profit Organizations". The Grantee shall also comply with standards for the financial record-keeping and management system applicable as described in **Attachment B, Processing and Release of Project Funds**. See also, paragraphs 22 and 23, herein with regard to additional record-keeping requirements.

- (c) **Request for Disbursement and Release of Project Funds.** As required by HOME Program regulation **92.504(c)3(viii)** the Grantee shall not request disbursement of Project funds pursuant to this Agreement until the funds are needed for payment of eligible costs. The amount of each such request shall be limited to the amount presently needed for eligible costs upon receipt of the appropriate written documents from the Grantee. The Town agrees to request release of Project funds from the Consortium in accordance with the procedures set forth in HOME Program regulation **92.500 et. seq.** And consistent with **Attachment B, Processing and Release of Project Funds**. Note that **NO FUNDS WILL BE AUTHORIZED OR RELEASED** for work done **PRIOR** to the effective date of this Agreement.
- (d) **Reversion of Assets.** The Grantee shall transfer to the Consortium HOME Investment Trust Account any HOME Project funds on hand at the time of expiration or termination of this Agreement, and must also transfer to the Consortium, represented by the Representative Town, the City of Newton, any accounts receivable attributable to the use of HOME funds for the Project.

5. **HOME PROJECT.**

- (a) **General.** The Grantee shall perform and carry out the Project described in **Attachment A** in a satisfactory manner, as determined reasonably and fairly by the Town. The Grantee shall comply with the requirements of the HOME Program regulations applicable to the project including, but not limited to: **maximum per unit subsidy stated in HOME Program regulation 92.250 as amended; eligibility requirements 92.205-215; income targeting requirements** in regulations **92.216-217**, etc.

In addition, the Grantee shall require each written agreement executed with a lower tier recipient or other entity to contain provisions requiring compliance with the regulations cited above.

- (b) **Ownership, Use, and Disposition of Property.** The Grantee shall comply with the affordability provisions referenced in HOME Program regulations **92.252-254**, as applicable, which include

income targeting, use requirements, initial and subsequent sale restrictions. For rental projects assisted with HOME funds, the Grantee shall ensure that the affordability requirements of HOME Program regulation section **92.252** be enforced by an executed Affordable Housing Restriction approved by the Town and by the Representative Member of the Consortium, which shall be executed and recorded at the time of the Grantee's closing of the HOME loan set forth in **Attachment A**, and prior to the recording of any other encumbrances on the premises on which the project is located, except for encumbrances permitted by the Town. If the Grantee fails to comply with any of the requirements of this provision, the Grantee shall be required to repay HOME funds disbursed pursuant to this Agreement, pursuant to HOME Program regulation **92.503**.

In the event that the Grantee or a subsidiary forms a partnership or a subsidiary for purposes of carrying out the Project described in **Attachment A**, the Grantee or its subsidiary must be the managing general partner if a partnership, and the Grantee must have "effective project control" as set forth under HOME Program regulation 92.300. Any partnership agreement or reorganization document for any subsidiary shall include a provision that the partnership or subsidiary shall accept contractual liability for all duties owed under this Agreement as they relate to the Project, and that each sub-entity, including the Grantee, shall be jointly and severally liable to the Town for the performance of the duties owed by the Grantee to the Town under this Agreement as they relate to the Project. If a partnership or subsidiary is created, the Grantee shall remain primarily obligated to perform the obligations, covenants, and duties under this Agreement. If such a partnership or subsidiary holds legal title to the premises that is the subject of the Project, the Grantee shall ensure that the partnership or subsidiary fully and competently executes the Declaration of Restrictive Covenants to the satisfaction of the Town.

Should Grantee 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 Grantee 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 A**.

- (c) **Post-completion Requirements.** Upon completion of the Project, the Grantee shall perform all applicable short and long-term special requirements including: compliance with **Housing Affordability** requirements (see HOME Program regulations **92.252-254** and

92.504(c)(2)), compliance with the **Housing Quality Standards** (see regulations **92.251** and **92.504(c)(6)**) and cost effective energy conservation and effectiveness standards in 24 CFR Part 39.

