

CHDO AGREEMENT

This CHDO Agreement ("Agreement") is made and entered into this the _____ day of _____, 2011 by and between the City of Durham, North Carolina, a municipal corporation, organized and existing under the laws of the State of North Carolina, whose address is 101 City Hall Plaza, Durham, North Carolina (the "City") and Metropolitan Housing and CDC, Inc., a non-profit corporation exempt under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended and having its principal office at 402 N. Market Street, Washington, NC 27889 ("MH CDC").

WITNESS THAT:

WHEREAS, the City has entered into an Agreement to receive funds under the HOME Investment Partnerships Program (hereinafter called the "HOME" Program) from the US Department of Housing and Urban Development (hereinafter called "HUD"); and

WHEREAS, the City has set aside a portion of its HOME Program funds for community housing development organizations in accordance with the National Affordable Housing Act of 1990, as amended, (hereinafter called the "ACT"); and

WHEREAS, the City has designated the above named organization as a community housing development organization or CHDO pursuant to HUD rule 24 CFR Part 92 which sets forth regulations to implement the HOME Program; and

WHEREAS, the City and MH CDC enter into an Agreement of even date herewith to provide MH CDC with construction and permanent financing for nine units to be constructed as part of the Franklin Village development,, Durham, NC 27703 as such funding is permissible under 24 CFR 92.205;

WHEREAS, the City desires to provide financing to MH CDC to assist it with its efforts to provide affordable housing to low- and moderate-income families throughout the City of Durham;

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the parties hereto agree as follows:

A. DEFINITIONS:

Except to the extent modified or supplemented by this Agreement, any term defined in 24 CFR Part 92 shall have the same meaning when used herein.

- (1) Agreement means this agreement, the approved application for HOME assistance (including cover letters, maps, schedules, award letters prior and

subsequent to this funding agreement, and other submissions in the approved application), and any subsequent amendments to this Agreement.

- (2) CHDO means Metropolitan Housing and CDC, Inc.
- (3) Assistance means the funds provided under this Agreement.
- (4) Program means the affordable housing program or project, including the administration thereof, for which assistance is being provided under this Agreement.

B. USE OF HOME FUNDS:

- (1) The CHDO shall perform the projects or tasks related to its allocation of HOME funds according to the schedule and within the budget specified in Attachment A. Attachment A is hereby made a part of this Agreement.
- (2) The CHDO shall complete the construction of nine residential units at the Franklin Village site located in Durham, NC 27703 within 24 months of receiving a first disbursement of HOME funds under this Agreement and the associated Loan Documents. The nine residences shall meet HOME requirements under 24 CFR Part 92.300 and conform to the City's Consolidated Plan.

C. DURATION OF THE AGREEMENT:

The City agrees to provide to the CHDO HOME Investment Partnerships Program (HOME) Assistance under Title II of the National Affordable Housing Act of 1990 as described in this Agreement. This Agreement will remain in effect until May 31, 2013, or until the project for which funding is provided under this or associated loan documents has been completed, and all obligations outstanding under this and related loan documents have been fulfilled.

D. SCOPE OF SERVICES:

The scope of services is specified in Attachment A, which is attached to and made part of this Agreement as if fully set forth herein.

E. AMOUNT OF ASSISTANCE:

The City shall make available to MHCDC up to the amount of **Four Hundred Fifty Thousand and No/100 Dollars (\$450,000.00)** pursuant to this Agreement. Said funds shall be disbursed by the City to MHCDC for implementation of the project as specified in Attachment A and associated Loan Documents, as defined in the Construction/Permanent Loan Agreement of even date herewith.

