

XXXX FUNDING AGREEMENT
BETWEEN XXXX. and CITY/TOWN
TO SUPPORT AFFORDABLE HOUSING AT X HOUSE

This AGREEMENT made as of _____, 2005 by and between XXXX, Incorporated, a not-for-profit corporation having a usual place of business located at ADDRESS (hereinafter "Grantee") and the City/Town, a corporation organized and existing under the laws of the Commonwealth of Massachusetts, acting by and through its Director of Planning and Development or his designated staff, but without personal liability to him, (hereinafter the "City"), collectively, the "parties."

WITNESSETH THAT:

WHEREAS, the Grantee in the name of XXXX, Trustees of XXXX, purchased the property at ADDRESS (hereinafter "the Property"), on which the building will be renovated for affordable rental housing units for a maximum occupancy of 12 individuals who are 55 years of age or older, with 10 units limited to individuals who have annual household incomes at or below 50% of area median income and 2 units limited to individuals who have annual household incomes at or below 60% of area median income;

WHEREAS, the Grantee has applied for and received approval from the XXXX Committee and City/Town's Legislative Body for a deferred forgivable loan amount of \$100,000.00 for the creation and support of the affordable housing units at XXXX;

WHEREAS, the Grantee is receiving additional funding from List current lenders and has received funding from list prior lenders,

WHEREAS, the Grantee has executed an affordable housing restriction (hereinafter the "Covenant") which will meet the requirements of G.L. c. 184, §§ 32, be approved by the Department of Housing and Community Development ("DHCD") and will which will permanently require that the Property be used as affordable housing for occupancy by elders who are 55 years of age or older and whose annual household income is at or less than 50% of area median income; and

WHEREAS, the Grantee will also execute a Note and a Mortgage securing the XXXX loan;

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

****GENERAL PROVISIONS****

1. **Subject matter.** This Agreement sets forth the terms and conditions where the Grantee shall receive funding from the City in the amount of one hundred thousand dollars (\$100,000.00). The Grantee agrees to use such funding for construction costs for renovation of XXXX.
2. **Conditions Prior to Receipt of Funds.** The Grantee agrees to the following conditions prior to receipt of funds:
 - (a) The Grantee agrees to execute a Note evidencing the indebtedness and a Mortgage securing the obligations under this Agreement and the Note.
3. **Release of Grant Funds for Construction.**
 - (a) **Request for Payment.** Following completion of any portion of the work the Grantee shall prepare and submit requests for payment to the City. The Grantee understands and agrees that it

may not request payment from the City for any costs covered by or charged to any other funding source. The City will not advance funds to the Grantee under any circumstances. The request for payment should be addressed to:

City or Town Address

(b) **Payments.** After inspection of the work and approval of a request for payment by the City, a periodic progress payment will be made in an amount equal to eighty percent of that portion of the compensation amount attributable to the portion completed. In any event, upon satisfactory completion of the entire work, payment in full shall be made within thirty (30) days of completion, subject to final inspection and approval of the work by the City. In the event any dispute arises concerning the work, an equitable amount shall be retained pending resolution thereof.

4. **Insurance Requirements.**

The Grantee shall provide the City with a Certificate of Insurance in the amount of \$1,000,000 or greater covering General Liability including Bodily Injury, Property Damage, and Personal Injury. The City shall be named as an additional insured on this certificate.

5. **Permanent Reporting Requirements.** On January 1, April 1, July 1 and October 1 of every year, Grantee shall submit a quarterly status report to the City as to the use and occupancy of the Property and the income level of the tenants.

6. **Recapture of Funds.** If the Grantee fails to comply with the requirements of this Agreement, the funds shall revert back to the City, and the Grantee shall be liable to repay the entire amount of the funding to the City. The City may take such steps as necessary, including legal action, to recapture such funds. In the alternative, at the sole option of the City, the City may elect to exercise its right pursuant to the Note executed herewith to purchase the Property from Grantee for one (\$1.00) dollar, in full satisfaction of Grantee's repayment obligations hereunder.

7. **Record Keeping.** The Grantee agrees to keep such records as are kept in the normal course of business and as may be required by the City. The City shall have full and free access to such records with respect to utilization of the proceeds of this Agreement.