- i. For the duration of the HOME Affordability Period set forth in Attachment A, following the completion of the Project activities, the Grantee ensures that the rents associated with all HOME-assisted units will be set at rates in compliance with the HOME regulations **92.252 (a)(2)**. Completion of the project activities (hereinafter "Project Completion"), is defined as the date in which all necessary title transfer requirements and construction work have been performed; the project complies with the requirements of the HOME Program regulations (including the property standards under **92.251**); the final drawdown has been disbursed for the project; and the project completion information has been entered in the disbursement and information system established by HUD.
- ii. Tenants occupying HOME-assisted units whose incomes met HOME guidelines at the time of initial occupancy but whose income later exceeds HOME guidelines may stay in their dwellings, provided the rent is adjusted so that the tenant is paying no less than 30% of their adjusted monthly gross income and the Grantee or Subgrantee must continue to verify the tenant's rent and income annually to the Town. If the "over income" tenant leaves, the unit must be rented to a low or very low income tenant in accordance with 24 CFR 92.252, except that tenants of HOME-assisted units that have been allocated low-income housing tax credits by a housing credit agency pursuant to section 42 of the Internal Revenue Code of 1986 (26 U.S.C. 42) must pay rent governed by section 42.
- iii. In projects in which the HOME units are designated as floating pursuant to **92.252(j)**, tenants who no longer qualify as low-income are not required to pay as rent an amount that exceeds the market rent for comparable, unassisted units in the neighborhood.

The Grantee shall comply with the requirements stated above and all applicable requirements for the duration of this Agreement and shall repay all HOME funds to the Consortium HOME Investment Trust Account in the event that the above provisions are not satisfied.

6. **LEAD-BASED PAINT.**

- (a) **General.** The Grantee shall remain solely responsible for ensuring that this project at all times complies with applicable requirements of the Lead-Based Paint Poisoning Prevention Act, 42 U.S.C. 4821, et seq.; Lead-Based Paint Regulations **24 CFR Part 35** and all future revisions and amendments to the same. The Grantee shall also ensure that this project complies with such Lead-Based Paint regulations as may be adopted pursuant to HOME Program regulation **92.355**, 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 Grantee shall comply with all state and local regulations related to asbestos removal.

8. **PROJECT MANAGEMENT.**

- (a) **General.** The Grantee shall perform all procedures and tasks necessary to develop, design, implement and monitor the specified project and shall fully comply with uniform administrative requirements as stated in HOME Program regulation **92.505**. Delays in implementation may lead to **termination and recapture** of HOME funds as provided in paragraph 10. **Termination.**
- (b) **Procurement.** The Grantee agrees to fully comply with applicable requirements as referenced in **24 CFR 85.36** and OMB Circular A-110 for nonprofit subrecipients. Procurement steps must be reviewed and approved by the Town and must satisfy all applicable advertisement, competitive pricing, minority outreach, award, documentation and related requirements. Note that HOME Program regulation **92.357** prohibits the use of debarred firms and requires certain certifications for covered subrecipient transactions consistent with **24 CFR 24, Appendix B**. Note that **no funds** may be released for contracts which have not been procured in accordance with these requirements.
- (i) Where the housing development project involves new construction or rehabilitation, the Grantee shall perform procurement and contracting of qualified contractors. The Grantee shall prepare a standard construction or rehabilitation procurement/contracting policy with appropriate procedures consistent with HOME regulations and submit it to the Town for approval. The Town shall review each procurement and review and approve all proposed contracts of the Grantee, the organization, its agents, representatives

and employees or designees. Said contracts shall be documented in the Grantee's program records.

- (c) **Energy Efficiency.** To the extent practicable, the Grantee should achieve an Energy Star rating for units in new construction and substantial rehabilitation projects and should purchase equipment that meets the Energy Star standard.
- (d) **Purchase of recycled materials.** The Grantee 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.
- (e) **Technical assistance.** Upon request, the Town may provide technical assistance in one or more areas of project management such as procurement, Equal Opportunity, Davis-Bacon, etc. However, this offer of assistance shall not in any way relieve the Grantee from compliance with all relevant HOME Program regulations, nor shall it unduly burden the Town.

9. DURATION.

- a. This Agreement, made as of the date first written above, shall be effective upon the date of signing by the Town Manager, and shall continue until the termination date of this Agreement in accordance with **Attachment A** provided however that certain provisions of this Agreement as stated in Paragraph 8(b) below shall survive such termination. 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.
- b. Consistent with applicable HUD regulations, the provisions of this Agreement shall not terminate prior to expiration of the period of affordability. In particular, the following provisions continue in effect from project completion for the periods indicated.
 - (l) Throughout the term of the Agreement and period of affordability consistent with HOME Program regulations 92.252.
 - 1. Paragraph 4(c). Post-completion Requirements
 - 2. Paragraph 12. Repayment of Project Funds & Penalties
 - 3. Paragraph 13(c). Monitoring by the Town or its Designee
 - 4. Paragraph 23. Records

(ii) throughout the term of any HOME loan:

1. Attachment B, Processing and Release of Project Funds.

10. **PERFORMANCE STANDARDS.**

The Grantee is considered to have met the Performance Standards of this Agreement if the Town is satisfied that the Grantee is:

- I. completing the project as described in **Attachment A** in a timely manner in compliance with the schedule as outlined.
- ii. complying with all relevant state and federal regulations relating to the HOME Program, including without limitation 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, and the terms of this contract.