F. OBLIGATIONS OF THE CHDO:

- (1) The CHDO shall comply with all applicable regulations in 24 CFR Part 92, and all applicable lawful requirements of the City, all applicable requirements of the General Statutes of the State of North Carolina and any other applicable statutes, laws and Executive Orders currently or hereafter in force.
- (2) The CHDO shall assume responsibility for (i) managing the day-to-day operations of its HOME program to assure compliance with program requirements outlined in 24 CFR Part 92, and (ii) for taking appropriate action when performance problems arise.
- (3) The CHDO shall take full responsibility for ensuring that housing it has assisted with HOME funds meets the affordability requirements of 24 CFR Part 92.252 or 92.254 as applicable, agrees to burden the property with the restrictive covenants which are attached hereto and made part of this agreement as Attachment B, and agrees to repay the outstanding balance of its HOME funds remaining to the City if the housing does not meet the affordability requirements for the specified time period.
- (4) The CHDO shall spend its total allocation of HOME funds under this Agreement on eligible activities by May 31, 2013.
- (5) The CHDO shall submit a complete Project Completion report to the City no later than 60 days after the final drawdown request for HOME funds under this Agreement.
- (6) The CHDO shall comply with all applicable uniform administrative requirements as described in 24 CFR Part 92.505.
- (7) The CHDO shall carry out each activity in compliance with all federal laws and regulations described in 24 CFR Subpart H, including the environmental review in 92.352.
- (8) The CHDO shall assume affirmative marketing responsibilities in accordance with 24 CFR Part 92.351.
- (9) The CHDO shall return to the City any unobligated HOME funds on hand at the expiration of the Agreement.
- (10) The CHDO shall be responsible for complying with the provisions of this Agreement even when the CHDO designates a third party or parties to undertake all or any part of the program. All third parties must be bound in

writing to the same provisions as required by this Agreement and approved in advance by the City.

- (11) The CHDO shall comply with all lawful requirements of the City necessary to insure that the program is carried out in accordance with the CHDO's Certifications including the certifications of assumption of environmental and labor standard responsibilities outlined in 24 CFR Part 92.
- (12) The assistance provided under this Agreement shall not be used by the CHDO to pay a third party to lobby the City for funding approval, approval of applications for additional assistance, or any other approval or concurrence of the City required under this Agreement. HOME funds may be used to pay reasonable fees for bona fide technical, consultant, managerial or other such services, other than actual solicitations, if these services are eligible as program costs, and in accordance with Attachment A.
- (13) The CHDO shall reimburse the City for any amount of HOME funds determined by the City to have been improperly expended.
- (14) If applicable, the CHDO shall abide by the conditions prescribed in 24 CFR Part 92.257 for the use of HOME funds by religious organizations.
- (15) The CHDO shall notify the City in writing of any changes in its 501 (c) (3) tax exempt status throughout the specified period of this Agreement, or any other change to the nonprofit which alters the organization such that it no longer meets the definition of a CHDO as provided under 24 CFR Part 92.

G. RECORDS AND REPORTS:

- (1) The CHDO shall maintain and make available at reasonable times and places all records, information and reports necessary to assist the City in meeting its internal and federally mandated record keeping and reporting requirements in accordance with 24 CFR Part 92.508. Such records and accounts shall include all property, personnel, and financial records the City and Federal agencies deem necessary to assure a proper accounting for all HOME Program funds.
- (2) The CHDO shall provide the City with information necessary for it to complete the Consolidated Annual Performance and Evaluation Review report and other reports required by HUD.
- (3) The CHDO shall provide an annual audit report performed in compliance with OMB Circular A-133.
- (4) The CHDO shall allow the City to conduct monitoring and evaluation

activities as determined necessary by the City and HUD.

- (5) The CHDO shall keep a fully executed copy of this Agreement and a copy of the HOME regulations on file in their place of business at all times.
- (6) The CHDO shall keep all documents used to determine their status as a Community Housing Development Organization as defined under 24 CFR Part 92 current and available for inspection by the City for the duration of this Agreement.
- (7) The CHDO agrees to repay, remit or return to the City any amount of remaining HOME funds provided under this Agreement, if the City determines that the CHDO does not have the capacity to carry out its HOME program on schedule or in a timely manner. The City shall provide a written determination of its finding to the CHDO ten (10) days prior to the request to remit, return or repay the HOME funds.
- (8) The CHDO shall provide any duly authorized representative of the City, the Department of Housing and Urban Development and the Comptroller General of the United States, at all reasonable times, access to and the right to inspect, copy, monitor and examine all of the books, papers, records, and other documents relating to the HOME loan and the fulfillment of this Agreement for a period of three years following the completion of all closeout procedures respecting HOME funds, and the final settlement and conclusion of all issues arising out of the HOME loan.

