

**HOME INVESTMENT PARTNERSHIPS PROGRAM  
CHDO AGREEMENT BETWEEN  
LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT  
AND  
REACH, INC.**

**THIS AGREEMENT**, made and entered into on this 17<sup>th</sup> day of September 2019, by and between the **LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT**, an urban county government of the Commonwealth of Kentucky, pursuant to KRS Chapter 67A, and located at 200 East Main Street, Lexington, Fayette County, Kentucky 40507 (hereinafter referred to as "GOVERNMENT"), and **REACH, INC.**, a non-stock, nonprofit Kentucky corporation, organized pursuant to KRS Chapter 273, that has been identified as a Community Housing Development Organization (CHDO) and whose mailing address is 733 Red Mile Road, Lexington, Kentucky 40504 (hereinafter referred to as "CHDO").

**RECITALS**

**WHEREAS**, the GOVERNMENT, in accordance with the regulations codified at 24 CFR 92.102–92.104 for the HOME Investment Partnership Program, has been designated a PARTICIPATING JURISDICTION by the U.S. Department of Housing and Urban Development (hereinafter referred to as "HUD").

**WHEREAS**, REACH has been certified by the GOVERNMENT as a Community Housing Development Organization (CHDO) that meets all of the federal requirements for designation as such.

**WHEREAS**, the GOVERNMENT has been awarded federal funds from HUD's HOME Investment Partnerships Program (CFDA # 14.239);

**WHEREAS**, a requirement of the HOME Investment Partnerships Program (24 CFR 92.300) is that the GOVERNMENT identify community housing development organizations capable of carrying out elements of the jurisdiction's approved housing strategy and that no less than 15 percent of the GOVERNMENT'S HOME allocations be reserved for investment only in housing to be developed, sponsored, or owned by community housing development organizations.

**WHEREAS**, the GOVERNMENT'S 2018 Consolidated Plan Annual Action Plan provides for the allocation of \$67,806 in funds to the CHDO acting as an Owner/Developer for acquisition/rehabilitation of a single family housing unit located at 1908 Chris Drive, Lexington, KY 40511;

**WHEREAS**, the GOVERNMENT is responsible for ensuring that HOME funds are used in accordance with all program requirements; and,

**WHEREAS**, federal regulations require the GOVERNMENT to enter into a written agreement with the CHDO ensuring compliance with all applicable federal regulations.

**WHEREAS**, if the CHDO has remaining funds from previous HOME written agreements, this agreement and its full contents will apply to those remaining funds.

**NOW THEREFORE**, in consideration of the foregoing and mutually agreed upon promises, conditions, and covenants hereinafter set forth, the GOVERNMENT and the CHDO hereto agree as follows:

**I. PROJECT DESCRIPTION**

- A. Scope of Work. CHDO shall undertake the Project and perform all activities in accordance with HOME rules, other applicable Federal, state, and local laws and regulations, and the terms and conditions contained herein.
  
- B. Eligible HOME Activities, Site Location, Total Units and Bedroom Sizes. The CHDO agrees to use the set-aside of \$67,806 for the purpose of acquiring/rehabilitating a 3 bedroom single family residence located at 1908 Chris Drive, Lexington, KY 40511 for sale to eligible low-income household under the GOVERNMENT's approved HOME First Time Homebuyer Assistance Guidelines and in accordance with the HOME Investment Partnerships Program regulations as stated in 24 CFR Part 92. Costs include hard and soft costs as permitted by the HOME program.

The CHDO agrees that all HOME funds will be used only for eligible costs in accordance with 24 CFR Part 92.206, and in accordance with a project budget that shall receive prior written approval of the GOVERNMENT. One residential unit will be completed with these funds.

- C. Designated HOME Units; HOME Subsidy. One unit shall be designated as HOME-Assisted Units ("HOME-Assisted Units"). The amount of subsidy for the unit at the locations described in I. B. shall not exceed a total of \$67,806 which does not exceed the allowable maximum per-unit subsidy limit based on the Section 234 Condominium Housing, elevator-type, basic mortgage limits for Fayette-Lexington, Kentucky, multiplied by the 2015 high cost percentage of 240%. The maximum per-unit subsidy based on these limits is listed in the table below.

| <b>Unit Size</b> | <b>Maximum HOME Subsidy per unit 2015 234 subsidy limits for condominium housing, elevator-type</b> |
|------------------|---|
| 0 bedroom        | \$147,074   |
| 1 bedroom        | \$168,600   |
| 2 bedroom        | \$205,018   |
| 3 bedroom        | \$265,229   |
| 4+ bedroom       | \$291,137   |

- D. Affordability. The Project must meet the Affordability Requirements as provided in Section II for the duration of the Affordability Period, as that term is defined below.
  
- E. Project Budget, Sources and Uses Statement, Pro Forma

1. Approved Documentation. CHDO has submitted the following documentation, upon which GOVERNMENT has relied in the execution of this Agreement:
    - a. Project budget;
    - b. a sources and uses statement, including the amount, form, use, and terms of the HOME subsidy;
    - c. financial commitments for any other funding sources.
  2. Cost Overruns. CHDO shall be solely responsible for ensuring completion of construction, within budget, as identified on the sources and uses statement, approved as a part of this Agreement. Any cost overruns will be the sole responsibility of the CHDO.
  3. Construction Financing. CHDO shall close on CHDO's construction financing, if applicable, before requesting any draws under this Agreement.
- F. Construction Schedule.
1. Begin Construction. CHDO shall commence visible construction no later than January 1, 2020.
  2. Substantial Completion. CHDO shall substantially complete rehabilitation of the identified unit no later than June 30, 2020.
- G. Construction Methods and Techniques. CHDO shall be solely responsible for all construction, methods, techniques, and procedures and shall furnish all materials, equipment, machinery, tools and labor to perform the work required to complete construction. All materials shall be new and of good quality.
- H. Sale of Unit. The owner must transfer title of the property and the HOME obligations to eligible homebuyers *within nine months of project completion* and completion report shall be submitted at the time of sale. In the event that unit is not sold for homeownership to an eligible buyer, CHDO shall operate the unit as a rental unit to an eligible low-income household for an affordability period of not less than fifteen (15) years, beginning on the date that completion is recorded in the HUD Integrated Disbursement and Information System (IDIS).
- I. Value of Property. CHDO agrees that upon sale to eligible first-time homebuyers, total encumbrances will equal market value. Maximum value of property shall not exceed HOME Homeownership Sales Price Limits established by the U.S. Department of Housing and Urban Development in accordance with the First-Time Homebuyer Guidelines, attached hereto and incorporated herein as **Exhibit A**.
- J. Homebuyer Agreement. A HOME Program Beneficiary Written Agreement is required for all HOME assisted units, as attached hereto and incorporated herein as **Exhibit B**.

- K. Administration Fees. The CHDO is prohibited from charging servicing, origination, processing, inspection, or other fees for the costs of administering a HOME program, except as permitted by § 92.214(b)(1).

## II. AFFORDABILITY REQUIREMENTS

- A. Qualification as Affordable Housing: Homebuyer Housing. HOME-Assisted Units must be occupied only by households that are eligible as low-income families or very-low income families, all as defined in 24 CFR §92.2, and must meet the requirements to qualify as affordable housing pursuant to 24 CFR §92.252, as provided herein (“**Affordability Requirements**”).
- B. Affordability Period.
1. Fifteen Years. The period of Affordability is fifteen (15) years (“**Affordability Period**”).
  2. Affordability Period Commencement. The Affordability Period shall commence upon Project completion. For the purpose of the Affordability Period, the Project completion date shall be as provided in 24 CFR §92.2, which is the date in which the Project completion information has been entered into the disbursement and information system established by HUD (“**Project Completion Date**”). The period of affordability is defined as a period of fifteen (15) years, beginning on the project completion date, established as the date that completion is recorded in the HUD Integrated Disbursement and Information System (IDIS). For purposes of enforcing the period of affordability, CHDO and GOVERNMENT shall execute and record in the Fayette County Clerk’s Office, Deed and Declaration of Restrictive Covenants upon each property on which HOME funds are expended. Repayment of funds does not affect the period of affordability.
  3. Deed Restriction. The Affordability Requirements shall be secured by a deed restriction and a Declaration of Restrictive Covenants (“**Declaration**”) on each property in substantially the same form as the document attached as **Exhibit C** and shall be recorded with the Fayette County Court Clerk. Upon purchase of the property financed in whole or in part with HOME funds, CHDO shall execute a Deed Restriction attached hereto and incorporated herein as Exhibit C requiring resale of the property to eligible first-time homebuyer(s). The Deed of Restrictions is used to meet the requirements of the Affordability Period as required by the HOME regulations. However, when the unit is sold to the eligible first-time homebuyer and the CHDO provides Direct Assistance to the homebuyer, the Deed Restrictions will be released and HOME restrictions on affordability period shall be incorporated into a mortgage that provides for recapture of HOME funds, in accordance with the HOME First-Time Homebuyer Assistance Guidelines.
- C. HOME Income Limits.
1. HOME Investment Partnerships Program regulations mandate that all HOME funds expended by a PARTICIPATING JURISDICTION must be invested in housing for low-income families, as defined at 24 CFR 92.2, During the

Affordability Period, Generally, this means families with incomes of 80 percent or less of the area median, as adjusted for family size. CHDO agrees to determine the anticipated annual income of all adults in using the Part 5 definition of annual income as defined in 24 CFR 5.609. GOVERNMENT shall provide CHDO with updated income limits as published by HUD.

- D. Conversion to Rental Unit. Effective August 23, 2013, the 2013 Rule requires a ratified sales contract with an eligible homebuyer for HOME assisted housing within 9 months of the date of completion of construction or rehabilitation. If a HOME-assisted homebuyer unit is not under a contract for sale within this timeframe, the unit must be converted to a rental housing unit and rented to an income-eligible tenant, or the HOME funds invested in the unit must be repaid. This requirement applies to all projects to which HOME funds are committed on or after the August 23, 2013 effective date.

In the event that unit becomes a rental unit, for a period of fifteen (15) years from the date on which development of the Project is completed, established as the date that completion is recorded in the HUD Integrated Disbursement and Information System (IDIS) showing that one hundred percent (100%) of the units assisted with these funds have been rented to low- income and very low-income households, in accordance with 24 CFR 92.252, CHDO shall charge the 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 CHDO to adjust the rent charged, CHDO must provide tenants with no less than thirty (30) days written notice before adjustments are implemented.

GOVERNMENT will notify CHDO of changes in rent and utility schedules. If the unit becomes a rental unit, the current rent and utility schedules will be provided to the CHDO.

### **III. PROPERTY STANDARDS**

- A. Property Standards. The Project must meet all applicable state and local codes and ordinances in effect at the time of Project completion. The Project must remain in compliance with all applicable state and local codes and ordinances for the duration of the Affordability Period. The CHDO agrees to comply with the Kentucky Building Code, as applicable. The CHDO agrees to comply with all local and state laws regarding the submission of plans and specifications to, and approval by, the appropriate Building Official prior to the start of construction. In the construction of new units, the CHDO agrees to meet the current edition of the Model Energy Code published by the Council of American Building Officials. CHDO agrees that these units will meet the federal ENERGY STAR standards. CHDO further agrees to maintain all units receiving a HOME subsidy in good condition and repair in accordance with Section 12-1, Code of Ordinances, Lexington-Fayette Urban County Government, as amended, for the full 15-year Period of Affordability. Upon written notification of violations of maintenance requirements, CHDO shall make corrections within 60 days.

Code of Ordinances Section 12-1 is available at [www.lfucg.com/council\\_clerk/index.asp](http://www.lfucg.com/council_clerk/index.asp).

- B. Insurance. The CHDO shall provide, maintain, and deliver to the GOVERNMENT evidence of fire and extended coverage insurance satisfactory to and with loss payable to the GOVERNMENT in the order and amount of the Mortgage Note hereby secured; 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 damaged 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.
  
- C. Lead-Based Paint. The CHDO agrees to comply with the Lead Based Paint Poisoning Prevention Act (42 U.S.C. 4821-4846), The Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851-4856), and implementing regulations at 24 CFR 35, subparts A,B,J, K, M and R. The CHDO is responsible for testing and abatement activities as may be required.
  
- D. Property and Casualty Insurance. CHDO agrees to keep all buildings or other improvements now on, or to be hereafter erected on the Property insured with an insurance company or companies licensed to sell property and casualty insurance within the State of Kentucky, naming the GOVERNMENT as an additional insured, until CHDO's obligations to the GOVERNMENT are fully complete, and to have the loss, if any, made payable on the policy, or policies, to the GOVERNMENT. The GOVERNMENT shall have the right to use all such insurance proceeds to satisfy all of the CHDO's obligations to the GOVERNMENT.
  
- E. Worker's Compensation. CHDO shall maintain statutory worker's compensation and employer's liability coverage for all employees who will be engaged in the performance of the contract, including special coverage extensions where applicable.
  
- F. Notice of Cancellation. CHDO agrees that all insurance policies as above required shall provide for not less than thirty (30) days prior written notice to the GOVERNMENT of cancellation, termination or material amendment of such policies. CHDO is responsible to notify the GOVERNMENT within five (5) business days of any cancellation, non-renewal or material change that affects required insurance coverage. In the event CHDO fails to keep in effect at all times the specified insurance coverage, the GOVERNMENT may, in addition to other remedies, terminate this Agreement upon the occurrence of such event.
  
- G. Proof of Insurance. CHDO shall at all times provide to the GOVERNMENT current written confirmation from the appropriate insurance company of compliance with the provisions of the above paragraphs, which shall include a copy of the applicable policy or policies, including all insuring pages, riders or endorsements. It is CHDO's obligation to furnish all such information on a current basis; and, if the GOVERNMENT is not in receipt of such, it is entitled to act on the presumption that such does not exist, and CHDO is not in compliance with this Agreement.

- H. Taxes and Assessments. CHDO further agrees to pay all taxes and assessments on the Property, general or special when due, or to reasonably contest the same and prevail or pay such tax or assessment pursuant to the same, and, upon demand of the GOVERNMENT, to pay, discharge, or remove or to reasonably contest the same and prevail or pay such tax or assessment pursuant to the same, any and all liens which may be hereafter placed against said Property.
- I. Sale of Property. All sales of property during the period of affordability must have the prior written approval of the GOVERNMENT's Division of Grants and Special Programs. No property sales will be approved that do not maintain the tenant income eligibility requirements and rent restrictions provided by the period of affordability. With the prior written approval of the GOVERNMENT's Division of Grants and Special Programs, properties may be sold to income-eligible tenants for homeownership.

#### IV. FINANCIAL MANAGEMENT

- A. Accounting Standards. CHDO agrees to maintain books, records, documents and other evidence directly pertinent to performance of work in accordance with comply with 24 CFR § 92.508(3), (4) and (7), as applicable and comply with 2 CFR § 200, Subpart D and agrees to adhere to the accounting principles and procedures required therein, utilize adequate internal controls, and maintain necessary source documentation for all costs incurred.
- B. Cost Principles. CHDO shall administer its program in conformance with 2 CFR § 200, Standards for Financial and Program Management, Cost Principles and Audit Requirements, as detailed in Subparts D, E, and F. These principles shall be applied for all costs incurred whether charged on a direct or indirect basis.
- C. Audits & Inspections. CHDO shall comply with audit requirements contained in 2 CFR, Subpart F which requires CHDO to have an annual audit conducted within nine (9) months of the end of their fiscal year, if CHDO has an aggregate expenditure of more than \$750,000 in federal funds in a fiscal year. CHDO further agrees to submit a copy of this audit to the GOVERNMENT within thirty (30) days of receipt from the auditor. Any deficiencies noted in audit reports must be fully cleared by the CHDO within thirty (30) days after receipt of same.
- D. CHDOs that are not required to perform an audit per the 2 CFR, Subpart F requirements must have and maintain adequate internal financial/cash management principles and reporting policies.
- E. Reversion of Assets. The CHDO agrees that in the event that it ceases to operate as a CHDO, it shall transfer to the GOVERNMENT any HOME funds on hand at the time of expiration and any accounts receivable attributable to the use of HOME funds.
- F. CHDO Proceeds. All **CHDO proceeds** from the sale of property by the CHDO shall be retained by the CHDO and shall be used exclusively for other HOME-eligible activities including acquisition and/or rehabilitation and the new construction of

homebuyer properties or rental housing; homeowner rehabilitation and tenant based rental assistance. The projects funded with project proceeds are not reported as HOME assisted units and not subject to HOME regulations. The CHDO agrees to provide a quarterly report detailing the amount received, date received, source of proceeds, and use of proceeds to the GOVERNMENT by the 15<sup>th</sup> of the following quarter, until all funds have been expended.

- G. Program Income and Recaptured Funds. All Program Income and Recaptured funds must be returned within 10 days of receipt. Funds recaptured because housing no longer meets affordability requirements are not Project Proceeds.

## V. PAYMENT TERMS AND CONDITIONS

- A. Request for Disbursement of Funds. The CHDO agrees that it shall not request disbursement of funds from the GOVERNMENT until the funds are needed for payment of eligible costs and shall request only the amount of funds needed. The CHDO further agrees that any federal funds received and not used by the CHDO within fifteen days of receipt will be returned to the government immediately.
- B. CHDO shall submit a request for reimbursement for eligible expenses no more frequently than monthly. CHDO shall provide documentation of direct costs, such as invoices or receipts. Approval of any request for reimbursement is conditional upon the submission of required documentation, inspection and approval of work performed, including but not limited to progress reports as required by the GOVERNMENT.
- C. The GOVERNMENT shall make careful review of all requests for reimbursement. So long as each request conforms to the terms and intent of this Agreement, the GOVERNMENT shall reimburse funds in a timely manner, which shall be within thirty (30) business days of CHDO's submission of a complete reimbursement request.

## VI. REPORTING AND RECORD-KEEPING REQUIREMENTS

- A. Reports. The CHDO agrees to provide any reports and information as required by the GOVERNMENT. The CHDO 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). In addition, an annual report shall also provide the following information about the employees of the CHDO'S organization: race, ethnicity, national origin, age, gender, and disability. The annual report shall be submitted to the GOVERNMENT no later than thirty days after the end of the GOVERNMENT's fiscal year.
- B. CHDO Status. Developer shall provide information to the GOVERNMENT on an annual basis to document that it still qualifies as a CHDO. The CHDO agrees that



throughout the term of this agreement it will conform to the definition of a Community Housing Development Organization as stated in the HOME Investment Partnerships Program regulations codified at 24 CFR 92.2.

- C. Establishment and Maintenance of Records. The CHDO agrees to establish and maintain records sufficient to document compliance with the grant requirements of the HOME Investment Partnerships Program. As applicable, the CHDO will maintain project records as identified in 24 CFR 92.508 (a)(5).
- D. Access to Records. The CHDO agrees that officials of the GOVERNMENT, officials of HUD, officials of the Comptroller General of the United States, or any of their duly authorized representatives shall have access to any books, documents, papers, and records of the CHDO which are directly pertinent to the specific grant program for the purpose of making audit, examination, excerpts, and transcriptions.
- E. Retention. The CHDO further agrees to retain records for five years after the expiration of the period of affordability; and in the event that the CHDO discontinues operating as a legal entity, said records shall be delivered to the GOVERNMENT.

## **VII. PROVISIONS RELATED TO OTHER FEDERAL REQUIREMENTS**

- A. Compliance with Federal and State Laws and Regulations. CHDO shall comply with all applicable Federal, State and local laws and regulations in the performance of this Agreement.
- B. Displacement, Relocation, and Acquisition. CHDO will take all necessary steps possible to minimize displacement in the Project. To the extent feasible, tenants displaced or relocated as a result of the development of the Project must be provided a reasonable opportunity to lease and occupy a suitable, decent, safe, sanitary, and affordable dwelling unit in the complex upon completion of the Project. In the event that relocation is necessary, CHDO shall comply with HOME regulations at 24 CFR § 92.353. With regard to relocation assistance for displaced persons, CHDO shall also comply with the requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (“URA”) (42 U.S.C. § 4201-4655) and 49 CFR Part 24.
- C. Environmental Review. The GOVERNMENT has performed the necessary obligations related to this section.
- D. Fair Housing and Equal Opportunity. Housing shall be made available without discrimination based on race, color, national origin, age, sex, religion, familial or marital status, disability, sexual orientation, or gender identity. Further, CHDO shall not discriminate against applicants based on participation in a direct rental subsidy program, such as Section 8.

The following fair housing and nondiscrimination laws and regulations shall apply to the Agreement (each to the extent applicable):

- Title VIII of the Civil Rights Act of 1968 (Fair Housing Act), as amended and implementing regulations at 24 CFR part 100;
- Title VI of the Civil Rights Act of 1964;
- The Age Discrimination Act of 1975, as amended and implementing regulations at 24 CFR part 146;
- Executive Orders 11063 and 12259 – Equal Opportunity in Housing, and implementing regulations at 24 CFR part 107;
- Section 504 of the Rehabilitation Act of 1973 and implementing regulations at 24 CFR part 8;
- Title II of the American Disabilities Act; and
- Equal Access to Housing in HUD Programs Regardless of Sexual Orientation or Gender Identity Final Rule.
- Section 2-33 of the Government’s Code of Ordinances – Discrimination due to sexual orientation or gender identity

E. Violence Against Women Act (2013). CHDO shall comply with the provisions of the Violence Against Women Act (“VAWA”), as amended in March 2013.

F. Nondiscrimination in Employment. CHDO shall not discriminate against any employee or applicant for employment because of race, color, national origin, sex, or religion, in accordance with Executive Order 11246, as amended and implementing regulations at 41 CFR part 60. In the event CHDO employs fifteen (15) or more employees, CHDO is prohibited from discriminating against any employee or applicant with a disability, in accordance with Title I of the Americans with Disabilities Act of 1990. CHDO shall include nondiscrimination notices in all job postings and post in a visible place in the office.

G. Labor.

1. HUD Section 3 Requirements. To the greatest extent feasible, CHDO shall make an effort to provide opportunities for employment and training for lower income residents within the project area, and to award contracts for work in connection with the Project to business concerns which are located, or owned in substantial part, by persons residing in the area of the project, as described in 24 CFR § 135.
2. Davis Bacon and Related Acts. CHDO will be rehabilitating one unit so the provisions of Davis Bacon will not apply.
3. Minority, Women and Small Business Enterprise Requirements. As stated in the Application instructions, the GOVERNMENT has set a goal of 10% participation for the CHDO to utilize Minority, Woman and Small Business Enterprises, (Diversity Business Enterprises, DBE) for this project. The CHDO shall make efforts to meet this goal by ensuring that these business entities, labor surplus area businesses, and individuals or firms located in or owned in substantial part by persons residing in the area of a Public Housing Agency project are used when possible.

4. Debarred Contractors. The CHDO 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.
  5. Other Federal Labor Requirements. CHDO shall comply with the following laws, or shall require such compliance from its partners pursuant to a construction contract or other written agreement:
    - Contract Work Hours and Safety Standards Act, as amended (40 U.S.C. § 327-333);
    - Copeland Anti-Kickback Act (40 U.S.C. § 276c);
    - Fair Labor Standards Act, as amended (29 U.S.C. § 201, et seq.).
- H. Conflict of Interest. The CHDO agrees to 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. The CHDO further agrees to comply with the conflict of interest provisions at 24 CFR 92.356. No owner, CHDO, or officer, employee, agent, or consultant thereof may occupy a HOME-Assisted Unit in the Project. This provision does not include an employee or agent of the owner or CHDO who occupies a HOME-Assisted Unit as the project manager or maintenance worker.
- I. Religious Activities.
1. CHDO is prohibited from using funds provided herein or personnel employed in relation to this Project for political activities and sectarian or religious activities.
  2. If CHDO is, or may be deemed to be, a religious or denominational institution or organization, it agrees that:
    - a. It will not discriminate against any employee or applicant for employment on the basis of religion and will not limit employment or give preference in employment to persons on the basis of religion;
    - b. It will not discriminate against any person applying for housing on the basis of religion and will not limit such housing or other eligible activities or give preference to persons on the basis of religion; and
    - c. It will provide no religious instruction or counseling, conduct no religious worship or services, engage in no religious proselytizing, and exert no other religious influence in the provision of shelter and other eligible activities.
- J. Affirmative Marketing: As it may be applicable, CHDO agrees to comply with the *Affirmative Marketing Plan* as adopted by the GOVERNMENT and as approved by HUD. The Affirmative Marketing Plan is located in the consolidated plan/annual action plan.

## VIII. ENFORCEMENT

- A. Right to Inspect Properties and Units. The GOVERNMENT retains the right to conduct on-site inspections of the Project during the development process and during the Affordability Period during normal business hours. The GOVERNMENT retains

the right to monitor the construction process with on-site inspections to verify sound and safe construction in accordance with approved plans.

- B. CHDO Default. The following shall constitute an event of default (“**Event of Default**” or “**Default**”) by CHDO under this Agreement, which Default shall be susceptible to cure as provided in Subsection C below:
1. Failure to maintain the Project or New Units in accordance with applicable property standards.
  2. Failure to meet the Affordability Requirements during the Affordability Period.
  3. Failure to comply with HOME requirements as outlined in this Agreement.
  4. Failure to maintain CHDO status for the duration of the affordability period. If Developer fails to maintain CHDO status for this term, title to the project must be transferred to another active CHDO of all funds must be repaid.
  5. Use of funds for activities or uses that are not HOME-eligible costs as described in this Agreement.
  6. Material breach of the terms and conditions of this Agreement by the CHDO or any of its Employees, Contractors, or Agents.
- C. Notice of Default. The GOVERNMENT shall provide written notice of Default to CHDO and shall provide CHDO an opportunity to take corrective action within thirty (30) days after receipt of written notice from the GOVERNMENT; provided, however, that such thirty (30) day period shall be extended for an additional thirty (30) days in the event CHDO has initiated and is diligently pursuing a cure to the satisfaction of the GOVERNMENT; provided, however, in the event it will require more than thirty (30) days to cure default, then the cure period shall be extended so long as CHDO diligently prosecutes such cure to completion to the satisfaction of the GOVERNMENT. Corrective action shall include, but is not limited to, submitting a Corrective Action Plan to the GOVERNMENT for approval that provides a timetable for correcting the default and details the activities that are necessary to correct the circumstances that constitute the default.
- D. Remedies. If CHDO fails to cure the Default as provided above, the GOVERNMENT shall have the following Remedies:
1. The GOVERNMENT may terminate this Agreement.
  2. The GOVERNMENT may demand repayment for and CHDO shall pay to the GOVERNMENT HOME Funds not used for the purposes provided in this Agreement.
  3. The GOVERNMENT may demand repayment of and CHDO shall pay to the GOVERNMENT HOME Funds if the HOME-Assisted Units do not meet the Affordability Requirements during the Affordability Period.
  4. The GOVERNMENT may pursue other remedies as may be available at law or in equity.

## IX. ADDITIONAL PROVISIONS

- A. Certification Regarding Federal Assistance. CHDO certifies that the federal financial assistance amounts contained in the approved Sources and Uses Budget are the only amounts of federal assistance that is being contributed to this project. CHDO further certifies that if other governmental assistance is sought in the future, CHDO will promptly notify the GOVERNMENT.
- B. Certification Regarding Lobbying. CHDO certifies, to the best of its knowledge and belief, that:
1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of a Federal contract, the making of a Federal grant, the making of a Federal loan, the entering into of a cooperative agreement, and the extension, continuation, renewal, amendment, or modification of a Federal contract, grant, loan, or cooperative agreement.
  2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal grant or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, Disclosure Form to Report Lobbying, in accordance with its instructions.
- C. Duration of Agreement. This Agreement shall be effective upon the date of execution hereof and shall remain in effect for the duration of the Affordability Period and until the terms of the HOME loan are satisfied, whichever is later.
- D. Termination. If through any cause, CHDO shall fail to fulfill in a timely and proper manner its obligations under this Agreement, or if CHDO shall violate any of the covenants or stipulations of this Agreement, such that such an Event of Default exists and remains uncured, the GOVERNMENT shall thereupon have the right to terminate this Agreement by giving written notice to CHDO of such termination and specifying the effective date thereof as provided herein.
- E. Entire Agreement and Modification. This instrument contains the entire agreement between the GOVERNMENT and CHDO. Oral changes of it will have no effect. Any prior information, discussions or agreements are merged herein and barred hereby. This Agreement may not be amended or modified orally, by course of dealing, waiver or estoppel. This Agreement may not be modified or amended except in writing signed by all parties.
- F. Conflicts. Notwithstanding anything to the contrary herein, the GOVERNMENT acknowledges that the HOME-Assisted Units may also be assisted with other government funds. To the extent that CHDO becomes aware of any conflict between the requirements

