

**HOME INVESTMENT PARTNERSHIPS PROGRAM  
CHDO AGREEMENT BETWEEN  
LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT  
AND  
THE FAYETTE COUNTY LOCAL DEVELOPMENT CORPORATION**

**THIS AGREEMENT**, made and entered into on this 15<sup>th</sup> day of January 2015, 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 and the Fayette County Local Development Corporation, a non-stock, nonprofit Kentucky corporation, organized pursuant to KRS Chapter 273, and whose mailing address is 148 Deweese Street, Lexington, Kentucky 40507.

**RECITALS**

**WHEREAS**, the Lexington-Fayette Urban County 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 (HUD).

**WHEREAS**, the Lexington-Fayette Urban County Government, (hereinafter referred to as the “Participating Jurisdiction”) has applied for and received 2012 HOME Investment Partnerships Grants from the U.S. Department of Housing and Urban Development.

**WHEREAS**, a requirement of the HOME Investment Partnerships Program (24 CFR 92.300) is that the Participating Jurisdiction 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 Participating Jurisdiction’s HOME allocations be reserved for investment only in housing to be developed, sponsored, or owned by community housing development organizations.

**WHEREAS**, the Fayette County Local Development Corporation has been certified by the Participating Jurisdiction as a community housing development organization that meets all of the federal requirements for designation as such.

**WHEREAS**, the Fayette County Local Development Corporation (hereinafter referred to as the “CHDO”) acting as an Owner/Developer, requests the Participating Jurisdiction to reserve \$132,024 from its 2012 HOME allocation for Rental Housing Production Activities.

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

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

**WHEREAS**, 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 Participating Jurisdiction and the CHDO hereto agree as follows:

**ARTICLE I**

**OBLIGATIONS OF THE CHDO**

**1. USE OF HOME FUNDS**

The CHDO agrees to use the set-aside of \$132,024 for the purpose of constructing two single family housing units located at 471 North Upper Street and 565 Chestnut Street for rent to eligible low-income households in accordance with the HOME Investment Partnerships Program regulations as stated in 24 CFR Part 92.

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 (Exhibit 1) that shall receive the prior written approval of the Participating Jurisdiction.

A minimum of two residential rental units will be completed with these funds.

2. **MAXIMUM PER-UNIT SUBSIDY AMOUNT**

All sums provided hereunder shall be used solely and exclusively for the construction of the units of rental housing for eligible project costs as set forth in 24 CFR 92.206. CHDO acknowledges that the unit in the Project shall be administered as a HOME-assisted unit, and that the per-unit subsidy shall not exceed the maximum per-unit subsidy amount established under section 221(d)(3)(ii) of the National Housing Act (12 U.S.C. 17151(d)(3)(ii)) for elevator-type projects that apply to the area in which the unit is located. The unit is designated as a HOME fixed unit.

3. **DURATION OF THE AGREEMENT**

The CHDO agrees to have all funds committed to HOME-eligible activities no later than June 30, 2015. The CHDO further agrees to complete all activities under this agreement no later than December 31, 2015. Project Completion is defined as all construction work being completed, issuance of a Certificate of Occupancy by the Lexington-Fayette Urban County Government Division of Building Inspection, and final inspection by the Division of Grants and Special Programs. Completion of activities includes the rental of the unit to an eligible household and acceptance of completion report by the HUD Cash Management System. Rental of unit shall be completed within six months of project completion and completion report shall be submitted within one month of rent-up. The terms of this Agreement shall be in effect for the full period of affordability, which is a period of twenty (20) years, beginning on the date the HUD Cash Management System accepts and records the Completion report.

4. **PERIOD OF AFFORDABILITY**

The period of affordability is defined as a period of twenty (20) years, beginning on the project completion date, established as the date the HUD Cash Management System accepts and records the Completion report. For purposes of enforcing the period of affordability, CHDO and Participating Jurisdiction 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. Deed Restrictions model is attached as Exhibit 2.

5. **TENANT ELIGIBILITY**

For a period of twenty (20) years from the date on which development of the Project is completed, established as the date the HUD Cash Management System accepts and records the Completion report, one hundred percent (100%) of the units assisted with these funds will be rented to low-income households, in accordance with HOME regulations at 24 CFR 92.203 (b) (1). Low-income households are those households with adjusted gross incomes at or below sixty percent (60%) of the median income for the community.

6. **MORTGAGES AND NOTES**

The CHDO shall deliver to the Participating Jurisdiction Mortgage and Mortgage Note in favor of the Participating Jurisdiction for the purpose of securing all HOME funds provided for Rental Housing Production Activities on all properties on which HOME assistance is expended. Mortgage shall be for a twenty-year term at 0% interest rate, with full forgiveness of all indebtedness at the expiration of the twenty-year Period of Affordability, absence any breach of this agreement. Mortgages shall provide for repayment of full amount of the HOME-investment by the CHDO to the Participating Jurisdiction in the event of CHDO's failure to meet the affordability requirements for the full twenty-year period of affordability. In the event of default by the CHDO, the Participating Jurisdiction 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 CHDO'S rights in the properties and/or the assignment and collection of the rents and profits of the Project. Mortgage and Mortgage Note are attached as Exhibits 3 and 4.

7. **INSURANCE**

The CHDO shall provide, maintain, and deliver to the Participating Jurisdiction evidence of fire and extended coverage insurance satisfactory to and with loss payable to the Participating Jurisdiction in the order and amount of the Mortgage Note hereby secured; assign to the Participating Jurisdiction 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.

8. **HOME RENT RESTRICTIONS**

For a period of twenty (20) years from the date on which development of the Project is completed, established as the date the HUD Cash Management System accepts and records the Completion report 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 Participating Jurisdiction. The rents so charged must include utility costs. The maximum allowable HOME rent must be reduced by a utility allowance approved by Participating Jurisdiction if tenant is required to pay separately for utilities. Utility allowances approved by Participating Jurisdiction 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. Participating Jurisdiction will notify CHDO of changes in rent and utility schedules. Current rent and utility schedules are attached as Exhibits 5 and 6.

9. **LEASES**

CHDO shall offer tenants leases for terms of at least one year. Leases of less than one year are permitted only by mutual agreement between the tenant and CHDO. Any lease entered into between CHDO 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 CHDO and to the requirements of 24 CFR 92.253. 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.

