

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

**THIS AGREEMENT**, made and entered into on this 17 day of September 2018, by and between the **LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT**, an urban county government of the Commonwealth of Kentucky, pursuant to KRS Chapter 67A, and located at 200 East Main Street, Lexington, Fayette County, Kentucky 40507 (hereinafter referred to as "GOVERNMENT"), and **REACH, INC.**, a non-stock, nonprofit Kentucky corporation, organized pursuant to KRS Chapter 273, that has been identified as a Community Housing Development Organization (CHDO) and whose mailing address is 733 Red Mile Road, Lexington, Kentucky 40504 (hereinafter referred to as "CHDO").

**RECITALS**

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

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

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

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

**WHEREAS**, the GOVERNMENT'S 2016 and 2017 Consolidated Plan Annual Action Plans provide for the allocation of \$104,476 in funds to the CHDO acting as an Owner/Developer for acquisition/rehabilitation of a single family housing unit located at 356 Scottsdale Circle, Lexington, KY 40511;

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

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

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

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

**I. PROJECT DESCRIPTION**

- A. Scope of Work. CHDO shall undertake the Project and perform all activities in accordance with HOME rules, other applicable Federal, state, and local laws and regulations, and the terms and conditions contained herein.
  
- B. Eligible HOME Activities, Site Location, Total Units and Bedroom Sizes. The CHDO agrees to use the set-aside of \$104,476 for the purpose of acquiring/rehabilitating a 3 bedroom single family residence located at 356 Scottsdale Circle, Lexington, KY 40511 for sale to eligible low-income household under the GOVERNMENT's approved HOME First Time Homebuyer Assistance Guidelines and in accordance with the HOME Investment Partnerships Program regulations as stated in 24 CFR Part 92. Costs include hard and soft costs as permitted by the HOME program.

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

- C. Designated HOME Units; HOME Subsidy. One unit shall be designated as HOME-Assisted Units ("HOME-Assisted Units"). The amount of subsidy for the unit at the locations described in I. B. shall not exceed a total of \$104,476 which does not exceed the allowable maximum per-unit subsidy limit based on the Section 234 Condominium Housing, elevator-type, basic mortgage limits for Fayette-Lexington, Kentucky, multiplied by the 2015 high cost percentage of 240%. The maximum per-unit subsidy based on these limits is listed in the table below.

<b>Unit Size</b>	<b>Maximum HOME Subsidy per unit 2015 234 subsidy limits for condominium housing, elevator-type</b>
0 bedroom	\$141,089
1 bedroom	\$161,738
2 bedroom	\$196,673
3 bedroom	\$254,431
4+ bedroom	\$279,286

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

1. Approved Documentation. CHDO has submitted the following documentation, upon which GOVERNMENT has relied in the execution of this Agreement:
    - a. Project budget;
    - b. a sources and uses statement, including the amount, form, use, and terms of the HOME subsidy;
    - c. financial commitments for any other funding sources.
  2. Cost Overruns. CHDO shall be solely responsible for ensuring completion of construction, within budget, as identified on the sources and uses statement, approved as a part of this Agreement. Any cost overruns will be the sole responsibility of the CHDO.
  3. Construction Financing. CHDO shall close on CHDO's construction financing, if applicable, before requesting any draws under this Agreement.
- F. Construction Schedule.
1. Begin Construction. CHDO shall commence visible construction no later than January 1, 2019.
  2. Substantial Completion. CHDO shall substantially complete rehabilitation of the identified unit no later than June 30, 2019.
- G. Construction Methods and Techniques. CHDO shall be solely responsible for all construction, methods, techniques, and procedures and shall furnish all materials, equipment, machinery, tools and labor to perform the work required to complete construction. All materials shall be new and of good quality.
- H. Sale of Unit. The owner must transfer title of the property and the HOME obligations to eligible homebuyers *within nine months of project completion* and completion report shall be submitted at the time of sale. In the event that unit is not sold for homeownership to an eligible buyer, CHDO shall operate the unit as a rental unit to an eligible low-income household for an affordability period of not less than fifteen (15) years, beginning on the date that HUD Cash Management System accepts and records the Completion Report.
- I. Value of Property. CHDO agrees that upon sale to eligible first-time homebuyers, total encumbrances will equal market value. Maximum value of property shall not exceed HOME Homeownership Sales Price Limits established by the U.S. Department of Housing and Urban Development in accordance with the First-Time Homebuyer Guidelines, attached hereto and incorporated herein as **Exhibit A**.
- J. Homebuyer Agreement. A HOME Program Beneficiary Written Agreement is required for all HOME assisted units, as attached hereto and incorporated herein as **Exhibit B**.

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

## II. AFFORDABILITY REQUIREMENTS

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

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

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

In the event that unit becomes a rental unit, for a period of fifteen (15) years from the date on which development of the Project is completed, established as the date 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 GOVERNMENT. The rents so charged must include utility costs. The maximum allowable HOME rent must be reduced by a utility allowance approved by GOVERNMENT if tenant is required to pay separately for utilities. Utility allowances approved by GOVERNMENT may vary as periodic adjustments are made. Should HUD revise these or other rent guidelines set out herein so as to permit CHDO to adjust the rent charged, CHDO must provide tenants with no less than thirty (30) days written notice before adjustments are implemented. GOVERNMENT will notify CHDO of changes in rent and utility schedules. If the unit becomes a rental unit, the current rent and utility schedules will be provided to the CHDO.