of this Agreement and the requirements applicable to other governmental funds, CHDO shall propose a resolution of such conflict to the GOVERNMENT for the GOVERNMENT approval, which approval shall not be unreasonably withheld.

- G. License and Insurance Requirements. CHDO shall comply with all applicable licensing requirements and associated business regulations, whether federal, state, or local. CHDO shall purchase and maintain worker's compensation insurance as required by state law.
- H. Employees, Contractors, and Agents. Pursuant to one or more written agreements, CHDO shall require CHDO's officers, managers, employees, contractors, subcontractors, agents, representatives, or any other person or entity hired, engaged, or otherwise used by CHDO to carry out the CHDO's obligations under this Agreement ("**Employees, Contractors, and Agents**") to comply with the applicable requirements in this Agreement in all respects, including but not limited to following all applicable laws and licensure requirements. Pursuant to one or more written agreements, CHDO shall require that the Employees, Contractors and Agents are aware of and abide by any applicable terms of this Agreement. CHDO shall be responsible for any failure of the Employees, Contractors, and Agents to adhere to the applicable terms of this Agreement. Without limiting the foregoing, such responsibility shall not be deemed to waive any indemnification rights or other rights that CHDO may have under other agreements with such Employees, Contractors, and Agents.
- I. Indemnification. CHDO agrees to indemnify and hold harmless the GOVERNMENT and its agents, staff, employees, officers, directors, affiliates, successors and assigns, of and from any and all claims, demands, debts, contracts, expenses, causes of action, lawsuits, damages, and liabilities of every kind and nature, including any claims of owner or employee negligence, whether known or unknown, in law or equity, including any claims against and/or regarding the CHDO and its Employees, Contractors, and Agents, which they have, ever had or may have ("**Claims**"), arising from or in any way related to CHDO's obligations under this Agreement with respect to the Project. This includes reasonable attorneys' fees the GOVERNMENT may incur in enforcing this paragraph. In addition, this indemnification and agreement to pay the GOVERNMENT's reasonable attorneys' fees expressly includes any Claims that may arise from any act or failure to act by any Employees, Contractors, and Agents. However, this indemnification does not apply to any acts of gross negligence, or intentional, willful or wanton misconduct of the GOVERNMENT.
- J. Successors and Assigns. This Agreement shall inure to the benefit of and be binding upon the parties hereto and the permitted successors and assigns of the parties. CHDO may not assign its interests or obligations under this Agreement without the express, prior written consent of the GOVERNMENT.
- K. Notices. All notices hereunder shall be sufficiently given and shall be deemed given when delivered or mailed by certified mail, postage prepaid, return receipt requested, or emailed to the parties at the following addresses:

GOVERNMENT:  
Lexington-Fayette Urban County Government  
Division of Grants and Special Programs  
200 East Main Street, 6<sup>th</sup> floor  
Lexington, Kentucky 40507  
ATTN: Charlie Lanter, Director

CHDO:  
REACH, Inc.  
733 Red Mile Road  
Lexington, Kentucky 40504  
ATTN: Tina Burns

The CHDO acknowledges receipt of the HOME Investment Partnerships Program regulations codified at 24 CFR Part 92.84.

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

**LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT**

BY:   
Linda Gorton, Mayor

DATE: 9/17/2019

**ATTEST:**

  
Clerk of Urban County Council

**REACH, INC.**

BY:   
Tina Burns, Director

DATE: 9/6/19