If the Town determines that the Grantee is complying with the above, then upon written request from the Grantee the Town will request reimbursement from the Consortium to reimburse the Grantee for specified project expenses according to **Attachment B, Processing and Release of Project Funds.**

If the Town determines that the Grantee fails to meet the terms of this Agreement, the Town will withhold HOME funds until the failure is remedied and/or require the Grantee to return all previously disbursed HOME funds.

- iii. complying with all applicable local codes, state and federal laws, including but not limited to, rehabilitation standards, building codes and zoning ordinances.

11. **TERMINATION.**

(a) **For cause.** The Town shall have the right to terminate this Agreement if for any reason the Grantee:

- I. fails to fulfill in a timely manner the project described in this Agreement, in accordance with the HOME Program regulations and schedule.

- ii. causes or allows HOME Program funds to be expended in violation of HOME Program regulations; or
- iii. violates any provisions of this Agreement and fails to cure the same as provided in **Paragraph 12(b)**; or
- iv. refuses to accept conditions and 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 Grantee. 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 Grantee by hand or by certified mail, return receipt requested.

(c) Cancellation. In the event a project is cancelled for any reason, the Grantee agrees to repay to the Consortium HOME Investment Trust Account all HOME funds released to the Grantee 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. ON-GOING RESPONSIBILITIES OF THE GRANTEE.

It shall be the Grantee's responsibility to meet all of the requirements of this Agreement and to provide documentation of said compliance to the Town.

- (a)** Comply with all requirements of HOME regulations relating to rental properties, including but not limited to: annual recertification and reporting of tenant income, annual review of allowable rent levels and utility allowances as determined by HUD with reporting to the Town; compliance with all requirements for record-keeping on tenant incomes and rents as specified in the HOME regulations **92.508(a)(3)** through **(a)(7)**. Said records shall be available to the Town for review upon request; adherence to a fair lease and grievance procedure as specified in the HOME regulations **92.253 and 92.303**; follow a program, approved by the Town, of tenant participation in management decisions, as specified in HOME regs. **92.303**; ensure that all HOME-assisted rental units comply with the Section 8 Housing Quality Standards to be documented annually by reports submitted by the Grantee and reviewed by the Town; complete affirmative marketing in compliance with the Grantee's Affirmative Marketing Plan; if applicable, provide relocation

assistance to temporary and/or permanently displaced tenants in accordance with the Uniform Relocation Assistance and Real Property Acquisition Policies and Act of 1970, as amended.

If the Grantee fails to meet any of these responsibilities in compliance with the applicable HUD standards, then the Grantee shall be obligated to correct the same as directed by the Town.

13. REPAYMENT OF PROJECT FUNDS AND PENALTIES

- (a) General.** In the event the Grantee, its agents, subsidiaries, or designees, fails to meet any HOME Program regulation or provision of this Agreement, and such failure continues after the opportunity to cure as stated in paragraph (b) of this provision, then the Grantee shall repay to the Consortium HOME Investment Trust Account all project funds disbursed to the Grantee pursuant to this Agreement in such amounts as may be determined by the Town and the Consortium. The Grantee shall also comply with **Paragraph 3 (d) Reversion of Assets**, above.
- (b) Opportunity to cure.** In the event of a violation of any of the provisions of this Agreement, the Town shall provide written notice of such violations to the Grantee. The notice shall describe the remedial steps to be taken by the Grantee and shall establish the deadline for full compliance. In the event that the Grantee 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 funds disbursed to the Grantee pursuant to this Agreement as specified in paragraph 13(a) herein.
- (c) Legal Recourse.** In the event the Grantee 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 manner 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 and to the Consortium, including but not limited to legal action.
- (d) Consortium Municipalities and Town to be Held Harmless.** The Grantee shall hold harmless and defend the Town, the Consortium and its Members from and against all claims for repayment of HOME project funds disbursed to the Grantee pursuant to this agreement, provided that such repayment is attributable to (1) the failure of the Grantee, its agents, subsidiaries or designees, to comply with applicable HUD regulations, or (2) any of the provisions of this Agreement or (3) any other act or omission of the Grantee, its agents, subsidiaries, or designees. The Grantee's

liability shall be limited to the amount of funds disbursed pursuant to this agreement, together with any penalties assessed by HUD or the Town on account of the Grantee's use of HOME 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 Grantee's use of HOME funds pursuant to this agreement, the Grantee shall be required to reimburse the Town in full for the amount of the penalties assessed.