### III. PROPERTY STANDARDS

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

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

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

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

#### IV. FINANCIAL MANAGEMENT

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

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

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

## V. PAYMENT TERMS AND CONDITIONS

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

## VI. REPORTING AND RECORD-KEEPING REQUIREMENTS

- A. Reports. The CHDO agrees to provide any reports and information as required by the GOVERNMENT. The CHDO shall be responsible for providing the following data: the number of affordable units developed, size of units (number of bedrooms), years of affordability, the number of units meeting Energy Star standards, the number of units made fully accessible under Section 504 accessibility standards, and the number of units occupied by elderly households (either the head or co-head is age 62 or older). In addition, an annual report shall also provide the following information about the employees of the CHDO'S organization: race, ethnicity, national origin, age, gender, and disability. The annual report shall be submitted to the GOVERNMENT no later than thirty days after the end of the GOVERNMENT'S fiscal year.
- B. CHDO Status. Developer shall provide information to the GOVERNMENT on an annual basis to document that it still qualifies as a CHDO. The CHDO agrees that



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

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

## VII. PROVISIONS RELATED TO OTHER FEDERAL REQUIREMENTS

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

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

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

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

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

G. Labor.

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

4. Debarred Contractors. The CHDO shall require all of its contractors and subcontractors to certify that neither they nor their principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in federally funded activities.
  5. Other Federal Labor Requirements. CHDO shall comply with the following laws, or shall require such compliance from its partners pursuant to a construction contract or other written agreement:
    - Contract Work Hours and Safety Standards Act, as amended (40 U.S.C. § 327-333);
    - Copeland Anti-Kickback Act (40 U.S.C. § 276c);
    - Fair Labor Standards Act, as amended (29 U.S.C. § 201, et seq.).
- H. Conflict of Interest. The CHDO agrees to comply with the conflict of interest provisions in 24 CFR 84.42 regarding written standards governing the performance of its officers, employees, and agents engaged in awarding and administering contracts. The CHDO further agrees to comply with the conflict of interest provisions at 24 CFR 92.356. No owner, CHDO, or officer, employee, agent, or consultant thereof may occupy a HOME-Assisted Unit in the Project. This provision does not include an employee or agent of the owner or CHDO who occupies a HOME-Assisted Unit as the project manager or maintenance worker.
- I. Religious Activities.
1. CHDO is prohibited from using funds provided herein or personnel employed in relation to this Project for political activities and sectarian or religious activities.
  2. If CHDO is, or may be deemed to be, a religious or denominational institution or organization, it agrees that:
    - a. It will not discriminate against any employee or applicant for employment on the basis of religion and will not limit employment or give preference in employment to persons on the basis of religion;
    - b. It will not discriminate against any person applying for housing on the basis of religion and will not limit such housing or other eligible activities or give preference to persons on the basis of religion; and
    - c. It will provide no religious instruction or counseling, conduct no religious worship or services, engage in no religious proselytizing, and exert no other religious influence in the provision of shelter and other eligible activities.
- J. Affirmative Marketing: As it may be applicable, CHDO agrees to comply with the *Affirmative Marketing Plan* as adopted by the GOVERNMENT and as approved by HUD. The Affirmative Marketing Plan is located in the consolidated plan/annual action plan.

## VIII. ENFORCEMENT

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

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

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

## **IX. ADDITIONAL PROVISIONS**

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

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

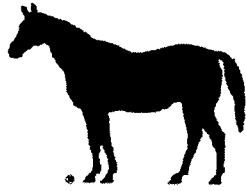
- G. License and Insurance Requirements. CHDO shall comply with all applicable licensing requirements and associated business regulations, whether federal, state, or local. CHDO shall purchase and maintain worker's compensation insurance as required by state law.
- H. Employees, Contractors, and Agents.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



# **Exhibit A**

## **First-Time Homebuyer Assistance Guidelines** **May 2016**





# LEXINGTON

## FIRST TIME HOMEBUYER ASSISTANCE GUIDELINES HOME Investment Partnership Program MAY 2016

### **INTRODUCTION**

The Lexington-Fayette Urban County Government (LFUCG) will make HOME funds available to nonprofit corporations for the purpose of developing and operating first-time homeownership programs for low-income households. The government's primary objective in using part of its HOME allocation for first-time homeownership programs is to increase the number of affordable housing units in the community and to increase the opportunities for homeownership for low-income families in Fayette County. In general, the LFUCG will provide HOME funds to approved nonprofits for the purpose of purchasing or rehabilitating existing single-family houses; new construction of single family houses which will be marketed to eligible and qualified first-time homebuyers; and direct assistance to first-time homebuyers for the purchase of new or existing single-family houses. Assistance will be provided to eligible homebuyers under the recapture option.

These guidelines will serve as operational parameters within which the nonprofits can receive HOME funds and provide financial assistance to first-time homebuyers. Hereinafter in this document, nonprofits may be referred to as grantor agencies. In addition to these guidelines, all projects funded under the HOME Investment Partnerships Program are subject to the regulations codified at 24 CFR Part 92.

