

**LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT  
AFFORDABLE HOUSING FUND  
LOAN AGREEMENT FOR  
STATE AND LOCAL FISCAL RECOVERY FUNDS**

**THIS LOAN AGREEMENT** ("Agreement") is made and entered into this 11 day of October, 2023, by and between **LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT**, an urban county government created pursuant to KRS Chapter 67A, whose principal address is 200 East Main Street, Lexington, Kentucky 40507 (hereinafter referred to as "LFUCG") through its **OFFICE OF AFFORDABLE HOUSING**, and **DAVIS PARK STATION LIMITED LIABILITY LIMITED PARTNERSHIP**, a Kentucky limited liability limited partnership, whose principal address is 159 Old Georgetown Street, Lexington, Kentucky 40508 (hereinafter referred to as the "Borrower").

**WITNESSETH:**

**WHEREAS**, pursuant to Chapter 2, Article XXXXV, Section 2-482 of the Lexington-Fayette Urban County Code of Ordinances ("the Code"), the Affordable Housing Fund ("the Fund") was created to preserve, produce, and provide safe, quality, and affordable housing; and

**WHEREAS**, pursuant to Chapter 2, Article XXXXV, Section 2-479 of the Code, the Affordable Housing Governing Board oversees and manages the administration of the Fund; and

**WHEREAS**, the Lexington Fayette Urban County Government has also made federal grant funds, awarded pursuant to the American Rescue Plan Act of 2021 ("ARPA"), available through the Fund for projects approved by the Affordable Housing Governing Board; and

**WHEREAS**, the development of housing to increase the supply of affordable and high-quality living units is an eligible use of ARPA funds; and

**WHEREAS**, Borrower by application dated September 7, 2022 (hereinafter referred to as the "Application"), attached hereto and incorporated herein as **Exhibit A**, has applied for and has received approval for funds for a specific housing related project described below (hereinafter referred to as the "Eligible Activity"); and

**WHEREAS**, the Eligible Activity includes the construction of affordable housing, which may have tax implications as set out in the Internal Revenue Code of 1986 (hereinafter "Code"), which is incorporated herein by reference;

**WHEREAS**, in order to assist Borrower in the funding of the Eligible Activity, LFUCG is willing to make funds available to Borrower from the Fund under the terms and conditions of this Agreement and the terms of its Commitment Letter, dated August 16, 2023 (hereinafter referred to as the "Commitment") attached hereto and incorporated herein as **Exhibit B**; and

**WHEREAS**, the project for which Borrower has been approved includes new construction activities on the property.

**NOW, THEREFORE**, the parties do hereby agree as follows:

**ARTICLE 1 – COMMITMENT**

**1.1 LFUCG's COMMITMENT.** Pursuant to the Application and this Agreement, LFUCG will make available an amount not to exceed **ONE MILLION THREE HUNDRED THOUSAND DOLLARS AND 00/100 CENTS (\$1,300,000.00)** (“AHF ARPA Loan”) to Borrower from the Fund. Borrower understands that this AHF ARPA Loan is funded with money awarded to LFUCG under ARPA and further understands that the use of the AHF ARPA Loan is governed by any and all terms and conditions provided in applicable federal law. Affordable Housing Funds will be disbursed by LFUCG to Borrower in accordance with the requirements set forth in this Agreement and in the Commitment, conditioned upon Borrower’s continued satisfactory performance under the terms of this Agreement. The Loan will be made available in the form of a twenty-year (20) loan, which shall accrue interest at the rate of zero percent (0%) per annum. The Loan will be evidenced by one or more promissory notes (“Notes”) in form and substance satisfactory to LFUCG payable to LFUCG and signed by Borrower. Principal and interest (if any) of the Loan shall be payable to LFUCG in annual installments of available “Net Cash Flow” of the Borrower as defined and specified in the Maker’s First Amended and Restated Agreement of Limited Partnership in a sum that shall not exceed 75% of the Borrower’s available Cash Flow (“Target Annual Payment”), commencing on January 1, 2026, and continuing on the first day of January until paid in full. All unpaid principal and accrued interest shall be due **January 1, 2046 (“Maturity Date”)**. In the event of any inconsistency between the Application and this Agreement, this Agreement will control. The Loan will be expended only for the purpose of new construction on the Property (defined below) described in the mortgage(s) executed pursuant to Section 1.2 below and in conformity with the other provisions of this Agreement, the Commitment and the Application. Further, LFUCG will not be required to advance any amount under this Agreement if an Event of Default (as hereinafter defined) has occurred and is continuing.

Borrower also acknowledges that, pursuant to ARPA, Funds provided pursuant to this Agreement shall be spent on or before December 31, 2026 (“ARPA Deadline”), unless in the case of reallocation made by the U.S. Treasury to LFUCG. Reallocation of funds by the U.S. Treasury to LFUCG does not guaranty reallocation of funds to the Borrower. Any funds not expended must be returned. The Borrower understands that the failure to spend all the Funds committed in this Agreement on or before the ARPA Deadline is an Event of Default, and said Event of Default may also give LFUCG grounds to immediately terminate this Agreement and pursue any and all available remedies specified within this Agreement or any other document executed contemporaneously herewith. Borrower also understands and agrees that any amount of the Funds that were committed in this Agreement but not expended on or before the ARPA Deadline shall be returned to LFUCG no later than thirty (30) days after the ARPA Deadline.

**1.2 MORTGAGE; OTHER SECURITY.** The performance of the Borrower’s obligations under this Agreement shall be secured by a mortgage lien, or mortgage liens, in favor of LFUCG in the total principal amount of the Loan in form and substance satisfactory to LFUCG. In the sole

discretion of LFUCG, the performance of Borrower's obligations under this Agreement may also be secured by an Assignment of Leases and Rents, Security Agreement, UCC-1 Financing Statement, Fixture Filing, and such other documents as LFUCG may in its sole discretion require (collectively, the mortgage(s) and the other security documents described in this subsection are referred to as the "Security Documents," the terms and conditions of which are incorporated herein).

- 1.3 **ELIGIBLE ACTIVITY.** The Loan has been made available based upon the information provided by Borrower in the Application. The sole purpose of this allocation is to construct 73 units known as Davis Park Station on the property located at 501 and 512 De Roode Street, Lexington, Kentucky 40508 ("Project" or "Property").
- 1.4 **SITES.** In the event the Project includes new construction activities, Borrower must identify specific units (the "Units") to be assisted. Once identified, Units may not be changed, removed or substituted without prior written approval of LFUCG.
- 1.5 **MONITORING.** LFUCG shall monitor the Borrower as necessary and in accordance with regulations on Monitoring and Management, 2 CFR 200.330 – 2 CFR 200.332, to ensure Borrower complies with all of the requirements of this Agreement, including the timeframes and performance goals associated with the activities. Substandard performance, as determined by LFUCG, will constitute noncompliance with this Agreement. If action to correct such substandard performance is not taken by the Borrower within 30 days after being notified by LFUCG, then LFUCG may impose additional conditions on the Borrower and its use of funds consistent with 2 CFR 200.207, suspend or terminate this Agreement, or initiate other remedies for noncompliance as appropriate and permitted under 2 CFR 200.338.

## **ARTICLE 2 - REPRESENTATIONS AND WARRANTIES OF BORROWER**

- 2.1 Borrower represents and warrants that:
  - A. The Property will be free and clear of all encumbrances, except for that certain loan from Cedar Rapids Bank and Trust Company in the amount of \$5,305,000.00 ("Cedar Rapids Loan"); an Open-End Swap Leasehold Mortgage, Assignment Of Rents, Security Agreement and Fixture Filing from Cedar Rapids Bank and Trust Company in the amount of \$1,350,000.00 ("SWAP Mortgage"); a construction loan from HOPE of Kentucky in the amount of \$9,000,000.00 ("HOPE Loan"); and a certain subordinate loan from LFUCG, by and through its Division of Grants and Special Programs, in the amount of \$950,000.00 ("HOME Loan"), (together with the Cedar Rapids Loan, the HOPE Loan, the SWAP Mortgage, and the HOME Loan, the "Permitted Encumbrances"), and clear of easements, restrictions, stipulations and rights-of-way of record, applicable zoning rules and regulations and taxes which may be due and payable or which have been assessed and become a lien against the property whether or not yet due and payable. The AHF ARPA Loan shall be in all respects subordinate to the Cedar Rapids Loan, the SWAP Mortgage, and the HOPE Loan. The HOME Loan shall be subordinate to the AHF ARPA Loan.