14. **AUDIT AND MONITORING.**

- (a) **General.** Subgrantee shall comply with OMB Circular A-133, including completion of a single audit if Subgrantee expended federal funds in excess of \$500,000. The Subgrantee shall be responsible for the cost of all audits performed on its records and operations pursuant to this section, and the Subgrantee shall not use HOME Program funds for any portion of the cost of such audits. 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 Grantee and/or its lower tier recipient 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, excerpts or transcripts from such records and may audit all contracts, procurement records, invoices, materials, payrolls, personnel records, conditions of employment, and all documents relating to all manners covered by this Agreement.
- (b) **HUD Performance Reviews and Monitoring.** The Grantee understands that HUD may conduct performance reviews and monitoring of the Town and Consortium as provided in HOME Program regulations **92.550-.552** in order to examine expenditure and commitment rates, and compliance with eligibility, income targeting, affordability, matching, and any other applicable requirement of the HOME Program. The Grantee agrees to cooperate with HUD, the Town and the Consortium in such reviews and monitoring and to undertake remedial action as may be required pursuant to HOME Program regulation **92.551, Corrective and remedial actions.**
- (c) **Monitoring by the Town or its Designee.** The Town or its designee will perform periodic monitoring of the Project. During project construction or rehabilitation activities the Town will meet

with the Grantee periodically at which time the Grantee shall provide written documentation of completed construction work. Following completion of the construction work the Town shall inspect each unit to certify compliance with Section 8 Housing Quality Standards. Thereafter the Town will complete annual monitoring of the project which will include, but not be limited to, annual review of:

- (l) If rental, recertification of tenant household income as provided by the Grantee to the Town; documentation of rents for said properties as provided by the Grantee to the Town in the form of signed yearly leases; verification that the rental units comply with the Section 8 Housing Quality Standards through annual inspections completed by the Town or its designee.

The Grantee shall cooperate with the Town throughout these annual and any other monitoring procedures, shall maintain recordkeeping in compliance with HOME regulations **92.508(a)3(5)-(c)**, and shall implement such corrective action as requested by the Town.

15. INDEMNIFICATION.

Indemnification. The Grantee shall indemnify, hold harmless and defend the Town, and its agents or employees, the Consortium, and its Members, agents or employees, from and against all claims, damages, losses, and expenses including, but not limited to, attorneys' fees arising out of or resulting from the use of HOME funds disbursed pursuant to this Agreement, provided that any such claim, damage, loss or expense is (1) attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property, and (2) is caused in whole or in part by any negligent act or omission of the Grantee, anyone directly or indirectly employed by the Grantee, or anyone for whose acts the Grantee may be liable, regardless of whether or not it is caused in part by a party indemnified hereunder.

16. INSURANCE.

- (a) Not later than 15 days prior to commencement of any construction or rehabilitation work to be performed pursuant to this Agreement, the Grantee shall provide the Town with a Certificate of Insurance covering each contracted portion of work to be performed pursuant to this Agreement, which Certificate shall provide coverage of the types and amounts stated in paragraph (b) of this section, as further specified in **Attachment C**. The insurance provided shall be

maintained for the duration of each construction contract, and for such additional period of time as may be required by the Town. Said certificate may be obtained directly from contractors, subcontractors or other persons or entities hired to perform work pursuant to this Agreement.

- (b) The Certificate of Insurance shall provide, at a minimum, comprehensive general liability insurance covering bodily injury and property damage with an arrangement for coverage specifying premises/operations, contractual liability, and completed operations. The certificate shall also provide evidence of automobile liability, worker's compensation and professional liability coverage where applicable as determined by the Town.

The Certificate shall name the Consortium, its Representative Member and the Town as additional insured parties

17. CONFLICT OF INTEREST and ANTI-LOBBYING.

- (a) In accordance with HOME Program regulation **92.356**, the procurement of property and services by the Town and the Grantee is governed by the conflict of interest provisions stated in **24 CFR 85.36** and **OMB Circular A-110**. The Grantee shall comply with all applicable federal and state conflict of interest rules and shall ensure compliance with the same by all subrecipients as defined in HOME Program regulation **92.2** or other persons designated to receive HOME funds pursuant to this Agreement. At a minimum, the Grantee 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 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: any person who is an employee, agent, consultant, officer, elected or appointed official of the Town of Lexington or of the Grantee, or any state recipient or subrecipient of HOME funds.

- (d) Any exceptions to the conflict of interest provisions stated or cited herein must be approved by HUD in accordance with HOME Program regulation **92.356(d)**. The Grantee shall advise the Town in writing as to any such exceptions granted by HUD.
- (e) No Federal appropriated funds shall be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- (f) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

18. EQUAL OPPORTUNITY.

The Grantee shall comply with all applicable Federal and State laws governing discrimination and equal opportunity. In particular, the Grantee shall ensure compliance with HOME Program regulation **92.350(a)** 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; Executive Order 11246 (Equal Employment Opportunity); Housing and Urban Development Act of 1968, Section 3; Executive Orders 11625 and 12432 (Minority Business Enterprise); Executive Order 12138 (Women's Business Enterprise).