### **STATEMENT OF INTENT**

The content of this document establishes the operating parameters for all Lexington-Fayette Urban County Government HOME funded first time homebuyer programs. It is the intent of the Lexington-Fayette Urban County Government to provide in each homebuyer case the smallest subsidy necessary to make the purchase possible. As the Lexington-Fayette Urban County Government provides funds for the first time homebuyer programs of several non-profits, it is the responsibility of each non-profit to attract other public and private funds and to minimize the use of HOME funds.

### **FAIR HOUSING**

LFUCG administers a variety of HUD programs and is required to affirmatively further the purposes and policies of the Fair Housing Act, which is Title VIII of the Civil Rights Act of 1968. The Fair Housing Act not only prohibits discrimination, but in conjunction

with other statutes, directs LFUCG to take steps to proactively overcome historic patterns of segregation, promote fair housing choice, and foster inclusive communities for all.

Under Consolidated Plan regulations, LFUCG is required to undertake fair housing planning, which consists of the following: 1) an Analysis of Impediments (AI) to fair housing choice; 2) actions to address the identified impediments; and 3) maintenance of records to support the affirmatively furthering fair housing certification.

The Affirmative Marketing Plan is part of the 2015 Consolidated Plan which may be viewed on the LFUCG website at [www.lexingtonky.gov](http://www.lexingtonky.gov).

### **ELIGIBLE FIRST-TIME HOMEBUYERS**

All Applicants for homebuyer assistance must meet the following criteria:

- Be a first time homebuyer (Borrower cannot currently own or have owned a home for at least the last three years)
- Must occupy the home as its principal residence throughout the period of affordability
- Must not have at any time in the past received HOME funding for homebuyer assistance as provided by the LFUCG
- Must have completed 8 hours pre-purchase counseling and homebuyer education through a HUD-certified counseling agency as evidenced by a Certificate/Letter of Completion. In lieu of HUD-certified counseling, LFUCG may approve an alternate counseling program.
- Annual household income, as calculated by HUD regulations at 24 CFR Part 5, must not exceed 80% of the Area Median Income limit for the Lexington-Fayette MSA. The purchasing household must be low income at the time of approval by the Division of Grants and Special Programs, or at the time the HOME funds are invested, whichever is later. Verification of income is required and is good for a period of six months.

Funds are available for any low-income family that has been a resident of Fayette County Metropolitan Service Area for one (1) year which includes: Bourbon, Clark, Fayette, Jessamine, Scott and Woodford Counties. The assisted unit must be located in Fayette County.

### **ELIGIBLE ACTIVITIES**

- New Construction
- Acquisition and rehabilitation of existing vacant single-family residential structures
- Acquisition of an existing unit that meets Housing Quality Standards and local property maintenance code

Nonprofits may use HOME funds to purchase and rehabilitate properties whose after-rehab appraised value is less than actual costs of production only with prior written

approval from the Division of Grants and Special Programs. In cases where the costs for acquisition and rehabilitation are greater than 120% of the after-rehab fair market value, the grantor agency shall document the reasons for excess costs and obtain written permission of the Lexington-Fayette Urban County Government's Division of Grants and Special Programs before proceeding with the project.

The Lexington-Fayette Urban County Government's Division of Grants and Special Programs will evaluate on a case-by-case basis each project in which costs are expected to exceed 120% of the fair market value of the property to determine an acceptable level of excess costs. The LFUCG Division of Grants and Special Programs will consider such factors as location, size, and environmental factors (Examples are presence of lead-based paint and lead-based paint hazards, presence of asbestos and historic preservation requirements) in its evaluation of each property.

### **INELIGIBLE ACTIVITIES**

- Luxury improvements or improvements that exceed the neighborhood standard  
Reconstruction of a unit that was not standing at least 12 months prior to the commitment of HOME funds
- Land acquisition or demolition that does not result in a unit of affordable housing

### **ELIGIBLE PROPERTIES**

The property must be located in Fayette County. Effective May 2, 2016, the value of an existing home may not exceed \$149,000. The value of a new home may not exceed \$228,000. All properties must be appraised by a state licensed or certified appraiser in the Commonwealth of Kentucky prior to purchase.

### **PROPERTY STANDARDS**

New construction of single family units (units that were constructed during the past 12 months) shall comply with the building codes adopted by the LFUCG Division of Building Inspection. Effective January 1, 2014, the 2013 KRC (2012 IRC with 2013 Kentucky Amendments) applies to construction of single family residential buildings.

An existing housing unit (twelve months or older) must meet the Section 8 Housing Quality Standards and the local property maintenance code. In addition, a home inspection is required for all existing homes, by a state licensed inspector. If the property requires rehabilitation LFUCG Building codes apply as well as rehabilitation standards adopted by the LFUCG Division of Grants and Special Programs.

The property type must be a single family property (one unit detached) and deeded as such. Condominiums and duplexes will not be considered.

### **FORM OF OWNERSHIP**

For the purposes of the HOME program, homeownership means ownership in fee simple title.