10. **VERIFICATION AND REPORTING OF TENANT ELIGIBILITY**

The family size and the adjusted gross income for all tenants 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 Cash Management System accepts and records the Completion report showing that one hundred percent (100%) of the units assisted by this Loan have been rented to low-income and very low-income households. CHDO shall obtain and verify income and family size information from each tenant upon initial rent up and annually during the twenty (20) year period. CHDO shall provide information on family size, adjusted gross income and rent charged for all tenants to the Participating Jurisdiction's Division of Grants and Special Programs within sixty (60) days after the initial rent up and the annual review date. CHDO shall obtain any necessary releases from tenant to allow Participating Jurisdiction to independently verify the information provided. The definition of income for this project is the same as the U.S. Department of Housing and Urban Development's Section 8 (Part 5) Annual (gross) Income.

The CHDO 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 and determine if any are over-income. Development is deemed to be completed on the date the HUD Cash Management System accepts and records the Completion report showing that one hundred percent (100%) of the units assisted by this Loan have been rented to low-income and very low-income households. An over-income tenant is a household with an adjusted gross income exceeding eighty percent (80%) of the median

for the community. CHDO shall not evict over-income tenants based on income. CHDO shall increase the rent of the unit to thirty percent (30%) of the household's adjusted gross income. Units vacated by an over-income tenant must be rented to an income-eligible tenant during the twenty (20) year period.

11. **PROPERTY STANDARDS**

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 further 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 20-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).

12. **REPORTS**

The CHDO agrees to provide any reports and information as required by the Participating Jurisdiction. 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 Participating Jurisdiction no later than thirty days after the end of the Participating Jurisdiction's fiscal year.

14. **REQUEST FOR DISBURSEMENT OF FUNDS**

The CHDO agrees that it shall not request disbursement of funds from the Participating Jurisdiction 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.

The request for disbursement of funds for rental housing development shall include a draw request for HOME funds for each unit, accompanied by all receipts for labor and materials identified by property address. The first request shall include a copy of the building permit, the Deed and Declaration of Restrictive Covenants, and evidence of compliance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (URA). Payment shall be made based upon the proportionate HOME investment. Progress payments shall be made at the following intervals: 25%, 50%, and 75% of completion based upon the budget.

The final request for disbursement of funds for rental housing development shall also include post construction appraisals, Certificates of Occupancy, Final Inspection conducted by the Lexington-Fayette Urban County Government's Division of Grants and Special Programs, Final Sources and Uses of Funds, leases, HOME Annual Certification Report, completed tenant-funded utilities form, mortgage and note for HOME assistance, copies of all other recorded mortgages on the HOME-assisted properties, amount and source (name of individual or organization) of all private donations, and 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: women-owned and/or the following race/ethnicity categories (Alaskan Native/American Indian, Asian or Pacific Islander, Black Non-Hispanic, Hispanic, or White/Non-Hispanic.

15. **REVERSION OF ASSETS**

The CHDO agrees that in the event that it ceases to operate as a CHDO, it shall transfer to the Participating Jurisdiction any HOME funds on hand at the time of expiration and any accounts receivable attributable to the use of HOME funds.

16. **SALE OF PROPERTY**

All sales of property during the period of affordability must have the prior written approval of the Participating Jurisdiction'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 Participating Jurisdiction's Division of Grants and Special Programs, properties may be sold to income-eligible tenants for homeownership.

17. **PROJECT PROCEEDS**

All **Project 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 Participating Jurisdiction by the 15<sup>th</sup> of the following quarter, until all funds have been expended.

18. **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.

19. **DEFINITION OF COMMUNITY HOUSING DEVELOPMENT ORGANIZATION**

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.

20. **ENFORCEMENT OF THE AGREEMENT**

This agreement, in accordance with 24 CFR 85.43 can be terminated if the CHDO fails to comply with any term of the agreement. This agreement may be terminated for convenience in accordance with 24 CFR 85.44 upon written notice by the participating jurisdiction.

## ARTICLE II

### OTHER FEDERAL REQUIREMENTS

1. **FAIR HOUSING AND EQUAL OPPORTUNITY**

Under any program funded in whole or in part with HOME funds, the CHDO shall not exclude from participation in, deny the benefits of, or subject to discrimination any person in the United States on the grounds of race, color, national origin, religion, sex, familial status or disability.

The CHDO agrees to comply with the requirements of the Fair Housing Act (42 U.S.C. 3601-20) and implementing regulations at 24 CFR, part 100; Executive Order 11063, as amended by executive Order 12259 (3CFR, 1958-1963 Comp., p. 652 and 3 CFR, 1980 Comp., p. 307) (Equal Opportunity in Housing) and implementing regulations at 24 CFR part 107; and title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d) (Nondiscrimination in Federally Assisted Programs) and implementing regulations issued at 24 CFR part 1.

The CHDO agrees to comply with the requirements of the Age Discrimination Act of 1975 (42 U.S.C. 6101-07) and implementing regulations at 24 CFR part 146: the requirements of section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and implementing regulations at 24 CFR part 8.

In accordance with 24 CFR 5.105 and section 2-33 of the Code of Ordinances of the Lexington-Fayette Urban County Government, the CHDO shall ensure that HUD-assisted housing or other services being provided pursuant to this agreement shall be made available without regard to actual or perceived sexual orientation, gender identity or marital status. Neither CHDO nor any of its agents will inquire about the sexual orientation or gender identity of any applicant for or person receiving HUD-assisted housing or other services.

2. **EMPLOYMENT AND EQUAL OPPORTUNITY**

The CHDO agrees to comply with the requirements of Equal Employment Opportunity, Executive Order 11246, as amended (3CFR 1964-65, Comp., p. 339) (Equal Employment Opportunity) and the implementing regulations issued at 41 CFR chapter 60; and the requirements of section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u).

3. **AFFIRMATIVE MARKETING**

As applicable, the CHDO agrees to comply with the Affirmative Marketing Plan as adopted by the Participating Jurisdiction and as approved by the U.S. Department of Housing and Urban Development.

4. **DISADVANTAGED BUSINESS ENTERPRISES**

To the maximum extent possible, the CHDO agrees to afford minority- and women-owned business enterprises the opportunity to participate in the performance of this Agreement. As used in this Agreement, the term "minority and female business enterprise" means a business at least fifty-one (51) percent owned and controlled by minority group members or women. For the purpose of this definition, "minority group members" are Alaskan Native/American Indian, Asian or Pacific Islander, Black Non-Hispanic, Hispanic, or White/Non-Hispanic.

5. **UNIFORM RELOCATION AND REAL PROPERTY ACQUISITION ACT**

The CHDO agrees to conduct housing acquisition, rehabilitation, and demolition activities in such a manner as to minimize the displacement of persons. The CHDO further agrees to 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.

