

## HOME AGREEMENT

**THIS HOME AGREEMENT**, dated and entered into this the 26 day of January, 2021, is by and between the **LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT**, an urban county government of the Commonwealth of Kentucky pursuant to Chapter 67A of the Kentucky Revised Statutes, 200 East Main Street, Lexington, Fayette County, Kentucky 40507 ("**Government**") through its Division of Grants and Special Programs and **STONEWALL TERRACE, LLC ("Owner")**, 1390 Olivia Lane, Lexington, Fayette County, Kentucky 40511.

### WITNESSETH:

**WHEREAS**, Government, in accordance with the regulations codified at 24 CFR 92.102 – 92.106 for the HOME Investment Partnerships Program, has been designated a Participating Jurisdiction by the U.S. Department of Housing and Urban Development ("HUD") and is the recipient of federal funding from the HOME Investment Partnerships Program;

**WHEREAS**, Government's approved 2019 Annual Action Plans provide \$346,591.00 in funding from the HOME Investment Partnerships Program for the development of rental housing for low-income HOME-eligible persons and/or households in accordance with the HOME Investment Partnerships Program regulations as stated in 24 CFR Part 92.205-92.206;

**WHEREAS**, Owner has requested federal funds from the Government's HOME Program for the rehabilitation of rental housing for low-income persons and/or households;

**WHEREAS**, Government is willing to make a loan to the Owner upon the terms and conditions hereinafter set forth;

**WHEREAS**, Owner will rehabilitate a multi-family residential project located at 1812 Versailles Road, Lexington, Fayette County, Kentucky 40504 under the name of Stonewall Terrace Apartments;

**NOW, THEREFORE**, in consideration of the covenants set out herein, the parties agree as follows:

### SECTION 1

#### PARTICULAR COVENANTS

1.01 The Government hereby agrees to loan to Owner the maximum sum of Three Hundred Forty-six Thousand Five hundred ninety-one and 00/000 Dollars (\$346,591.00) (hereinafter "Loan"). This Loan shall be in the form of a Deferred Payment Loan for the term of twenty (20) years from the date of this Loan Agreement. The Deferred Payment Loan shall be at zero percent (0%) interest for the twenty (20) year period and shall be repayable in full at the end of the twenty (20) year period. Funds shall be used for the construction of 26 residential units of multi-family housing located at 1812 Versailles Road, Lexington, Fayette County, Kentucky 40504 ("Project"). The number of HOME funded units is three (3).

1.02 Owner acknowledges and agrees to remain fully and solely liable for the repayment of the Loan to the Government, pursuant to the terms and conditions of this Agreement and the Mortgage Note executed in connection herewith. The affordability period is twenty (20) years and begins on the day that the HUD's Integrated Disbursement and Information System (IDIS) accepts and records the Completion report required by HUD regulations. Repayment of funds does not affect the period of affordability.

1.03 During the term of this Loan, the Owner shall make no payments of principal provided Owner complies with all of the terms and conditions of this HOME Agreement, Declaration of Restrictive Covenants, Mortgage Note and Leasehold Mortgage dated 1/26, 2021.

1.04 All sums borrowed hereunder shall be used solely and exclusively for the Project that is further described as the construction of residential rental property located at 1812 Versailles Road, Lexington, Fayette County, Kentucky 40504, for rent to low-income persons and/or households or for other eligible costs as set forth in 24 CFR 92.206. Owner acknowledges that *three (3) units in the Project shall be administered as HOME-assisted units*, and that the per-unit subsidy shall not exceed the maximum per-unit subsidy amount established under Section 234 Condominium Housing Limits for elevator-type projects that apply to the area in which the units are located. The three (3) HOME-assisted units shall be floating. At a minimum, the following types of units will be HOME assisted:

Unit Type	# of Units	High HOME	Low HOME
0 BR	0	0	0
1 BR	26	0	3
2 BR	0	0	0
3 BR	0	0	0
4 BR	0	0	0
	<b>26</b>	<b>0</b>	<b>3</b>

1.05 No loan shall be made hereunder unless and until Owner supplies to Government the following documentation:

- Plans and Specifications for the Project
- Copy of Development Agreement and Development Team
- Final Sources and Uses of Funds
- Commitment letters with all terms and conditions for all mortgages, grants, subordination agreements, bridge loans and investment tax credits
- Copy of the Partnership Agreement
- Closing Statement for Purchase of Property
- Construction Cost Estimate
- Construction Contract
- Documentation on syndication costs
- Twenty-Year Operating Proforma for the Project
- Documentation that no excess federal funds are in the project

1.06 Upon request, Owner shall provide supporting documentation for all other costs as specified in the Sources and Uses of Funds statement. Government consents to the following loans to

the Owner in connection with the Project: a first Mortgage loan in favor of Hope of Kentucky, LLC, a Kentucky limited liability company ("First Mortgage Lender"), in the amount of \$1,125,000.00, a second Mortgage loan in favor of Lexington-Fayette Urban County Government through its Office of Affordable Housing in the amount of \$250,000.00 ("Second Mortgage Lender"), and a third Mortgage loan in favor of Kentucky Housing Corporation in the amount of \$300,000.00 (hereinafter collectively the "Permitted Encumbrances"). This Loan shall be in all respects subordinate to the Permitted Encumbrances.

1.07 No loan shall be made hereunder unless and until Owner has delivered to Government a note in the amount of \$346,591.00 and a mortgage securing said note, all within one year of the date of this HOME Agreement for the purpose of securing the Loan made hereunder, which mortgage shall be upon the real property located at 1812 Versailles Road, Lexington, in Fayette County, Kentucky, together with all buildings and other structures now or hereafter erected or installed and all fixtures now or hereafter attached to or used in, or in the operation of any such lands, buildings and structures which are necessary to complete use and occupancy of such buildings or structures for the purposes for which they were or are to be erected or installed. To the extent permitted by law, all personal property described in the subordinate Mortgage shall be deemed to be fixtures and part of the property. As to any part of personal property not permitted by law to be fixtures, the mortgage shall constitute a security agreement under the Uniform Commercial Code.

1.08 For a period of twenty (20) years from the date on which development of the Project is completed, established as the date the HUD's Integrated Disbursement and Information System (IDIS) accepts and records the Completion report, one hundred percent (100%) of the HOME-assisted (three units) shall be rented to low-income and very low-income households. None of the HOME-assisted units are required to be rented to very low-income households. Low-income households are those households with adjusted gross incomes at or below sixty percent (60%) of the median income for the community. Very low-income households are those households with adjusted gross incomes at or below fifty percent (50%) of the median income for the community. During this same twenty (20) year period, for projects of five or more HOME-assisted units, twenty percent (20%) of the HOME-assisted units shall be rented to very low-income households except as otherwise set out herein in Section 1.11. Owner shall use the Section 8 Program definition of annual gross income (24 CFR 5.609).

1.09 For a period of twenty (20) years from the date on which development of the Project is completed, established as the date the HUD's Integrated Disbursement and Information System (IDIS) accepts and records the Completion report, Owner shall charge the low HOME and high HOME rents in HOME-assisted units as established from time to time by HUD pursuant to any regulations promulgated by HUD or the Government. The rents so charged must include utility costs. The maximum allowable HOME rent must be reduced by a utility allowance approved by Government if tenant is required to pay separately for utilities. The Utility Allowance must be approved by the Government prior to Lease-Up. Utility allowances approved by Government may vary as periodic adjustments are made. Should HUD revise these or other rent guidelines set out herein so as to permit Owner to adjust the rent charged, Owner must obtain the approval of the Government prior to adjusting rents and provide tenants with no less than thirty (30) days' written notice before adjustments are implemented.

1.10 The family size and the adjusted gross income for all tenants in HOME-assisted units must be determined at the time of initial occupancy and annually for a period of twenty (20) years from the date on which development of the Project is completed. Project is deemed to be completed on the date the HUD's Integrated Disbursement and Information System (IDIS) accepts and records the Completion report. Owner shall obtain and verify income and family size information from each tenant upon initial rent up and annually during the twenty (20) year affordability period. Owner shall provide information on family size, adjusted gross income and rent charged for all tenants in HOME-assisted units to the Government's Division of Grants and Special Programs within sixty (60) days after the initial rent up and the annual review date. Owner shall obtain any necessary releases from tenant to allow Government to independently verify the information provided.

1.11 For a period of twenty (20) years from the date on which development of the Project is completed, established as the date the HUD's Integrated Disbursement and Information System (IDIS) accepts and records the Completion report, Owner shall comply with the affirmative marketing requirements established by the Government pursuant to 24 CFR 92.351(a). The Owner must adopt and follow written tenant selection policies and criteria that: (1) limit the housing to very low-income and low-income families; and (2) are reasonably related to the applicants' ability to perform the obligations of the lease (i.e., to pay the rent, not to damage the housing; not to interfere with the rights and quiet enjoyment of other tenants). Additionally, the Owner may give preference to Veterans in all units. The Owner shall provide all information to the Government necessary to the monitoring of the Owner's marketing strategy to ensure compliance with this section.

1.12 a. The Owner shall, on an annual basis, during a period of twenty (20) years from the date on which development is completed, review the income, family size and exclusions of all tenants in HOME-assisted units and determine if any are over-income. Development is deemed to be completed on the date the HUD's Integrated Disbursement and Information System (IDIS) accepts and records the Completion report. An over-income tenant is a household with an adjusted gross income exceeding eighty percent (80%) of the median income for the community. Owner shall not evict over-income tenants based on income. Owner shall increase the rent of the HOME-assisted unit to thirty percent (30%) of the household's adjusted gross income. HOME-assisted units vacated by an over-income tenant must be rented to an income-eligible tenant during the twenty (20) year period, except 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. HOME-assisted units vacated by an over-income tenant must be rented to an income-eligible tenant for the duration of these covenants.

b. Should the adjusted gross income of a very low-income tenant renting a unit at the low HOME rate increase to greater than fifty percent (50%) of the median for the community but less than eighty percent (80%) of the median for the community during the term of the tenancy and during the twenty (20) year period from the date on which development of the Project is completed, the Owner shall set the rent for such tenant at the high HOME rate for the duration of the tenancy. The Project is deemed to be completed on the date the initial tenant surveys are verified. Owner shall not evict such a tenant on the basis of the increase of the adjusted gross income. The next vacancy shall be rented to a very low-income tenant whose income is at or below fifty percent (50%) of the area median income at a rent no higher than the established low HOME rent.

1.13 During the twenty (20) year period of affordability, the Owner shall permit the Government, its employees, and its consultants access to all of its financial records so that Government can make a determination of the continued financial viability of the Project.

1.14 No loan shall be made hereunder unless and until all necessary parties execute deed restrictions or other covenants to limit the use of the property in conformance with the terms of the eligibility and affordability provisions of the HOME Investment Partnerships Program of the H.U.D. Such instrument shall be fully and properly executed by the Owner, shall be in recordable form, and shall become a covenant which runs with the land. Such restrictions or covenants shall be made a part of any instrument, executed subsequent to this Loan Agreement and the Mortgage Note and Mortgage referenced herein, conveying any interest in said property.