**PERIOD OF AFFORDABILITY**

The HOME rule at §92.254(a)(3) requires that all HOME-assisted homebuyer housing be acquired by an eligible low-income family, and the housing must be the principal residence of the family throughout the period of affordability.

The following table outlines the required minimum affordability periods.

<b>If the total HOME investment or direct subsidy in the unit is:</b>	<b>The period of affordability is:</b>
Under \$15,000	5 years
Between \$15,000 and \$40,000	10 years
Over \$40,000	15 years

The mortgage documents and/or deed restrictions must include language detailing the affordability period and the recapture provisions.

**AFFORDABILITY CRITERIA**

All applicable ratios noted below are based on the Income of the qualifying applicant for a 30 year conventional mortgage. If the qualifying applicant is married, the income of both spouses will be included in determining the ratios even if only one applicant is the qualifying applicant. The monthly expenditure for Principal, Interest, Taxes, and Insurance (PITI) shall not be less than the percentage of gross household income indicated in the table below and shall not be more than 33% of the gross income at the time of loan approval. All applicants should only be provided gap financing based on the maximum amount of mortgage they can repay.

If the homebuyer receives a Housing Assistance Payment (HAP) from HUD's Section 8 Housing Program, the minimum percentages are not applicable for PITI.

<b>Family Size</b>	<b>Minimum PITI %</b>
1	20%
2	19%
3	18%
4	17%
5	16%
6	15%
7	14%
8	13%

The first-time homebuyer may not commit more than 41% of their gross income for total long-term debt. Long-term debt is defined as debt exceeding repayment for more than 6 months, or debt with an outstanding balance of more than \$3,000. The homebuyer will be required to commit to the financing of the purchase of the home, all cash reserves, to include checking and savings accounts, cash on hand, and certificates of deposit, which is in excess of six months of PITI unless pre-approved by the Division of Grants and Special Programs. There is no requirement that first-time homebuyers remain low income after they purchase the property. Increases or decreases in gross income or changes in PITI do not affect the eligibility of a family outside of the six-month period noted in the section on homebuyer eligibility. If homeowner association fees are required, then these will be considered as housing costs and counted along with PITI.

All variances in calculating the required percentages noted above must have prior written approval from the Division of Grants and Special Programs.

### **Borrower Criteria and Credit Worthiness**

Of all criteria used to evaluate the credit worthiness and capacity of a low- and moderate-income borrower, the individual borrower's credit must be the driving determinant factor. Each household will be evaluated on a case-by-case basis in order to determine credit-worthiness.

Income must have a history, be verifiable in the present and be able to be relied upon in the future. Income history must cover at least cover a twelve-month period. It must be verifiable in writing through traditional sources and/or tax returns. Tax returns are only acceptable verification for self-employed persons.

*Definition of Household Size and Members:* The Household is comprised of ALL individuals who will be occupying the home over the next or upcoming twelve months. The following individuals are not counted as part of the household: foster children, unborn children, children who live with the applicant (parent) less than 50% of the time, children being pursued for legal custody or adoption who are not yet living with the household at the time of application, and non-family care-takers. A child who resides with the household at least 50 percent of the time and receives over 50% of the care from the applicant, can be counted as a household member.

### **FORMS OF SUBSIDY**

- A. *Principal Reduction.* In order to make the monthly carrying cost of PITI affordable to the homebuyer, the Urban County Government will allow HOME funds to be used by the grantor agencies to subsidize units by providing "gap" financing or principal reduction to make up the difference between the market value of the property and a sales price that renders the monthly PITI affordable. A **second** mortgage shall be placed upon the property by the grantor agency or the Lexington-Fayette Urban County Government. The second mortgage shall provide for the **RECAPTURE** of the HOME subsidy in the event that the homebuyer sells the property, is foreclosed upon by another mortgagee, or ceases to occupy the property as the principal residence.

- B. *Amount of Subsidy.* For eligible first time home buyers below 80% of median income, the maximum home purchase subsidy may be \$20,000 for 1 person households, \$25,000 for households of 2 and \$30,000 for households of 3 or more if needed. The HOME subsidy may be used to fund acquisition costs up to 106% of fair market value to include eligible closing costs. The minimum HOME subsidy cannot be less than \$1,000.
- C. *Development Subsidy.* In the event the total development costs exceed the appraised value, the house may not sell for more than the appraised value. The difference between the total development costs and the appraised value is development subsidy. LFUCG permits eligible grantor agencies to use HOME funds as development subsidy with a minimum of \$1,000 provided as a direct subsidy to the homebuyer. Eligible grantor agencies will be required to submit documentation to LFUCG to support the necessity of a development subsidy. This may include but is not limited to an appraisal and a detailed final cost breakdown.

### **TERMS**

The buyer will be required to invest at least \$500 in cash at the time of closing. The remaining funds needed for closing costs, downpayment, or principal reduction will be provided in the following forms:

- 1) 2% repayable loan for homebuyers between 71% and 80% of median income with a term of 20 years.
- 2) 1% repayable loan for homebuyers between 61% and 70% of median income with a term of 20 years.
- 3) A non-repayable loan for homebuyers at or below 60% of area median income with a term of 20 years. Beginning in year 11, 10% of the loan amount will be forgiven each year.