- B. All funds disbursed hereunder will be used only for acquisition or development expenses, as applicable, of the Property, as approved by LFUCG, and said funds will not be used in any other manner or for any other purpose; and
  - C. The acquisition or construction work has been approved by the appropriate local, regional and state agencies, including those concerned with planning and zoning, public works and health.
- 2.2 Borrower understands and acknowledges that projects assisted with LFUCG Funds must, at a minimum, meet the requirements set out in this Agreement. Borrower will supply, at LFUCG's request, all necessary documentation to substantiate compliance with this paragraph.
- 2.3 Borrower represents and warrants that, at the time any advances are made by LFUCG as provided herein, the Property will contain no substance known to be hazardous such as hazardous waste, lead-based paint (in violation of Federal or State law), asbestos, methane gas, urea formaldehyde, insulation, oil, toxic substances, polychlorinated biphenyls (PCBs) or radon, and Borrower shall take all action necessary to insure that the Property contains no such substances. Further, the Property will not be affected by the presence of oil, toxic substances or other pollutants that could be a detriment to the Property, nor is Borrower or the Property in violation of any local, state or federal environmental law or regulation and no violation of the Clean Air Act, Clean Water Act, Resource Conservation and Recovery Act, Toxic Substance Control Act, Safe Drinking Water Control Act, Comprehensive Environmental Resource Compensation and Liability Act or Occupational Safety and Health Act has occurred or is continuing. Borrower will take all actions within its control necessary to insure that no such violation occurs. Borrower will immediately deliver to LFUCG any notice it may receive about the existence of any of the foregoing hazardous conditions on the Property or about a violation of any such local, state or federal law or regulation with respect to the Property.
- 2.4 Borrower is duly organized and validly existing and in good standing under the laws of the Commonwealth of Kentucky; has the power and authority, corporate or otherwise, to own its properties and carry on its business as being conducted; and is duly qualified to do business wherever qualification is required. Borrower has been organized pursuant to state law for the primary purpose of providing housing to persons and families of lower and moderate income. Borrower is not presently under any cease or desist order or other orders of a similar nature, temporary or permanent, of any federal or state authority which would have the effect of preventing or hindering the performance of its duties under this Agreement, nor are there any proceedings presently in progress or to its knowledge contemplated which would, if successful, lead to the issuance of any cease or desist order.
- 2.5 Plans and specifications for the Project are satisfactory to Borrower and, to the extent required by applicable law, have been approved by all governmental agencies and authorities having jurisdiction thereof, and the use of the Project site(s) contemplated hereby will comply with all local zoning requirements.

- 2.6 There are no actions, suits or proceedings pending or, to the knowledge of the Borrower, threatened against or affecting it or the Project or involving the validity or enforceability of any mortgage or the priority of the mortgage lien granted by or to Borrower, at law or in equity, on or before or by any governmental authority or any other matters which would substantially impair the ability of Borrower to pay when due any amounts which may become payable in respect to the Notes, and to the Borrower's knowledge, it is not in default with respect to any order, writ, judgment, injunction, decree or demand of any court of any governmental authority.
- 2.7 The consummation of the transaction contemplated hereby and the performance of this Agreement and any Mortgage, if so required, will not result in any breach of, or constitute a default under, any mortgage, deed of trust, lease, bank loan or other loan, credit agreement, corporate charter, bylaw or any other instrument to which the Borrower is a party or by which it may be bound or affected.

### **ARTICLE 3 – REQUIREMENTS FOR DISBURSEMENT**

- 3.1 **DISBURSEMENT OF AFFORDABLE HOUSING FUNDS.** The Loan will be disbursed to Borrower upon receipt by LFUCG of the following:
- A. an executed original of the Authorized Signature form; and
  - B. evidence that the Project will remain affordable as provided below;
  - C. an executed LFUCG Construction Start-Up Form;
  - D. proof of costs in adherence to LFUCG's requirements for draws and inspections for the Program activity under this Agreement (construction draws);
  - E. execution of the Notes, recordation of a valid mortgage lien against the Property securing repayment of the Loan, recordation of a Declaration of Covenants and Restrictions, and execution of any and all other Security Documents which may be required by LFUCG.

LFUCG will not be required to advance any amount hereunder if an Event of Default (hereinafter defined) has occurred and is continuing.

- 3.2 **DISBURSEMENT OF DEVELOPER FEE.** If a Developer fee is paid with the Loan proceeds, it will be disbursed on a pro-rata share equal to the percent of the Project completion, with the exception of the initial draw as follows:
- A. up to 40% of the Project's developer fee may be disbursed at the initial draw; and
  - B. the remaining 60% may be drawn based upon the percentage of construction completion.

Developer fee shall be used to cover all funding shortfalls before additional funds can be requested. LFUCG will continue to hold the ten percent (10%) retainage until all project completion and closeout documents are received.

- 3.3 AFFORDABILITY PERIOD.** The Property must either: (1) be a qualified low-income housing project as defined in 42(g) of the Code; (2) be a qualified residential rental project as defined in 142(d) of the Code; or, 3) must satisfy all the requirements for an extended low-income housing commitment as described in 42(h) of the Code, and the Property must maintain the status set forth above in (1)-(3) for a minimum of twenty (20) years from the date the units are available for occupancy. Violation of this provision shall be considered an Event of Default and shall entitle LFUCG to all rights and remedies specified in Article 5 and otherwise available at law, in equity, or in bankruptcy, including but not limited to the full recoupment of all sums paid under this Agreement. Affordability must be ensured by recorded deed restrictions for all properties receiving Affordable Housing Funds. Only LFUCG, or its successors and assigns, has the right to release the deed restrictions prior to the date on which the restrictions expire.
- 3.4 SECTION 8 RENTAL ASSISTANCE.** If Loan proceeds are used to construct rental property, Borrower will not refuse to lease any Unit assisted with Affordable Housing Funds to a holder of a voucher or certificate of eligibility under Section 8 of the United States Housing Act of 1937, as amended, solely because of the status of the prospective tenant as a holder of a certificate or voucher. Provided, however, if the rent required for the Unit is based upon a percentage of the prospective tenant's income through project design, or the assisted housing unit(s) utilize project-based rental housing assistance through another source, this section will not apply. This section does not apply to homeowner-occupied units of housing assisted with Affordable Housing Funds.
- 3.5 INSURANCE.** For all properties assisted with Affordable Housing Funds, the Borrower or Property Owner must maintain all risk, fire and extended coverage, in form and with companies acceptable to LFUCG, for all 73 units of the Project and any improvements to be constructed thereon in an amount of not less than the Affordable Housing Funds made available to Borrower for each Unit of the Project. This insurance is specific to the Property and is in addition to the Borrower's insurance requirements specified within this Agreement. Each policy must include appropriate loss payable clauses in favor of LFUCG or Borrower, as applicable, as beneficiary and without right of cancellation or change except upon thirty (30) days' written notice to LFUCG. Borrower will deliver proof of all insurance to LFUCG upon request.
- 3.6 CLOSING COSTS.** All costs associated with funding under this Agreement will be borne by the Borrower, including but not limited to the cost of attorneys' fees, documentation, recording fees, and costs associated with disbursement. There will be a one percent (1%) Closing Cost Fee of **THIRTEEN THOUSAND DOLLARS AND 00/100 CENTS (\$13,000.00)**.
- 3.7 REPAYMENT.** In the event that repayment of the Affordable Housing Funds is required, Borrower agrees to repay funds to the Fund through LFUCG on a timely basis. Further, the

Borrower agrees to repay the entire amount of the loan if at any time during the affordability period the Property fails to comply with the affordability requirements set forth in Article 3.3.

**3.8 LEGAL MATTERS.** All legal matters incident to the contemplated transaction will be concluded to the satisfaction of LFUCG's Department of Law.

**3.9 PROOF OF CORPORATE ACTION.** Prior to execution of this Agreement, LFUCG shall have received (i) copies of Borrower's organizational documents; (ii) confirmation from the Secretary of State of Borrower's organizational jurisdiction that Borrower is a validly existing entity in good standing, and (iii) a resolution from the Borrower's Board of Directors, member, manager or general partner, as appropriate, authorizing the execution of the legal documents evidencing the funding received under this Agreement. If Borrower is a foreign entity, it shall, in addition to jurisdictional organizational documents provide evidence of its authority to conduct business in the Commonwealth of Kentucky.

#### **ARTICLE 4 - CONSTRUCTION LOAN TERMS**

**4.1 PLANS AND SPECIFICATIONS.** Borrower will develop the Property in accordance with plans and specifications which have been approved by LFUCG, or by any other agency approved by LFUCG, which plans and specifications, upon such approval, will be incorporated herein by reference. Said plans and specifications will include and specifically identify all roads, sewer lines and water lines and will provide for the development of the Property in conformance with applicable Affordable Housing Program requirements. Said plans and specifications may be subject to minor changes as required to comply with state and local building codes and to conform to the Property, provided such changes are approved by LFUCG. In addition to said plans and specifications, Borrower will prepare or cause to be prepared from time to time such additional plans and drawings, including working drawings, shop drawings and supplemental specifications, as may be necessary or desirable to facilitate expeditious construction of the improvements in accordance with the approved plans and specifications and will cause copies of all such additional items to be delivered to LFUCG. All of said plans and specifications and any such additional items so approved are hereinafter collectively referred to as the "Plans and Specifications." Borrower will not deviate nor permit any such deviation from the Plans and Specifications without the prior written consent of LFUCG.