H. PAYMENT:

- (1) The CHDO shall request disbursement of HOME funds only for reimbursement of eligible expenditures made or eligible expenses incurred by the CHDO, except where advance payments are explicitly authorized in writing by the City at the sole discretion of the City.

All expenditures and expenses shall be incurred in accordance with the provisions of the Agreement. Payments shall only be made after the CHDO has presented documentation of expenses that meet City approval. It is expressly understood and agreed by the CHDO that payment by the City will not exceed the maximum sum of **\$450,000.00** for all of the services specified in Attachment A. Further, the CHDO understands and agrees that any payment made under this Agreement by the City is limited to funds made available under the loan referenced above. The City shall make payments upon receipt of a request for check from the CHDO, documentation of expenditures and any other documentation that the Director of the Department of Community Development for the City, may require from the CHDO. All such documentation to be in a form and substance satisfactory to the Department of Community Development.

Payments shall be made only for the activities listed in Attachment A. Check requests for reimbursable expenses will be processed by the City for payment no more often than monthly, until all such loan funds have been expended or until this Agreement has expired, whichever shall come first.

- (2) The sum total of the CHDO reimbursement requests during a given year shall not exceed the amount of the agreed upon budget appearing in Attachment A.
- (3) The CHDO shall submit monthly reports to the City within fifteen (15) business days following the closure of the month for which the activity is being reported. The CHDO shall provide to the City any other information determined by the City to be necessary or appropriate for the proper monitoring of this Agreement. Delays by the CHDO in making any report to the City required by this Agreement may, at the City's sole discretion, result in delays in payment to the CHDO of part or all of the CHDO's request for funds. A delay in making a disbursement by the City to the CHDO does not change the time required of the CHDO to submit reports to the City.

I. CONFLICT OF INTEREST:

- (1) No employee, agent, consultant, officer, elected official or appointed official of the City of Durham who has responsibilities related to the HOME Program or access to "inside" information concerning said program shall obtain a financial benefit or interest from any HOME Program activity for themselves or those with whom they have family or business ties during their tenure or for one year thereafter.
- (2) The CHDO shall make a good faith effort to assure that this provision is not violated, and that any suspected violations are promptly reported to the City.

J. DEFAULT:

- (1) It is expressly agreed and understood that the CHDO's designation as a CHDO shall become null and void, at the City's option, in the event the CHDO fails to meet one or more of the criteria for CHDO designation and or fails to develop, sponsor or own one or more housing projects in conformance with 24 CFR Part 92.
- (2) The City shall notify the CHDO in writing of any such default under this Agreement.
- (3) The CHDO shall have sixty (60) days after receipt of the written notice of default within which to cure such default.

- (4) The CHDO agrees to repay, remit or return to the City any amount of unspent HOME funds provided to the CHDO in the event of a default under the terms of this Agreement.

K. SUSPENSION OR TERMINATION:

- (1) The City may suspend or terminate this Agreement, in whole or in part, if the CHDO materially fails to comply with any term of this Agreement, or with any of the rules, regulations or provisions referred to herein or announced by HUD.
- (2) In the event there is probable cause to believe the CHDO is in noncompliance with any applicable rules or regulations, the City may withhold said HOME funds until such time as the CHDO is found to be in compliance by the City, or is otherwise determined to be in compliance.
- (3) The City shall advise the CHDO in writing what action(s) must be taken for resumption of payments.
- (4) Termination due to adverse environmental impact. This Agreement is conditioned on the City's determination to proceed with, modify or cancel the project based on the results of a subsequent environmental review. This Agreement will terminate at the conclusion of the environmental review process if the results of the review indicate that the project would have a significant adverse impact on the environment and that this impact cannot be feasibly eliminated or mitigated.

L. HOLD HARMLESS:

- (1) The City shall not be liable for any claims, actions, suits and judgments whatsoever arising out of the performance or nonperformance of this Agreement by the CHDO, its employees, officers or agents.
- (2) The CHDO shall hold harmless, defend and indemnify the City, its officers, agents, and employees from all such claims, actions, suits, charges, and judgments under this Agreement.

M. AMENDMENTS:

- (1) The City or the CHDO may amend this Agreement at any time provided that such amendments make specific reference to this Agreement, are executed in writing and signed by a duly authorized representative of both organizations. For amendments that do not increase the Agreement amount beyond the total project appropriation by the City Council, and which are otherwise consistent with the representations of the project made to Council

prior to City Council approval, the City Manager may execute such amendments without additional City Council action.

- (2) Such agreements shall not invalidate this Agreement, nor relieve or release the City or CHDO from its obligations under this Agreement.
- (3) The City may, at its discretion, amend this Agreement to conform with Federal, State or local government guidelines, policies and available funding amounts, or for other reasons, and the CHDO will execute such amendment promptly.
- (4) If such amendment results in a change in HOME funding, a new attachment shall be executed with corresponding changes to the project or tasks, schedule and budget that now appear in Attachment A.

N. MISCELLANEOUS PROVISIONS:

- (1) Service of all notices under this Agreement shall be sufficient if given personally, by registered or certified mail, return receipt requested, and mailed to the party involved at the address and to the attention of the person set forth below, or to such other person or address as said party may provide in writing from time to time.
- (2) Any such notice mailed to such address shall be effective upon the date received as shown by the returned receipt or otherwise.

City of Durham
Director, Department of Community Development
807 E. Main Street
Durham, NC 27701
919-560-4570
919-560-4090 fax

Metropolitan Housing and CDC, Inc.
President and CEO:
402 N. Market Street
Washington, NC 27889
252-946-1668
252-946-8537 fax

IN WITNESS WHEREOF, the City of Durham and Metropolitan Housing and CDC, Inc., have caused this CHDO Agreement to be duly executed all as of the day and year first above written.

CITY OF DURHAM

ATTEST:

D. Ann Gray, City Clerk

By: _____
Thomas J, Bonfield, City Manager

ACKNOWLEDGMENT BY CITY OF DURHAM

Name of other party to the contract: Metropolitan Housing and CDC

Title of the contract: Construction of Nine Single Family Units - Franklin Village

I, _____, a notary public, certify:
(Type or print name of Notary Public)

(1) _____ personally appeared
before me
(Type or print name of City Clerk or Deputy City Clerk who attested)

in Durham County, N. C. on this day; (2) I have personal knowledge of her identity; and (3) she acknowledged that by authority duly given and as the act of the City of Durham, the foregoing document was signed in its corporate name by its _____ City Manager, sealed with its corporate seal, and attested by its said City Clerk or Deputy City Clerk.

This the _____ day of _____, 20_____.

My commission expires:

Notary Public

Metropolitan Housing and CDC, Inc.

By: _____
Rev. David L. Moore
President and CEO

Corporate Secretary

(Affix Corporate Seal

STATE OF NORTH CAROLINA
COUNTY OF BEAUFORT

I, Notary Public of the County and State aforesaid certify that _____, personally appeared before me this day and stated her or she is the _____ Secretary of Metropolitan Housing and CDC, Inc., a non-profit corporation, and that by authority duly given and as the act of the corporation the foregoing contract or agreement with the City of Durham was signed in its name by the President and CEO, whose name is Rev. David L. Moore, sealed with its corporate seal, attested by him/herself as its said Secretary or Assistant Secretary. This the _____ day of _____, 2011.

Notary Public: _____

My Commission Expires: _____

Preaudit

ATTACHMENT A

Scope of Work

The HOME funds provided under this Agreement will be used to provide construction financing to MHCDC in an amount up to \$450,000.00 for the construction of nine homes on lots 12-20 Plum Street, located at the Franklin Village development in Durham, NC. Metropolitan Housing and Community Development Corporation, Inc. (MHCDC or Borrower) will provide \$600,000.00 toward the costs of developing, marketing and selling these nine homes to Eligible Buyers, with \$60,000.00 toward the costs of each individual home coming from a first position loan secured by the Borrower. The HOME funds provided by the City will be disbursed on a basis of 50% of the value of the work and materials in place per individual unit minus all previous loan disbursements for that individual unit.. When Borrower's construction loan is drawn down to zero on a per unit basis, the remaining disbursements will be made from the CHDO loan on the basis of 95% of the work completed minus the amount of all previous loan disbursements on an individual unit basis.