The monthly repayment amount for any repayable HOME loan will be included in the cap of 33% of gross income for PITI. The Urban County Government will take loan servicing responsibility for repayable loans in the form of receiving and documenting payments, unless otherwise approved in a written agreement. The requirements of private lenders and government regulations must prevail if the terms of the direct loan would violate said requirements and regulations. Any deviations from the terms stated above will require justification and prior approval from the Division of Grants and Special Programs.

### ***Example:***

*For a 3-person household, the maximum amount of income to be eligible for the HOME Program is \$49,100. The family has two parents who work at jobs earning minimum wage which is currently set at \$7.25 an hour. Their total combined family income is \$30,160. Their PITI must be at least 18% of \$30,160 which is \$452.40 per month.*

*100% of the area median income for a family of 3 is \$61,375. At \$30,160, the family is making approximately 49% of the Area Median Income. Because the family is below*

60% AMI, the family is eligible for a nonrepayable loan that is forgiven starting in year 11.

The family has found a 3-bedroom house listed at \$140,000. A typical mortgage will have a term of 30 years and an interest rate of 4.0%. The base payment is \$668.38 with an additional \$200 a month for taxes and insurance that raises the total payment to \$868.38. The family has met their minimum PITI ratio but has exceeded the maximum PITI ratio of 33%. Therefore, the family has a gap that can be filled with HOME funding. The amount of gap that will be provided will depend on several factors such as the amount of debt. In this scenario, the family has financial obligations of \$250 each month which gives them a back-end ratio of 44.5%, which is well above the maximum of 41%. This family is eligible for up to \$30,000 in HOME funding. If they are given a grant of \$25,000, they now have a base payment of \$549 plus \$200 in taxes and insurance for a total of \$749.03 which is 29.8% of their income. With other financial obligations totaling \$250, their back-end ratio is now reduced to 39.75% which puts them within the allowable financial ratios.

### **SUBORDINATION**

The grantor agency may provide for subordination of the mortgages(s) securing the HOME subsidy only if as identified: (1) if there is no change in the government's mortgage position, total encumbrances cannot exceed 106% of the appraised value of the property; (2) if there is a change to the government's position, third position is the lowest acceptable, and total encumbrances do not exceed 90% of the appraised value (appraiser subject to approval by the LFUCG) and the total long-term debt as defined previously does not exceed 41% of the households and the reason for the subordination is capital improvements for the subject property. The government reserves the right to decline the subordination requests if the terms of the new mortgage are determined to negatively impact the homeowner's financial position.

### **VIOLATION OF RESTRICTION ON PRINCIPAL RESIDENCE**

In the event that the homebuyer ceases to occupy the HOME-subsidized unit as his principal residence during the required period of affordability, the Mortgagee shall provide for foreclosure of the mortgage which secures the HOME subsidy.

### **INSURANCE REQUIREMENTS**

Grantor agencies are responsible for ensuring that HOME units are properly insured during the construction/rehab process. Grantor agencies should also ensure through mortgages that the assisted property remains insured throughout the affordability period. At a minimum, the policy must be in an amount sufficient to cover the HOME investment. If HOME is subordinate to another mortgage, the policy must cover both mortgages. For all home buyer units, either the LFUCG or the grantor agency must be listed as a loss payee on the insurance policy. LFUCG shall contract with a loan servicing agency that has the capacity to purchase forced placed insurance in the event that homeowner fails to maintain coverage.

### **SECURITY**

All properties developed under a HOME-assisted first-time homebuyer program, whether or not the first-time purchaser receiving a repayable or non-repayable loan as described above, will be considered to be HOME-assisted and therefore are subject to all HOME restrictions.

All HOME restrictions regarding the period of affordability and use of property as principal residence during the period of affordability shall be included in the loan agreement, mortgage, and mortgage note, made in favor of the grantor agency or the Lexington Fayette Urban County Government; however, if the unit only receives a Developer's subsidy, then a recorded Deed of Restriction is also required.

The Lexington Fayette Urban County Government must approve all loan agreements, mortgages, mortgage notes, and deed of restrictions (if applicable) for properties assisted under the provisions of these guidelines prior to a grantor beginning a program.

If and when possible, the LFUCG will encourage participating private lenders to include all pertinent HOME requirements in the loan and mortgage documents for the private financing.

### **ASSUMABILITY OF SUBSIDY**

No HOME subsidy mortgage may be assumed during the period of affordability.

### **USE OF RECAPTURED HOME SUBSIDY**

Any HOME funds recaptured by the grantor agency under the provisions of these guidelines shall be returned to the Lexington-Fayette Urban County Government within ten days of receipt, unless otherwise noted in a written agreement.

### **PROGRAM INCOME**

All program income must be reported and returned to the LFUCG within 10 days of receipt, unless otherwise noted in a written agreement.

### **REPORT TO THE LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT**

The grantor agency shall report all pending property sales, all pending foreclosures (pertaining to events during the period of affordability), and violations of restrictions on use of HOME-assisted properties as principal residences of homebuyers to the Lexington-Fayette Urban County Government within five working days of their knowledge of the action.

### **HOME RELOCATION REQUIREMENTS**

A HOME-assisted homeownership project is subject to relocation requirements under the Uniform Relocation Act (URA). In order to avoid the costs of relocation and to avoid the displacement of persons, the Urban County Government requires that nonprofits purchase only vacant properties or properties which are owner-occupied and are being publicly marketed. An owner-occupant who sells a property is not eligible for relocation assistance under the URA as long as the seller, prior to sale is informed in writing: (1) of the fair market value of the property; and (2) that the buyer does not have the power



of eminent domain and, therefore, will not acquire the property if negotiations fail to result in an amicable sales agreement. The nonprofit will be required to document all steps of the acquisition. If vacant units are purchased, the government will evaluate whether or not the seller removed tenants in order to sell a "vacant" building.

### **CONFLICT OF INTEREST**

All grantor agencies must establish a Conflict of Interest policy that adheres to 24 CFR Part 84.84, and 2 CFR 200, as applicable. Potential conflicts of interest may arise from many situations. Some of the more common examples are:

- Requests for program assistance from employees, families of employees or board members, or families of board members of recipients or sub-recipients
- Recipients or sub-recipients contracting with or procuring materials from employees, families of employees or board members, or families of board members of recipients or sub-recipients.

All HOME grantor agencies are responsible for identifying situations in which a conflict of interest, whether real or perceived, may exist. If a conflict of interest is identified, the grantor agency must seek an exemption before proceeding with the project.

### **LEAD-BASED PAINT (For all pre-1978 units)**

*Per 24 CFR Part 35, sellers must disclose to the purchaser or lessee the presence of any known lead-based paint and/or lead-based paint hazards; provide available records and reports; provide the purchaser or lessee with a lead hazard information pamphlet; give purchasers a 10-day opportunity to conduct a risk assessment or inspection; and attach specific disclosure and warning language to the sales or leasing contract before the purchaser or lessee is obligated under a contract to purchase or lease target housing.*

All grantor agencies shall ensure that these regulations are followed.

### **APPLICATION FOR HOMEOWNERSHIP ASSISTANCE**

Each grantor agency must develop and use a standard program application form. Each household must complete the standard application form. If necessary, the grantor agency will provide assistance in preparing the form, especially to the elderly, handicapped, limited-English speaking persons and persons who are unable to read and/or write. A Uniform Residential Loan Application is not considered a program application and cannot be used as such under this program.

Each grantor agency shall comply with Title VI of the Civil Rights Act, ensuring that no person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance. Each grantor agency shall implement a language assistance program for persons who have limited English proficiency.

**HOME INCOME LIMITS**

Annual household income must be calculated based on HUD regulations at 24 CFR Part 5 and compared to the most recent HUD Income limits based on HUD estimates of median family income, with adjustments based on family size.

**BENEFICIARY AGREEMENT**

All prospective first-time homebuyers will receive counseling on the obligations, terms, and conditions associated with a HOME funded property. This counseling will cover how the first-time homebuyer program works and require the potential homebuyer to sign acknowledgement of program guidelines.

***Revision History:***

F:\WP51\HCD\HCDGEN\2400-001.doc - August 1, 2001

F:\WP51\HCD\HCDGEN\fthbguide803.doc

F:\WP51\HCD\HCDGEN\fthbguide804.doc

Revised March 2007

Revised October 2007

Revised February 2008

Revised May 9, 2008

Revised March 2010

Revised April 28, 2011

Revised April, 25, 2013

Revised February 25, 2014

Revised May2016

## **Exhibit B**

# **HOME Program Beneficiary Written Agreement**

# HOME Program Beneficiary Agreement & Acknowledgement

<b>Homebuyer (s) :</b>	
<b>Date Housing Unit must be Acquired By:</b>	
<b>Maximum Property Value:</b>	

Form of Assistance:                      Deferred Loan                      OR                      Repayable Loan

Use and amount of HOME funds: (mark all that apply):

<b>X</b>	Downpayment & Closing Costs Assistance	<b>\$30,000.00</b>
	Development Subsidy	

## Affordability Restrictions

### **Period of Affordability:**

The HOME rule at 92.254(a)(3) requires that all HOME assisted homebuyer housing be acquired by an eligible low income family, and the housing must be the principal residence of the family throughout the period of affordability. For HOME assisted homebuyer units under the recapture provision, the period of affordability is based upon the direct HOME subsidy provided to the homebuyer that enabled the homebuyer to purchase the unit. Any HOME program income used to provide direct assistance to the homebuyer is included when determining the period of affordability. After closing, and once your paperwork has been completed by the LFUCG Division of Grants and Special Programs and sent to HUD through the IDIS system, you will receive a letter from REACH, Inc. that will state the start and end date of your period of affordability. You will need to retain a copy of this documentation as it will show when your period of affordability will be completed. Your Period of Affordability does not start at the time of your closing when your note, mortgage and deed are signed. It starts once your information has been entered and closed out in HUD's system.

### **Sale Before the Expiration of The Period Of Affordability:**

#### *Recapture Provision:*

When the home is sold, the full amount of the HOME investment is recaptured by LFUCG. The full amount is defined as follows:

Sales Price – non-HOME first mortgage balance - Seller's closing costs= Net Proceeds

If the Net Proceeds exceed the original HOME subsidy amount, or the balance on a repayable loan, the excess will be paid to the homeowner.