**4.2 NO LIENS.** Borrower will cause all work to be performed, including all labor, materials, supervision, supplies, equipment, architectural, and engineering services necessary to complete the improvements, in accordance with the Plans and Specifications. The Borrower will complete the improvements free from all materialmen's liens and all mechanic's liens and claims. All contracts with subcontractors and materialmen will contain, upon the request of LFUCG, a provision for not less than ten percent (10%) retainage to ensure adequate and complete performance in connection with interim or progress payments hereunder. Advances of the Affordable Housing Funds by LFUCG will not be made until a representative of LFUCG has inspected the improvements, certified their completion and received from the general contractor and all subcontractors'

affidavits, in form and substance satisfactory to LFUCG, stating that payment will constitute payment in full of all amounts due and owing to them and their suppliers.

- 4.3 DEADLINE ON PROPERTY DEVELOPMENT.** Borrower will begin development of the Property within 30 days after an advance is made hereunder for the Property and will cause all development work to be pursued with diligence and without delay. Borrower will cause the improvements to be constructed in a good and workmanlike manner in substantial compliance with the Plans and Specifications and in all respects in full compliance with all laws, rules, permits, requirements and regulations of any governmental agency or authorities having jurisdiction over the Property.
- 4.4 USE OF FUNDS.** Borrower will cause all Affordable Housing Funds borrowed or advanced pursuant hereto to be applied entirely and exclusively for the acquisition or development, as applicable, of the Property and payment of labor and materials in the completion of development work in substantial compliance with the Plans and Specifications and for the payment of such other costs incidental thereto as may be specifically approved in writing by LFUCG. Borrower further understands and agrees that the use of these Funds shall be governed by federal statutes, regulations, and interpretive guidance issued by federal agencies, including the U.S. Department of the Treasury. Borrower shall comply with each and every federal law that governs the use of these Funds.
- 4.5 RIGHT OF INSPECTION.** Borrower will permit access by LFUCG to the books and records of Borrower and to the Property and all improvements at reasonable times. In the event LFUCG determines that any work or materials are not substantially in conformance with the Plans and Specifications, or are not in conformance with any applicable laws, regulations, permits, requirements or rules of any governmental authority having or exercising jurisdiction thereover or are not otherwise in conformity with sound building practices, LFUCG may stop the work and order replacement or correction of any such work or materials. Such inspection will not be construed as a representation or warranty by LFUCG to any third party that the improvements are, or will be, free of faulty materials or workmanship.
- 4.6 UNDERTAKING.** If required by LFUCG prior to disbursement of Affordable Housing Funds hereunder and thereafter as LFUCG may require, Borrower will deliver to LFUCG (a) an agreement between Borrower and the architect who has prepared the Plans and Specifications whereby such architect agrees that the agreement is assignable to LFUCG upon the same terms and conditions as exist in said agreement; (b) an agreement between Borrower and Borrower's contractor whereby Borrower's contractor agrees that the agreement is assignable to LFUCG upon the same terms and conditions as exist in said agreement; (c) copies of all subcontracts and material purchase orders between Borrower's contractor and any persons, firms, or corporations with whom it has contracted to provide labor, materials or services with respect to the construction of the improvements, where any such contract exceeds a minimum price of Five Thousand Dollars (\$5,000.00); and (d) if requested in writing by LFUCG, a list of all persons, firms and corporations who have provided or proposed to provide labor, materials or services in connection with construction of the improvements.



- 4.7 **NONLIABILITY OF LFUCG.** This Agreement will not be construed to make LFUCG liable to materialmen, contractors, craftsmen, laborers or others for goods and services delivered by them to or upon the Property or for debts or claims accruing to said parties against the Borrower. There are no contractual relationships, either express or implied, between LFUCG and any materialman, contractors, craftsmen, laborers or any other persons supplying work, labor or materials on the job, nor will any third person or persons, individual or corporate, be deemed to be beneficiaries of this Agreement or any term, condition or provisions hereof or on account of any actions taken or omitted by LFUCG pursuant hereto.

#### **ARTICLE 5 – BREACH OR DEFAULT**

- 5.1 **RECAPTURE OF FUNDS; BREACH OF AGREEMENT.** In the event of a breach of this Agreement, LFUCG may suspend Borrower's authority to draw Affordable Housing Funds at any time by giving thirty (30) days' written notice to Borrower, except where specified in Paragraph 5.5 of this Agreement. After providing the aforementioned written notice, LFUCG has the right, in its sole discretion, to terminate disbursement of funds and/or recapture any remaining portion of Affordable Housing Funds and/or require repayment of Affordable Housing Funds already disbursed or the amount including and up to an amount which has not been forgiven upon the occurrence of one or more of the following events ("Breach"):
- A. Borrower does not diligently pursue the activity detailed in Borrower's Application and for which Affordable Housing Funds have been awarded;
  - B. Borrower violates of any of the terms of this Agreement, the Affordable Housing Program ordinances, any federal law governing the use of these Funds, the Notes evidencing the Affordable Housing Funds under this Agreement, the Declaration of Covenants and Restrictions, or any other Security Document entered into pursuant to this Agreement;
  - C. Borrower does not submit reports or submits inadequate reports pursuant to Article 6 below;
  - D. Borrower defaults under any of the terms of this Agreement or any other document executed in conjunction with funding under this Agreement, and such default is not cured within any applicable cure period;
  - E. Borrower is unable to draw all Affordable Housing Funds, as set forth in the closing documents, in no instance later than twenty-four (24) months from the date of this Agreement;
  - F. Borrower is unable to document its participation in the project throughout the compliance period as required of nonprofit material participation per IRC Section 42;

- G. The information submitted to LFUCG by Borrower, upon which LFUCG relied in its decision to allocate funds to Borrower, proves to be untrue or incorrect in any material respect; or
- H. LFUCG determines in its sole discretion that it would be inadvisable to disburse Affordable Housing Funds to Borrower because of a material and adverse change in Borrower's condition.

**5.2 EVENTS OF DEFAULT.** Occurrence of one or more of the following events will, in the sole discretion of LFUCG, constitute an event of default:

- A. Any installment of principal or interest required by the Notes remains unpaid for more than ten (10) days after the due date thereof;
- B. Any representation or warranty made herein, or in any certificate, report or statement furnished to LFUCG in connection the Affordable Housing Funds or the Notes proves to have been untrue or misleading in any material respect when made;
- C. Failure of Borrower to perform any of the provisions of the Notes, Mortgage, this Agreement or any other document executed in connection with this Agreement;
- D. Borrowers violation of the affordability requirements, whether evidenced by recorded deed restriction or owner certification of continued compliance;
- E. The entry of any lien or encumbrance against the Project site(s), (other than liens or encumbrances evidencing loan proceeds for the Permitted Encumbrances), except for ad valorem taxes which are not yet due and payable and liens incurred in the ordinary course of business with respect to amounts which are not yet due and payable without penalty or interest;
- F. Borrower fails to prosecute Project site development work with diligence so that construction thereof will be completed in a timely manner;
- G. Any party obtains or seeks an order or decree in any court of competent jurisdiction seeking to enjoin the construction of the improvements or to delay construction of the same or to enjoin or prohibit Borrower or LFUCG from carrying out the terms and conditions hereof, and such proceedings are not discontinued or such decree is not vacated within thirty (30) days after LFUCG has given Borrower notice under the provisions hereof;
- H. Borrower discontinues the construction work and abandonment continues for a period of ten (10) days;
- I. Borrower permits cancellation or termination of any insurance policy required under this Agreement or fails, if required, to obtain any renewal or replacement

thereof satisfactory to LFUCG;

- J. Borrower (A) becomes bankrupt, or ceases, becomes unable, or admits in writing its inability to pay its debts as they mature, or makes a general assignment for the benefit of, or enters into any composition or arrangement with, creditors; (B) applies for, or consents (by admission of material allegations of a petition or otherwise) to the appointment of a trustee, receiver or liquidator of the Borrower or of a substantial portion of its assets, or authorizes such application or consent, or proceedings seeking such appointment are commenced without such authorization, consent or application against it and continue un-dismissed and unstayed for a period of fifteen (15) days; (C) authorizes or files a voluntary petition in bankruptcy, reorganization, readjustment of debt, insolvency, dissolution, liquidation or other similar law of any jurisdiction; or authorizes such application or consent; or proceedings to such end are instituted against the Borrower without such authorization, application or consent and are approved as properly instituted, remain undismissed for fifteen (15) days, or result in adjudication of bankruptcy or insolvency; or
- K. Borrower is found to have violated any law or regulation, whether federal or state; or
- L. Any action is filed to foreclose on the Property; or
- M. Borrower fails to comply with any applicable federal law that governs the use of these Funds; or
- N. Borrower fails to spend the Funds committed in this Agreement on or before the ARPA Deadline.

**5.3 CURE OF BREACH OR DEFAULT; PENALTIES.** If any breach or default is not cured within thirty (30) days from the date LFUCG notifies Borrower and Borrower's limited partner of the breach or default in writing, LFUCG may continue suspension of disbursements. However, the limited partner of the Borrower shall have the right, but not the obligation, to cure any default on the same terms and conditions as Borrower, and such cure shall be accepted or rejected by LFUCG, as if such cure was made by Borrower. Additionally, LFUCG may declare the loan and/or grant immediately due and payable and may institute proceedings for its collection. LFUCG may terminate this Agreement by giving written notice to Borrower. In the event of a termination, Borrower's authority to draw Affordable Housing Funds will terminate as of the date of the notice of termination and Borrower will have no right, title or interest in or to any remaining Affordable Housing Funds.