1.15 The Owner shall construct all units in the Project in accordance with the Kentucky Building Code, as amended, and all applicable State and local codes, ordinances, and zoning requirements. The housing must meet the accessibility requirements of 24 CFR part 8, which implements Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), and Titles II and III of the Americans with Disabilities Act (42 U.S.C. 12131-12189) implemented at 28 CFR parts 35 and 36, as applicable. Covered multifamily dwellings, as defined at 24 CFR 100.201, must also meet the design and construction requirements at 24 CFR 100.205, which implements the Fair Housing Act (42 U.S.C. 3601-3619). Construction contract(s) and construction documents must describe the work to be undertaken in adequate detail so that inspections can be conducted. The Owner shall be responsible for construction inspections and shall provide copies of all inspections to the Government. The Government shall also inspect for work in progress and shall make a final inspection.

1.16 The Owner shall maintain all units within a building containing a unit receiving a HOME subsidy in good condition and repair in accordance with Chapter 12.1 of the Code of Ordinances of the Lexington-Fayette Urban County Government, as amended, for the full twenty (20) year term of this Loan. Owner shall not remove or demolish any portion of any unit. Owner shall complete or restore promptly and in good workmanlike manner any unit which may be constructed, damaged or destroyed to the extent insurance proceeds are actually received and to pay when due all claims for labor performed and materials furnished. Owner shall not create, permit or suffer to be created or to exist any claims or liens for the labor or materials supplied for the development of the units set out herein. Owner will comply with all laws affecting said project and will not commit or permit any waste thereon or commit or permit any act thereon in violation of law.

Government may conduct inspections of units annually for purposes of determining Owner's compliance with maintenance requirements during the twenty (20) year period of affordability. Upon written notification of violations of maintenance requirements, Owner shall make corrections within 60 days.

1.17 Except for such interests in the real property as may be conveyed, assigned or otherwise transferred by Owner in connection with the Permitted Encumbrances, the Owner shall not transfer any interest in the real property described herein in any manner or through any document or instrument of any kind during the term of the Loan without the consent of the Government. Notwithstanding anything to the contrary herein, any transfers of partnership or ownership interests in the Owner are expressly permitted and shall not constitute a default hereunder.

1.18 The Loan set out herein may be assumed by an individual or entity capable and able to enter into enforceable contracts, agreements or other loan documents as may be required to ensure compliance with the requirements and intent of the HOME Program upon the prior written consent of the Government's Division of Grants and Special Programs, which consent shall not be unreasonably withheld or delayed.

1.19 Any lease entered into between Owner and a tenant shall require the tenant to provide information as to family size and income as set out herein. Non-renewable leases shall not be utilized. The lease shall be in conformance with the Uniform Residential Landlord and Tenant Act to the extent the Uniform Residential Landlord and Tenant Act is applicable to Owner and the requirements of 24 CFR 92.253. Leases for the HOME-assisted units shall be submitted to the Government for approval prior to execution. The requirements set forth in this paragraph shall be in effect for a period of twenty (20) years from the date on which development of the project is completed.

1.20 The real property and improvements described herein shall be residential rental units and related administrative offices and common areas for the full twenty (20) year term of the loan. Owner shall not convert the units to condominium ownership or any form of cooperative ownership during the twenty (20) year term of the Loan, without the prior written consent of the Government.

1.21 The Owner shall provide, maintain and deliver to the Government evidence of all risk, fire and extended coverage insurance satisfactory to the Government in the order and amount of the Mortgage Note hereby secured, and each policy must include a loss payable clause in favor of the Government as a beneficiary and without right of cancellation or change except upon thirty (30) days' written notice to the Government; the Owner shall assign to the Government any award of damages, or portion thereof, in connection with any condemnation for public use or injury to this property in the same manner and with the same effect as provided for payment of proceeds of fire and other insurance, said award or damages not to exceed the amount secured by the Mortgage Note and to the extent not assigned to the holder of any prior or superior mortgage on this property.

1.22 The Owner shall pay all taxes, legal assessments, water rates, utilities, special assessments or other charges when the same shall become due and without delinquency, and shall not permit any liens to be imposed on this property by any reason of delinquency.

1.23 The Owner shall not seek relief under the bankruptcy laws or declare insolvency, make assignments for the benefit of its creditors or be placed in receivership.

1.24 The Owner shall act in conformity with the requirements of the Fair Housing Act (42 U.S.C. 3601-20) and implementing regulations at 24 CFR Part 100 et seq.; Equal Opportunity in Housing (Executive Order 11063, as amended by Executive Order 12259 [3 CFR, 1959-1963 Comp., p 652 and 3 CFR, 1980 Comp., p 307] and implementing regulations at 24 CFR part 107); and Title VI of the Civil Rights Act of 1964 as amended (42 U.S.C. 2000d et seq.) regarding Nondiscrimination in Federally Assisted Programs and implementing regulations issued at 24 CFR part 1. The Owner shall not discriminate against prospective tenants on the basis of race, color, national origin, religion, sex, familial status or disability. The Owner shall also comply with the provisions of the Violence Against Women Act ("VAWA"), as amended in March 2013.

1.25 The Owner shall act in conformity with the Age Discrimination Act of 1975, (42 U.S.C. 6101-6107) and implementing regulations at 24 CFR Part 146.

1.26 The Owner shall act in conformity with the Americans with Disabilities Act (42 U.S.C. 12131; 47 U.S.C. 205, 201, 218, and 225) which provides comprehensive civil rights to individuals with disabilities in the areas of employment, public accommodations, state and local government services and telecommunications; the Fair Housing Act (42 U.S.C. 3601-19) as implemented by 24 CFR 100.205; and Section 504 of the Rehabilitation Act of 1973 prohibiting discrimination in federally assisted programs on the basis of handicap (29 U.S.C. 791 et. seq) and implementing regulations at 24 CFR part 8.

1.27 The Owner shall comply with the requirements of Executive Order 11625, as amended by Executive Order 12007 (3 CFR, 1971-1975 Comp., p. 616 and 3 CFR, 1977 Comp., p. 139) concerning the use of Minority Business Enterprises; Executive Order 12432 (3 CFR, 1983 Comp., p. 198) regarding Minority Enterprise Development; and, Executive Order 12138, as amended by Executive Order 12608 (3 CFR, 1977 Comp., p. 393 and 3 CFR, 1987 Comp., p. 245) regarding Women's Business Enterprises. The Owner shall require its contractors and subcontractors to provide disadvantaged business enterprises with opportunities to participate in the project to ensure equal opportunity for socially and economically disadvantaged small businesses.

1.28 Owner and Government acknowledge that all laborers and mechanics, etc., employed in the construction of any project containing twelve (12) or more dwelling units and assisted with HOME funds, whether employed by Owner, contractors, or subcontractors, shall be paid wages complying with the Davis-Bacon Act (40 U.S.C. Section 276(A)-7). The Owner further agrees to comply with the applicable provisions of the Contract Work Hours and Safety Standards Act (40 U.S.C. Section 327-333), and the applicable provisions of the Fair Labor Standards Act of 1938, as amended (29 U.S.C. et seq.). Owner agrees that it will be responsible for compliance with these regulations and shall provide Government with evidence of compliance upon request.

#### 1.29 Regulations Pursuant to So-Called "Anti-Kickback Act"

The Owner and/or his Contractor shall comply with the applicable regulations of the Secretary of Labor, United States Department of Labor, made pursuant to the so-called "Anti-Kickback Act" of June 13, 1934, (48 Stat. 948; 62 Stat. 862; title 18 U.S.C. section 874; and title 40 U.S.C. section 276c), and any amendments or modifications thereof, shall cause appropriate provisions to be inserted in subcontractor's contract to insure compliance therewith by all subcontractors thereunder, except as said Secretary of Labor may specifically provide for reasonable limitations, variations, tolerances, and exemptions from the requirements thereof.

1.30 The Owner shall require all of its contractors and subcontractors to certify that neither they nor their principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in federally funded activities.

1.31 The Owner shall comply with the "Lead Based Paint Poisoning Prevention Act of 1971" and H.U.D. Regulations 24 CFR 35 and Section 8 Conforming Rule at 24 CFR 982.401(j). All interior and exterior paints, enamels, finishes, and/or primers used on any surfaces of housing and its environs

shall not contain more than .06 of 1 percent of lead by weight (calculated as lead metal) in the total non-volatile content of liquid paints.

1.32 To assure and protect its rights under this Loan, the Government shall have right of access and inspection of the Project at reasonable times and with reasonable notice to the Owner.

1.33 The Owner shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, age, national origin or handicap. The Owner shall state in all solicitations and advertisements for employees placed by or on behalf of Owner that all qualified applicants will receive equal consideration for employment without regard to race, color, religion, sex, age, national origin, or handicap.

1.34 The Owner shall act in conformity with the "Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970" (42 U.S.C. 4201-4655) and 49 CFR part 24 pertaining to the acquisition of real property and relocation assistance for displaced persons. The Owner shall provide all information to the Government necessary to the monitoring of the Owner's marketing strategy to ensure compliance with this section, as if said policy were fully set out herein in writing.

1.35 The Owner shall comply with the conflict of interest provisions in 24 CFR 84.42 regarding written standards governing the performance of its officers, employees, and agents engaged in awarding and administering contracts.

1.36 In accordance with section 2-33 of the Code of Ordinances of the Lexington-Fayette Urban County Government, the Owner shall ensure that projects being assisted with HOME funds pursuant to this agreement shall be made available without regard to actual or perceived sexual orientation, gender identity or marital status of any applicant or prospective tenant. Neither Owner nor any of its agents will inquire about the sexual orientation or gender identity of any applicant or prospective tenant.

1.37 The Owner shall comply with the Violence Against Women Act (VAWA) requirements set forth in 24 CFR §5.2005, specifically protections for victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking, including but not limited to, providing notification of occupancy rights, constructing lease terms of assistance for victims, and providing emergency transfer plans.

1.38 Source and Uses of Funds:

HOME funds provided to the Owner hereunder shall be used only for eligible project costs in accordance with the HOME regulations at 24 CFR 92.206. The specific Sources and Uses of Funds must be delivered to and approved by the Government prior to the delivering of a mortgage and note.

1.39 Changes in the Project work requested by the Owner, for any reason whatsoever must be submitted in writing, properly itemized and supported by sufficient substantiating data to be evaluated and certified by the Division of Grants and Special Programs. The Government will issue a written authorization for such changes and no such modification shall be made without a written agreement signed by the Owner and the Government.



#### 1.40 Time of Completion

The Owner agrees to complete the development covered by this Agreement on or before January 01, 2023, unless the time for completion is extended in writing by the Government. All HOME-assisted units shall be occupied by eligible tenants within six months of completion of development. The Owner shall submit a marketing plan to the Government if it fails to lease units within six months of completion of development. If HOME-assisted units are not occupied by eligible tenants within eighteen months of completion of development, Owners shall repay HOME funds in the amount of \$346,591.00, less pro-rated amount for occupied units.

Time is of the essence, and it is agreed that if all development work is not completed in the time specified for completion and stated herein that it may result in the Government withdrawing funds which have been made available under this Agreement.

#### 1.41 Progress Payments

The Government shall disburse loan proceeds from time to time as the work progresses, as requested by the Owner, but not more frequently than once a month. At no time will the total number of payments exceed twelve (12). At the Government's request, lien releases shall be submitted with each request for progress payments.