Under "Recapture" provisions, if the house is SOLD prior to the end of the required affordability period, the net sales proceeds from the sale, if any, will be returned to LFUCG and will be used for other HOME eligible activities.

*Defaults or Violations of Principal Residency:*

In the event the homebuyer ceases to occupy the HOME-subsidized unit as their principal residence during the required period of affordability, LFUCG shall provide for foreclosure of the mortgage which secures the HOME subsidy. The full HOME subsidy plus 5% per annum interest, calculated from the date of the initial closing, shall be recaptured, after the first mortgagee has recovered the value of its loan.

A HOME Written Agreement, Note and Deed of Trust will be executed by the borrower and LFUCG that accurately reflects the resale or recapture provisions before or at the time of sale.

**CERTIFICATION: I have read the above Homebuyer Beneficiary Agreement & Acknowledgment. I / We fully understand all the terms as stated in the Affordability Restrictions. I / We acknowledge that I/we must use the property as my/our Principal Residence during the entire Period of Affordability and my obligations in the receipt of HOME funds for the purchase of the unit I choose to purchase.**

\_\_\_\_\_

Applicant Signature

\_\_\_\_\_

Date

\_\_\_\_\_

Co-Applicant Signature

\_\_\_\_\_

Date

\_\_\_\_\_

Agency Staff Member Signature

\_\_\_\_\_

Date

*\*Note: No person shall be excluded from participation, denied REACH program benefits or subjected to discrimination on the basis of race, color, religion, sex, age, disability, familial status or national origin.*



# **Exhibit C**

## **Deed Restriction**

## **DEED AND DECLARATION OF RESTRICTIVE COVENANTS**

**THIS DEED AND DECLARATION OF RESTRICTIVE COVENANTS** is made this \_\_\_\_\_ day of \_\_\_\_\_, 2018, by and between **REACH, Inc.**, a Kentucky Private Nonprofit Corporation, 733 Red Mile Road , Lexington, Fayette County, Kentucky 40504 ("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 known and designated as 356 Scottsdale Circle, Lexington, Kentucky 40511, 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 number of affordable housing units in the community and to increase the opportunities for homeownership for first-time low-income households by providing loans to Community Housing Development Organizations (CHDO's) ; and

**WHEREAS**, said Government, through its HOME Investment Partnerships Program (24CFR 92.300), has loaned funds in the amount of \$104,476 to Declarant/Owner to purchase and rehabilitate (develop) affordable housing for low income family.

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

**WHEREAS**, the Declarant/Owner has borrowed the sum of \$104,476 pursuant to the Government's HOME Program and HUD's HOME Investment Partnerships Program for the purpose of developing and creating affordable housing units in the community and to increase the opportunities for homeownership for low-income families in Fayette County through rehabilitation or new construction. The Declarant/Owner will comply with the requirements of the HOME program;

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

**NOW, THEREFORE**, the Declarant/Owner, for its assigns, subsequent purchasers, and successors in interest hereby declares that the site and project unit 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 property :

**1. RESTRICTED USES:**

(a) The site shall be maintained solely as single family (one unit) residential property and shall be sold to a first-time low-income household whose annual gross income, as defined by the HOME regulations, of the first-time homebuyer may not exceed 80% of the area median income by Declarant/Owner and its assigns, subsequent purchasers, and successors in interest. The purchasing household must be a resident of Fayette County for one (1) year who has not owned a home within the past three years, or is a displaced homemaker, or a single parent. A first-time homebuyer is also one who must occupy the property as his/her principal residence.

(b) Declarant/Owner and its assigns, subsequent purchasers, and successors in interest shall determine that the households monthly expenditure for Principal, Interest, Taxes and Insurance (PITI) shall not be less than the percentage of the gross household income indicated in the table provided in the Lexington-Fayette Urban County Government HOME First Time Homebuyer Assistance Guidelines dated May 2016, and shall not be more than 33% of the gross income at the time of loan approval. If the homebuyer receives a Housing Assistance Payment (HAP) from HUD's Section 8 Housing Program, the minimum percentages are not applicable for PITI. The first-time homebuyer may not commit more than 41% of their gross income for total long-term debt. Long term debt is defined as debt exceeding repayment for more than 6 months; or debt with an outstanding balance of more than \$3,000.

(c) The family size and the gross income for the purchasing household must be low income at either the time the household initially occupies the property or at the time the HOME funds are invested, whichever is later. There is no requirement that a first-time homebuyer remain low income while they own the property. Declarant/Owner and its assigns, subsequent purchasers, and



successors in interest shall obtain and verify income and family size information from the purchasing household upon initial application.

(d) 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 property and land and shall be effective from the date hereof for a period of fifteen (15) years and shall be binding upon the Declarant/Owner, its assigns, subsequent purchasers, and successors in interest and all parties and persons claiming under them during the term hereof. On the date that is fifteen years after the date of this deed (as set forth in the first paragraph of this deed) all the restrictions, covenants and other provisions contained in this deed shall expire and become null and void.