19. FAIR HOUSING.

- (a) **General.** The Grantee shall affirmatively further fair housing consistent with the Consortium's Affirmative and Fair Marketing Policy and with **24 CFR 570.904(c)**.

- (b) **Affirmative Marketing.** The Grantee shall adopt and implement affirmative marketing procedures for HOME-assisted housing containing 5 or more housing units consistent with the requirements of HOME Program regulation **92.351** and the Consortium **Affirmative Marketing Plan** prior to release of funds.

20. DISPLACEMENT AND RELOCATION

- (a) **General.** The Grantee shall take all reasonable steps to minimize displacement of persons consistent with the requirements of HOME Program regulation **92.353**. In the event that displacement cannot be avoided, the Grantee shall ensure compliance with HOME Program regulation **92.353**, including the provision of relocation assistance in accordance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, hereinafter "URA", as amended. In addition, the Grantee shall ensure compliance with the most current edition of **HUD Handbook 1378** "Tenant Assistance Relocation and Real Property Acquisition". All costs associated with relocation assistance will be the responsibility of the Grantee.
- (b) **Responsibility of the Grantee.** The Grantee shall prepare and maintain all necessary displacement and relocation plans and documentation (if applicable), as required by the URA (and Section 104(d) if applicable) including, but not limited to relocation plans, determinations of comparable housing, amounts and types of relocation assistance for which tenants are eligible, issuing notices to all tenants. If applicable, the Grantee shall be required to comply with its relocation plan as presented in a Relocation Assistance Plan to be reviewed and approved by the Town. In addition, the Grantee shall forward all permanent or temporary relocation notices and other related tenant correspondence to the Town for review and approval prior to issuing said documents or prior to committing any funds for relocation assistance, whichever occurs earlier.

21. LABOR STANDARDS.

The Grantee shall comply and/or ensure compliance with all applicable state and federal labor laws, including but not limited to the Davis/Bacon Act, 40 U.S.C. 27a-5 et seq., as applicable pursuant to HOME Program regulation **92.354**. In particular, the Grantee shall comply and/or ensure compliance with all applicable federal laws and regulations pertaining to labor standards and HUD Handbook 1344.1 (Federal Labor Standards Compliance in Housing and Community Development Programs), and all future amendments and revisions thereto. 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,

preconstruction meeting and instructions, etc. The Grantee shall require certification as to compliance with the provisions of this paragraph as required by the Town pursuant to HOME Program regulation **92.354**.

22. 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 notify the Town in writing of any such desired changes and if the Town agrees to such changes, they must be approved in writing by the Town and incorporated into this Agreement as amendments.

23. RECORDS.

The Grantee shall maintain all applicable records for the Project consistent with HOME program regulation **92.508 Recordkeeping**. In addition the Grantee shall make available copies of all such records as may be requested by the Town or the Consortium.

24. REPORTS.

The Grantee shall cooperate with the Town in providing all data and information specific to its project in such formats and time frame as required by HUD and the Town within five (5) business days of request. Such reporting includes, but is not limited to the following:

- (a) a post-completion enforcement plan submitted to the Town prior to initiation of the project as described in **Attachment A** outlining how the Grantee will comply with the terms of this Agreement over the term stated in Paragraph 9, Duration;
- (b) all data required for the project completion report submitted to the Town within 30 days of project completion.
- (c) The Grantee shall provide to the Town annual income verification on all tenants of said property as well as copies of all leases entered into for said property.
- (d) The Grantee shall provide documentation of Energy Star rating, if applicable.

25. RELIGIOUS ORGANIZATIONS.

The Grantee shall comply with HOME Program regulation **92.257** with respect to the funding of faith-based organizations.

26. ASSIGNABILITY.

The Grantee shall not assign any interest in this Agreement and shall not transfer any interest in the same whether by assignment or novation.

27. OBLIGATIONS.

The Town shall not be obligated to lend any funds to the Grantee unless and until the same are received from the Consortium. No Town funds are obligated under the terms of this Agreement, only such funds as received from the HOME Consortium Investment Trust Fund. The Town is obligated to the Grantee only to the extent that funds are actually released from the HOME Consortium Investment Trust Fund.

28. NOTICES.

All notices, reports, and submissions must be sent by mail to the following addresses:

**Grantee: Lexington Housing Authority
1 Countryside Village
Lexington, MA 02420**

**Town: Lexington Planning Department
1625 Massachusetts Ave
Lexington, MA 02420**

29. LIENS.

The Grantee 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 mortgages agreed to by the Town. The following anticipated liens have been approved by the Town:

None

30. PROCEEDS

Except as otherwise specified in this Agreement, any proceeds of the Project may be retained by Grantee. Such proceeds must be used for HOME-eligible or other housing activities to benefit low-income families. Grantee shall report any such proceeds to the Town. However, funds recaptured because the HOME-assisted housing no longer meets the affordability requirements under 24 CFR 92.254(a)(5)(ii) are subject to the requirements of 24 CFR 92.503.

