

## SETTLEMENT AGREEMENT & RELEASE

**THIS SETTLEMENT AGREEMENT & RELEASE** ("Agreement") is made and entered into as of ~~October~~ <sup>November 26</sup>, 2019 by and between the **LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT** ("LFUCG"), and **LEXINGTON DOWNTOWN HOUSING FUND, LLC**, a Kentucky limited liability company ("Housing Fund").

### RECITALS

**WHEREAS**, the Housing Fund was formed in 2004 to stimulate market-rate housing units in the downtown business district and surrounding neighborhoods by providing attractive secondary financing assistance;

**WHEREAS**, the Housing Fund was capitalized with capital contributions (equity) and loans (debt) from nine (9) regional and community banks active in the Lexington area ("Banks");

**WHEREAS**, one of the Housing Fund's loans in furtherance of its above-stated mission was a secondary loan ("Centercourt Loan") to Centercourt I, LLC, a Kentucky limited liability company ("Borrower"), pursuant to that certain Promissory Note dated August 2, 2005, made payable by Borrower to the order of the Company in the principal amount of \$1,418,000.00, as renewed, extended, and/or amended from time to time ("Note"), which is guaranteed by certain guarantors ("Guarantors") pursuant to that certain Guaranty Agreement executed on or about August 2, 2005 in favor of the Company ("Guaranty"), and which is secured by that certain Second Mortgage of Real Property, Security Agreement of Personal Property and Assignment of Personal Property dated July 29, 2005, granted by Borrower in favor of the Company, of record in Mortgage Book 5407, Page 212, in the Fayette County Clerk's Office ("Office"), as amended from time to time ("Mortgage"), and that certain Assignment of Rents and Leases dated August 2, 2005, granted by the Company of record in Deed Book 2574, Page 448 in the Office, as amended from time to time ("Assignment");

**WHEREAS**, the Centercourt Loan facilitated the development of the Centercourt mixed-use residential and commercial condominium project located at the corner of South Upper Street and Bolivar Street in Lexington, Kentucky ("Centercourt Project");

**WHEREAS**, LFUCG provided funds in the principal amount of \$405,000.00 to the Housing Fund ("LFUCG Funds") pursuant to that certain Sublease Agreement between LFUCG and the Housing Fund dated July 25, 2005 ("Sublease") for and as a ratable participation interest in the Centercourt Loan;

**WHEREAS**, the Housing Fund provided funds in the principal amount of \$1,013,000.00 for and as a ratable and managing participation interest in the Centercourt Loan;

**WHEREAS**, pursuant to the Sublease, principal and interest and any other amounts received by the Housing Fund in repayment of the Centercourt Loan, if any, are to be allocated between the Housing Fund and LFUCG prorata in proportion to the principal amount of funds LFUCG provided (\$405,000.00) to fund the Centercourt Loan in relation to the principal portion of the Centercourt Loan funded to the Housing Fund by the Banks (\$1,013,000.00) (resulting in an allocation of 28.56% to LFUCG and 71.44% to the Housing Fund of principal and interest

and any other amounts received or collected in repayment or enforcement of the Centercourt Loan and security therefor);

**WHEREAS**, while the Centercourt Loan appears a positive influence in enabling the Center Court Project and fulfilled the mission of the Housing Fund, Borrower failed to pay the Centercourt Loan upon maturity and it is now in default;

**WHEREAS**, the holder of the first priority mortgage and assignment of leases and rents on the real property subject to the Mortgage and Assignment has filed a lawsuit in the Fayette Circuit Court, styled *CL45 MW Loan 1, LLC v. Centercourt I, LLC, et al.*, Civil Action No. 19-CI-2975, on or about August 15, 2019, to foreclose on its first priority mortgage and enforce the underlying debt and other security interests securing the same, and the Housing Fund has been made a party to that action by virtue of its Mortgage and Assignment (“Foreclosure Proceeding”);

**WHEREAS**, the Housing Fund has previously paid \$25,000.00 to LFUCG, from the Housing Fund’s own internal funds, which LFUCG applied to interest;

**WHEREAS**, the Housing Fund has received an offer from a third party to purchase the Centercourt Loan for the total sum of \$230,000.00 (“Centercourt Loan Exit”), enabling the Housing Fund to fully exit the Centercourt Loan;

**WHEREAS**, the Housing Fund, after due inquiry, and as the manager of the Centercourt Loan, believes there is little or no chance of meaningful recovery from enforcement of the Centercourt Loan or security therefor and that the above-referenced sale of the Centercourt Loan and the Centercourt Loan Exit is in the best interest of the Housing Fund and LFUCG;

**WHEREAS**, pursuant to the allocation in the Sublease, the \$230,000.00 from the sale of the Centercourt Loan should be allocated \$65,688.00 to LFUCG and \$164,312.00 to the Housing Fund, resulting in LFUCG suffering a total principal loss of \$314,312.00 and the Housing Fund (and ultimately the Banks) suffering a total principal loss of \$848,688.00 on the Centercourt Loan; and

**WHEREAS**, the Housing Fund, in the interest of a complete resolution of the Centercourt Loan and in furtherance of the Centercourt Loan Exit has agreed, on the terms hereof to pay LFUCG the sum of \$230,000.00 and make a \$22,500.00 contribution to the Mayor’s Opioid Addiction and Recovery Work Group and a \$22,500.00 contribution to the LFUCG’s Collective Impact Program, in full and complete satisfaction and resolution of any obligations to LFUCG under the Sublease or otherwise, and LFUCG is willing to agree to the same, all on the terms and conditions set forth herein;

**NOW THEREFORE**, in consideration of the above recitals, and the promises and conditions herein contained, the parties agree as follows:

**1. PAYMENTS.** The Housing Fund simultaneously herewith, the receipt and sufficiency of which LFUCG does hereby acknowledge (i) has paid LFUCG the sum of \$230,000.00 in immediately payable funds, and (ii) made charitable contributions in immediatly

payable funds in the amounts of \$22,500.00 to the Mayor's Opioid Addiction and Recovery Work Group and \$22,500,00 to the LFUCG's Collective Impact Program, ("LFUCG Resolution").

2. **RELEASE.** The Housing Fund and LFUCG do hereby, automatically and without further action on the part of either party, fully release and forever discharge one another, and their respective successors and assigns and their members, managers, officers, and other agents and representatives ("Released Parties"), of and from all rights, claims, actions, causes of action, suits, debts, liens, obligations, accounts, damages, demands, liabilities, costs and expenses whatsoever, including attorneys' fees and costs, at law or in equity, known or unknown, anticipated or unanticipated, which either party now has, owns, or holds, or may have, own, or hold, or anytime heretofore ever did or may have had, owned, or held, against the other party, and/or its respective successors and assigns and/or its and their members, managers, officers, and other agents and representatives, arising out of or relating in any way to the Centercourt Loan, the Housing Fund, the LFUCG Funds, or any other matters addressed in or related to the matters addressed in the foregoing recitals ("Released Matters").

3. **ACKNOWLEDGMENT OF UNDERSTANDING.** Each party hereby covenants not to institute or have instituted on its behalf any claim or lawsuit against any other Released Parties, or to voluntarily and knowingly participate or aid in any way in any suit or proceeding (or to execute, seek to collect, or recover upon, or otherwise enforce or accept a judgment decision award, writ, or attachment) with respect to any Released Matters.

4. **MISCELLANEOUS.**

(a) **No Party Deemed Drafter.** If this Agreement, or any provision hereof, is interpreted by a court of law, no provision hereof shall be construed more harshly against any party as drafter.

(b) **Successor and Assigns.** The provisions of this Agreement shall be binding upon all Released Parties.

(c) **Governing Law.** All matters relating to the interpretation, construction, and enforcement of this Agreement shall be governed by and construed according to the laws of the State of Kentucky.

(d) **Severability.** If any provision of this Agreement is determined by a court of competent jurisdiction to be in violation of any equitable law or otherwise invalid or unenforceable, such provision shall, to such extent as it shall be determined to be illegal, invalid or unenforceable under such law, be deemed null and void, but this Agreement shall otherwise remain in full force and effect.

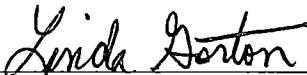
(e) **Entire Agreement.** This Agreement is a complete integration and constitutes the entire agreement between the parties with respect to the subject matter hereof; it supersedes all prior negotiations, representations, understandings and agreements, whether

written or oral. This Agreement may be modified, amended, or waived only by a written instrument duly executed by LFUCG and the Housing Fund.

(f) **Authority.** It is warranted and represented that the persons who will affix their signature hereto have full and complete authority to execute this Agreement on behalf of the parties for whom they have acted as stated herein.

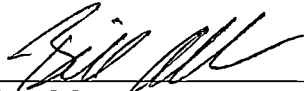
**IN WITNESS WHEREOF**, the parties have executed this Agreement as of the day and year first above written.

**LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT**

By:   
Linda Gorton, Mayor

  
Attest Deputy Council Clerk

**LEXINGTON DOWNTOWN HOUSING FUND, LLC,**  
a Kentucky limited liability company

By:   
Bill Allen, Manager