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

This Deed and Declaration of Restrictive Covenants may be released during the fifteen (15) year term if the unit is sold to a low-income eligible household, as approved by the Lexington Fayette Urban County Government and additional HOME Investment Partnership Program funds are provided to the Homebuyer as a Direct Subsidy. The Mortgage providing the additional HOME funds directly to the Homebuyer shall contain the required language to comply with the HOME Investment Partnership Program regulations and this Deed and Declaration of Restrictive Covenant may be released.

**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, 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.

[SPACE INTENTIONALLY LEFT BLANK. SIGNATURE PAGE TO FOLLOW]

**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.

**REACH, INC.**

**BY:** \_\_\_\_\_  
**Tina Burns**

**ITS:** Director

State of Kentucky)  
  )SCT  
County of Fayette)

The foregoing instrument was subscribed, sworn to, and acknowledged before me this the \_\_\_\_\_ day of \_\_\_\_\_, 2018, by Tina Burns, as Director of REACH, Inc., a Kentucky Private Nonprofit Corporation, by and on behalf of the Company.

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

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

**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 \_\_\_\_\_, 2018, by Jim Gray, as Mayor of the Lexington-Fayette  
Urban County Government.

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

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

Prepared by:

\_\_\_\_\_  
Melissa More Murphy  
Attorney Senior  
Lexington-Fayette Urban County Government  
Department of Law  
200 East Main Street  
11th Floor  
Lexington, Kentucky 40507

# Cost Summary for Homebuyer Projects : DRAFT

1621 Brentmoor Drive, Lexington, KY 40515

(Applicant need only fill in yellow or blue shaded cells; other non-shaded cells will calculate automatically).

Please indicate status of each column's source of other cash and non-cash resources (approved)

	Funds requested from LFUCG in this application		Other cash and non-cash resources, excluding support services, committed to this project (type the name of each source in the yellow blocks below, and in the rest of the column enter the amount of that source of funds to be spent for the items at left).							TOTALS
	HOME funds	AHTF funds	Bank Interim Construction Financing - CTB Approved	name of source here	name of source here	name of source here	name of source here	name of source here	name of source here	
A) Acquisition (includes building lots and existing structures)	90,000	0	0	0	0	0	0	0	0	90,000
B) Downpayment	0	0	0	0	0	0	0	0	0	0
C) Principal reduction/gap financing	0	0	0	0	0	0	0	0	0	0
D) Closing costs	0	0	0	0	0	0	0	0	0	0
E) Three percent homebuyer contribution (FHA-insured only)	0	0	0	0	0	0	0	0	0	0
F) Permanent/take-out financing (not used for construction)	0	0	0	0	0	0	0	0	0	0
G) Construction hard costs - Unrelated to lead-based paint	1,910	0	40,545	0	0	0	3	0	0	42,458
H) Construction hard costs - to abate lead-based paint	0	0	0	0	0	0	0	0	0	0
	1,910	0	40,545	0	0	0	3	0	0	42,458
I) Construction contingency not to exceed 10% of lines G + H	0	0	0	0	0	0	0	0	0	0
J) Site improvements	0	0	0	0	0	0	0	0	0	0
	1,910	0	40,545	0	0	0	3	0	0	42,458
K) Related finance costs	0	0	0	0	0	0	0	0	0	0
L) Related soft costs	0	0	0	0	0	0	0	0	0	0
1) Plans and specifications (or work write-ups)	665	0	0	0	0	0	0	0	0	665
2) Inspection costs	375	0	0	0	0	0	0	0	0	375
3) Appraisals	600	0	0	0	0	0	0	0	0	600
4) Temp Utilities	1,200	0	0	0	0	0	0	0	0	1,200
5) Insurances	250	0	0	0	0	0	0	0	0	250
6) Legal and filing fees	0	0	0	0	0	0	0	0	0	0
7) Loan processing	0	0	0	0	0	0	0	0	0	0
	3,090	0	0	0	0	0	0	0	0	3,090
Subtotal soft costs (sum of lines L(1) through L(7))	3,090	0	0	0	0	0	0	0	0	3,090
Total homebuyer activity	95,000	0	40,545	0	0	0	3	0	0	135,548
	5,000	0	0	0	0	0	0	0	0	5,000
M) Developer fee* (total from HOME not to exceed 12% of HOME Total)	0	0	0	0	0	0	0	0	0	0
N) Permanent relocation expense	0	0	0	0	0	0	0	0	0	0
1) Owner-occupied	0	0	0	0	0	0	0	0	0	0
2) Renters	0	0	0	0	0	0	0	0	0	0
3) Businesses	0	0	0	0	0	0	0	0	0	0
4) Excess payments	0	0	0	0	0	0	0	0	0	0
Total permanent relocation	0	0	0	0	0	0	0	0	0	0
Subtotal all project costs	100,000	0	40,545	0	0	0	3	0	0	140,548
O) Administration **	0	0	0	0	0	0	0	0	0	0
P) Environmental review costs ***	0	0	0	0	0	0	0	0	0	0
Total project costs	100,000	0	40,545	0	0	0	3	0	0	140,548

71.15%

Percentage of LFUCG HOME funds vs. Total Project Cost:

Number of units proposed: 1