**5.4 MISAPPROPRIATION OF FUNDS.** Borrower will be liable for any and all misappropriation of Affordable Housing Funds, audit exceptions by state or federal agencies, and violations of the terms of this Agreement. LFUCG also has the right to require Borrower to repay to LFUCG a portion of or all Affordable Housing Funds drawn by Borrower in cases of breach involving a material misrepresentation in any document furnished to LFUCG in

connection with the Borrower's Application for Funds, misappropriation of funds, or fraudulent uses of funds.

**5.5 RIGHTS UPON DEFAULT.** If one or more of the Events of Default described above occur, LFUCG may declare Borrower to be in default under this Agreement by giving not less than then thirty (30) days prior written notice (or other notice required by applicable default provisions in other LFUCG loan documents) to Borrower, except for a default in payment, in which case no notice is required, and thereafter, LFUCG may exercise any one or more of the following remedies:

- A. Terminate the credit hereby extended, declare the entire unpaid balance and all accrued but unpaid interest under the Notes due and payable and institute proceedings for collection thereof; provided, however, LFUCG may make advances under the occurrence of an event of default without waiving any of its rights hereunder;
- B. Exercise its rights under the Notes or any other Security Document;
- C. Enter upon the Project site(s), expel and eject Borrower and all persons claiming through or under Borrower and collect the rents and profits therefrom;
- D. Complete the Project site development work at the cost and expense of Borrower and add such cost to the debt evidenced by the Loan and/or grant and this Agreement and secured by the Security Documents;
- E. Have discharged of record any mechanic's and materialmen's lien or other lien against the Project site(s);
- F. Institute such legal proceedings or other proceedings in the name of Borrower or LFUCG as LFUCG may deem appropriate for the purpose of protecting the Project site(s) and LFUCG's interests therein; or
- G. Do and perform all acts and deeds in the name of Borrower or LFUCG as LFUCG deems necessary or desirable to protect the Project site(s) and LFUCG's interests therein.
- H. All of the rights and remedies of LFUCG under this Agreement shall be cumulative and to the fullest extent permitted by law and shall be in addition to all those rights and remedies afforded LFUCG at law or in equity or in bankruptcy.

**5.6 PAYMENTS DUE TO DEFAULT.** Borrower shall reimburse and fully compensate LFUCG upon demand for all loss, damage and expense, including without limitation reasonable attorney's fees and court costs, together with interest on the amount thereof from the date the same accrues at the rate of twelve percent (12%) per annum, incurred by LFUCG (a) by reason of any default or defaults hereunder or under this Agreement, the Notes, or the Security Documents or any other loan document executed by Borrower, (b) by reason of

the neglect by Borrower of any duty or undertaking hereunder or under the Security Documents and (c) in the exercise of any right or remedy hereunder or under the Security Documents.

- 5.7 **TRANSFERS OF INTERESTS.** Notwithstanding anything to the contrary herein, any transfers of partnership interests in the Borrower (including the removal of the general partner) are expressly permitted and shall not constitute a default hereunder.

## **ARTICLE 6 – RECORDS; REPORTING**

- 6.1 **RECORDS; ACCESS.** Borrower agrees to comply with any reporting obligations established by the U.S. Department of Treasury, including the Treasury Office of Inspector General, as relates to this subaward, including but not limited to: (i) reporting of information to be used by the Treasury to comply with its public reporting obligations under ARPA; (ii) any reporting of information to be used by the Treasury to comply with its public reporting obligations under Section 501 of the Consolidated Appropriations Act of 2021 (hereinafter “Section 501”); and (iii) any reporting to Treasury and the Pandemic Response Accountability Committee that may be required pursuant to Section 15011(b)(2) of Division B of the Coronavirus Aid, Relief, and Economic Security Act (Pub. L. No. 116-136), as amended by Section 801 of Division O of the Consolidated Appropriations Act, 2021 (Pub. L. No. 116-260). Borrower acknowledges that any such information required to be reported pursuant to this section may be publicly disclosed. Borrower further agrees to provide LFUCG or its designee access to all of its books and records, including fiscal records, for the purpose of program assessment reviews, and to retain all books and records until the later of five (5) years from the termination of all activities funded under this Agreement, or until all audits of performance during the term of this Agreement have been completed. Notwithstanding the above, if there is litigation, claims, audits, negotiations or other actions that involve any of the records cited and that have started before the expiration of the five-year period, then such records must be retained until completion of the actions and resolution of all issues, or the expiration of the five -year period, whichever occurs later. Borrower agrees to maintain its books and records in accordance with generally accepted accounting principles. Nothing in this Agreement will be construed to limit the ability of LFUCG to monitor implementation of the project funded by this Agreement.
- 6.2 **RECORDS TO BE MAINTAINED.** The Borrower shall maintain all records documenting its compliance with ARPA, its accompanying regulations, and any and all interpretive guidance issued by the U.S Treasury. The Borrower shall also maintain records showing how the Borrower prevented Duplication of Benefits, as defined by Section 312 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. § 5155) and in accordance with Section 1210 of the Disaster Recovery Reform Act of 2018 (division D of Public Law 115–254; 132 Stat. 3442), which amended section 312 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. § 5155). The Borrower further agrees to maintain all records identified herein and in any addendum to this Agreement, in accordance with all terms and conditions stated herein, for any expenses that the Borrower paid using funds provided under the Agreement:

- A. Any and all records specified in this Agreement or in any other loan document;
- B. Any and all documents specifically requested by LFUCG.

### **6.3 AUDITS, INSPECTIONS AND MONITORING**

A. If the Funds provided in this Agreement equal or exceed \$750,000.00, or if the Borrower identified in this Agreement receives an aggregate of \$750,000.00 from the Affordable Housing Governing Board throughout the year in which this Agreement was executed, then the following requirements shall apply:

1. **Single Audit.** The Borrower must be audited as required by 2 CFR part 200, subpart F when it is expected that the Borrower's federal awards expended during the respective fiscal year equaled or exceeded the threshold set forth in §200.501 Audit requirements.

The Borrower shall submit a copy of the audit report to the federal Audit Clearinghouse within 30 days after receipt of the audit report, but not later than nine months after the end of the audit period. Concurrently with the submission of the audit report to the federal Audit Clearinghouse, the Borrower shall submit a copy of the audit report to the LFUCG's Division of Grants and Special Programs. Any deficiencies noted in audit reports must be fully cleared by the Borrower within 30 days after receipt by the Borrower. Failure of the Borrower to comply with the above audit requirements will constitute a violation of this Agreement and may result in the withholding of future payments.

2. **Inspections and Monitoring.** All of Borrower's records with respect to any matters covered by this Agreement shall be made available to LFUCG, their designees, or the federal government, at any time during normal business hours, as often as LFUCG, their designees, or the federal government deems necessary, to audit, examine, and make excerpts or transcripts of all relevant data to meet the requirements of 2 CFR part 200. The Borrower must submit to monitoring of its activities by LFUCG as necessary to ensure that the subaward is used for authorized purposes, in compliance with federal statutes, regulations, and the terms and conditions of this Agreement.

**6.4 ACCESS TO RECORDS.** The Borrower shall furnish and cause each of its own subcontractors to furnish all information and reports required hereunder and will permit access to its books, records and accounts by LFUCG, the U.S. Department of Treasury or its agent, or other authorized federal officials for purposes of investigation to ascertain compliance with the rules, regulations and provisions stated herein.

**6.5 REPORTING REQUIREMENTS.** In the event project activity reports are required, reports must be submitted as requested by LFUCG, on the forms provided by LFUCG, beginning the first calendar quarter after Borrower receives a disbursement of Affordable Housing

Funds.

- 6.6 **ANNUAL FINANCIAL REPORTING.** Borrower agrees to provide LFUCG or its designee audited financials and/or Financial Compilation Reports on an annual basis during the term of this Agreement.
- 6.7 **WARRANTY AS TO INFORMATION.** Borrower acknowledges that its award of Affordable Housing Funds has been based upon information received from Borrower. Borrower warrants that the financial and other information furnished by Borrower to LFUCG was, at the time of application, and continues to be, true and accurate.
- 6.8 **PROGRAM COMPLIANCE.** Borrower agrees to comply with the LFUCG Affordable Housing Program guidelines and criteria relating to the Fund.

#### **ARTICLE 7 – UNIFORM ADMINISTRATIVE REQUIREMENTS**

- 7.1 The Borrower shall comply with the applicable provisions in 2 CFR part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, 2 CFR part 200. These provisions include:
- A. **Financial & Program Management.** The Borrower shall expend and account for all funds received under this Agreement in accordance with 2 CFR part 200, including 2 CFR part 200, subpart D, which covers Standards for Financial and Program Management and agrees to adhere to the accounting principles and procedures required therein, use adequate internal controls, and maintain necessary source documentation for all costs incurred.
- B. **Cost Principles.** Costs incurred, whether charged on a direct or an indirect basis, must be in conformance with 2 CFR part 200, subpart E. All items of cost listed in 2 CFR part 200, subpart E, that require prior federal agency approval are allowable without prior approval of LFUCG to the extent they comply with the general policies and principles stated in 2 CFR part 200, subpart E and are otherwise eligible under this Agreement.