The attached architectural drawings labeled unit types A-E are hereby incorporated into this Agreement as if fully set forth herein as Attachment C. Initially, MHCDC will construct one Model A unit, one Model B unit, one Model C unit and one Model E unit, with the remaining five units to be constructed based on market preference. The approved drawings include construction features meeting the energy efficiency standards required by the Department of Housing and Urban Development. Building permits must be obtained and construction is to begin within sixty days of the execution of the Agreement and the initial four units must be completed within 150 days of the date of the issuance of the building permits. The completion date for each unit is defined as the date of the issuance of a Certificate of Occupancy for the individual unit. The construction of all nine units shall be completed within twenty-four months of the execution date of this Agreement. Once a unit constructed under this Agreement is sold and the real estate closing transferring the property to an eligible owner-occupant occurs, MHCDC will construct an additional unit or units with the proceeds of that sale until all nine units comprising the project funded by this Agreement are completed. If MHCDC obtains additional construction financing, the City, through authority of the City Manager, reserves the right to release additional funding on a per unit basis up to the nine specified units or to modify the schedule to adjust for presales of units or for market preference. At no time shall the amount of HOME funds extended from the City to Borrower exceed the amount of \$450,000.00.

Once the nine units are complete, the total loan provided will be an amount up to \$450,000.00. The cost to construct the homes is anticipated to exceed the projected sales price. Therefore, a portion of the CHDO HOME funds will be provided as a forgivable loan to the Borrower. At the time a home is sold to an eligible owner-occupant, a portion of the loan will be forgiven in the amount of the difference between the cost to construct that home and the home's sales price.

Included in the CHDO loan to the developer is an amount up to \$1,500.00 per unit for down payment assistance for eligible buyers. The \$1500.00 may be used for downpayment assistance and/or closing costs to eligible buyers earning 80% or below the Area Median Income. At no time will the downpayment assistance exceed \$1500.00 dollars per unit or be available for more than nine units.

Each unit will be sold to first-time homebuyers whose income is 80% or below the Area Median Income, as that may be revised time to time by HUD. MHCDC will hire a local real estate firm to market the units. MHCDC will be responsible for providing income verification on each potential homebuyer. Within 30 days of the execution date of this agreement, MHCDC will provide a marketing plan to the Department of Community Development.

All units shall remain affordable as defined by 24 CFR Part 92.252 for not less than fifteen years. Affordability shall be enforced through the restrictive covenants which is made part of this Agreement as Attachment B, and which MHDCDC shall impose upon each lot and home which is part of the project prior to deeding any property in the project to a third party. Leases or subleases of any kind are not allowed within the fifteen year affordability period.

The construction costs below are provided only as an example of the costs to construct the individual units and the amount of subsidy that will be provided on a per unit basis. All HOME funds must be spent according to the HOME program guidelines.

Estimated Cost on a Per Unit Basis				
Unit Type	A	B and C	D	E
Square Footage	1456	1376	1344	1200
Construction Costs	135,387	127,948	124,973	112,234
Land Purchase	7,500	7,500	7,500	7,500
Developer's Fee 8%	10,831	10,235	9,998	8,979
Architect's Fee	1,250	1,250	1,250	1,250
Engineer's Fee	1,000	1,000	1,000	1,000
Attorney's Fee	500	500	500	500
Impact Fees	3,500	3,500	3,500	3,500
Loan Origination Fee	1,350	1,270	1,250	1,120
Real Estate Fee	6,545	6,395	6,050	5,500
Interest on Construction Loan	4,722	4,400	4,350	3,918
Total Costs	172,585	163,998	160,371	145,501
Projected Sales Price	130,900	127,900	122,900	109,900
City Subsidy as Grant	41,685	36,098	37,471	35,601