No progress payment shall exceed ninety percent (90%) of the value of work in place, as estimated by an inspection by the Government less the aggregate of previous payments. The remaining ten percent (10%) shall be held by the Government as retainage. At such time as the Government deems appropriate, based on quality of work performed and other pertinent factors, the rate of retainage may be reduced; although, any reduction in retainage, below the ten percent (10%) level, is made solely at the Government's discretion. All remaining retainage held will be included in the final payment to the Owner.

#### 1.42 Acceptance and Final Payment

Upon receipt of notice that the development is ready for final inspection and acceptance, the Government shall promptly make such inspection within five (5) days of receipt of such notice; and when it finds the development acceptable under this Agreement and the Agreement fully performed, shall authorize the payment to the Owner and/or his Contractor the final progress payment which shall be the entire balance then due to Owner and/or his Contractor. Before the Owner and/or his Contractor shall be paid in full, however, he shall submit evidence satisfactory to the Government that all payrolls, materials, bills, and other indebtedness connected with the work have been paid and the Owner and/or his Contractor shall provide satisfactory releases of liens or claims for liens by any Contractors, Subcontractors, Laborers and material suppliers.

Prior to final payment, the Owner will provide a satisfactory summary of all project expenses to document that the additional funds expended by the Owner for development equaled or exceeded the amount so specified in the approved Sources and Uses of Funds. Should the Owner's actual and final share of total project expenses be less than the amount specified in the approved Sources and Uses of Funds, then the Owner will repay to the Government, or have HOME funds withheld in an

amount sufficient to reduce the Government's HOME Deferred Loan amount to a sum no greater than the amount needed for HOME gap financing.

Prior to final payment, the Owner shall provide: a post construction appraisal; copies of all Lexington-Fayette Urban County Government Division of Building Inspection reports, including Certificate of Occupancy, Final Sources and Uses of Funds; leases; HOME Annual Certification Report; completed tenant-funded utilities form(s); and, the final report of contractors/subcontractors employed on the project, with Federal Employer Identification Numbers/Social Security numbers, complete mailing addresses, type of trade/skill, total contract dollar amount, and indication of Disadvantaged Business Enterprise status, specifically women-owned and/or race/ethnicity categories (Alaskan Native/American Indian, Asian or Pacific Islander, Black Non-Hispanic, Hispanic, or White/Non-Hispanic). Owner shall also provide written report on all efforts made by its contractor and subcontractors to comply with Housing and Urban Development Act of 1968 (12 U.S.C. 1701u) Section 3 Clause.

#### 1.43 Reporting

The Owner agrees to provide any reports and information as required by the Participating Jurisdiction. The Owner shall be responsible for providing the following data: the number of affordable units developed, size of units (number of bedrooms), years of affordability, the number of units meeting Energy Star standards, the number of units made fully accessible under Section 504 accessibility standards, and the number of units occupied by elderly households (either the head or co-head is age 62 or older). The Owner shall also provide an annual report on the number of persons that applied for tenancy but were not served to include race, ethnicity, and single-headed households, both male and female. In addition, an annual report shall also provide the following information about the employees of the Owner's organization: race, ethnicity, national origin, age, gender, and disability. The annual report shall be submitted to the Participating Jurisdiction no later than thirty days after the end of the Participating Jurisdiction's fiscal year. Annual reports shall be submitted throughout the twenty (20) year period of affordability.

## SECTION 2

### MISCELLANEOUS

#### 2.01 Interest of Certain Federal and Other Officials

No member of or delegate to the Congress of the United States and no resident commissioner shall be admitted to any share or part of this Agreement or to any benefits to arise from same, provided that the foregoing provision of this Section shall not be construed to extend to this Agreement if made with a corporation for its general benefit.

No officer, employee or member of the governing body of the Government who exercises any functions or responsibilities in connection with the carrying out of the project to which this Agreement pertains shall have any private interest, direct or indirect, in this Agreement.

2.02 The Owner shall act in conformity with the federal prohibition regarding the employment of, awarding contracts to, or otherwise engaging the services of any contractor, owner, or subcontractor during any period of debarment, suspension or placement of ineligibility status.

2.03 Executive Order 11246

The Owner shall comply with the provisions of Executive Order 11246, as amended by Executive Orders 11375, 11478, 12086, and 12107 (3 CFR, 1964-1965 Comp., p. 339; 3 CFR, 1966-1970 Comp., p. 684; 3 CFR, 1966-1970 Comp., p. 803; 3 CFR, 1978 Comp., p. 230; and 3 CFR, 1978 Comp., p. 264, respectively) concerning Equal Employment Opportunity Programs and implementing regulations at 41 CFR Chapter 60.

2.04 The Owner shall comply with the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u) Section 3 Clause and implementing regulations at 24 CFR part 135.

The Owner and/or his Contractor agrees to abide by the Section 3 Clause set forth above and will also cause this section to be inserted in any subcontracts entered into with third parties for work covered by this Agreement.

2.05 The Owner agrees to comply with the Historic Preservation requirements set forth in the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470) and the procedures set forth in 36 CFR, Part 800, insofar as they apply to the performance of the contract.

2.06 The Owner agrees to defend, indemnify, and hold Government harmless from any and all losses or claims of whatever kind, that are in any way incidental to, or connected with, or that arise or allege to have arisen, directly or indirectly, in whole or in part, from the execution, performance, or breach of this Agreement by Owner, including any environmental problems, including, without limitation, soil and/or water contamination, and remedial investigations and feasibility studies thereof, which exist at or prior to the Agreement commencement date, regardless of when such losses or claims are made or incurred. This Indemnity Provision shall in no way be limited by any financial responsibility, or loss control requirements below, and shall survive the termination of this Agreement;

For the purposes of this Indemnity Provision:

1. The word “defend” includes, but is not limited to, investigating, handling, responding to, resisting, providing a defense for, and defending claims, at Owner’s expense, using attorneys approved in writing by Government, which approval shall not be unreasonably withheld.
2. The word “claims” includes, but is not limited to, claims, demands, liens, suits, notices of violation from Governmental agencies, and other causes of action of whatever kind.
3. The word “losses” includes, but is not limited to: attorney fees and expenses; costs of litigation; court or administrative costs; judgments; fines; penalties; interest; all environmental cleanups and remediation costs of whatever kind; and any liability arising from death, injury, or damage of any kind, to any person, including employees and agents of Owner and Government, and damage to, or destruction of, any property, including the property of Government.

## 2.07 Access to Records

The Secretary and the Inspector General of HUD, the Comptroller General of the United States of America, and the Mayor of the Government, or any of their duly authorized representatives, shall have access to all books, accounts, reports, files, and other papers or property of the Owner and the Owner pertaining to this Loan and related development for the purpose of making surveys, audits, examinations, excerpts, and transcripts.

## **SECTION 3**

### **DEFAULT**

3.01 If within one year from the date of completion of the development of the Project, Owner breaches any of the provisions of Sections 1 and 2 of this Agreement, such shall be considered a default and the full amount of the disbursed amount of the Deferred Payment Loan, plus fifteen percent (15%) of that full amount, shall be immediately due and payable; provided, before the Government may accelerate any amount due under the Deferred Payment Loan or take advantage of any other remedies, Owner shall have a thirty (30) day grace period from receipt of written notice of the fault to cure such default.

3.02 If during the second through the end of the twentieth year of the Deferred Payment Loan, the Owner breaches any of the provisions of Sections 1 and 2 of this Agreement, such shall be considered a default and the full disbursed amount of the Deferred Payment Loan shall be immediately due and payable; provided, before the Government may accelerate any amount due under the Deferred Payment Loan or take advantage of any other remedies, Owner shall have a thirty (30) day grace period from receipt of written notice of the default to cure such default.

3.03 Any forbearance by the Government with respect to any of the terms and conditions of this Loan in no way constitutes a waiver of any of the Government's rights or privileges granted hereunder.

3.04 In the event of default by the Owner, the Government may take such measures as may be lawful to it for the recovery of indebtedness and including, but not limited to, foreclosure and sale of the Owner's rights in the Project and/or the assignment and collection of the rents and profits of the Project.

3.05 Owner acknowledge that any default on a superior lien or any initiation of a foreclosure based on any lien shall be a default under this Loan Agreement and that the amount immediately due and payable as a result of such a default shall be governed by Section 3.01 and Section 3.02 of this Agreement.

3.06 If an event of default occurs under the terms of any documents executed in connection with this HOME Agreement or any other document executed in connection herewith (collectively, the "Loan Documents"), prior to exercising any right or remedy thereunder, Government shall give Owner written notice of such default. If the default is reasonably capable of being cured within thirty (30) days, Owner shall have 30 days (or such longer period of time as may be specified in the Loan Documents) to effect a cure prior to the exercise by Government of any rights or remedies under the Loan Documents. If the default is such that it is not reasonably capable of being cured within thirty

(30) days or such longer period if so specified, and if Owner (a) initiates corrective action within said period, and (b) diligently, continually, and in good faith works to effect a cure as soon as possible, then Borrower shall have such additional time as is reasonably necessary to cure the default prior to the exercise of any rights or remedies by Lender.

**SECTION 4**

**MISCELLANEOUS**

4.01 Notwithstanding anything to the contrary contained herein, the covenants and agreements contained in Sections 1 through 3 shall survive the closing.

4.02 Invalidation of any one of these provisions by judgment or Court order shall not affect any other provisions which shall remain in effect.

This instrument, with documents described herein, constitutes the entire agreement between the parties.

**IN WITNESS WHEREOF**, the parties have executed this Contract at Lexington, Kentucky, the day and year first above written.

**LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT**

By: *Linda Gorton*  
Linda Gorton, Mayor

Date: 1/26/2020

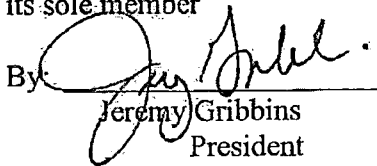
ATTEST:

*Mackenzie Sommer*  
Deputy COUNCIL CLERK

STONEWALL TERRACE, LLC,  
a Kentucky limited liability company

By: Stonewall Terrace MM, LLC,  
a Kentucky limited liability company,  
its managing member

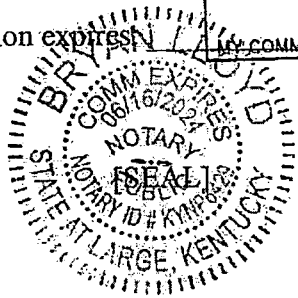
By: AVOL Kentucky, Inc.,  
a Kentucky nonprofit corporation,  
its sole member

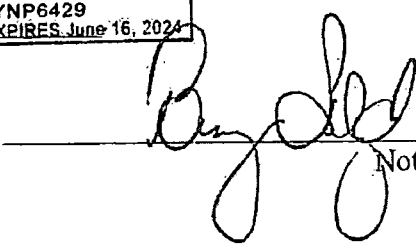
By:   
Jeremy Gribbins  
President

COMMONWEALTH OF KENTUCKY    )  
  ) SS:  
COUNTY OF FAYETTE            )

The foregoing instrument was acknowledged before me this January 15<sup>th</sup>, 2021, by Jeremy Gribbins as President of AVOL Kentucky, Inc., a Kentucky nonprofit corporation, the sole member of Stonewall Terrace MM, LLC, a Kentucky limited liability company, the managing member of Stonewall Terrace, LLC, a Kentucky limited liability company, for and on behalf of the limited liability company.