#### **ARTICLE 8 – ADHERENCE TO FEDERAL, STATE, AND LOCAL LAWS AND REGULATIONS**

- 8.1 **GENERAL.** The Borrower understands that it is responsible for reviewing all applicable federal laws and regulations, as well as any guidance issued by any federal agency, and agrees that it shall comply with the requirements of ARPA, Treasury interpretive guidance, and all other applicable federal statutes, regulations, and executive orders. The Borrower shall also provide for such compliance in any agreements it enters with other parties relating to this subaward.

Federal regulations applicable to this subaward include, without limitation, the following:

- Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, 2 CFR Part 200, other than such provisions as Treasury may

determine are inapplicable to this subaward and subject to such exceptions as may be otherwise provided by Treasury. Subpart F – Audit Requirements of the Uniform Guidance, implementing the Single Audit Act, shall apply to this award.

- Universal Identifier and System for Award Management (SAM), 2 C.F.R. Part 25 and pursuant to which the award term set forth in Appendix A to 2 C.F.R. Part 25 is hereby incorporated by reference.
- Reporting Subaward and Executive Compensation Information, 2 C.F.R. Part 170, pursuant to which the subaward term set forth in Appendix A to 2 C.F.R. Part 170 is hereby incorporated by reference.
- OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement), 2 C.F.R. Part 180 (including the requirement to include a term or condition in all lower tier covered transactions (contracts and subcontracts) described in 2 C.F.R. Part 180, subpart B) that the award is subject to 2 C.F.R. Part 180 and Treasury’s implementing regulation at 31 C.F.R. Part 19.
- Recipient Integrity and Performance Matters, pursuant to which the award term set forth in 2 C.F.R. Part 200, Appendix XII to Part 200 is hereby incorporated by reference.
- Governmentwide Requirements for Drug-Free Workplace, 31 C.F.R. Part 20.
- New Restrictions on Lobbying, 31 C.F.R. Part 21.
- Fair Housing Act (Title VIII of the Civil Rights Act of 1968);
- 24 CFR § 5.105, which prohibits discrimination on the basis of actual or perceived sexual orientation or gender identity, and marital status
- Title VI of the Civil Rights Act of 1964;
- Section 504 of the Rehabilitation Act of 1973;
- Section 109 of Title I of the Housing and Community Development Act of 1974;
- Title II of the Americans with Disabilities Act of 1990;
- Architectural Barriers Act of 1968;
- Age Discrimination Act of 1975;
- Title IX of the Education Amendments Act of 1972; and
- Presidential Executive Orders 11063, 11246, 12892, 12898, 13166, 13217.
- Chapter 2, Article XLV, of the Lexington-Fayette Urban County Code of Ordinances.

**8.2 ECONOMIC OPPORTUNITIES.** The Borrower shall ensure that employment and other economic opportunities generated by the Program shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly those who are recipients of government assistance for housing. Section 3 of the Housing and Urban Development Act of 1968, 12 U.S.C. § 1701u, as amended by the Housing and Community Development Act of 1992, final rule requirements for CDBG, CDBG-CV, CDBG-DR, CDBG-MIT, NSP, Section 108, and RHP projects, and regulations at 24 CFR part 135, shall apply, except that homeless individuals have priority over other Section 3 residents in accordance with § 576.405(c).

**8.3 ASSURANCES OF COMPLIANCE WITH TITLE VI.** As a condition of receipt of this federal financial assistance from the Department of the Treasury, the Borrower provides the



assurances stated herein. The federal financial assistance may include federal grants, loans and contracts to provide assistance to the Borrower's beneficiaries, the use or rent of Federal land or property at below market value, Federal training, a loan of Federal personnel, subsidies, and other arrangements with the intention of providing assistance. Federal financial assistance does not encompass contracts of guarantee or insurance, regulated programs, licenses, procurement contracts by the Federal government at market value, or programs that provide direct benefits.

The assurances apply to all federal financial assistance from or funds made available through the Department of the Treasury, including any assistance that the Borrower may request in the future. The Civil Rights Restoration Act of 1987 provides that the provisions of the assurances apply to all of the operations of the Borrower's program(s) and activity(ies), so long as any portion of the Borrower's program(s) or activity(ies) is federally assisted in the manner prescribed above.

- A. Borrower ensures its current and future compliance with Title VI of the Civil Rights Act of 1964, as amended, which prohibits exclusion from participation, denial of the benefits of, or subjection to discrimination under programs and activities receiving federal financial assistance, of any person in the United States on the ground of race, color, or national origin (42 U.S.C. § 2000d *et seq.*), as implemented by the Department of the Treasury Title VI regulations at 31 CFR Part 22 and other pertinent executive orders such as Executive Order 13166, directives, circulars, policies, memoranda, and/or guidance documents.
- B. Borrower acknowledges that Executive Order 13166, "Improving Access to Services for Persons with Limited English Proficiency," seeks to improve access to federally assisted programs and activities for individuals who, because of national origin, have Limited English proficiency (LEP). Borrower understands that denying a person access to its programs, services, and activities because of LEP is a form of national origin discrimination prohibited under Title VI of the Civil Rights Act of 1964 and the Department of the Treasury's implementing regulations. Accordingly, Borrower shall initiate reasonable steps, or comply with the Department of the Treasury's directives, to ensure that LEP persons have meaningful access to its programs, services, and activities. Borrower understands and agrees that meaningful access may entail providing language assistance services, including oral interpretation and written translation where necessary, to ensure effective communication in the Borrower's programs, services, and activities.
- C. Borrower agrees to consider the need for language services for LEP persons when Recipient develops applicable budgets and conducts programs, services, and activities. As a resource, the Department of the Treasury has published its LEP guidance at 70 FR 6067. For more information on taking reasonable steps to provide meaningful access for LEP persons, please visit <http://www.lep.gov>.
- D. Borrower acknowledges and agrees that compliance with the assurances constitutes

a condition of continued receipt of federal financial assistance and is binding upon Borrower and Borrower's successors, transferees, and assignees for the period in which such assistance is provided.

- E. Borrower acknowledges and agrees that it must require any sub-grantees, contractors, subcontractors, successors, transferees, and assignees to comply with assurances 1-4 above, and agrees to incorporate the following language in every contract or agreement subject to Title VI and its regulations between the Borrower and the Borrower's contractors, subcontractors, successors, transferees, and assignees: *The contractor, subcontractor, successor, transferee, and assignee shall comply with Title VI of the Civil Rights Act of 1964, which prohibits recipients of federal financial assistance from excluding from a program or activity, denying benefits of, or otherwise discriminating against a person on the basis of race, color, or national origin (42 U.S.C. § 2000d et seq.), as implemented by the Department of the Treasury's Title VI regulations, 31 CFR Part 22, which are herein incorporated by reference and made a part of this contract (or agreement). Title VI also includes protection to persons with "Limited English Proficiency" in any program or activity receiving federal financial assistance, 42 U.S.C. § 2000d et seq., as implemented by the Department of the Treasury's Title VI regulations, 31 CFR Part 22, and herein incorporated by reference and made a part of this contract or agreement.*
- F. Borrower understands and agrees that if any real property or structure is provided or improved with the aid of federal financial assistance by the Department of the Treasury, this assurance obligates the Borrower, or in the case of a subsequent transfer, the transferee, for the period during which the real property or structure is used for a purpose for which the federal financial assistance is extended or for another purpose involving the provision of similar services or benefits. If any personal property is provided, this assurance obligates the Borrower for the period during which it retains ownership or possession of the property.
- G. Borrower shall cooperate in any enforcement or compliance review activities by the Department of the Treasury of the aforementioned obligations. Enforcement may include investigation, arbitration, mediation, litigation, and monitoring of any settlement agreements that may result from these actions. The Borrower shall comply with information requests, on-site compliance reviews and reporting requirements.
- H. Borrower shall maintain a complaint log and inform the Department of the Treasury of any complaints of discrimination on the grounds of race, color, or national origin, and limited English proficiency covered by Title VI of the Civil Rights Act of 1964 and implementing regulations and provide, upon request, a list of all such reviews or proceedings based on the complaint, pending or completed, including outcome. Borrower also must inform the Department of the Treasury if Borrower has received no complaints under Title VI.

- I. Borrower must provide documentation of an administrative agency's or court's findings of non-compliance of Title VI and efforts to address the non-compliance, including any voluntary compliance or other agreements between the Borrower and the administrative agency that made the finding. If the Borrower settles a case or matter alleging such discrimination, the Borrower must provide documentation of the settlement. If Borrower has not been the subject of any court or administrative agency finding of discrimination, please so state.
- J. If the Borrower makes sub-awards to other agencies or other entities, the Borrower is responsible for ensuring that sub-recipients also comply with Title VI and other applicable authorities covered in this document State agencies that make sub-awards must have in place standard grant assurances and review procedures to demonstrate that that they are effectively monitoring the civil rights compliance of sub-recipients.