31. OTHER PROVISIONS/ATTACHMENTS.

All other provisions are set forth within the following attachments which are hereby incorporated into this Agreement:

Attachment A, PROJECT DESCRIPTION
Attachment B, PROCESSING AND RELEASE OF PROJECT FUNDS
Attachment C, INSURANCE
Attachment D, STATE TAX ATTESTATION

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.

GRANTEE

By: Lexington Housing Authority

Stephen Keene
Name:
Title: Executive Director

Stephen Keene
Name:
Title:

Town of Lexington

CONTRACT APPROVAL:

Carl F. Valente
Carl F. Valente, Town Manager

8/21/2013
Date

ATTACHMENT A

561-563 Massachusetts Avenue, Lexington Avenue Project

1. NAME/BUDGET CODE: The 561-563 Massachusetts Avenue, Lexington Project.
2. LOCATION: 561-563 Massachusetts Avenue, Lexington, MA
3. PURPOSE: To provide a grant to Grantee, a Massachusetts Housing Authority as the Lexington Housing Authority, GRANTEE, to assist with the renovation of 561-563 Massachusetts Avenue. This property consists of two 3BR units of which one will be rented as an affordable unit to 60% income eligible renters under Section 92.206.
4. PROJECT FUNDING:

\$ 58,818	FFY 10 (Program Year) HOME funds
\$ 58,413	FFY 11 (Program Year) HOME funds
\$ 51,704	FFY 12 (Program Year) HOME funds
<u>\$ 8,065</u>	<u>FFY 13 (Program Year) HOME funds</u>
\$177,000	Total HOME Funds

Other funding:

\$694,000 Lexington Housing Authority Equity (Building value)

Total: \$871,000

5. DESCRIPTION: 561-563 Massachusetts Avenue, Lexington will be renovated by the Grantee. One of the two 3-BR units will continue to be rented to a public housing authority family and the other 3-BR unit will continue to be rented to Cooperative for Human Services, Inc. who operates a group home for 3 developmentally disabled adults in the unit. One of the units shall be designated as a HOME-assisted units and will be rented to no more than 60% AMI income eligible households. The HOME-assisted unit shall be a floating unit.

USE OF HOME FUNDS: HOME funds will be available for hard and soft costs of the project allowed under Section 92.206.

Use	HOME Total
1. Rehabilitation Costs	\$143,000.00
2. Soft Costs (architectural, engineering, appraisal, legal and other eligible soft costs under Section 92.206)	\$34,000.00
Total	\$177,000.00

6. **MAXIMUM PER UNIT SUBSIDY AMOUNT:** The most current subsidy levels to be used in this project shall be calculated by the time the Town approves the final development pro forma but in any event not later than the date the Town requests set-up in IDIS. The proposed HOME funded subsidy levels shall not exceed limits published by HUD and current at the time of set-up in IDIS. Use of HOME funds together with other Federal funds shall comply with HOME Program regulation **92.250(b)** and the Consortium guidelines prohibiting excessive layering of Federal funds. At present the HUD limits are:

Unit size	HUD limits	Proposed project
3BR	\$255,471	177,000

7. **INCOME TARGETING:** The project shall meet HOME requirements under **92.203** and **92.216**. The income of all tenants in units assisted by HOME funds will be verified to ensure that HUD's income eligibility standards are met.

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.

In rental projects with five or more HOME-assisted units, twenty percent of the HOME-assisted units must be occupied by tenants whose annual incomes do not exceed 50% of area median income.

8. **CURRENT HOUSEHOLD INCOME LIMITS:** The renters' income levels shall not exceed limits published by HUD and current at the time of set-up in IDIS. If HOME assisted property is rented, incomes must comply with Section 92.216. If purchased, incomes must comply with Section 92.217.

Current Household Income Limits, effective March 15, 2013

<u>Number in Family</u>	<u>50% of area median income</u>	<u>60% of area median income</u>
1	\$33,050	\$39,660
2	\$37,800	\$45,360
3	\$42,500	\$51,000
4	\$47,200	\$56,640
5	\$51,000	\$61,200
6	\$54,800	\$65,760
7	\$58,550	\$70,260
8 or more	\$62,350	\$74,820

9. QUALIFICATION AS AFFORDABLE HOUSING, HOME AFFORDABILITY PERIOD: This project will comply with Section **92.252** and satisfy requirements as follows:

Rents will be set at a level that meets all of the requirements under the HOME program guidelines Section **92.252**. The Town shall provide a schedule of rents for HOME Assisted units for approval by the Representative Member. The rents will not exceed the maximum HOME rent limits as determined by HUD.