My commission expires \_\_\_\_\_  
Bryan Lloyd  
NOTARY PUBLIC  
STATE AT LARGE  
KENTUCKY  
ID. # KYNP6429  
MY COMMISSION EXPIRES June 16, 2024



  
\_\_\_\_\_  
Notary Public

## LEASEHOLD MORTGAGE

**THIS SUBORDINATE MORTGAGE** is made this 26 day of January, 2021, by and between **STONEWALL TERRACE, LLC**, a Kentucky limited liability company, whose address is 1390 Olivia Lane, Lexington, KY 40511 (herein "Mortgagor", whether singular or plural), and **AVOL KENTUCKY, INC.**, a Kentucky nonprofit corporation, whose address is 365 Waller Avenue, Lexington, KY 405044 (herein "Owner") and the **LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT**, an urban county government of the Commonwealth of Kentucky pursuant to Chapter 67A of the Kentucky Revised Statutes, 200 East Main Street, Lexington, Fayette County, Kentucky 40507 ("Lender") through its Division of Grants and Special Programs.

### WITNESSETH:

**WHEREAS**, Mortgagor is the holder of a leasehold interest (the "Leasehold Estate") in that certain real estate located in Fayette County, Kentucky (more particularly described in Exhibit A attached hereto and incorporated herein by reference) (the "Property") by virtue of that certain Lease Agreement dated as of January 25, 2021 by and between Owner and Mortgagor (the "Ground Lease") which Ground Lease is further evidenced by that certain Memorandum of Lease dated as of January 25, 2021, of record in Deed Book \_\_\_\_\_, Page \_\_\_\_\_ in the Office of the Clerk of Fayette County, Kentucky; and

**WHEREAS**, the Lender, through its Division of Grants and Special Programs, has provided Mortgagor a loan for the construction of an apartment complex on the property described herein as part of its HOME Program conducted pursuant to the HOME Investment Partnerships Program of the United States Department of Housing and Urban Development and, the Mortgagor is thereby justly indebted to the Lender for borrowed money in the principal sum of **Three Hundred Forty Six Thousand, Five Hundred and Ninety-One Dollars and 00/100 Dollars (\$346,591.00)** ("Loan"), to secure the payment of which Mortgagor has executed a promissory note ("Note") of even date herewith, bearing interest at the rate of zero percent (0%) per annum, wherein the entire indebtedness evidenced by said Note, which if not sooner paid, is due and payable on January \_\_\_\_\_, 2041.

**WHEREAS** Mortgagor and Owner have determined that it is to Mortgagor's and Owner's direct and indirect economic benefit that LFUCG make the Deferred Mortgage Loan to Mortgagor, and therefore have agreed to execute and deliver this Mortgage in order to secure repayment of the Loan.

**NOW, THEREFORE**, in consideration of the promises and to secure to the Lender the payment of the indebtedness evidenced by the Note or so much thereof as may be advanced by the Lender, according to the terms of the Note, with interest thereon, the payment of all other sums, with interest thereon, advanced in accordance herewith to protect the security of this Mortgage, and the faithful performance of all covenants, stipulations, and agreements set out herein and in the HOME Loan Agreement of January 26, 2021 ("Agreement"), and the Note, Mortgagor does hereby mortgage, grant, assign and convey to Lender, forever, its leasehold rights, title and interest in the following described real property, situated and located in Fayette County, Kentucky, to wit:

See Legal Description in Exhibit A attached hereto and incorporated by reference (hereinafter "Premises")

together with all rents, issues and profits therefrom (provided, however, that the Mortgagor shall be entitled to collect and retain the said rents, issues and profits until default hereunder), and all fixtures now or hereafter attached to or used in connection with the premises herein described (hereinafter "Mortgaged Property");

**TO HAVE AND TO HOLD** the Premises with the privileges and appurtenances thereunto belonging, and all rents, revenues, issues and profits therefrom, unto Lender, its successors and assigns, forever, for the uses and purposes herein expressed. Mortgagor covenants that Mortgagor is well seized of the Premises and each portion thereof, and has full right and power to grant, bargain, sell, convey, mortgage and warrant the Mortgagor's interest in the same in the manner and form written. Mortgagor represents and warrants to Lender that the granting of this Mortgage has been and is duly authorized. Mortgagor covenants that the Premises are free from all liens and

encumbrances whatsoever, excepting; (i) the lien of general taxes not yet due and payable, easements and restrictions of record, and restrictions and zoning laws affecting the Premises, if any; (ii) Permitted Encumbrances (meaning those encumbrances defined in the HOME Agreement executed by the Mortgagor and Lender on January 26 2021); and (iii) any leases as may now or hereafter affect any portion of the Premises. Mortgagor warrants and will defend the Premises, with the privileges and appurtenances thereunto belonging, to Lender, its successors and assigns forever, against all claims and demands whatsoever adverse to the interest of Lender, at Mortgagor's sole expense.

**THIS MORTGAGE** is given to secure: (a) payment of the Loan, same being evidenced by the Note of even date herewith and any modifications, extensions or renewals thereof, executed and delivered by Mortgagor to Lender, and payment of interest thereon at the rate(s) and in the manner provided therein; the entire principal amount advanced and all interest thereon, if not sooner paid, being due and payable by Mortgagor on January 26, 2041, as more particularly described in the Note; and (b) payment by Mortgagor of its obligations to Lender of all sums expended or advanced by Lender pursuant to any provisions and performance of each and every of Lender's and Mortgagor's respective covenants, conditions and agreements contained in this Mortgage, the Note, the HOME Agreement and any other instrument or agreement evidencing, securing or otherwise pertaining to the Loan (hereafter collectively, the "Loan Documents"). (Hereafter all references to the "Loan" where appropriate shall include all advances made and expenses incurred by Lender pursuant to this Mortgage for the protection of the Premises and all other security for the Loan.)

**AND MORTGAGOR HEREBY COVENANTS AND AGREES THAT:**

Mortgagor agrees to pay the principal of and interest on the Loan evidenced by the Note and secured hereby, to be paid at the times and in the manner provided in the Note.

Mortgagor will pay or will have paid all taxes, assessments, liens, judgments and other similar charges now or hereafter levied upon the Premises before the same become delinquent, and will promptly deliver to Lender, if requested, receipts of the proper officers therefor; Mortgagor's failure to pay or to have paid any such charges shall at Lender's election constitute an Event of Default hereunder. Or, at Lender's sole option in the event of delinquency, Lender may pay such delinquent taxes, assessments, and charges, including any penalties or interest thereon (of which payment, amount and validity thereof, the receipt of the proper officer shall be conclusive evidence) and any amount so paid by Lender shall become immediately due and payable by Mortgagor, shall be secured by this Mortgage and shall bear interest from date of advance until paid at an annual rate equal to twelve percent (12%).

Mortgagor hereby assigns to Lender all leases and rents, revenues, issues and profits of the Premises (whether or not payable under a lease) as further security for the payment of all amounts by Mortgagor and performance of all Mortgagor's obligations under the Loan Documents, and grants Lender the right to enter on the Premises for the purpose of collecting same, and to promote, manage and/or operate the Premises or any part thereof in such manner as Lender may elect, and to apply the revenues received therefrom, after payment of all necessary charges and expenses, to the obligations secured by this Mortgage, upon the occurrence and continuance of an Event of Default (as such term is defined in the Loan Documents). While this is a present assignment, Lender will not exercise its rights hereunder unless and until an Event of Default occurs and is continuing. Mortgagor shall, and hereby agrees that it will, indemnify Lender, its officers, agents and employees for and hold each of them harmless from any and all claims and demands whatsoever which may be asserted against Lender, its officers, agents or employees by reason of any actual or alleged undertakings or obligations on Lender's part to perform or discharge any terms, covenants or agreements relative to use or occupancy of the Premises or any part thereof or for waste committed or permitted on the Premises, or by reason of any actual or allegedly dangerous or defective condition or conditions of the Premises resulting in loss or injury to any lessee or to any other person, including Lender's reasonable costs and attorney's fees incurred by reason of any of the foregoing. Provided, that said obligation to indemnify Lender shall not apply to any loss, injury or damage caused by the gross negligence or willful misconduct of Lender, its officers, agents or employees.

Mortgagor, at its own expense, will maintain insurance coverage with admitted insurers authorized to do business in the Commonwealth of Kentucky against claims for bodily injury,



personal injury, death or property damage occurring on, in or about the Premises or as a result of ownership of the improvements located on the Premises in amounts not less than as set forth in the HOME Agreement. Mortgagor further covenants to keep the improvements now existing or hereafter erected on or in the Premises insured against loss or damage by, or abatement of rental income, resulting from fire and "all risk" perils. Mortgagor covenants to maintain flood insurance as required by the Flood Disaster Protection Act of 1973, as amended and any additional flood insurance required by Lender. All perils insured, with the exception of flood, shall be in an amount not less than the full replacement value of the property. Mortgagor agrees to promptly pay or have paid when due all premiums on such insurance and further agrees, if requested by Lender, to furnish a certificate from the company carrying such insurance acknowledging that such insurance is adequate in an amount to prevent the operation of any coinsurance provision contained therein. All such insurance shall be carried by companies approved by Lender in its reasonable discretion and, the policies and renewals thereof shall be deposited with and held by Lender. All policies of insurance required to be maintained by Mortgagor pursuant to this paragraph shall be reasonably satisfactory to the Lender, shall name as the insured parties Mortgagor and Lender, with a loss payable clause in favor of the Lender as a beneficiary and shall: (a) provide for the benefit of such holder or holders, that thirty (30) days' prior written notice of suspension, cancellation, termination, modification, non-renewal or lapse or material change of coverage shall be given to all insured parties and that such insurance shall be given to all insured parties and that such insurance shall not be invalidated by any act or neglect of Mortgagor or Lender or any owner of the Premises, including Ground Lessor, nor by any foreclosure or other proceedings or notices thereof relating to the Premises or any interest therein, nor by occupation of the Premises for purposes more hazardous than are permitted by such policy; and (b) not contain a provision relieving the insurer thereunder of liability for any loss by reason of the existence of other policies of insurance covering the Premises against the peril involved, whether collectible or not.

Copies of all such policies shall be delivered to Lender. In the event of Mortgagor's failure to comply with any of the requirements of this paragraph, same shall at Lender's option constitute an Event of Default hereunder. Or, Lender may, in its discretion, upon a default in payment of the premium for any such policy by the Mortgagor and the expiration of any cure period for such default, obtain any insurance required hereunder and pay the premiums due therefor, and any amounts so paid by Lender shall become immediately due and payable by Mortgagor with interest thereon at the rate of twelve percent (12 %), and same shall be secured by this Mortgage.

In the event of any loss or damage to the Premises or any portion thereof, Mortgagor will give immediate notice thereof to Lender, and Lender may thereupon make proof of claim relative to such loss or damage, if same is not promptly made by Mortgagor. Mortgagor hereby authorizes Lender (should Lender so elect) to settle, adjust, or compromise any claims for loss, damage, or destruction under any such policy or policies of insurance and collect the proceeds thereof, and to this end hereby grants Lender the Mortgagor's power of attorney for such purposes (which power of attorney is a power coupled with an interest, same being irrevocable for the term of this Mortgage); provided, that Lender will exercise its rights under this sentence only if an Event of Default as defined herein and in any of the Loan Documents occurs and is continuing. All such proceeds of fire and extended coverage insurance, to the full extent of the Loan, are hereby assigned to Lender and shall be payable to Lender if Lender should so elect, and Mortgagor hereby authorizes and directs any affected insurance company to make payment thereof directly to Lender. All such insurance proceeds or any portion thereof shall be applied in whole or in part to restoration, repair, replacement, or rebuilding of the Premises. The delivery to Lender of any such policies or certificates of insurance, or renewals thereof, shall constitute an assignment to Lender of all unearned premiums thereon as further security for the payment of the Loan. In the event of foreclosure of this Mortgage or other transfer of title to the Premises in extinguishment of the Loan, all right, title and interest of Mortgagor in and to any insurance policies then in force shall pass to Lender.

Mortgagor will have maintained or will maintain the Premises in good condition and repair and will not commit or allow any waste or destruction, reasonable wear and tear excepted. Mortgagor will comply with, or cause to be complied with, any applicable statutes, ordinances, regulations, or requirement of any governmental authority relative to the Premises and the use and maintenance thereof, and will promptly repair, restore, replace, or rebuild any part of the Premises now or hereafter subject to the lien of this Mortgage which may be damaged or destroyed by any casualty or as the result of any proceeding referred to herein. No buildings, structures, or improvements hereafter erected on the Premises shall be removed, demolished, or substantially or

structurally altered in any respect by Mortgagor, on Mortgagor's behalf, or by any tenant or by any other party without the prior written consent of Lender by its duly authorized officer, Lender, and any person authorized by Lender, may enter upon and inspect the Premises at all reasonable times.

Except for the Permitted Encumbrances as defined in the Loan Documents, Mortgagor will not create, suffer or allow any charge, lien or encumbrance (whether superior or inferior to the lien of this Mortgage) upon the Premises or any part thereof, without the prior written consent of Lender by its duly authorized officer, which consent shall not be unreasonably withheld, conditioned or delayed. Mortgagor will pay or will have paid promptly when due any charges for utilities or services including but not limited to electricity, gas and water; should Mortgagor or any tenant fail to pay such charges, Lender may pay the same, and any amount so paid by Lender shall become immediately due and payable by Mortgagor with interest at the rate of twelve percent (12 %) hereof until paid, and same shall be secured by this Mortgage.

If all or any part of the Premises are damaged, taken, or acquired, either temporarily or permanently, in any condemnation proceeding, or by exercise of the right of eminent domain, or by the alteration of the grade of any street affecting the Premises, the amount of any award or other payment for such taking or damages made in consideration thereof, to the extent of the full amount of the Loan then remaining unpaid, is hereby assigned by Mortgagor to Lender, who may collect and receive the same and give proper receipts therefor in the name of Mortgagor, and the same shall be paid forthwith to Lender. To such end, Mortgagor hereby grants to Lender the Mortgagor's power of attorney (which power of attorney is a power coupled with an interest and shall be irrevocable for the term of this Mortgage). Any award or payment so received by Lender during the occurrence and continuation of any Event of Default may, at the sole option of Lender, be retained and applied, in whole or in part, to the Loan (whether or not then due and payable), in such manner as Lender may determine and/or released, in whole or in part, to Mortgagor for the purpose of altering, restoring, or rebuilding any part of the Premises which may have been affected by such taking, alteration, or proceeding. Provided that absent the occurrence and continuation of an Event of Default, Lender will release said sums to Mortgagor, to be applied to restoration of the Premises. Lender shall not be obligated to see to the application of any amounts so released to Mortgagor. In the event of a material and adverse effect upon the value of the Premises by reason of any such damage, taking or acquisition, and should the proceeds or award payable therefor not satisfy in full the Loan, same shall constitute an Event of Default.

If Lender shall incur or expend any sums, including reasonable attorneys' fees, to sustain the lien of this Mortgage or its priority, or to protect or enforce any of Lenders rights hereunder or under any other Loan Document, to protect the Premises as collateral for the Loan, or to recover any portion of the Loan, all such sums shall become immediately due and payable by Mortgagor with interest thereon at the rate of twelve percent (12%) until paid. All such sums shall be secured by this Mortgage and shall be a lien on the Premises prior to any right, title, interest, or claim, in, to or upon the Premises attaching or accruing subsequent to the lien of this Mortgage.

Mortgagor will not hereafter lease the Premises, except leases executed in Mortgagor's ordinary course of business, nor will Mortgagor assign, alter, terminate or otherwise materially modify the terms of any lease affecting the Premises to which Mortgagor is a party, except residential leases, nor further encumber or assign (in whole or in part) the rents, revenues, income, or profits arising from the Premises or any portion thereof (except in connection with the Permitted Encumbrances) without the prior written consent of Lender by its duly authorized officer, or in any other manner impair the value of the Premises or the security of this Mortgage for the payment of the Loan.

Mortgagor will observe and perform all covenants, conditions, and agreements imposed on it by any lease or leases now or hereafter affecting the Premises, or any portion thereof. If Mortgagor shall default in its performance of any of the terms, covenants, conditions, or obligations imposed upon it by any such lease or leases, which default would give the other party or parties thereto the right to terminate or cancel said lease or leases and if same may have a material adverse effect on the value of the Premises as security or the Loan if such default is not cured within thirty (30) days of written notice to Mortgagor, then such default is considered an Event of Default at the sole option of Lender and the entire Loan shall become immediately payable and collectible by foreclosure or otherwise, without notice or demand. Provided, that in the event of any such default by Mortgagor (whether as lessor, lessee, sub lessee or otherwise), after the expiration of all applicable cure periods, Lender shall have the right but not the obligation

to cure any such default of Mortgagor, in such manner and to the extent Lender may deem advisable to protect its interest in the Premises. In the event that Lender should so elect, then any and all sums so expended by Lender relative to effecting any such cure shall become immediately due and owing Lender by Mortgagor, shall be secured hereby and shall bear interest at the rate of twelve percent (12%) until paid.

With respect to the Premises and the operation and promotion thereof, Mortgagor will keep or will cause to be kept proper books of record and account in accordance with generally accepted accounting principles consistently applied. Lender shall have the right to examine said books of record and account at such reasonable times and intervals as Lender may elect.

In the event that Lender (a) grants any extension of time or forbearance for payment of any portion of the Loan; (b) takes, or realizes, other additional security for the payment thereof, (c) waives or does not exercise any right granted herein, under the Note or under any other Loan Document; (d) grants any release, with or without consideration, of all or any part of the security held for the payment of the Loan; (e) amends or modifies in any respect with the consent of Mortgagor any of the terms and provisions hereof or of the Note; then and in any such event, such act or failure to act shall not release Mortgagor or (if applicable) any of its principals or any co-maker, sureties, or guarantors of this Mortgage or of the Note, under any covenant of this Mortgage, the Note or other Loan Documents, nor preclude Lender from exercising any right or privilege herein or therein granted or intended to be granted in the event of any other existing or subsequent default and without in any manner impairing or affecting the lien or priority of this Mortgage. Further, no delay or omission on the part of Lender in exercising any right or remedy hereunder or under any other Loan Documents shall operate as a waiver of such right or remedy or any other right or remedy. A waiver by Lender on any one occasion shall not be a bar to or waiver of any right or remedy on any further occasion. The rights and remedies provided herein and in the other Loan Documents are cumulative, and Lender may resort to any other right or remedy or any combination thereof available under the other Loan Documents or at law or in equity without first exhausting and without affecting or impairing the security of or any right or remedy afforded by this Mortgage. No waiver shall be effective as to Lender unless same shall be in writing by its duly authorized officer; any such waiver shall be construed strictly according to its terms.

Mortgagor will not hereafter make or permit, without the prior written consent of Lender by its duly authorized officer (a) any sale of the Premises, or the execution of any contract for deed relative to the Premises, or any assumption of the Loan, any condominium conversion or any use of the Premises or any part thereof for any purpose other than that presently contemplated by the parties hereto; (b) after completion of the renovations contemplated by the Plans and Specifications referenced in the HOME Agreement, any material alteration, removal or demolition of any buildings, improvements, fixtures, apparatus, machinery, and equipment now or hereafter located or erected upon the Premises except in the ordinary course of business; (c) any purchase or conditional sale, lease or agreement under which title is reserved in the vendor of any fixtures, apparatus, machinery, equipment or personal property in or upon any of the buildings or improvements comprising a part of the Premises; (d) except in connection with the Permitted Encumbrances, any assignment of the revenues, rents, income or profits from the Premises; (e) except for the Permitted Encumbrances, any mortgage, lien or encumbrance upon the Premises, or any part thereof (whether prior or inferior to the lien of this Mortgage) affecting or adverse to the lien hereof, general and special taxes duly levied and assessed and not yet due and payable and any lease now or hereafter affecting any portion of the Premises; (f) a default under any document or agreement executed in connection with the Permitted Encumbrances. Any of the foregoing without Lender's prior written consent, which consent shall not be unreasonably withheld, conditioned or delayed, shall be and constitute an Event of Default by Mortgagor on this Mortgage and on the Loan. Further, it is expressly understood that a default on either of the Senior Mortgages or any initiation of a foreclosure based on any lien shall be an Event of Default under this Mortgage and the principal amount of this Loan shall immediately become due and payable and Lender shall be entitled to recover the cost of collection, including reasonable attorney fees. Notwithstanding anything to the contrary contained herein or in the loan documents, the following shall be permitted without consent of Lender and shall not constitute an event of default or result in any fee: (i) the transfer of member interests in Mortgagor, or interests in Tax Credit Investor, pursuant to the terms of Mortgagor's Amended and Restated Operating Agreement ("Operating Agreement"); (ii) the removal and replacement of the managing member of the Mortgagor in accordance with the terms

of the Operating Agreement, and/or (iii) an amendment of the Operating Agreement memorializing the transfers or removal described above.

Upon the occurrence and continuance of an Event of Default, then, and in such event, at Lender's sole option, without further notice or demand, the same being hereby expressly waived by Mortgagor as evidenced by Mortgagor's execution of this Mortgage, the Loan shall become due, payable and collectible. Upon the occurrence and continuance of an Event of Default, in addition to any other right of remedy which Lender may now or hereafter have at law or in equity, and not by way of limitation, Lender shall have the right and power to exercise any or all or any combination of the following remedies: (a) to declare the Loan due and payable (and same shall thereupon be due and payable and to foreclose upon this Mortgage and the lien hereof; (b) to sell the Premises according to law as an entirety or in separate parcels; (c) to apply without notice (same being hereby expressly waived by Mortgagor) for the appointment of a receiver to collect the revenues and profits of the Premises and to preserve the security hereof as a matter of right, either before or after any foreclosure sale, without regard to the value of the Premises or any other property as security for the amount due Lender, or the solvency of any entity liable for the payment of such amounts; (d) to enter upon and take possession of the Premises without application to any court, with the irrevocable consent of Mortgagor as evidenced by Mortgagor's execution of this Mortgage, and collect the revenues, issues and profits thereof, and, without the appointment of any receiver or application being made therefor, to manage, promote and/or operate the Premises, either in Lender's name or Mortgagor's name, by whatever means Lender may elect, and receive all the revenues, issues and profits therefrom, and apply the same, after payment of all necessary charges and expenses deemed by Lender to be necessary, to payment of the Loan. All the foregoing rights and powers are effective and may be enforced by Lender either in conjunction with or without any action to foreclose this Mortgage, and without applying at any time for a receiver for the Premises. The foregoing rights and remedies are independent of and in addition to any statutory right to appointment of a receiver. Written notices required by the foregoing paragraph shall be sent by certified mail to the addresses provided herein. Any sale under this Mortgage shall operate to divest all right, title and interest of Mortgagor in and to the Premises and rights so sold; and shall be a perpetual bar both in law and equity against the Mortgagor and shall be in bar of any equity or right of redemption, the same being expressly waived by Mortgagor.

Notwithstanding Lender's right to invoke any remedies under the Loan Documents, the Lender agrees as follows:

1. Lender shall, upon serving Mortgagor with any notice of default pursuant to Lender's Loan Documents, simultaneously serve a copy of such notice upon the Senior Lenders who hold who hold the Permitted Encumbrances defined in the HOME Agreement. Such notice shall outline in detail the default(s) under the Lender's Loan Documents. The Senior Lenders shall thereupon have 60 days after service of such notice upon it to remedy or cause to be remedied the defaults complained of, and at the instigation of the Senior Lender as if the same had been done by Mortgagor.
2. Lender will not proceed to enforce any of its rights and remedies under the Lender's Loan Documents, including without limitation the right to accelerate the indebtedness under the Mortgage Note or initiate foreclosure proceedings to enforce the lien of this Mortgage until it has given Senior Lenders at least 60 days prior written notice as set forth above.
3. PNC Bank, National Association, its successors and assigns, in its capacity as investor member in Mortgagor ("Tax Credit Investor") shall have the right, but not the obligation, to cure any default by Mortgagor under the loan documents, and Lender agrees to accept any such cure tendered by Tax Credit Investor within any applicable grace period or cure period available to Mortgagor.

All Notices required by this Mortgage to be sent to the Mortgagor and/or the Lender shall be sent to the following addresses:

**For the Mortgagor:**

With a copy to: PNC Bank, National Association, c/o PNC Real Estate, 121 S.W. Morrison Street, Suite 1300, Portland, Oregon 97204, Attention: Asset Manager.

**For the Lender:**

Attn: Charlie Lanter

LFUCG, Division of Grants & Special Programs

200 E. Main Street, 6<sup>th</sup> Floor

Lexington, Ky. 40507

Mortgagor represents and warrants that no hazardous substances are present on the Premises, except in compliance with all applicable state and federal laws and regulations relating thereto (collectively, "Environmental Laws"). Furthermore, Mortgagor represents, warrants and agrees that Mortgagor will not use, generate, treat, store, dispose of or otherwise introduce any such hazardous substances into or on the Premises except in compliance with all applicable Environmental Laws. Mortgagor represents, warrants and agrees that there is no current and will be no future unlawful physical (including environmental, natural, artificial, structural or chemical) hazard or potential hazard (including, without limitation, the presence, accumulation or storage of any toxin, toxic waste, toxic affluent or discharge) or condition in or on or affecting the Premises or affecting the health of any person in or on the Premises, except in compliance with all applicable Environmental Laws. The Mortgagor shall pay immediately when due the cost of removal of any such wastes or substances, and shall keep the Premises free of any lien imposed pursuant to laws, rules, regulations and orders pertaining to hazardous wastes or substances and the removal thereof; in the event Mortgagor fails to do so, it shall be deemed an Event of Default. The Mortgagor shall indemnify Lender and hold Lender harmless from and against all loss, cost, damage and expense (including, without limitation, attorneys' fees and cost incurred in the investigation, defense and/or settlement of claims) that Lender may incur as a result of or in connection with the assertion against Lender of any claim relating to the presence or removal of any hazardous waste or substance referred to in this paragraph, or compliance with any federal, state or local laws, rules, regulations or orders relating thereto. The obligations of Mortgagor under this paragraph to indemnify Lender and hold Lender harmless shall survive payment of the Loan and Note and shall survive release of this Mortgage and shall extend to the representatives, successors and assigns of Lender.

Whenever used in this Mortgage, unless the context shall otherwise clearly require, the term "Mortgagor" shall include the heirs, representatives, successors and assigns, as the case may be, of Mortgagor and all persons claiming by, through, or under Mortgagor; the term "Mortgagor" shall include the successors and assigns, as the case may be, of Mortgagor and all persons claiming by, through, or under Mortgagor; the term "Lender" shall include the legal representatives, successors and assigns of Lender; the term "person" shall include any individual, partnership, corporation, trustee, or unincorporated association. The singular shall include the plural and the plural, the singular; the gender used shall include the other genders. The invalidity or unenforceability of any one (1) or more phrases, sentences, clauses or paragraphs of this Mortgage shall not affect the validity or enforceability of the remaining portions of this Mortgage or of any part hereof. If this Mortgage is invalid or unenforceable as to any part of the Loan, or if this Mortgage is invalid or unenforceable as to any part of the Premises, the unsecured or partially unsecured portion of the Loan shall be completely paid prior to the payment of the remaining secured or partially secured portion of the Loan; and all payments made on the Loan, whether voluntary or under foreclosure or other enforcement action or procedure, shall be considered to have been first paid on and applied to the full payment of that portion of the Loan which is not secured or fully secured by this Mortgage.

All the terms, covenants, conditions and agreements herein set forth shall be binding upon and inure to the benefit of the respective heirs, executors, administrators, attorneys, representatives, successors and assigns, as the case may be, of the parties hereto.

In the event any existing lender discontinues the collection of funds to pay annual premiums for insurance and taxes and immediately upon the delivery of a written request, but subject to the terms of the Permitted Encumbrances, Mortgagor will pay or will have paid to Lender for the term of this Mortgage, on the same dates as payments of principal and/or interest are required to be made by Mortgagor, an amount equal to one-twelfth (1/12) of the annual

premiums for insurance as may be required by Lender relative to the Premises, and one-twelfth (1/12) of the annual taxes and assessments assessed against the Premises. Lender shall hold all such sums so received for, and shall apply same to, payment of such taxes, assessments and insurance. Mortgagor shall receive no interest on any such sums received and held by Lender for the benefit of Mortgagor.

In the event of any inconsistency, in the terms and provisions of this Mortgage or any other Loan Document as to the rights and remedies of Lender, or in the event of any such inconsistency as between or among any two (2) or more Loan Documents, then in any such event Lender shall have the right at its sole option to elect which of such provisions shall govern.

This Mortgage may be executed by the parties in any number of counterparts, each of which shall be an original, but such counterparts together shall constitute one and the same instrument.

This Mortgage is taken, in part, to secure a loan made for the purpose of erecting, improving or adding to a building.

Notwithstanding any provision in any of the Loan Documents to the contrary, Lender acknowledges and agrees that (a) the Premises is or will be subject to a Declaration of Restrictive Covenants ("Declaration"); (b) the recordation of the Declaration against the Premises is permitted under the terms of the Loan Documents; and (c) this Mortgage, and the terms and provision thereof, shall be subordinate to the Declaration, regardless of the order of recording of either document. "Declaration of Restrictive Covenants" means the extended low-income housing commitment, regulatory agreement or restrictive covenants executed or to be executed by Mortgagor setting forth certain terms and conditions under which the Premises is to be operated and which shall meet the requirements of Section 42(h)(6)(B) of the Internal Revenue Code of 1986, as amended, and the requirements of the HOME Investment Partnerships Program at 24 CFR Part 92.252.

The Lender consents to any agreement or arrangement in which a Senior Lender waives, postpones, extends, reduces or modifies any provisions of the Senior Mortgage including any provisions requiring the payment of money.

Notwithstanding the foregoing, the Mortgagor shall have no personal liability under this Mortgage, the Note, or any other Loan Document for the payment of the indebtedness evidenced by the Note and the performance of any other obligations of the Mortgagor under the Loan Documents (collectively, the "Indebtedness") and the Lender's only recourse for the satisfaction of the Indebtedness and the performance of such obligations shall be the Lender's exercise of its rights and remedies under the Loan Documents with respect to the Mortgaged Property.

Invalidation of any one of the provisions of this Mortgage by judgment or Court order shall not affect any other provisions, which shall remain in effect.

**PROVIDED, HOWEVER,** that if Mortgagor shall pay the Note according to the terms thereof and the interest thereon, in the manner and at the times mentioned in the Note or otherwise in connection with the Loan, and shall pay Lender any and all sums due from Mortgagor to Lender under this Mortgage, and shall fully keep and perform all of the terms, covenants, conditions, stipulations, and agreements set out in any Loan Document or herein contained, then this Mortgage shall cease and be void, and the Lender shall, at Mortgagor's cost and request, release the same.

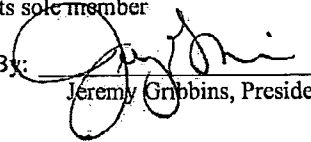
**IN TESTIMONY WHEREOF,** witness the signature of Mortgagor.

MORTGAGOR:

STONEWALL TERRACE, LLC,  
a Kentucky limited liability company

By: Stonewall Terrace MM, LLC,  
a Kentucky limited liability company,  
its managing member

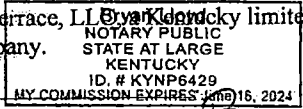
By: AVOL Kentucky, Inc.,  
a Kentucky nonprofit corporation,  
its sole member

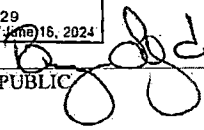
By:   
Jeremy Gribbins, President

COMMONWEALTH OF KENTUCKY )  
 )SS.  
COUNTY OF FAYETTE )

The foregoing instrument was acknowledged before me this January 21<sup>st</sup>, 2021, by  
Jeremy Gribbins as President of AVOL Kentucky, Inc., a Kentucky nonprofit corporation, the  
sole member of Stonewall Terrace MM, LLC, a Kentucky limited liability company, the  
managing member of Stonewall Terrace, LLC, a Kentucky limited liability company, for and on  
behalf of the limited liability company.

My commission expires:

  
NOTARY PUBLIC  
STATE AT LARGE  
KENTUCKY  
ID. # KYNP6429  
MY COMMISSION EXPIRES: Jan 16, 2024

  
NOTARY PUBLIC







**OWNER:**

By: **AVOL KENTUCKY, INC.,**  
a Kentucky nonprofit corporation,  
its sole member

By: \_\_\_\_\_

Jeremy Gribbins  
President

COMMONWEALTH OF KENTUCKY )  
)SS.  
COUNTY OF FAYETTE )

The foregoing instrument was acknowledged before me this January \_\_\_\_, 2021, by  
Jeremy Gribbins as President of AVOL Kentucky, Inc., a Kentucky nonprofit corporation, for  
and on behalf of the limited liability company.

My commission expires: \_\_\_\_\_.