8. **Termination.** In the event the Grantee fails to fulfill all obligations under the terms of this Agreement, including refusal to comply with the Covenant, the City shall have the right, in its sole discretion, to terminate this Agreement upon written notice to the Grantee. Upon such termination, the City shall be free to pursue any rights or remedies available at law or in equity, as well as any rights or remedies provided within the Note, Mortgage, or this Agreement, including without limitation, recapture of funds under paragraph 6.

9. **Compliance with Applicable Laws.** The Grantee shall comply with all applicable laws, ordinances, or codes of state and/or local governments, in the construction, operation, and maintenance of the Property.

10. **Monitoring.** The City shall periodically evaluate the performance of the Grantee and may make a determination as to whether the Grantee has conformed with this Agreement and has a continuing capacity to carry out the funded activities in the manner required pursuant to this Agreement. At any time during normal business hours and as often as the City may deem necessary, Grantee shall make available all such records and documents as requested by said parties for audit and/or monitoring. The City may examine and make copies of such records and may audit all contracts,

procurement records, invoices, materials, payrolls, personnel records, conditions of employment, and all documents relating to all matters covered by this Agreement.

11. **Successors and assigns.** The terms of this Agreement, including, but not limited to the Permanent Reporting Requirements in Paragraph 5, shall be binding on the Grantee's successors and assigns. The Grantee shall promptly provide notice of any change in ownership of the Property to the City.
12. **Conflict of Interest; Bonus and Benefit Prohibited.**
 - (a) No member, officer, or employee of the City or its designees or agents, no member of the governing body of the City/Town or the Commonwealth of Massachusetts, and no other public official of such locality or localities who exercises any functions or responsibilities with respect to the subject funding programs during his or her tenure or for one year thereafter, shall have any interest or benefit, direct or indirect, in any contract or subcontract, or in the proceeds thereof, in connection with this Agreement, including work to be performed.
 - (b) Grantee shall not pay bonus, commission, or fee for the purpose of obtaining the City's approval of or concurrence to complete the work financed in whole or in part by this Agreement.
13. **Free from Encumbrances.** It is agreed and represented that the Property is free from any attachments, tax liens, mechanic liens or any other encumbrances, except as shown on Schedule C attached hereto.
14. **Indemnification.** The Grantee shall indemnify, hold harmless, and defend the City and its departments, officers, employees, servants, and agents from and against all actions, causes of actions, claims, demands, damages, costs, loss of services, expenses, and compensation, including attorneys' fees and interest arising out of or resulting directly from the services rendered pursuant to this Agreement, provided that any such action, cause of action, claim, demand, damage costs, loss of service, expense, compensation (1) in any way grows out of bodily injury, sickness, disease or death, or to injury to or destruction of tangible property which (2) is caused in whole or in part by any act or omission of the Grantee, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, regardless of whether or not it is caused in part by a party indemnified hereunder.
15. **Notice.** Any notice, demand, request, consent, approval, communication either party is required to give to the other party or any person shall be in writing and either served personally or sent by prepaid, first class mail to the respective addresses set forth below. Either party may change its address by notifying the other party of the change of address in writing.

To the City: Associate Director for Housing and Community Development
Planning and Development Department
ADDRESS

To Grantee: Executive Director
ADDRESS

**** **SIGNATORIES** ****

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

By: _____
Its: _____

By: _____
Director of Planning & Development

By: _____
Comptroller of Accounts

By: _____
Assistant City Solicitor

By: _____
Mayor Date

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

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

_____; and that
(Print name of corporation)

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

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

3. on _____ at a duly authorized meeting of the Board of Directors
*(insert date of meeting) **

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

_____ of this
(Print name and title of officer who signs the contract, as in number 2 above)
corporation be and hereby is authorized to execute contracts and bonds in the name and on behalf of said corporation, and affix its Corporate Seal thereto, and such execution of any contract of obligation in this corporation's name on its behalf, with or without the Corporate Seal, shall be valid and binding upon this corporation; and that

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

ATTEST: _____
(signature of Clerk/Secretary)

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

DATE: _____
*(insert date Certificate signed by Clerk/Secretary)***

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

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

**Certificate of Authority
and
List of Officers and Directors**

List of *Officers* of the Board of Directors/Trustees

Names

Titles

_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

List of Board of Directors/Trustees

Names

Names

Attachment B
State Tax Attestation

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

Signature

Name of Contractor (Agency)

Federal Identification Number
or Social Security Number

Date

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