6. **ENVIRONMENTAL REVIEW**

CHDO agrees to provide property addresses and work specifications to the Participating Jurisdiction prior to commitment of HOME Funds for purposes of completing environmental review requirements under 24 CFR Part 58. The CHDO agrees to comply with the Advisory Council on Historic Preservation's Rules and Regulations for the Protection of Historic and Cultural Properties (36 CFR, Part 800) pursuant to the National Historic Preservation Act of 1966, The National Environmental Policy Act of 1969, and Executive Order 11593.

7. **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.

8. **LABOR**

The CHDO acknowledges 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 CHDO, contractors, or subcontractors, shall be paid wages complying with the Davis-Bacon Act (40 U.S.C. Section 276(A)-7). The CHDO further agrees to comply with the applicable provisions of the Contract Work Hours and Safety Standards Act (40 U.S.C. Section 327-333), the applicable provisions of the Fair Labor Standards Act of 1938, as amended (29 U.S.C. et seq.), and the Copeland (Anti-Kickback) Act (40USC 276c).

9. **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.
10. **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.
11. **TENANT SELECTION POLICIES AND TENANT PARTICIPATION PLAN**  
The CHDO shall adopt and follow written tenant selection policies and criteria that are consistent with the purpose of providing housing for very low-income and low-income persons and in conformance with the requirements at 24 CFR 92.253(d). The CHDO shall develop and follow a tenant grievance procedure that shall have the approval of the Participating Jurisdiction and shall provide a plan for and follow a program of tenant participation in management decisions in accordance with 24 CFR 92.303.
12. **STANDARDS FOR FINANCIAL MANAGEMENT SYSTEM**  
The CHDO agrees to comply with the requirements at 24 CFR 84.21, "Standards for Financial Management Systems." 24 CFR 84.21 is attached as Exhibit 7.
13. **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). The CHDO agrees that officials of the Participating Jurisdiction, officials of the U.S. Department of Housing and Urban Development, 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. 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 to operate as a legal entity, said records shall be delivered to the Participating Jurisdiction.

### ARTICLE III

#### OBLIGATIONS OF THE PARTICIPATING JURISDICTION

1. In accordance with 24 CFR 92.300-301, the Participating Jurisdiction agrees to reserve \$132,024 from its 2012 and 2013 HOME allocations for Rental Housing Production Activities for use by the CHDO for eligible HOME projects.
2. The Participating Jurisdiction agrees to monitor the performance of the CHDO to assure compliance with all applicable federal regulations; however, monitoring does not relieve the CHDO of primary responsibility for compliance.
3. The Participating Jurisdiction agrees to prepare and submit any and all required reports to the U.S. Department of Housing and Urban Development.
4. The Participating Jurisdiction agrees to provide technical assistance to the CHDO in fulfilling its obligations under this agreement.
5. The Participating Jurisdiction agrees to make reasonable, allowable disbursements from its local HOME Investment Trust Fund to the CHDO when a need for payment is documented.


6. Participating Jurisdiction shall conduct inspections of units at least every three years for purposes of determining CHDO'S compliance with maintenance requirements.
7. The Participating Jurisdiction agrees to notify the CHDO with any changes in the HOME regulations, program limits for income, rent and property value, and all other pertinent information received in regards to the program.

**ARTICLE IV  
ADDITIONAL PROVISIONS**

1. No right, benefit, or advantage inuring to the CHDO and no burden imposed on the CHDO hereunder may be assigned or otherwise transferred without the prior written approval of the participating jurisdiction.
2. This agreement, or any part hereof, may be amended from time to time hereafter only in writing executed by the Participating Jurisdiction and the CHDO.
3. The CHDO agrees to be responsible (in the manner and to the extent permitted by law) for all lawfully proven claims, losses, actions, and expenses (including legal expenses), including claims against the Participating Jurisdiction, arising from the performance of the terms of this agreement in accordance with the requirements of the HOME Investment Partnerships Program but excepting any such claims, losses, causes of action and expenses arising as a result of fault on the part of the Participating Jurisdiction, its officers, agents and employees. The CHDO is not responsible for negligent acts of the Participating Jurisdiction, its officers, agents, and employees.
4. All notices hereunder shall be sufficiently given and shall be deemed given when delivered or mailed by certified mail, postage prepaid, return receipt requested, to the parties at their respective addresses as first set out herein.
5. This agreement will remain in effect during the relevant period of affordability of any housing developed with HOME financial assistance under the provisions of this agreement and in accordance with the requirements of the HOME regulations at 24 CFR 92, or for as long as federal regulations may require compliance.
6. 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.

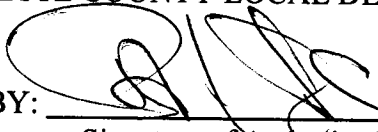
LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT

BY:   
 \_\_\_\_\_  
 Jim Gray, Mayor

ATTEST:

  
 \_\_\_\_\_  
 Clerk of Urban County Council

FAYETTE COUNTY LOCAL DEVELOPMENT CORPORATION

BY:   
 \_\_\_\_\_  
 Signature of Authorized Official

   
 \_\_\_\_\_  
 Printed Name and Title of Authorized Official



## Project Estimate

Address: 471 North Upper St  
Square Footage: 1,556  
Specs: 4 bd, 2 bth, 1-story, crawl

	<u>Projected Costs</u>
Equipment Rental	\$ 1,250.00
Site Work	\$ 1,000.00
Excavate & Form Footer	\$ 3,200.00
Dumpster	\$ 750.00
Masonry	\$ 2,800.00
Framing	\$ 18,750.00
Concrete	\$ 3,200.00
Siding/Columns	\$ 3,800.00
Windows/ Energy Star Upgrade *	\$ 1,650.00
Electric - 2009 Code	\$ 4,800.00
Roof Shingles	\$ 2,800.00
Plumbing	\$ 6,500.00
Insulation (attic & crawl)	\$ 2,700.00
HVAC	\$ 7,500.00
DryWall - hang & finish	\$ 5,500.00
Trim/Doors	\$ 3,550.00
Interior Painting	\$ 2,334.00
Gutters	\$ 1,200.00
Cabinets/Countertops/Vanities & Tops	\$ 3,200.00
Flooring - Carpet/vinyl	\$ 4,600.00
Accessories	\$ 1,200.00
Lighting **	\$ 1,000.00
Landscaping	\$ 3,000.00
Decks - 10 X 10	\$ 750.00
Appliances	\$ 2,800.00
Cleaning	\$ 200.00
Utilities	\$ 1,200.00
Permits & Fees	\$ 1,800.00
Street Cut - Gas line	\$
<b>Subtotal 1</b>	<b>\$ 93,034.00</b>
4% Contingency	\$ 3,721.36
Soft Costs: (Interest, Insurance, loan Costs)	\$ 5,185.00
<b>Subtotal 2</b>	<b>\$ 101,940.36</b>
Overhead & Profit	\$ 45,002.41
<b>Total Building Costs</b>	<b>\$ 146,942.77</b>