The Borrower understands and agrees that the United States of America has the right to seek judicial enforcement of the terms of this assurances document and nothing in this document alters or limits the federal enforcement measures that the United States may take in order to address violations of this document or applicable federal law.

Under penalty of perjury, the Borrower certifies that its authorized official(s) has read and understood the Borrower's obligations as herein described, that any information submitted in conjunction with this assurances document is accurate and complete, and that the Borrower is in compliance with the aforementioned nondiscrimination requirements.

**8.4 CIVIL RIGHTS, NONDISCRIMINATION AND EQUAL OPPORTUNITY IN PARTICIPATION.**

The Borrower agrees to comply with Title VI of the Civil Rights Act of 1964, as amended, Title VIII of the Civil Rights Act of 1968, as amended, Section 109 of the Title I of the Housing and Community Development Act of 1974, Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990, and the Age Discrimination Act of 1975, and 41 CFR Chapter 60, including 41 CFR § 60-1.4. The requirements in 24 CFR part 5, subpart A are applicable, including the nondiscrimination and equal opportunity requirements at 24 CFR § 5.105(a). The Borrower shall not discriminate against any participant on the ground of race, color, creed, religion, sex, age, handicap, disability, ancestry, national origin, marital status, familial status, sexual orientation, or any other basis prohibited by applicable law. The Borrower shall, through affirmative outreach, make known that use of the facilities, assistance, and services are available to all on a nondiscriminatory basis. The Borrower must take appropriate steps to ensure effective communication with persons with disabilities.

**8.5 NONDISCRIMINATION AND EQUAL EMPLOYMENT OPPORTUNITY.**

During the performance under this Agreement, the Borrower shall not discriminate against any employee or applicant for employment based on race, color, creed, religion, sex, age, handicap, disability, ancestry, national origin, marital status, familial status, sexual orientation, or any other basis prohibited by applicable law. The Borrower shall take affirmative action to ensure that all applicants and employees are treated without regard to

race, color, creed, religion, sex, age, handicap, disability, ancestry, national origin, marital status, familial status, and sexual orientation. The Borrower shall comply with all provisions of Executive Order 11246, Equal Employment Opportunity, as amended by Executive Orders 11375 and 12086. The Borrower will, in all solicitations or advertisements for employees placed or on behalf of the Borrower, state that it is an Equal Opportunity or Affirmative Action employer.

- 8.6** **AMERICANS WITH DISABILITIES ACT.** The Borrower agrees to comply with any federal regulations issued pursuant to compliance with the Americans with Disabilities, Act which prohibits discrimination and ensures equal opportunity for persons with disabilities in employment, State and Local government services, and public accommodations.
- 8.7** **CONTRACT WORK HOURS AND SAFETY STANDARDS ACT.** If the Borrower's activities discussed this Agreement will involve the employment of mechanics or laborers, then the Borrower agrees to comply with 40 U.S.C. § 3702 and § 3704.
- 8.8** **CLEAN AIR ACT AND FEDERAL POLLUTION CONTROL ACT.** The Borrower agrees that all activities carried out pursuant to this Agreement shall comply with the Clean Air Act (42 U.S.C. § 7401) and the Federal Water Pollution Control Act as amended (33 U.S.C. §§ 1251-1387). The Borrower also agrees that it shall report any violations to LFUCG and to the Environmental Protection Agency.
- 8.9** **RIGHTS TO INVENTIONS MADE UNDER A FUNDING AGREEMENT.** The Borrower agrees to comply with all requirements stated in 37 CFR Part 401, to the extent applicable.
- 8.10** **HATCH ACT.** The Borrower agrees that no funds provided, nor personnel employed under this Agreement, shall be in any way or to any extent engaged in the conduct of political activities in violation of the Hatch Act, 5 U.S.C §§ 1501 et seq.
- 8.11** **LABOR AND EMPLOYMENT RESTRICTIONS.** The Borrower agrees to comply with the Copeland Anti- Kick Back Act (18 U.S.C. § 874) and its implementing regulations of the U.S. Department of Labor at 29 CFR part 3 and part 5. The Borrower shall maintain documentation that demonstrates compliance with applicable hour and wage requirements. Such documentation shall be made available to the Borrower for review upon request. The Borrower further agrees to comply with the applicable provisions of the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327-333), and the applicable provisions of the Fair Labor Standards Act of 1938, as amended (29 U.S.C. et seq.). The Borrower further agrees that it will report all suspected or reported violations of any of the laws identified in this paragraph to LFUCG.
- 8.12** **CONFLICT OF INTEREST.** The Borrower shall comply with 2 CFR 200.112 with respect to the use of program funds to procure services, equipment, supplies, or other property. With respect to all other decisions involving the use of program funds, the following restriction shall apply: No person who is an employee, agent, consultant, officer, or elected or appointed official of the Borrower and who exercises or has exercised any functions or responsibilities with respect to assisted activities, or who is in a position to participate in a

decision making process or gain inside information with regard to such activities, may obtain a personal or financial interest or benefit from the activity, or have an interest in any contract, subcontract, or agreement with respect thereto, or the proceeds there under, either for himself or herself, or for those with who he or she has family or business ties, during his or her tenure or for one (1) year thereafter. All contractors of the Borrower must comply with the same requirements that apply to the Borrower under this section.

**8.13 LOBBYING.** The Borrower hereby certifies that:

- A. No federal appropriated funds have been paid or will be paid, by or on behalf of it, 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 any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement;
- B. 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 contract, grant, loan, or cooperative agreement, it will complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions;
- C. It will require that the language of paragraph (d) of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly; and
- D. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

**8.14 RELIGIOUS ACTIVITIES.** The Borrower agrees that funds provided under this Agreement will not be used for religious activities, to promote religious interests, or for the benefit of a religious organization in accordance with the federal regulations specified in 24 CFR 570.200(j).

**8.15 DRUG FREE WORKPLACE.** The Borrower shall administer a policy designed to ensure that the facilities providing services under the terms of this Agreement are free from the illegal use, possession, or distribution of drugs or alcohol by its employees and beneficiaries.

**8.16 INSURANCE & BONDING.** The Borrower shall comply with the bonding and insurance requirements of 24 CFR 200.325 and 24 CFR 200.310.

**8.17 FFATA.** The Subrecipient shall comply with the requirements of 2 CFR part 25 Universal Identifier and System for Award Management (SAM). The Subrecipient must have an active registration in SAM in accordance with 2 CFR part 25, appendix A, and must have a Data Universal Numbering System (DUNS) number. The Subrecipient must also comply with provisions of the Federal Funding Accountability and Transparency Act, which includes requirements on executive compensation, and 2 CFR part 170 Reporting Subaward and Executive Compensation Information.

**8.18 WHISTLEBLOWER.** In accordance with 41 U.S.C. § 4712, the Borrower may not discharge, demote, otherwise discriminate against an employee as a reprisal for disclosing information to any of the list of persons or entities provided below that the employee reasonably believes is evidence of gross mismanagement of a federal contract or grant, a gross waste of federal funds, an abuse of authority relating to a federal contract or grant, a substantial and specific danger to public health or safety, or a violation of law, rule, or regulation related to a federal contract (including the competition for or negotiation of a contract) or grant. The Borrower shall inform its employees in writing of the rights and remedies provided under this section, in the predominant native language of the workforce. The persons and entities referenced in this paragraph include:

- A member of Congress or a representative of a committee of Congress;
- An inspector General;
- The Government Accountability Office;
- A Treasury employee responsible for contract or grant oversight or management;
- An authorized official of the Department of Justice or other law enforcement agency;
- A court or grand jury; and/or
- A management official or other employee of the Borrower, contractor, or subcontractor who has the responsibility to investigate, discover, or address misconduct.

**8.19 DUPLICATION OF BENEFITS.** The Borrower agrees that the funds provided under this Agreement are intended to supplement, not supplant any other form of federal assistance. The Borrower agrees that it shall develop and maintain adequate procedures to prevent a duplication of benefits to assess whether the funds received under this Agreement duplicate any other federal benefit. The Borrower agrees that it shall develop and maintain adequate procedures to ensure that all assistance the Borrower provides using funding under this Agreement shall not exceed any person's total need.

The Borrower further agrees that it shall maintain records showing how the Borrower prevented Duplication of Benefits, as defined by Section 312 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. § 5155) and in accordance with Section 1210 of the Disaster Recovery Reform Act of 2018 (division D of Public Law 115–254; 132 Stat. 3442), which amended section 312 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. § 5155).

If the Borrower at any time uses funds provided under this Agreement in any manner that results in a duplication of any other federal benefit, it shall repay to LFUCG an amount equal to the amount of funds it received under this Agreement that were used in duplication of any other federal benefit.

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

**8.21.** MISCELLANEOUS.

- A. Pursuant to Executive Order 13043, 62 FR 19217 (April 8, 1997), the Borrower should encourage its contractors to adopt and enforce on-the-job seat belt policies and programs for their employees when operating company-owned, rented or personally owned vehicles.
- B. Pursuant to Executive Order 13513, the Borrower should encourage its employees, subrecipients, and contractors to adopt and enforce policies that ban text messaging while driving, and should establish workplace safety policies to decrease accidents caused by distracted drivers.