\_\_\_\_\_  
NOTARY PUBLIC

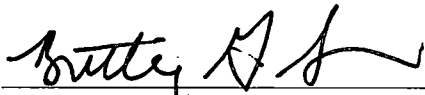
**LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT**

By: Linda Gorton  
Linda Gorton, Mayor

**ATTEST:**

Mackenzie Sommer  
Deputy Clerk, Urban County Council

**PREPARED BY:**



Brittany Griffin Smith

Attorney

Lexington-Fayette Urban County Government

Department of Law

200 East Main Street

Lexington, Kentucky 40507

(859) 258-3561

EXHIBIT A  
LEGAL DESCRIPTION

Situated on the southerly side of the Versailles Turnpike, near the city limits of Lexington, beginning at a point in the center of said Versailles Turnpike, at the northeasterly corner of the Blackwell on the said Turnpike, thence with the line of Blackwell S 53-30 E 597 ½ feet; thence N 82-16 E 93 ¼ feet; thence S 2-12 E 526 ½ feet to the line S.P. Mason; thence with Mason's line N 81-52 W 222 ¼ feet to the corner of Joseph Arnold; thence with the line of Arnold N 1-39 W 1065 feet to the center of the Versailles Turnpike; thence with the line of said Turnpike N 81-40 E to the point of beginning; containing four acres, more or less, less whatever has been taken by the Department of Highways of the Commonwealth of Kentucky in the widening of the Versailles Road; said premises being known and designated as 1812 Versailles Road, Lexington, Kentucky.

Parcel No. 26590475

## MORTGAGE NOTE

**\$346,591.00**

**Lexington, KY**

**FOR VALUE RECEIVED**, the undersigned, **STONEWALL TERRACE, LLC**, whose mailing address is 1390 Olivia Lane, Lexington, Fayette County, Kentucky 40511 ("Borrower"), does hereby promise and agree to pay to the order of the **LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT**, an urban county government of the Commonwealth of Kentucky pursuant to Chapter 67A of the Kentucky Revised Statutes, 200 East Main Street, Lexington, Fayette County, Kentucky 40507, its successors or assigns ("Government"), through its Division of Grants and Special Programs, the principal sum of **Three Hundred Forty-Six Thousand, Five-Hundred and Ninety-One Dollars and 00/100 Dollars (\$346,591.00)** in lawful money of the United States, with interest at the rate of zero percent (0%) per annum, from January 26, 2021, until January 26, 2041, the date upon which the unpaid principal balance and all accrued but unpaid interest shall be due and payable.

### LOAN CONDITIONS:

1. This Note evidences a Loan by the Government to the Borrower for the exclusive purpose of constructing residential rental property containing 26 dwelling unit(s) located at 1812 Versailles Road, Lexington, KY 40504, under the name of Stonewall Terrace Apartments ("Project") in the manner set out in the HOME Loan Agreement of \_\_\_\_\_, January 2021, by and between Borrower and the Government ("Agreement") and the monies so provided shall be used solely for such purpose.
2. No principal or interest payments will be required during the term of the indebtedness as long as the Borrower complies with all terms and conditions of this Note, the Mortgage of even date herewith, and the Loan Agreement (collectively, the "Loan Documents") between the Borrower and the Government. The Mortgage and the Loan Agreement are incorporated herein by reference and made a part hereof.
3. This Note is a draw note for construction purposes and disbursements of principal hereunder shall be made to Borrower upon its delivery of invoices, or other evidence satisfactory to the Government, related to construction costs of the Project and supporting the amount requested.
4. If within one year from the date of completion of the construction of the Project, said date established as the date of the final progress payment to Borrower, Borrower breaches any of the provisions of this Note or the Loan Agreement or the Mortgage, such shall be considered an event of default and the full disbursed amount of the Loan, plus fifteen per cent (15%) of that full amount, shall be immediately due and payable; provided, before the Government may accelerate any amount due under the Loan or take advantage of any other remedies, Borrower shall have a thirty (30) day grace period from receipt of written notice of default to cure such default.
5. If during the second through twentieth year of the Loan the Borrower breaches any of the provisions of this Note or the Agreement or the Mortgage, such shall be considered an event of default and the fully disbursed amount of the Loan, plus twelve per cent (12%) of that amount, shall be immediately due and payable; provided, before the Government may accelerate any amount due under the Loan or take advantage of any other remedies, Borrower shall have a thirty (30) day grace period from receipt of written notice of default to cure such default.
6. Any default on a superior lien encumbering the Project or any initiation of a foreclosure based on any lien encumbering the Project shall be an event of default under this Note and the Loan Agreement and the Mortgage and the full disbursed amount of the Loan, plus twelve per cent (12%) of that full amount, shall be immediately due and payable.
7. The Loan evidenced by this Note may be assumed by an individual or entity capable and able to enter into enforceable contracts, agreements or other loan documents as may be required to ensure compliance with the requirements and intent of the HOME Program upon the prior written consent of the Government, which consent shall not be unreasonably withheld or delayed.
8. This Note shall be the joint and several obligation of all makers, co-makers, endorsers, sureties and guarantors and shall be binding upon them and their successors, heirs or assigns and each waives demand, presentment and protest and notice of dishonor, and agree in case of any default to pay all costs of collection, including reasonable attorney fees and legal expenses.

9. Except as otherwise provided in this Paragraph, Borrower shall have no personal liability under this Note or any of the other the Loan Documents for the repayment of the amount due and owing hereunder (the "Indebtedness") or for the performance of any other obligations of Borrower under the Loan Documents, and the Government's only recourse for the satisfaction of the Indebtedness and the performance of such obligations shall be the Government's exercise of its rights and remedies with respect to the Mortgaged Property (as such term is defined in the Mortgage of even date herewith) and any other collateral held by the Government as security for the Indebtedness. This limitation on Borrower's liability shall not limit or impair the Government's enforcement of its rights against any guarantor of the Indebtedness or any guarantor of any obligations of Borrower.

Borrower shall be personally liable to the Government for the repayment of a portion of the Indebtedness equal to any loss or damage suffered by the Government as a result of:

(1) failure of Borrower to pay to Lender upon demand after default under any of the Loan Documents, which, with the passage of time or the giving of notice or both shall constitute a default (an "Event of Default"), all rents to which the Government is entitled under the Mortgage and the amount of all security deposits collected by Borrower from tenants then in residence;

(2) failure of Borrower to apply all insurance proceeds and condemnation proceeds as required by the Mortgage;

(3) fraud or written material misrepresentation by Borrower, the Borrower's Key Principal, or any officer, director, partner, member or employee of Borrower in connection with the application for or creation of the Indebtedness or any request for any action or consent by the Government;

(4) failure to apply rents, first, to the payment of reasonable operating expenses (other than property management fees that are not currently payable pursuant to the terms of any agreement with the Government executed in connection with the Loan) and then to debt service amounts, except that Borrower will not be personally liable (i) to the extent that Borrower lacks the legal right to direct the disbursement of such sums because of a bankruptcy, receivership or similar judicial proceeding, or (ii) with respect to rents that are distributed in any calendar year if Borrower has paid all operating expenses and debt service amounts for that calendar year.

Borrower shall become personally liable to the Government for the repayment of all of the Indebtedness upon the occurrence of any of the following Events of Default:

(1) Borrower's acquisition of any property or operation of any business not permitted by the Mortgage;

(2) a transfer that is an Event of Default under the Mortgage;

(3) the occurrence of a Bankruptcy Event (but only if the Bankruptcy Event occurs with the consent, encouragement or active participation of Borrower, Key Principal or any Borrower Affiliate). As used herein, "Bankruptcy Event" shall mean (a) a voluntary insolvency or bankruptcy proceeding or (b) an involuntary insolvency or bankruptcy proceeding which is (i) commenced by the Borrower, the Borrower's Key Principal or any person or entity controlling or under common control with such parties (the "Borrowing Group") or (ii) in which any member of the Borrowing Group objects to a motion by the Government for relief from any stay or injunction from the foreclosure of the Mortgage or any other remedial action permitted under the Note, the Mortgage or any of the other Loan Documents.

To the extent that Borrower has personal liability under Paragraph 9, the Government may exercise its rights against Borrower personally without regard to whether the Government has exercised any rights against the Mortgaged Property or any other security, or pursued any rights against any guarantor, or pursued any other rights available to the Government under this Note, the Mortgage, any other Loan Document or applicable law. For purposes of this Paragraph, the

term "Mortgaged Property" shall not include any funds that (1) have been applied by Borrower as required or permitted by the Mortgage prior to the occurrence of an Event of Default, or (2) Borrower was unable to apply as required or permitted by the Mortgage because of a bankruptcy, receivership, or similar judicial proceeding.

10. The indebtedness evidenced by this Note is secured by a Mortgage of even date herewith in favor of the Government on real property, which will be recorded in the Office of the Fayette County Clerk, and reference is made to said instrument for rights as to acceleration of the indebtedness evidenced by this Note.

11. Invalidation of any one of these provisions by judgment or Court order shall not affect any other provisions of this Note, which provisions shall remain in effect.

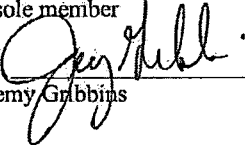
**IN WITNESS WHEREOF**, the parties have executed this Note on the day and year first above written.

**BORROWER:**

**STONEWALL TERRACE, LLC,**  
a Kentucky limited liability company

By: Stonewall Terrace MM, LLC,  
a Kentucky limited liability company,  
its managing member

By: AVOL Kentucky, Inc.,  
a Kentucky nonprofit corporation,  
its sole member

By:   
Jeremy Grbbins

DUE DATE: January 26, 2041

PROPERTY ADDRESS: 1812 Versailles Road, Lexington, Fayette County, Kentucky 40504

## DECLARATION OF RESTRICTIVE COVENANTS

This **DECLARATION OF COVENANTS AND RESTRICTIONS** ("Declaration") is made this January 26, 2021, by **STONEWALL TERRACE, LLC**, a Kentucky limited liability company, whose address is 1390 Olivia Lane, Lexington, KY 40511 ("Borrower") and **AVOL KENTUCKY, INC.**, a Kentucky nonprofit corporation, whose address is 365 Waller Avenue, Lexington, KY 405044 ("Owner"). Owner is the holder of a fee simple interest, and Borrower is the holder of a leasehold interest, in that certain real estate located in Fayette County, Kentucky, more particularly described in Exhibit A attached hereto and incorporated herein by reference (the "Property"), by virtue of that certain Lease Agreement dated as of January 25, 2021 by and between Owner and Borrower (the "Ground Lease") which Ground Lease is further evidenced by that certain Memorandum of Lease dated as of January 25, 2021, of record in Deed Book     , Page      in the Office of the Clerk of Fayette County, Kentucky. Borrower is to construct on the Property a twenty six (26) unit rental housing development known or to be known as Stonewall Terrace Apartments ("Project"). To facilitate the construction of the Project, Borrower has been awarded funds in the amount of \$346,591.00 from the **LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT**, an urban county government of the Commonwealth of Kentucky pursuant to Chapter 67A of the Kentucky Revised Statutes, 200 East Main Street, Lexington, Fayette County, Kentucky, 40507 ("Government"), through the Government's Division of Grants and Special Programs' HOME Program.

### WITNESSETH:

**WHEREAS**, the Owner is the owner of certain real property known and designated as 1812 Versailles Road, Lexington (Fayette County) Kentucky 40504 and more particularly described in Exhibit A which is attached hereto and incorporated herein by reference ("Site"); and

**WHEREAS**, the Government, through its HOME Program, works to increase the supply of affordable, standard residential rental units to low and very low income households by providing loans to property owners; and

**WHEREAS**, said Government, through its HOME Program, has loaned funds in the amount of \$346,591.00 to Borrower for the construction of a 26-unit apartment complex for low-income households;

**WHEREAS**, Borrower and Owner have agreed that three (3) units are HOME-assisted and that only these three (3) units are subject to the herein described affordability restrictions;

**WHEREAS**, said Government program is being conducted pursuant to the HOME Investment Partnerships Program of the United States Department of Housing and Urban Development ("HUD") which requires, as a condition of receipt of funds thereunder, that Restrictive Covenants, running with the land in conformance with the eligibility and affordability provisions of the program, be declared and filed of record as to each property developed with program funds; and

**WHEREAS**, the Borrower has borrowed the sum of \$346,591.00 pursuant to the Government's HOME Program and HUD's HOME Investment Partnerships Program for the construction of 26 affordable rental units on the herein described Site, and in consideration of such loan, Owner intends to establish covenants, conditions and restrictions running with the land to comply with the requirements of the HOME program;

**WHEREAS**, the Government holds a leasehold mortgage lien interest in the site and is required by HUD regulations relating to the HOME Investment Partnerships Program to require the establishment of covenants, conditions and restrictions running with the land and to enforce such covenants, conditions and restrictions;

**NOW, THEREFORE**, the Owner, for its assigns, subsequent purchasers, lessees and successors in interest hereby declares that the Site is and shall be held transferred, sold, conveyed and occupied, subject to the conditions, restrictions and reservations hereinafter set out, which are hereby established and declared to be covenants running with the land:

#### 1. **RESTRICTED USES:**

(a) The site shall be maintained solely as residential property. Owner and its assigns, subsequent purchasers, lessees and successors in interest agree that the three (3) HOME-assisted units shall be rented to low income and very low households. Low income households are those households with gross incomes at or below sixty percent (60%) of the median income for the community. Very low income households are those households with adjusted gross incomes at or below fifty percent (50%) of the median income for the community. During the duration of these covenants, there is no minimum of the number of the HOME-assisted units that shall be rented to very low income households except as provided elsewhere herein.

(b) Owner and its assigns, subsequent purchasers, lessees and successors in interest shall charge rents no higher than low HOME and high HOME rents as established from time to time by HUD pursuant to any regulations promulgated by HUD or the Government. The rents so charged must include utility costs. The maximum allowable HOME rent must be reduced by a utility allowance approved by Government if tenant is required to pay separately for utilities. Utility allowances approved by Government may vary as periodic adjustments are made. Should HUD revise these or other rent guidelines set out herein so as to permit Owner and its assigns, subsequent purchasers, lessees and successors in interest to adjust the rent charged, Owner and its assigns, subsequent purchasers, lessees and successors in interest must obtain the prior approval of the Government and provide tenants with no less than thirty (30) days written notice before adjustments are implemented.

(c) The family size and the gross income for all tenants must be determined at the time of initial occupancy and annually for the duration of these covenants. Owner and its assigns, subsequent purchasers, lessees and successors in interest shall obtain and verify income and family size information from each tenant upon initial rent up and annually during the duration of these covenants. Owner and its assigns, subsequent purchasers, lessees and successors in interest shall provide information on family size, gross income and rent charged for all tenants to the Government within sixty (60) days after the initial rent up and the annual review date. Owner and its assigns, subsequent purchasers, lessees and successors in interest shall obtain any necessary releases from tenant to allow Government to independently verify the information provided.

(d) The Owner and its assigns, subsequent purchasers, lessees and successors in interest shall, on an annual basis, for the duration of these covenants, review the income, family size and exclusions of all tenants and determine if any are over-income. An over-income tenant is a household with a gross income exceeding eighty percent (80%) of the median for the community. Owner and its assigns, subsequent purchasers, lessees and successors in interest shall not evict over-income tenants based on income. Owner and its assigns, subsequent purchasers, lessees and successors in interest shall increase the rent of the site to not less than thirty percent (30%) of the households adjusted gross income, except 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. Units vacated by an over-income tenant must be rented to an income-eligible tenant for the duration of these covenants.

(e) Should the adjusted gross income of a very low income tenant renting a unit at the low HOME rate increase to greater than fifty percent (50%) of the median for the community but less than eighty percent (80%) of the median for the community during the term of the tenancy and for the duration of these covenants, the Owner and its assigns, subsequent purchasers, lessees and successors in interest may increase the rent for such tenant up to the high HOME rate for the duration of the tenancy. Owner and its assigns, subsequent purchasers, lessees and successors in interest shall not evict such a tenant on the basis of the increase of the adjusted gross income. The next vacancy shall be rented to a very low income tenant whose income is at or below fifty percent (50%) of the area median income at a rent no higher than the established low HOME rent.

(f) No sale of the site shall be completed without giving notice to the Government in writing at least ten (10) days prior to the closing.

## **2. DURATION**

The covenants and restrictions herein established shall be a covenant running with the land and shall be effective from the date of project completion, established as the date the HUD's Integrated Disbursement and Information System (IDIS) accepts and records the Completion report showing that ten units assisted by this loan have been rented to low-income and very low-income households, for a period of twenty (20) years and shall be binding upon the Owner, its assigns, subsequent purchasers, lessees and successors in interest and all parties and persons claiming under them during the term hereof.

It is intended and agreed that the Government and its successors and assigns and the United States of America shall be deemed a beneficiary of the covenant provided, both for and in their or its own right and also for the purpose of protecting the interest of the community and other parties, public or private, in whose favor or for whose benefits such agreements or covenants have been provided. Said covenant shall run in favor of the Government and the United States for the duration of these covenants. The Government and the United States shall have the right, in the event of any breach of any such covenant, to exercise all the rights and remedies, and to maintain any actions or suits at law or in equity or other proper proceedings to enforce the curing of such breach of agreement or covenant, or to collect the full amount of any disbursement made to Owner, to which it or any other beneficiaries of such agreement or covenant may be entitled.

## **3. PURCHASER AT FORECLOSURE;**

During the term hereof, should any mortgage or deed of trust be foreclosed on the Site, then the title acquired by such foreclosure, and the person or persons who thereby and thereafter become



the owner or owners of such property, shall be subject to and bound by all the restrictions, conditions and covenants set forth in this instrument. In the event of foreclosure by, acceptance of deed-in-lieu of foreclosure by, or assignment by any Superior Mortgage(s) to the U.S. Department of Housing and Urban Development (HUD), all restrictions relating to affordable housing programs provided for in this Deed and Declaration of Restrictive Covenants or provided for in any other document related to this transaction shall automatically and permanently terminate and shall have no further force to or effect on subsequent owners or purchasers of the property.

**4. FUTURE DEEDS:**

Owner, its assigns, subsequent purchasers, lessees and successors in interest agree that all of the covenants, conditions and restrictions contained in this deed shall be inserted in full in all future deeds related to the Site during the term hereof.

**5. SEVERABILITY OF PROVISIONS:**

Invalidation of any one of these provisions by judgment or Court order shall not affect any other provisions which shall remain in effect.

**IN WITNESS WHEREOF**, Owner, Borrower and Government have executed this Deed and Declaration of Restrictive Covenants effective as of the day and year first above written.

**BORROWER:**

**STONEWALL TERRACE, LLC,**

a Kentucky limited liability company

By: Stonewall Terrace MM, LLC,

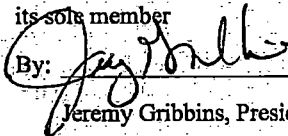
a Kentucky limited liability company,

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a Kentucky nonprofit corporation,

its sole member

By:   
Jeremy Gribbins, President

COMMONWEALTH OF KENTUCKY )

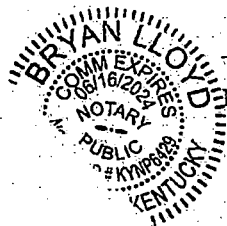
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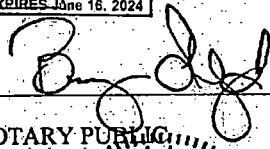
COUNTY OF FAYETTE )

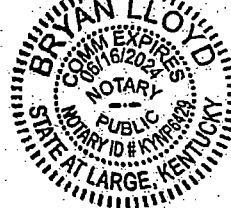
The foregoing instrument was acknowledged before me this January 25<sup>th</sup>, 2021, by Jeremy Gribbins as President of AVOL Kentucky, Inc., a Kentucky nonprofit corporation, the sole member of Stonewall Terrace MM, LLC, a Kentucky limited liability company, the managing member of Stonewall Terrace, LLC, a Kentucky limited liability company, for and on behalf of the limited liability company.

Bryan Lloyd  
NOTARY PUBLIC  
STATE AT LARGE  
KENTUCKY  
ID. # KYNP6429  
MY COMMISSION EXPIRES June 16, 2024

My commission expires:



  
Bryan Lloyd  
NOTARY PUBLIC



OWNER:

By: AVOL KENTUCKY, INC.,

a Kentucky nonprofit corporation,

its sole member

By: Jeremy Gribbins  
Jeremy Gribbins, President

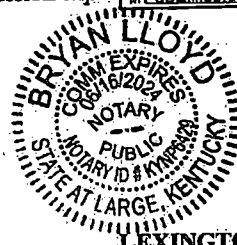
COMMONWEALTH OF KENTUCKY )

)SS:

COUNTY OF FAYETTE )

The foregoing instrument was acknowledged before me this January 25<sup>th</sup>, 2021, by Jeremy Gribbins as President of AVOL Kentucky, Inc., a Kentucky nonprofit corporation, for and on behalf of the limited liability company

My commission expires June 16, 2024  
Bryan Lloyd  
NOTARY PUBLIC  
STATE AT LARGE  
KENTUCKY  
ID. # KYNP6429  
MY COMMISSION EXPIRES June 16, 2024



Bryan Lloyd  
NOTARY PUBLIC

LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT

BY: Linda Gorton  
Linda Gorton, Mayor

State of Kentucky)  
)SCT  
County of Fayette)

The foregoing instrument was subscribed, sworn to, and acknowledged before me this the 26<sup>th</sup> day of January, 2021, by Linda Gorton, as Mayor of the Lexington-Fayette Urban County Government.

My Commission Expires: 11/29/2023 # 634750  
Walter J. Cole  
NOTARY PUBLIC, STATE AT LARGE, KENTUCKY

Prepared by:  
Brittany M. Smith  
Brittany Griffin Smith  
Attorney  
Lexington-Fayette Urban County Government

Department of Law  
200 East Main Street, 11th Floor  
Lexington, Kentucky 40507

EXHIBIT A  
LEGAL DESCRIPTION

Situated on the southerly side of the Versailles Turnpike, near the city limits of Lexington, beginning at a point in the center of said Versailles Turnpike, at the northeasterly corner of the Blackwell on the said Turnpike, thence with the line of Blackwell S 53-30 E 597 ½ feet; thence N 82-16 E 93 ¼ feet; thence S 2-12 E 526 ½ feet to the line S.P. Mason; thence with Mason's line N 81-52 W 222 ¼ feet to the corner of Joseph Arnold; thence with the line of Arnold N 1-39 W 1065 feet to the center of the Versailles Turnpike; thence with the line of said Turnpike N 81-40 E to the point of beginning; containing four acres, more or less, less whatever has been taken by the Department of Highways of the Commonwealth of Kentucky in the widening of the Versailles Road; said premises being known and designated as 1812 Versailles Road, Lexington, Kentucky.

Parcel No. 26590475