Current Maximum HOME Program Rent Limits (effective February 9, 2012):

High HOME Program Rents	
3 Bedroom	\$1,619

Notwithstanding the above, if a HOME Assisted Unit receives federal or state project-based rental subsidy and the occupying household qualifies as a Low Income Household and pays as a monthly contribution towards rent not more than thirty percent (30%) of one-twelfth of their household income, then the maximum rent (i.e., tenant contribution plus rental subsidy) is the rent allowable under the federal or state rental subsidy program.

The HOME Affordability Period shall be 15 years, in accordance with 92.252 (e). The Period shall start on the **date of completion** of the project, as recorded by the Consortium in IDIS. The **date of completion** is defined in the General Provisions, Section 5(c)(i).

10. AFFIRMATIVE MARKETING for this project shall comply with the "WestMetro HOME Consortium Affirmative Marketing Policy and Implementing Procedures". Town will require Grantee to prepare an affirmative marketing plan for approval by the Town and the Consortium.

11. FUNDING INSTRUMENTS: The Town will execute this FUNDING AGREEMENT with Grantee for the full amount of HOME funds.

12. PROJECT SCHEDULE:

Per HOME Program regulation **92.500(d)**, HUD will:

- a) Recapture FFYxx (PYxx) funds not expended by XXXX 3x, 20xx.
- b) Recapture FFYxx (PYxx) funds not expended by XXXX 3x, 20xx.
- c) Recapture FFYxx (PYxx) funds not expended by XXXX 3x, 20xx.
- d) Recapture FFYxx (PYxx) funds not expended by XXXX 3x, 20xx.

Date November 1, 2013

Expected Project Start Date

Date	March 1, 2014	50% completion
Date	June 30, 2014	Expected Project Completion

13. **INSURANCE AND IMDEMNIFICATION:** Town will require developer to comply with indemnification and insurance requirements, as stated in the Mutual Cooperation Agreement (the "MCA") by and between the Towns of Bedford, Belmont, Brookline, Framingham, Lexington, Lincoln, Natick, Needham, Sudbury and Watertown and the Cities of Newton and Waltham and the Town, dated May 7, 2004, as amended, executed pursuant to the Cranston-Gonzalez National Affordable Housing Act of 1991.
14. **FINANCIAL RECORDS:** The Town will require the developer to
 - Have financial management systems conforming to 24CFR84.21.
 - Have financial records which include cash receipts and disbursements register. All HOME funds and transactions must be clearly identifiable.
 - Copies of checks issued with HOME funds must be forwarded to the Town.
 - Have subsidiary records for each contract executed, including at minimum contract price, dates and amounts of payments and running balance.
15. **ASSETS AND ACCOUNTS RECEIVABLES CONTROL:** The Town will establish and maintain accounting records which will track assets and receivables generated by HOME loans issued by the Town pursuant to this project, and will record revenue from such loans. The Town will require the developer to comply with MCA, Section 4.k, Reversion of Assets.
16. **DISPLACEMENT AND RELOCATION:** The Grantee will comply with MCA, Section 10.q and HOME Program regulation **92.353**.
17. **ACQUISITION:** The Grantee will comply with MCA, Section 10.r. and HOME Program regulations **92.353**.
18. **RECORDS:** The Town will require the developer to comply with MCA, Section 10.e. and HOME Program regulation **92.508**.
19. **PROPERTY STANDARDS:** Grantee must meet property standards set out in **92.251**. Town will ensure that the units are inspected after completion and prior to rental by the Grantee's qualified inspector, for assurance that it meets Minimum Property Standards.
20. **SUBMITTALS:** The Town will ensure that IDIS setup requests, environmental clearance, insurance (including flood insurance) acquisition, and lower tier funding instruments are submitted to the Representative Member in a timely manner and as provided in the MCA.
21. Prior to request for setup in IDIS, the following documents shall be submitted:

- Final project schedule
- Final Subsidy Layering Analysis
- This Funding Agreement executed between the Town and Grantee.

22. The Grantee shall ensure that, at the time of the closing of the HOME funds loan set forth in item 4 herein, an Affordable Housing Restriction shall be executed and recorded pursuant to Section **92.252** that is acceptable to the Town and the Representative Member.

**ATTACHMENT B
PROCESSING AND RELEASE OF PROJECT FUNDS**

1. PRE-RELEASE REQUIREMENTS

- (a) **Funding Instruments.** The Town-Grantee HOME Project Funding Agreement must be fully executed between the Town of Lexington and Grantee.
- (b) **Environmental Clearance.** Release of Funds must have been received from HUD for this project and the Consortium Representative Member must have approved final site specific environmental documentation.
- (c) **Set-Up Request.** The Town must have transmitted a project Set-Up Request to the Consortium Representative Member for Set-Up of the Operating Expense in the HUD IDIS system.

2. METHOD OF PAYMENT. If HOME funds are to be used for acquisition, the Grantee shall submit a requisition at least three weeks prior to closing and shall receive at time of closing a lump sum payment of up to ninety-five percent (99%) of the HOME Program funds as specified in Attachment A and the balance of the loan amount after project completion, consistent with the disbursement procedure set forth in paragraph 3 below.

3. DISBURSEMENT PROCEDURE.

At time of closing of this HOME Loan, Town will disburse a check in the amount of ninety-five percent (99%) of the loan made payable to Grantee. The Grantee shall prepare an invoice in the manner described below for the balance of the loan upon occupancy of each unit in the Project by an income-eligible household, as evidenced by delivery to the Town, in form acceptable to the Town, of:

- a. income verification of each household;
- b. HQS reports; and
- c. lease for each unit;

recordation of the HOME-required deed restriction; and submission of final occupancy data to the Town and entry of same by the Representative Member in the HUD Information and Disbursement System ("IDIS"). Payment will be released after receipt of the above for the final HOME-assisted unit.

(a) Invoice.

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, attach appropriate documentation and shall forward it to the Town.

(b) Requisition for HOME funds. After review and approval of the Grantee transmittal, vendor or contractor invoice, and Construction Report (if applicable), the Town will prepare a Consortium requisition for HOME funds, in accordance with Consortium procedures and requirements.

Incomplete requisitions or requisitions not in full conformance with HOME Program regulations will be returned to the Grantee. In such case, processing of the Consortium requisition and drawdown of HOME funds will not be initiated, until such time as an approvable requisition is received.

(c) Processing of Consortium requisition. After review and approval, the Consortium will process the requisition for payment through its accounts payable system. The A/P cycle takes approximately 15 days, provided all approvals for a requisition are in place by Wednesday of a typical workweek. It is anticipated that payees will be the Grantee and/or the Grantee's designated contractors, vendors and subrecipients.

(d) Retainage requirement. The Town shall retain 1% of the HOME funds associated with this project until occupancy of the HOME-assisted units, the HOME-required deed restrictions have been recorded, and final occupancy data has been submitted to the Town and recorded by the Consortium in the HUD Information and Disbursement Information System (IDIS).

(e) Release of checks. For acquisition, when released by the Consortium, checks will be held for pickup at the City of Newton's Treasurer's office by a person authorized in writing by the Town. For all other purposes when released by the Consortium checks will be transmitted to the designated payees by mail. The Consortium reserves the right to hold release of the final project payment pending satisfaction of all terms of this Agreement.

4. FINANCIAL RECORDKEEPING REQUIREMENTS.

(a) General. The Town and the Grantee must have financial management systems conforming to **24 CFR 85.20 Standards for financial management systems.**

- (b) **Financial records.** The Town and Grantee shall at minimum have a HOME funds Cash receipts register and Cash disbursements register. All HOME funds and transactions must be clearly identifiable. Copies of checks issued with HOME 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.

(c) **Documentation.**

- (i) General. All HOME transactions must be supported by appropriate source documentation. This includes, but is not limited to: contracts, invoices, countersigned payrolls, time sheets, etc., evidencing the nature and propriety of each obligation and payment, and showing the approval of the individual at the Grantee organization who is designated as the HOME program director.
- (ii) Construction (if applicable). Contractor invoices must be accompanied by an itemized Application for Payment, prepared and signed by the contractor and architect, verified and countersigned by the Subgrantee and verified by the Town or its designee. If a pay item is funded both by HOME funds and other funds, the portion of each respective sources shall be broken out and identified.
- (iii) Supplemental information. The Town and Grantee agree 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.

ATTACHMENT C INSURANCE

1. GENERAL. The Grantee, and contractors and subcontractors engaged by the Grantee, 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 the 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 and the Consortium. Certificates shall be provided to the Town and the Consortium by the Grantee at the time of execution of this Agreement and thereafter immediately upon demand. All renewal certificates shall be delivered to the Town and the Consortium 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 Grantee shall ensure that all engineers and architects engaged by the Grantee in any and all aspects relative to the project identified in **Attachment A** 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) **Rehabilitation Phase.** No later than 15 days prior to commencement of any rehabilitation and thereafter until construction is completed, Grantee 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.** Grantee 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 Grantee are hereby assigned and shall be paid to the Town for application to the sums secured by the subject Mortgage and Note, with any excess to be paid to Grantee.
- 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, Grantee shall restore the property unless Grantee and the Town determine that it is impossible or impractical to do so.

**HOME LOAN AGREEMENT
ATTACHMENT D, STATE TAX ATTESTATION**

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

A T T E S T A T I O N

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: _____

**Soc. Secur. Number or EIN
(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.**