**ARTICLE 9 – MISCELLANEOUS**

**9.1** GENERAL PROGRAM CONDITIONS. The Borrower agrees that the following conditions apply to the Funds specified in this Agreement:

- A. The Borrower agrees to use Funds available under this Agreement to supplement rather than supplant funds otherwise available.
- B. LFUCG may designate such persons as may be necessary to monitor and evaluate the services rendered by the Borrower. LFUCG, its agents and employees, shall, at all times, have unrestricted access to all places where or in which the services required hereunder are being carried on and conducted. Inspection and monitoring of the work by these authorities shall in no manner be presumed to relieve in any degree the responsibility or obligations of Borrower, or to constitute Borrower as an agent of LFUCG.
- C. Borrower understands that false statements or claims made in connection with this subaward may result in fines, imprisonment, debarment from participating in federal awards or contracts, and/or any other remedy available by law.

- D. Borrower agrees that to the greatest extent practicable, it will prefer the purchase, acquisition, and use of goods, products or materials produced in the United States.
- E. Any publications produced with funds from this subaward must display the following language: "This project [is being] [was] supported, in whole or in part, by federal award number **SLFRP0292 / SLFRP3418** awarded to the Lexington Fayette-Urban County Government by the U.S. Department of Treasury."
- F. It is understood and agreed by the parties that Borrower hereby assumes the entire responsibility and liability for any and all damages to persons or property caused by or resulting from or arising out of any act or omission on the part of Borrower or its employees, agents, servants, owners, principals, licensees, assigns or subcontractors of any tier under or in connection with this agreement and/or the provision of goods or services and the performance or failure to perform any work required thereby.

**9.2 NOTICES.** Any notice required or permitted to be given pursuant to this Agreement will be deemed to have been duly given when properly addressed and hand-delivered, or mailed by registered or certified mail with postage prepaid, to Borrower, Senior Lender, or LFUCG, as the case may be, at the following addresses or to such other place as any of the parties may for themselves designate in writing from time to time for the purpose of receiving notices pursuant hereto:

**Borrower:** Davis Park Station Limited Liability Limited Partnership  
 159 Old Georgetown Street  
 Lexington, Kentucky 40508  
 Attn: Johan Graham, Member

With a copy to:

Community Equity Fund XXVII Limited Partnership  
 c/o Community Affordable Housing Equity Corporation  
 7700 Falls of Neuse Road, Suite 200  
 Raleigh, North Carolina 27615  
 Attention: Legal Department

and:

Kutak Rock LLP  
 1650 Farnam Street  
 Omaha, Nebraska 68102  
 Attention: Asher Ball

**Senior Lender:** Cedar Rapids Bank and Trust Company  
 501 First Avenue NE, Suite 100  
 Cedar Rapids, Iowa 52401



Attn: Sam D. Kramer

**LFUCG:** Lexington-Fayette Urban County Government  
200 East Main Street, 12<sup>th</sup> Floor  
Lexington, Kentucky 40507  
ATTN: Richard McQuady, Affordable Housing Manager

- 9.3 COSTS TO BE PAID BY BORROWER.** All items which Borrower agrees to furnish under this Agreement will be furnished at Borrower's sole cost and expense.
- 9.4 SUSPENSION AND DEBARMENT.** Borrower certifies by submission of its application and execution of this Agreement that to the best of its knowledge and belief after reasonable investigation, that it and/or its principals are not presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in any transaction under this Agreement by any federal department or agency, or under LFUCG's Suspension and Debarment Policy. Borrower further agrees that any future principal will meet the requirements of this section.
- 9.5 INDEMNIFICATION.** The Borrower shall indemnify, save, hold harmless and defend LFUCG and its elected and appointed officials, employees, agents, volunteers, and successors in interest from and against all liability, damages, and losses, including but not limited to, demands, claims, liens, suits, notices of violation from Governmental agencies, obligations, causes of action, judgments, penalties, fines, liens, costs, expenses, interest, defense costs and reasonable attorney's fees that are in any way incidental to or connected with, or that arise or are alleged to have arisen, directly or indirectly, from or by Borrower's performance or breach of the agreement and/or the provision of goods or services provided that: (a) it is attributable to personal injury, bodily injury, sickness, or death, or to injury to or destruction of property (including the loss of use resulting therefrom), or to or from the negligent acts, errors or omissions or willful misconduct of the Borrower; and (b) not caused solely by the active negligence or willful misconduct of LFUCG. The parties understand and agree that Borrower's obligation to defend LFUCG includes the obligation to investigate, handle, respond to, resist, provide a defense for, and defend claims, at Borrower's expense, using attorneys approved in writing by LFUCG, which approval shall not be unreasonably withheld. The parties also understand and agree that Borrower's obligation to indemnify includes, but is not limited to: attorney fees and expenses; costs of litigation; court and administrative costs; expert witness fees and expenses, judgments; fines; penalties; interest; all environmental cleanups and remediation costs of whatever kind; and any liability arising from death, injury, or damage of any kind, to any person, including employees and agents of Borrower and LFUCG, and damage to, or destruction of, any property, including the property of LFUCG.
- A. These provisions shall in no way be limited by any financial responsibility or insurance requirements, and shall survive the termination of this agreement.
- B. LFUCG is a political subdivision of the Commonwealth of Kentucky. Borrower acknowledges and agrees that LFUCG is unable to provide indemnity or otherwise

save, hold harmless, or defend the Borrower in any manner.

- C. Borrower understands and agrees that it shall demonstrate the ability to assure compliance with the above indemnity provisions and other risk management provisions prior to final acceptance of its proposal and the commencement of any work or the provision of services.
- D. Borrower shall procure and maintain for the duration of this Agreement the following or equivalent insurance policies at no less than the limits shown below and cause its subcontractors to maintain similar insurance with limits acceptable to LFUCG in order to protect LFUCG against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work or services hereunder by the Borrower. The cost of such insurance shall be included in any bid:

	<u>Coverage</u>	<u>Limits</u>
1.	General Liability	\$1 million per occurrence, \$2 million aggregate
2.	(Insurance Services Office Form CG 00 01)	(or \$2 million combined single limit)
3.	Worker's Compensation	Statutory
4.	Employer's Liability	\$1 million
5.	The policies above shall contain the following conditions:	
	(a)	All Certificates of Insurance forms used by the insurance carrier shall be properly filed and approved by the Department of Insurance for the Commonwealth of Kentucky (DOI). LFUCG shall be named as an additional insured in the General Liability Policy using the Kentucky DOI approved forms.
	(b)	The General Liability Policy shall be primary to any insurance or self-insurance retained by LFUCG.
	(c)	The General Liability Policy shall include Premises and Operations coverage unless it is deemed not to apply by LFUCG.
	(d)	The General Liability Policy shall include Employment Practices Liability coverage or an endorsement in a minimum amount of \$1 million unless it is deemed not to apply by LFUCG.
	(e)	LFUCG shall be provided at least 30 days advance written notice

via certified mail, return receipt requested, in the event any of the required policies are canceled or non-renewed.

- (f) Said coverage shall be written by insurers acceptable to LFUCG and shall be in a form acceptable to LFUCG. Insurance placed with insurers with a rating classification of no less than Excellent (A or A-) and a financial size category of no less than VIII, as defined by the most current Best's Key Rating Guide shall be deemed automatically acceptable.
- (1) After insurance has been approved by LFUCG, evidence of renewal of an expiring policy must be submitted to LFUCG, and may be submitted on a manually signed renewal endorsement form. If the policy or carrier has changed, however, new evidence of coverage must be submitted in accordance with these Insurance Requirements.
- (2) Self-insurance programs, deductibles, and self-insured retentions in insurance policies are subject to separate approval by LFUCG's Division of Risk Management, upon review of evidence of Borrower's financial capacity to respond to claims. Any such programs or retentions must provide Borrower with at least the same protection from liability and defense of suits as would be afforded by first-dollar insurance coverage. If Borrower satisfies any portion of the insurance requirements through deductibles, self-insurance programs, or self-insured retentions, Borrower agrees to provide LFUCG's Division of Risk Management, the following data prior to the final acceptance of bid and the commencement of any work:
- i. Latest audited financial statement, including auditor's notes.
  - ii. Any records of any self-insured trust fund plan or policy and related accounting statements.
  - iii. Actuarial funding reports or retained losses.
  - iv. Risk Management Manual or a description of the self-insurance and risk management program.
  - v. A claim loss run summary for the previous five (5) years.
  - vi. Self-Insured Associations will be considered.

F. Borrower agrees to furnish LFUCG with all applicable Certificates of Insurance signed by a person authorized by the insurer to bind coverage on its behalf prior to final award, and if requested, shall provide LFUCG copies of all insurance policies, including all endorsements. Borrower understands and agrees that LFUCG may review, audit and inspect any and all of its records and operations to insure compliance

with these Insurance Requirements.

- G. Borrower shall comply with all applicable federal, state, and local safety standards related to the performance of its works or services under this Agreement and take necessary action to protect the life, health and safety and property of all of its personnel on the job site, the public, and LFUCG.