## Project Estimate

Address: 565 Chestnut  
Square Footage: 1206 (roofed area)  
Specs: 3bdrm, 2 bath

	<u>Costs</u>
Acquisition	\$ 20,000.00
Demolition	
Equipment Rental	\$ 1,500.00
Site Work	\$ 1,000.00
Excavate, Form & Pour Footer	\$ 2,500.00
Dumpster	\$ 1,200.00
Masonry	\$ 1,200.00
Framing	\$ 18,500.00
Concrete	\$ 3,200.00
Siding/Columns	\$ 4,600.00
Windows/ Energy Star Upgrade	\$ 1,200.00
Electric - 2009 Code	\$ 4,900.00
Roof Shingles	\$ 4,000.00
Plumbing	\$ 6,500.00
Insulation (crawl & attic)	\$ 1,000.00
HVAC	\$ 7,500.00
DryWall - hang & finish	\$ 6,000.00
Trim/Doors	\$ 3,600.00
Interior Painting	\$ 1,800.00
Gutters	\$ 1,700.00
Cabinets/Countertops/Vanities & Tops	\$ 3,800.00
Flooring - Carpet/vinyl	\$ 4,500.00
Accessories	\$ 1,000.00
Lighting	\$ 1,000.00
Landscaping	\$ 2,500.00
Decks - 10 X 10	\$ 1,800.00
Appliances	\$ 2,800.00
Cleaning	\$ 200.00
Utilities	\$ 800.00
Permits & Fees	\$ 1,500.00
Street Cut - Gas line	
<b>Subtotal 1</b>	<b>\$ 91,800.00</b>
4% Contingency	\$ 3,672.00
Soft Costs (Interest, Insurance, loan costs)	<u>\$ 5,186.00</u>
<b>Subtotal 2</b>	<b>\$ 100,658.00</b>
Overhead & Profit	<u>\$ 44,424.90</u>
<b>Total Building Costs</b>	<b><u>\$ 145,082.90</u></b>
<b>Total Building &amp; Acquisition</b>	<b>\$ 165,082.90</b>

**DEED AND DECLARATION OF RESTRICTIVE COVENANTS**

**THIS DEED AND DECLARATION OF RESTRICTIVE COVENANTS** is made this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, by and between **FAYETTE COUNTY LOCAL DEVELOPMENT CORPORATION**, A Kentucky Private Nonprofit Corporation, 148 Deweese Street; Lexington, Fayette County, Kentucky 40507 ("Declarant/Owner"), owner of certain real property in Lexington, Fayette County 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 ("Government").

WITNESSETH:

**WHEREAS**, the Declarant/Owner is the owner of certain real property located at \_\_\_\_\_, Lexington (Fayette County) Kentucky 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 development funds to Community Housing Development Organizations; and

**WHEREAS**, said Government, through its HOME Program, has recognized Declarant/Owner as a Community Housing Development Organization and has committed HOME funds to Declarant/Owner to increase affordable residential rental units for low-income households in Fayette County;

**WHEREAS**, Declarant/Owner has committed the herein described HOME funds for the purposes of constructing housing units for operation as rental units to low-income households;

**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

## EXHIBIT 2

### Page 2 of 6

WHEREAS, the Declarant/Owner has committed federal funds pursuant to the Government's HOME Program and HUD's HOME Investment Partnership Program for the construction of a new affordable rental unit on the herein described sites, and in consideration of such loan intends to establish covenants, conditions and restrictions running with the land to comply with the requirements of the HOME program;

NOW, THEREFORE, the Declarant/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 and shall be rented to low income households by Declarant/Owner and its assigns, subsequent purchasers, lessees and successors in interest. Low income households are those households with gross incomes at or below sixty percent (60%) of the median income for the community.

(b) Declarant/Owner and its assigns, subsequent purchasers, lessees and successors in interest shall charge rents no higher than 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 Declarant/Owner and its assigns, subsequent purchasers, lessees and successors in interest to adjust the rent charged, Declarant/Owner and its assigns, subsequent purchasers, lessees and successors in interest must 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. Declarant/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. Declarant/Owner and its assigns, subsequent purchasers, lessees and successors

**EXHIBIT 2**  
**Page 3 of 6**

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. Declarant/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 Declarant/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. Declarant/Owner and its assigns, subsequent purchasers, lessees and successors in interest shall not evict over-income tenants based on income. Declarant/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) 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 Cash Management System accepts and records the Completion report showing that one hundred percent (100%) of the units assisted by this Loan have been rented to low-income households, for a period of twenty (20) years and shall be binding upon the Declarant/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

**EXHIBIT 2**

**Page 4 of 6**

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 Declarant/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 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:**

Declarant/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 of 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, Declarant/Owner, and Government have executed this  
Deed and Declaration of Restrictive Covenants effective as of the day and year first above written.

FAYETTE COUNTY LOCAL DEVELOPMENT  
CORPORATION

BY: \_\_\_\_\_

ITS: \_\_\_\_\_

LEXINGTON-FAYETTE URBAN  
COUNTY GOVERNMENT

BY: \_\_\_\_\_  
JIM GRAY, MAYOR

State of Kentucky)  
                                  )SCT  
County of Fayette)

The foregoing instrument was subscribed, sworn to, and acknowledged before me this the  
\_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by \_\_\_\_\_,  
as \_\_\_\_\_ of Fayette County Development Corporation, a Kentucky  
Private Nonprofit Corporation, by and on behalf of the Company.

My Commission Expires: \_\_\_\_\_

\_\_\_\_\_  
NOTARY PUBLIC, STATE AT LARGE, KENTUCKY

State of Kentucky)  
                                  )SCT  
County of Fayette)

The foregoing instrument was subscribed, sworn to, and acknowledged before me this the  
\_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by Jim Gray, as Mayor of the Lexington-  
Fayette Urban County Government.

My Commission Expires: \_\_\_\_\_

\_\_\_\_\_  
NOTARY PUBLIC, STATE AT LARGE, KENTUCKY

Prepared by:

\_\_\_\_\_  
Michael Keith Horn  
Managing Attorney  
Lexington-Fayette Urban County Government  
Department of Law  
200 East Main Street  
11th Floor  
Lexington, Kentucky 40507

**Exhibit A**

**Legal Descriptions**



**MORTGAGE**

**THIS MORTGAGE** made the \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, by and between **FAYETTE COUNTY LOCAL DEVELOPMENT CORPORATION**, A Kentucky Private Nonprofit Corporation, 148 Deweese Street; Lexington, Fayette County, KY 40507("Mortgagor") 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").

**WITNESSETH:**

**WHEREAS**, the Lender, through its Division of Grants and Special Programs, has provided Mortgagor a loan for the construction of residential unit(s) 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 \_\_\_\_\_ Dollars \_\_\_\_\_, 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 \_\_\_\_\_, \_\_\_\_\_.

**NOW, THEREFORE**, in consideration of the premises 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 Agreement of \_\_\_\_\_("Agreement"), and the Note, Mortgagor does hereby mortgage, grant, assign and convey to Lender, forever, the following described real property, situated and located in Fayette County, Kentucky, to wit:

See Exhibit A attached hereto and incorporated by reference.

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 ("Mortgaged Property").

**TO HAVE AND TO HOLD** all of the above-described real property together with all of the rights, privileges, appurtenances, and improvements thereunto belonging unto the Lender.

This Mortgage is made subject to, and is to include all valid conditions, restrictions, easements, and stipulations of record, applicable zoning rules and regulations and taxes not yet due and payable pertaining to the above-described real property as may be revealed in the chain of title thereto.

The Mortgagor warrants the aforesaid title to said property and covenants that it has a good right to mortgage and convey the same, that the same is free from all encumbrances except as herein otherwise recited, and that Mortgagor will warrant and defend generally the title to the property against all claims and demands.

The Mortgagor, in order to protect more fully the security of this Mortgage, covenants and agrees as follows:

1. All sums borrowed pursuant to the Note are for the exclusive purpose of constructing residential unit(s) for occupancy by low-income households to be located on the real property described hereinabove in the manner set out in the Agreement and the monies so provided

shall be used solely for such purpose. Said Note and Agreement are incorporated herein by reference.

2. During the twenty (20) year term of this loan, Mortgagor shall make no payments on principal or interest so long as Mortgagor complies with all of the terms and conditions of this Mortgage and the Note and Agreement (the "Loan Documents"). It is the intention of the parties that if Mortgagor complies with all terms and conditions of the Loan Documents for their full term, then all interest and principal under the note shall be forgiven in full.

3. If within one year from the date of completion of the construction of the Mortgaged Property, Mortgagor breaches any of the provisions of this Mortgage or the Note or Agreement, such shall be considered a default and the full amount of the Deferred Payment Loan, plus fifteen percent (15%) of that full amount, shall be immediately due and payable; provided, before the Lender may accelerate any amount due under the Deferred Payment Loan or take advantage of any other remedies, Mortgagor shall have a thirty (30) day grace period from receipt of written notice of default to cure such default.

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

5. The improvements now or hereafter on the Mortgaged Property shall be insured against loss by fire and such other hazards as are covered by a standard extended coverage endorsement of an insurance company or companies authorized to do business in the Commonwealth of Kentucky and acceptable to the Lender until the Note is fully paid or this Mortgage is released. The policy or policies for said insurance, bearing such standard extended coverage endorsement, shall be in such amounts as Lender may require and shall have attached thereto loss payable clauses in favor of and delivered to Lender. In the event of loss by fire or other causes covered by said standard extended coverage endorsement, Mortgagor shall give immediate notice thereof by mail to Lender which may make proof of loss if not made promptly by Mortgagor, and the insurance company or companies concerned are hereby authorized and directed to make payment for such loss directly to Lender, and Lender may at its option apply such insurance proceeds or any part thereof to the payment or reduction of the Note hereby secured or to the restoration or repair of such improvements.

6. All taxes and legal assessments, water rates, and other charges, fines, or impositions against the Mortgaged Property shall be promptly paid by the Mortgagor, and upon request the receipts therefore exhibited to Lender.

7. Mortgagor shall keep the dwelling unit on the property in good condition and repair, fully tenantable and shall not remove or demolish any dwelling unit thereon. Mortgagor shall complete or restore promptly and in a good and workmanlike manner any dwelling unit which may be constructed, damaged or destroyed thereon to the extent insurance proceeds are actually received and to pay when due all claims for labor performed and materials furnished at any time.

8. Upon failure of the Mortgagor to maintain insurance, pay taxes and other charges, or keep the improvements thereon in good repair, the Lender, at its option, may procure such insurance, pay said taxes and charges and make such repairs. All sums so paid by the Lender shall be repaid to it immediately by the Mortgagor, and in the default thereof shall be added to and become a part of the debt of the Mortgagor, and shall be secured by this Mortgage to the extent allowed by law and bear legal interest from the date of such payment until paid.

9. Mortgagor shall not sell, convey, or transfer any interest in the properties described hereinabove without the written consent of the Lender. This restriction includes the transfer of any interest in the properties by land-sale contract, mortgage, or similar agreements.

10. In the event Mortgagor (a) fails to pay or fails to cause to be paid the Note or any installment thereon when the same shall become due and payable; or (b) fails to maintain and keep in force insurance; or (c) fails to pay such taxes, legal assessments, water rates, special assessments, or other charges, fines, or impositions when the same shall become due and payable; or (d) sells or permits the Mortgaged Property to be sold without the written consent of the Lender; or (e) is adjudged a bankrupt or insolvent, makes an assignment for the benefit of creditors or is placed in receivership; or (f) defaults under any other Mortgage or lien; or (g) in any manner fails to keep and perform any of the covenants, stipulations, and agreements set out in this Mortgage, the Agreement, or Note, Lender may, without notice, at its option, immediately declare all sums secured hereby immediately due and payable and proceed to enforce the collection of the same and all charges and costs permitted by law and the lien of this Mortgage. The Lender may take such measure as may be lawful for the recovery of its indebtedness, including but not limited to foreclosure and the sale of the Mortgagor's right in the properties and/or the assignment and collection of the rents and profits therefrom.

11. The Mortgagor shall perform all of the Mortgagor's obligations under the First Mortgage\*, including Mortgagor's covenants to make payments when due. Mortgagor shall pay all taxes, assessments, charges, fines and impositions attributable to the Property which may attain priority over this Security Instrument, and leasehold payments or ground rents, if any. Mortgagor shall pay them on time directly to the person owed payment. Mortgagor shall promptly furnish to Lender all notices of amounts to be paid under this paragraph. If Mortgagor makes these payments directly, Mortgagor shall promptly furnish to Lender receipts evidencing the payments.

Except for the liens of the First Mortgage, Mortgagor shall promptly discharge any other lien which shall have attained priority over this Security Instrument unless Mortgagor: (a) agrees in writing to the payment of the obligation secured by the lien in a manner acceptable to Lender; (b) contests in good faith the lien by, or defends against enforcement of the lien in, legal proceedings which in the Lender's opinion operate to prevent the enforcement of the lien; or (c) secures from the holder of the lien an agreement satisfactory to Lender subordinating the lien to this Security Instrument. Except for the liens of the First Mortgage, if Lender determines that any part of the Property is subject to a lien which may attain priority over this Security Instrument, Lender may give Mortgagor a notice identifying the lien. Mortgagor shall satisfy such lien or take one or more of the actions set forth above within 10 days of the giving of notice.

12. Any notice to Mortgagor provided for in this Security Instrument shall be given by delivering it or mailing it by first class mail unless applicable law requires use of another method. The notice shall be directed to the Mortgagor address or any other address Mortgagor designates by notice to Lender. Any notice to Lender shall be given by first class mail to Lender's address stated herein or any other address Lender designates by notice to Mortgagor:

Director, Division of Grants and Special Programs  
Lexington-Fayette Urban County Government  
200 East Main Street, 6th Floor  
Lexington, Kentucky 40507

or such other address designated by notice to the Mortgagor. Any notice provided for in this Security Instrument shall be deemed to have been given to Mortgagor or Lender when given as provided in this paragraph.

13. (A.) Lender and Mortgagor acknowledge and agree that this Security Instrument is subject and subordinate in all respects to the liens, terms, covenants and conditions of any First Mortgage and to all advances heretofore made or which may hereafter be made pursuant to any First Mortgage including all sums advanced for the purpose of (a) protecting or further securing the liens of any First Mortgage(s) curing defaults by the Mortgagor under any First Mortgage or for any other purpose expressly permitted by any First Mortgage or (b) constructing, renovating, repairing, furnishing, fixturing or equipping the Property. The terms and provisions of any First Mortgage are paramount and controlling, and they supersede any other terms and provisions hereof in conflict therewith. During the term hereof, should any mortgage or deed of trust be foreclosed on the site,

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\*

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 of any First Mortgage to the U.S. Department of Housing and Urban Development (HUD) all restrictions relating to affordable housing programs provided for in this Subordinate Mortgage 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.

(B.) Further, if the First Mortgagee acquires title to the Property pursuant to a deed in lieu of foreclosure, the lien of this Security Instrument shall automatically terminate upon the First Mortgagee's acquisition of title, provided that (i) the Lender has been given written notice of a default under any First Mortgage and (ii) the Lender shall not have cured the default under any First Mortgage, or diligently pursued curing the default as determined by the First Mortgagee, within the 60-day period provided in such notice sent to the Lender. 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 of any First Mortgage to the U.S. Department of Housing and Urban Development (HUD) all restrictions relating to affordable housing programs provided for in this Subordinate Mortgage 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.

(C.) Notwithstanding Lender's right to invoke any remedies under the Agreement, the Mortgage Note, or this Security Instrument ("Lender's 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 First Mortgagee. Such notice shall outline in detail the default(s) under the Lender's Loan Documents. First Mortgagee 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 First Mortgagee 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 Security Instrument until it has given First Mortgagee at least 60 days prior written notice as set forth in paragraph 13 (C) (1) above.

14. It is expressly understood that a default on the First Mortgage or any initiation of a foreclosure based on any lien shall be a default under this Mortgage and the principal amount shall immediately become due and payable and Lender shall be entitled to recover the cost of collection, including reasonable attorney fees.

15. Lender or its agent may make reasonable entries upon and inspections of the Property. Lender shall give Mortgagor notice at the time of or prior to an inspection specifying reasonable cause for the inspection.

16. Failure of the Lender to exercise any of its options provided for herein in the event of any violation of the warranties, covenants, and agreements herein contained shall not constitute a waiver of its right to exercise such option because of any subsequent violation.

17. This Mortgage shall be binding upon and inure to the benefit of the respective heirs, executors, administrators, successors, and assigns of the parties hereto. Whenever used, the singular number shall include the plural, the plural the singular, the use of any gender shall include

all genders, and the term "Lender" shall include any payee of the indebtedness hereby secured or any transferee thereof whether by operation of law or otherwise.

18. Nothing in this agreement shall be construed to prohibit the assignment or subordination of this lien by the Lender.

19. The loan secured hereby 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, including the eligibility and affordability provisions of the Program, upon the prior written consent of Lender, which consent shall not be unreasonably withheld or delayed.

20. Mortgagor shall not cause or permit the presence, use, disposal, storage, or release of any Hazardous Substances on or in the Property. Mortgagor shall not do, nor allow anyone else to do, anything affecting the Property that is in violation of any Environmental law. The proceeding two sentences shall not apply to the presence, use, or storage on the Property of small quantities of Hazardous Substances that are generally recognized to be appropriate for normal residential uses and to maintenance of the Property.

Mortgagor shall promptly give Lender written notice of any investigation, claim, demand, lawsuit or other action by any governmental or regulatory agency or private party involving the Property and any Hazardous Substance or Environmental Law of which Mortgagor has actual knowledge. If Mortgagor learns, or is notified by any governmental or regulatory authority, that any removal or other remediation of any Hazardous Substance affecting the Property is necessary, Mortgagor shall promptly take all necessary remedial actions in accordance with Environmental Law. Prior to taking any such remedial action, however, the Mortgagor shall notify the First Mortgagee that such remedial action is necessary and shall obtain the First Mortgagee's prior written consent for such remedial action.

As used in this paragraph 20, "Hazardous Substances" are those substances defined as toxic or hazardous substances by Environmental Law and include the following substances: gasoline, kerosene, other flammable or toxic petroleum products, toxic pesticides and herbicides, volatile solvents, materials containing asbestos or formaldehyde, and radioactive materials. As used in the paragraph 20, "Environmental Law" means federal laws of the jurisdiction where the Property is located that relate to health, safety or environmental protection.

21. The lien of this instrument shall remain in full force and effect during any postponement or extension of the time of payment of the indebtedness or any part thereof secured hereby.

22. The Lender consents to any agreement or arrangement in which the First Mortgagee waives, postpones, extends, reduces or modifies any provisions of the First Mortgage Loan Documents, including any provisions requiring the payment of money.

23. Upon request of the Mortgagor, Lender, at its option, prior to release of this Mortgage, may make Future Advances to Mortgagor. Such Future Advances, with interest thereon, shall be secured by this Mortgage when evidenced by promissory notes stating that said notes are secured hereby. The maximum additional indebtedness which may be secured hereby is the sum of \$-0- and at no time shall the principal amount of the indebtedness secured by this Mortgage, not including sums advanced in accordance herewith to protect the security of this Mortgage, exceed the original amount of the Note plus \$-0-. All Future Advances secured by this Mortgage shall be due and payable on or before the maturity date of the indebtedness evidenced by the Note.

**PROVIDED, HOWEVER,** that if Mortgagor shall pay the Mortgage Note according to the terms thereof and perform all of the covenants, conditions, stipulations, and agreements set out in the same or herein contained, then this Mortgage shall be void, and the Lender shall, at Mortgagor's cost and request, release the same.

IN TESTIMONY WHEREOF, witness the signature of Mortgagor.

Fayette County Local Development Corporation

BY: \_\_\_\_\_

ITS: \_\_\_\_\_

COMMONWEALTH OF KENTUCKY) )  
COUNTY OF FAYETTE ) )

The foregoing instrument was subscribed, sworn to and acknowledged before me this the \_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, by \_\_\_\_\_ of Fayette County Local Development Corporation., A Kentucky Private Nonprofit Corporation, by and on behalf of the Company.

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

\_\_\_\_\_  
NOTARY PUBLIC, STATE AT LARGE, KY

PREPARED BY:

\_\_\_\_\_  
Michael Keith Horn, Managing Attorney  
Lexington-Fayette Urban  
County Government  
Department of Law  
200 East Main Street  
Lexington, Kentucky 40507  
(606) 258-3500

**EXHIBIT A**

**EXHIBIT 4**  
**Page 1 of 2**  
**MORTGAGE NOTE**

**Lexington, KY**

**FOR VALUE RECEIVED**, the undersigned, **FAYETTE COUNTY LOCAL DEVELOPMENT CORPORATION**, whose address is 148 DeWeese Street; Lexington, Fayette County, Kentucky 40507 ("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"), the principal sum of \_\_\_\_\_ Dollars (\$\_\_\_\_\_) in lawful money of the United States, with interest at the rate of zero percent (0%) per annum, from \_\_\_\_\_, 20\_\_, until \_\_\_\_\_, 20\_\_, the date upon which the unpaid principal balance and all accrued but unpaid interest shall be due and payable.

**DEFERRED PAYMENT LOAN CONDITIONS:**

This Note evidences a Deferred Payment Loan by the Government to the Borrower for the exclusive purpose of constructing a single family residential unit for rent to low-income households on property located at \_\_\_\_\_, Lexington, Kentucky ("Project") in the manner set out in the Agreement of ("Agreement") and the monies so provided shall be used solely for such purpose.

No principal or interest payments will be required during the term of the indebtedness and the principal amount due shall be reduced and amortized at zero percent (0%) interest as though monthly payments of \_\_\_\_\_ of the principal were being made as long as the Borrower complies with all terms and conditions of this Note, the Mortgage of even date herewith, and the Agreement of \_\_\_\_\_, (collectively, the "Loan Documents") between the Borrower and the Government. The Mortgage and the Agreement are incorporated herein by reference and made a part hereof. It is the intention of the parties that if Borrower complies with all terms and conditions of the Loan Documents for their full term, then the outstanding balance of this note shall be forgiven in full.

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 single family residential unit at \_\_\_\_\_, and supporting the amount requested.

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 Agreement or the Mortgage, such shall be considered a default and the full 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.

If during the second through twentieth year of the Deferred Payment Loan the Borrower breaches any of the provisions of this Note or the Agreement or the Mortgage, such shall be considered a default and the full amount of the 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, Borrower shall have a thirty (30) day grace period from receipt of written notice of default to cure such default.

Any default on a superior lien or any initiation of a foreclosure based on any lien shall be a default under this Note and the Agreement and the Mortgage and the amount as set out hereinabove 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, Borrower shall have a thirty (30) day grace period from receipt of written notice of default to cure such default.

The Deferred Payment 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



**EXHIBIT 4**

**Page 2 of 2**

upon the prior written consent of the Government, which consent shall not be unreasonably withheld or delayed.

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.

The indebtedness evidenced by this Note is secured by a Mortgage of even date herewith in favor of the Government on the aforescribed real property and Project executed by Fayette County Local Development Corporation, and recorded in the Office of the Fayette County Clerk in Mortgage Book \_\_\_\_\_, Page \_\_\_\_\_, and reference is made to said instrument for rights as to acceleration of the indebtedness evidenced by this Note.

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

Fayette County Local Development Corporation

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

Its: \_\_\_\_\_

DUE DATE: \_\_\_\_\_

PROPERTY ADDRESS:

# HOME PROGRAM RENTS

May 1, 2014

Unit Size	Low HOME Rent	High HOME Rent
SRO	\$351	\$351
0 Bedroom	\$469	\$469
1 Bedroom	\$553	\$553
2 Bedroom	\$717	\$717
3 Bedroom	\$872	\$1,021
4 Bedroom	\$973	\$1,143
5 Bedroom	\$1,074	\$1,314
6 Bedroom	\$1,174	\$1,420

Exhibit 6  
Page 1 of 1

**Allowances for  
Tenant-Furnished Utilities  
and Other Services**

U.S. Department of Housing  
and Urban Development  
Office of Public and Indian Housing

OMB Approval No. 2577-0169  
Exp 09/30/2017

LOCALITY		Unk Type					Effective Date
Lexington Housing Authority		House					01/01/2015
Utility or Service	Monthly Dollar Allowances						
	0 BR	1 BR	2 BR	3 BR	4 BR	5BR	
Heating	a. Natural Gas	33	40	47	54	65	71
	b. Bottle Gas	82	115	148	180	230	262
	c. Electric	28	40	51	62	79	91
	d. Oil/Other	68	95	123	150	191	218
Cooking	a. Natural Gas	3	4	5	6	8	9
	b. Bottle Gas	15	20	26	32	41	47
	c. Electric	4	6	8	9	12	14
	d. Oil/Other	N/A	N/A	N/A	N/A	N/A	N/A
Other Electric	23	28	33	38	46	51	
Air Conditioning	4	5	6	7	8	9	
Water Heating	a. Natural Gas	6	8	11	13	16	19
	b. Bottle Gas	32	44	57	70	89	102
	c. Electric	12	16	21	25	32	37
	d. Oil/Other	26	36	46	56	72	82
Water	20	28	43	56	72	88	
Sewer	13	20	31	47	62	77	
Range/Microwave	5	5	5	5	5	5	
Refrigerator	5	5	5	5	5	5	
Trash	15	15	15	15	15	15	
Other-Specify							
<b>Actual Family Allowances</b> To be used by the family to compute allowance						Utility or Service	Per Month Cost
Complete below for the actual unit rented.						Heating	\$
Name of Family						Cooking	
						Other Electric	
Address of Unit						A/C	
						Water Heating	
						Water	
						Sewer	
						Range/Microwave	
Number of Bedrooms	Contract Rent	\$ _____				Refrigerator	
	Utility Allowance	\$ _____				Other	
	Gross Rent	\$ _____				Total	\$

**§ 84.16**

system of measurement will be used in the agency's procurements, grants, and other business-related activities. Metric implementation may take longer where the use of the system is initially impractical or likely to cause significant inefficiencies in the accomplishment of federally-funded activities. HUD shall follow the provisions of E.O. 12770, "Metric Usage in Federal Government Programs."

**§ 84.16 Resource Conservation and Recovery Act.**

Under the Resource Conservation and Recovery Act (RCRA) (Pub. L. 94-580, 42 U.S.C. 6962), any State agency or agency of a political subdivision of a State which is using appropriated Federal funds must comply with Section 6002. Section 6002 requires that preference be given in procurement programs to the purchase of specific products containing recycled materials identified in guidelines developed by the Environmental Protection Agency (EPA) (40 CFR parts 247 through 254). Accordingly, State and local institutions of higher education, hospitals, commercial organizations and international organizations when operating domestically, and non-profit organizations that receive direct Federal awards or other Federal funds shall give preference in their procurement programs funded with Federal funds to the purchase of recycled products pursuant to the EPA guidelines.

**§ 84.17 Certifications and representations.**

Unless prohibited by statute or codified regulation, HUD is authorized and encouraged to allow recipients to submit certifications and representations required by statute, executive order, or regulation on an annual basis, if the recipients have ongoing and continuing relationships with the agency. Annual certifications and representations shall be signed by responsible officials with the authority to ensure recipients' compliance with the pertinent requirements.

**24 CFR Subtitle A (4-1-14 Edition)**

**Subpart C—Post-Award Requirements**

**FINANCIAL AND PROGRAM MANAGEMENT**

**§ 84.20 Purpose of financial and program management.**

Sections 84.21 through 84.28 prescribe standards for financial management systems, methods for making payments and rules for satisfying cost sharing and matching requirements, accounting for program income, budget revision approvals, making audits, determining allowability of cost, and establishing fund availability.

**§ 84.21 Standards for financial management systems.**

(a) HUD shall require recipients to relate financial data to performance data and develop unit cost information whenever practical.

(b) Recipients' financial management systems shall provide for the following:

(1) Accurate, current and complete disclosure of the financial results of each federally-sponsored project or program in accordance with the reporting requirements set forth in § 84.52. If a recipient maintains its records on other than an accrual basis, the recipient shall not be required to establish an accrual accounting system. These recipients may develop such accrual data for their reports on the basis of an analysis of the documentation on hand.

(2) Records that identify adequately the source and application of funds for federally-sponsored activities. These records shall contain information pertaining to Federal awards, authorizations, obligations, unobligated balances, assets, outlays, income and interest.

(3) Effective control over and accountability for all funds, property and other assets. Recipients shall adequately safeguard all such assets and assure they are used solely for authorized purposes.

(4) Comparison of outlays with budget amounts for each award. Whenever appropriate, financial information should be related to performance and unit cost data.

(5) Written procedures to minimize the time elapsing between the transfer of funds to the recipient from the U.S.

Office of the Secretary, HUD

§ 84.22

Treasury and the issuance or redemption of checks, warrants or payments by other means for program purposes by the recipient. To the extent that the provisions of the Cash Management Improvement Act (CMIA) (Pub. L. 101-453) govern, payment methods of State agencies, instrumentalities, and fiscal agents shall be consistent with CMIA Treasury-State Agreements or the CMIA default procedures codified at 31 CFR part 205, "Withdrawal of Cash from the Treasury for Advances under Federal Grant and Other Programs."

(6) Written procedures for determining the reasonableness, allocability and allowability of costs in accordance with the provisions of the applicable Federal cost principles and the terms and conditions of the award.

(7) Accounting records including cost accounting records that are supported by source documentation.

(c) Where the Federal Government guarantees or insures the repayment of money borrowed by the recipient, HUD, at its discretion, may require adequate bonding and insurance if the bonding and insurance requirements of the recipient are not deemed adequate to protect the interest of the Federal Government.

(d) HUD may require adequate fidelity bond coverage where the recipient lacks sufficient coverage to protect the Federal Government's interest.

(e) Where bonds are required in the situations described above, the bonds shall be obtained from companies holding certificates of authority as acceptable sureties, as prescribed in 31 CFR part 223, "Surety Companies Doing Business with the United States."

§ 84.22 Payment.

(a) Payment methods shall minimize the time elapsing between the transfer of funds from the United States Treasury and the issuance or redemption of checks, warrants, or payment by other means by the recipients. Payment methods of State agencies or instrumentalities shall be consistent with Treasury-State CMIA agreements or default procedures codified at 31 CFR part 205.

(b) Recipients are to be paid in advance, provided they maintain or demonstrate the willingness to maintain:

(1) Written procedures that minimize the time elapsing between the transfer of funds and disbursement by the recipient; and

(2) Financial management systems that meet the standards for fund control and accountability as established in § 84.21. Cash advances to a recipient organization shall be limited to the minimum amounts needed and be timed to be in accordance with the actual, immediate cash requirements of the recipient organization in carrying out the purpose of the approved program or project. The timing and amount of cash advances shall be as close as is administratively feasible to the actual disbursements by the recipient organization for direct program or project costs and the proportionate share of any allowable indirect costs.

(c) Whenever possible, advances shall be consolidated to cover anticipated cash needs for all awards made by HUD to the recipient.

(1) Advance payment mechanisms include, but are not limited to, Treasury check and electronic funds transfer.

(2) Advance payment mechanisms are subject to 31 CFR part 205.

(3) Recipients shall be authorized to submit requests for advances and reimbursements at least monthly when electronic fund transfers are not used.

(d) Requests for Treasury check advance payments shall be submitted through electronic means determined by the authorizing HUD program, or on forms as may be authorized by OMB. This form is not to be used when Treasury check advance payments are made to the recipient automatically through the use of a predetermined payment schedule or if precluded by special HUD instructions for electronic funds transfer.

(e) Reimbursement is the preferred method when the requirements in paragraph (b) of this section cannot be met. HUD may also use this method on any construction agreement, or if the major portion of the construction project is accomplished through private market financing or Federal loans, and the Federal assistance constitutes a minor portion of the project.