Borrower understands and agrees that the failure to comply with any provision of this Agreement regarding indemnification, insurance, safety, or loss control shall constitute a material breach of this Agreement and that LFUCG may elect at its option any remedy or penalty or any combination of remedies and penalties, as available, including but not limited to purchasing insurance and charging Borrower for any such insurance premiums purchased, or suspending or terminating the work.

- 9.6 **GOVERNING LAW.** This Agreement and the loan referred to herein will be governed by the laws of the Commonwealth of Kentucky.
- 9.7 **ASSIGNABILITY.** Borrower may not assign this Agreement nor any part hereof without the prior written consent of LFUCG. Subject to the foregoing restriction, this Agreement will inure to the benefit of LFUCG, its successors and assigns and will bind Borrower, Borrower's successors, assigns and representatives.
- 9.8 **MODIFICATION.** No variance or modification of this Agreement will be valid and enforceable except by supplemental agreement in writing, executed and approved in the same manner as this Agreement.
- 9.9 **EXHIBITS.** Any exhibits attached to this Agreement and the matters contained therein are incorporated herein and deemed to be a part hereof as if fully recited in this Agreement prior to the date of execution hereof.
- 9.10 **WAIVER.** LFUCG may waive Borrower's performance of any of the terms of this Agreement or Borrower's default hereunder; provided, however, such waiver must be in writing, signed by LFUCG, and any such written waiver hereunder will not be construed as a waiver of any other term or condition of this Agreement or of any act of continuing default.
- 9.11 **INVALID PROVISIONS.** The invalidity or unenforceability of a particular provision of this Agreement will not affect the other provisions hereof, and this Agreement will be construed in all respects as if such invalid or unenforceable provisions were omitted.
- 9.12 **COUNTERPARTS.** This Agreement may be executed by the parties in any number of counterparts, each of which shall be an original, but such counterparts together shall constitute one and the same instrument.
- 9.13 **ENTIRE AGREEMENT.** This Agreement constitutes the entire agreement between the parties for the use of funds received under this Agreement and it supersedes all prior or

contemporaneous communications and proposals, whether electronic, oral, or written between the parties relating to LFUCG's allocation of funding to Borrower.

- 9.14 **HEADERS.** All headings in this Agreement are for convenience of reference only and are not intended to qualify the meaning of any provision of this Agreement.
- 9.15 **ARPA.** The Borrower expressly acknowledges and agrees that expenditures of these funds will be in accordance with all pertinent regulations and interpretive guidance issued now or in the future by agencies of the federal government, and will be in accordance with any and all relevant provisions of ARPA, any regulations enacted pursuant to that Act, and any interpretive guidance issued by the U.S. Treasury.
- 9.16 **QUALIFIED CONTRACT.** The Borrower agrees that by executing this Loan Agreement, it has waived any right to request a qualified contract as defined in Section 42(h) of the Code.

**WITNESS** the signatures of the parties hereto as of the date and year first above written.

**THE REMAINDER OF THIS PAGE LEFT INTENTIONALLY BLANK**

**SIGNATURE PAGES TO FOLLOW**





**EXHIBIT A**

**Application**





# Affordable Housing Fund

## Application for Funding

Please review the guidelines and eligible uses at [\(link\)](#) prior to filling out this application. If you have any questions please contact the Office of Affordable Housing at [\(phone\)](#) or [\(email\)](#).

### General Information

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**Applicant Name:** AU Associates, Inc

**MWBE Status:** WBE

**Tax Status:** For Profit

**Type of Entity:** Affordable Housing Developer

**Development Name:** Davis Park Station

**Development Location:** 512 De Roode Street, Lexington, KY 40508

**Contact Person:** Brandon Shetler

**Contact Title:** Director of Development

**Mailing Address:** 159 Old Georgetown Street

**City:** Lexington      **State:** KY      **Zip:** 40508

**Phone:** 859-233-2009 ext 211

**Fax:** 859-259-0401

**Email Address:** Brandon@auassociates.com

**Funds Requested:** \$4,200,000 - AHF, \$950,000 - HOME-ARP

**Other Funding (Specify on Pro-Forma):**

**Total Development Cost:** \$18,794,432

## **Development Information**

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**Development Type (Check all that apply):**

- New Construction:
- Rehabilitation:
- Adaptive Re-Use:
- Rental (11 Units or Less):
- Rental (12 Units or More):
- Single Site:
- Scattered Site:
- Historic Property:

**Total Number of Units:** 73

**Total Number of Buildings:** 4

**Square Feet of Units by Bedroom Size:**

Unit Size: 1 Bed	Square Footage: 738
Unit Size: 2 Bed	Square Footage: 995
Unit Size: 3 Bed	Square Footage: 1134
Unit Size:	Square Footage:
Unit Size:	Square Footage:

**Monthly Rents by Bedroom Size:**

Unit Size:1 Bed	Monthly Rent: \$850
Unit Size:2 Bed	Monthly Rent: \$995
Unit Size:3 Bed	Monthly Rent: \$1,269
Unit Size:	Monthly Rent:
Unit Size:	Monthly Rent:

**Target Area Median Income (AMI):** 60% AMI

**Amenities (Check all that apply):**

- Stove:
- Refrigerator:
- Dishwasher:
- Garbage Disposal:

- Dishwasher:
- Wash/Dryer Hookup:
- Help/Call System:
- Community Room:
- Playground:
- Other (Please specify):

**Location Amenities (Check all that apply):**

- |                        |                                     |                                    |  |
|------------------------|-------------------------------------|------------------------------------|--|
| Public Transportation: | <input checked="" type="checkbox"/> | Proximity to Development: <1 Mile  | Description: This project is located   |
| Shopping:              | <input checked="" type="checkbox"/> | Proximity to Development: <1 Mile  | Description: near the center of        |
| Restaurants:           | <input checked="" type="checkbox"/> | Proximity to Development: < 1 Mile | Description: downtown lexington,       |
| Medical Facilities:    | <input checked="" type="checkbox"/> | Proximity to Development: < 1 Mile | Description: near the corner of Oliver |
| Banks:                 | <input checked="" type="checkbox"/> | Proximity to Development: <1 Mile  | Description: Lewis and Broadway, in    |
| Other:                 | <input type="checkbox"/>            | Proximity to Development:          | Description: the former Davis Bottom.  |

**Populations to be Served (Check all that apply):**

- Elderly:
- Single Parent:
- Homeless:
- Victims of Domestic Violence:
- Physically Disabled:
- Acquired Traumatic Brain Injury:
- Aging out of Foster Care:
- Veterans:
- Severe Mental Illness:
- Drug/Alcohol Addiction:

**Description of services to be provided, service providers, and how services will be paid:**

## **Application for Funding Agreement**

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The applicant certifies that the information submitted in this application is accurate and consistent with the applications submitted to other funding sources. The applicant commits to keeping the staff and board of the Affordable Housing Fund of Lexington, KY updated with changes in the project structure, funding, and development team. The applicant and any other borrower consents to a possible credit check as part of the underwriting process.

I have read the above agreement and consent to its terms:

**Name: Brandon Shetler**

**Title: Director of Development**

**Date: 9/7/2022**

**EXHIBIT B**

**Commitment Letter**



August 16, 2023

Mr. Johan Graham, President  
AU Associates, Inc.  
159 Old Georgetown Road  
Lexington, KY. 40508

Dear Mr. Graham,

The Lexington-Fayette Urban County Government (LFUCG) Affordable Housing Fund Board of Directors has approved your request for a \$4,200,000 second mortgage loan for the development of Davis Park Station, a 73-unit development located at 525 and 530 DeRoode Street in Lexington, Kentucky. The development will include a Community Service Facility that will house some of LFUCG's workforce training initiatives.

The second mortgage loan will be in the form of a 20-year, 0%, \$2,900,000 deferred loan and a \$1,300,000, 0%, surplus cash note with a 20-year term and 40-year amortization. Annual scheduled payments of \$32,500 on the surplus cash note shall be made prior to any annual payment on the deferred developer fee. The \$2,900,000 will be funded from the Affordable Housing Fund and the \$1,300,000 will be funded from State and Local Fiscal Recovery Funds.

There will be a 1% loan fee (\$42,000) due at closing.

The Affordable Housing Fund Board also approved a \$950,000, 0%, 20-year, deferred third mortgage loan for Davis Park Station. These funds come from HOME ARPA dollars and require that 5 of the 73 units be leased to households whose incomes are at or below 30% of area median income. Please know the \$950,000 requires approval from the Lexington-Fayette Urban County Council and that approval is anticipated later this month.

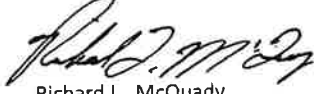
In addition to the mortgages, a Deed Restriction will be placed on the property requiring the units remain in compliance with Affordable Housing Fund and HOME ARPA Program Guidelines.

Please indicate your acceptance of this commitment letter by signing below in the space provided.



We look forward to working with you on this much needed development in Lexington.

Sincerely,



Richard L. McQuady  
Affordable Housing Manager

Accepted:

