

## HOME AGREEMENT

**THIS HOME AGREEMENT**, dated and entered into this the 4th day of December, 2018, by and between 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**") through its Division of Grants and Special Programs and **LEESTOWN VA HOUSING, LLLP**, ("**Owner**"), whose mailing address is 159 Old Georgetown Street, Lexington, Kentucky 40508.

### WITNESSETH:

**WHEREAS**, Government, in accordance with the regulations codified at 24 CFR 92.102 – 92.106 for the HOME Investment Partnerships Program, has been designated a Participating Jurisdiction by the U.S. Department of Housing and Urban Development ("HUD") and is the recipient of federal funding from the HOME Investment Partnerships Program;

**WHEREAS**, Government's approved 2016 and 2017 Annual Action Plans provide \$900,000 in funding from the HOME Investment Partnerships Program for the development of rental housing for low-income HOME-eligible persons and/or households in accordance with the HOME Investment Partnerships Program regulations as stated in 24 CFR Part 92.205-92.206;

**WHEREAS**, Owner has requested federal funds from the Government's HOME Program for the construction of rental housing for low-income persons and/or households;

**WHEREAS**, Government is willing to make a loan to the Owner upon the terms and conditions hereinafter set forth;

**WHEREAS**, Owner will construct a multi-family residential project located at 141 Opportunity Way in Lexington, Fayette County, Kentucky under the name of Victory Point Apartments and Townhomes;

**NOW, THEREFORE**, in consideration of the covenants set out herein, the parties agree as follows:

### SECTION 1

#### PARTICULAR COVENANTS

1.01 The Government hereby agrees to loan to Owner the maximum sum of Nine Hundred Thousand and 00/100 Dollars (\$900,000.00). This loan shall be in the form of a Deferred Payment Loan for the term of twenty (20) years from the date of this Loan Agreement. The Deferred Payment Loan shall be at zero percent (0%) interest for the twenty (20) year period and shall be repayable in full at the end of the twenty (20) year period. Funds shall be used for the construction and rehabilitation of 50 residential units of multi-family housing located at 141 Opportunity Way, Lexington, Fayette County, Kentucky ("Project").

1.02 Owner acknowledges and agrees to remain fully and solely liable for the repayment of the loan to the Government, pursuant to the terms and conditions of this Agreement and the Mortgage Note execution in connection herewith. The affordability period is twenty (20) years and begins on the day that the HUD's Integrated Disbursement and Information System (IDIS) accepts and records the Completion report. Repayment of funds does not affect the period of affordability.

1.03 During the term of this loan, the Owner shall make no payments of principal provided Owner complies with all of the terms and conditions of this HOME Agreement, Declaration of Restrictive Covenants, Mortgage Note and Subordinate Mortgage dated December 6, 2018.

1.04 All sums borrowed hereunder shall be used solely and exclusively for the Project that is further described as the construction of residential rental property located at 141 Opportunity Way, Lexington, Fayette County, Kentucky, for rent to low-income persons and/or households or for other eligible costs as set forth in 24 CFR 92.206. Owner acknowledges that *four (4) units in the Project shall be administered as HOME-assisted units*, and that the per-unit subsidy shall not exceed the maximum per-unit subsidy amount established under [Section 234 Condominium Housing Limits] for elevator-type projects that apply to the area in which the units are located. The four HOME-assisted units shall be floating. At a minimum, the following types of units will be HOME assisted:

Unit Type	# of Units	High HOME	Low HOME
0 BR	14	0	0
1 BR	6	0	0
2 BR	13	1	0
3 BR	13	2	0
4 BR	4	1	0
	<b>50</b>	<b>4</b>	<b>0</b>

1.05 No loan shall be made hereunder unless and until Owner supplies to Government the following documentation:

- Copy of Development Agreement
- Final Sources and Uses of Funds
- Commitment letters with all terms and conditions for all mortgages, grants, subordination agreements, bridge loans and investment tax credits
- Copy of the Partnership Agreement
- Closing Statement for Purchase of Property
- Construction Cost Estimate
- Construction Contract
- Documentation on syndication costs
- Twenty-Year Operating Proforma for the Project
- Documentation that no excess federal funds are in the project

1.06 Upon request, Owner shall provide supporting documentation for all other costs as specified in the Sources and Uses of Funds statement. Government consents to the following loans to the Owner in connection with the Project: that certain loan from FAHE in the amount of \$1,940,000 ("FAHE Loan 1"), that certain loan from FAHE in the amount of \$500,000 ("FAHE Loan 2"), that certain loan from FAHE in the amount of \$15,000 ("FAHE Loan 3"), that certain loan from Central Bank & Trust Co. in the amount of \$5,565,000 (the "CBT Loan") and that certain affordable housing fund loan from LFUCG in the amount of \$100,000 ("LFUCG Loan" and together with the CBT Loan, FAHE Loan 3, FAHE Loan 2 and FAHE Loan 1, the "Additional Indebtedness"). This HOME loan shall be in all respects subordinate to the CBT Loan and FAHE Loans. Government also consents to any unsecured loans made by the partners of the Owner in connection with Owner's amended and restated limited partnership agreement. Notice of unsecured loans must be given to the Government within 30 days of execution. Additional information may be requested.

1.07 No loan shall be made hereunder unless and until Owner has delivered to Government a note in the amount of \$900,000 and a mortgage securing said note, all within one year of the date of this HOME Agreement for the purpose of securing the loan made hereunder, which mortgage shall be upon the real property located at 141 Opportunity Way, Lexington, in Fayette County, Kentucky, together with all buildings and other structures now or hereafter erected or installed and all fixtures now or hereafter attached to or used in, or in the operation of any such lands, buildings and structures which are necessary to complete use and occupancy of such buildings or structures for the purposes for which they were or are to be erected or installed. To the extent permitted by law, all personal property described in the subordinate Mortgage shall be deemed to be fixtures and part of the property. As to any part of personal property not permitted by law to be fixtures, the mortgage shall constitute a security agreement under the Uniform Commercial Code.

1.08 For a period of twenty (20) years from the date on which development of the Project is completed, established as the date the HUD's Integrated Disbursement and Information System (IDIS) accepts and records the Completion report, one hundred percent (100%) of the HOME-assisted (four units) shall be rented to low-income and very low-income households. Low-income households are those households with adjusted gross incomes at or below sixty percent (60%) of the median income for the community. Very low-income households are those households with adjusted gross incomes at or below fifty percent (50%) of the median income for the community. During this same twenty (20) year period, for projects of five or more HOME-assisted units, twenty percent (20%) of the HOME-assisted units shall be rented to very low-income households except as otherwise set out herein in Section 1.11. Owner shall use the Section 8 Program definition of annual gross income (24 CFR 5.609).

1.09 For a period of twenty (20) years from the date on which development of the Project is completed, established as the date the HUD's Integrated Disbursement and Information System (IDIS) accepts and records the Completion report, Owner shall charge the low HOME and high HOME rents in HOME-assisted units 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. The Utility Allowance must be approved by the Lexington-Fayette Urban County Government prior to Lease-Up. 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 Owner to adjust the rent charged, Owner must obtain the approval of the Government prior to adjusting rents and provide tenants with no less than thirty (30) days written notice before adjustments are implemented.

1.10 The family size and the adjusted gross income for all tenants in HOME-assisted units must be determined at the time of initial occupancy and annually for a period of twenty (20) years from the date on which development of the Project is completed. Project is deemed to be completed on the date the HUD's Integrated Disbursement and Information System (IDIS) accepts and records the Completion report. Owner shall obtain and verify income and family size information from each tenant upon initial rent up and annually during the twenty (20) year affordability period. Owner shall provide information on family size, adjusted gross income and rent charged for all tenants in HOME-assisted units to the Government's Division of Grants and Special Programs within sixty (60) days after the initial rent up and the annual review date. Owner shall obtain any necessary releases from tenant to allow Government to independently verify the information provided.

1.11 For a period of twenty (20) years from the date on which development of the Project is completed, established as the date the HUD's Integrated Disbursement and Information System (IDIS) accepts and records the Completion report, Owner shall comply with the affirmative marketing requirements established by the Government pursuant to 24 CFR 92.351(a). The owner must adopt and follow written tenant selection policies and criteria that: (1) limit the housing to very low- income and low-income families; and (2) are reasonably related to the applicants' ability to perform the obligations of the lease (i.e., to pay the rent, not to damage the housing; not to interfere with the rights and quiet enjoyment of other tenants). Additionally, the Owner may give preference to Veterans in all units. The Owner shall provide all information to the Government necessary to the monitoring of the Owner's marketing strategy to ensure compliance with this section.

1.12 a. The Owner shall, on an annual basis, during a period of twenty (20) years from the date on which development is completed, review the income, family size and exclusions of all tenants in HOME-assisted units and determine if any are over-income. Development is deemed to be completed on the date the HUD's Integrated Disbursement and Information System (IDIS) accepts and records the Completion report. An over-income tenant is a household with an adjusted gross income exceeding eighty percent (80%) of the median income for the community. Owner shall not evict over-income tenants based on income. Owner shall increase the rent of the HOME-assisted unit to thirty percent (30%) of the household's adjusted gross income. HOME-assisted units vacated by an over-income tenant must be rented to an income-eligible tenant during the twenty (20) year period, except tenants of HOME-assisted units that have been allocated low-income housing tax credits by a housing credit agency pursuant to Section 42 of the Internal Revenue Code of 1986 (26 U.S.C. 42) must pay rent governed by Section 42. HOME-assisted units vacated by an over-income tenant must be rented to an income-eligible tenant for the duration of these covenants.

b. Should the adjusted gross income of a very low-income tenant renting a unit at the low HOME rate increase to greater than fifty percent (50%) of the median for the community but

less than eighty percent (80%) of the median for the community during the term of the tenancy and during the twenty (20) year period from the date on which development of the Project is completed, the Owner shall set the rent for such tenant at the high HOME rate for the duration of the tenancy. The Project is deemed to be completed on the date the initial tenant surveys are verified. Owner shall not evict such a tenant on the basis of the increase of the adjusted gross income. The next vacancy shall be rented to a very low-income tenant whose income is at or below fifty percent (50%) of the area median income at a rent no higher than the established low HOME rent.

1.13 During the twenty (20) year period of affordability, the Owner shall permit the Government, its employees, and its consultants access to all of its financial records so that Government can make a determination of the continued financial viability of the Project.

1.14 No loan shall be made hereunder unless and until all necessary parties execute deed restrictions or other covenants to limit the use of the property in conformance with the terms of the eligibility and affordability provisions of the HOME Investment Partnerships Program of the HUD. Such instrument shall be fully and properly executed by the Owner, shall be in recordable form, and shall become a covenant which runs with the land. Such restrictions or covenants shall be made a part of any instrument, executed subsequent to this Loan Agreement and the Mortgage Note and Mortgage referenced herein, conveying any interest in said property.

1.15 The Owner shall construct all units in the Project in accordance with the Kentucky Building Code, as amended, and all applicable State and local codes, ordinances, and zoning requirements. The housing must meet the accessibility requirements of 24 CFR part 8, which implements Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), and Titles II and III of the Americans with Disabilities Act (42 U.S.C. 12131-12189) implemented at 28 CFR parts 35 and 36, as applicable. Covered multifamily dwellings, as defined at 24 CFR 100.201, must also meet the design and construction requirements at 24 CFR 100.205, which implements the Fair Housing Act (42 U.S.C. 3601-3619). Construction contract(s) and construction documents must describe the work to be undertaken in adequate detail so that inspections can be conducted. The Owner shall be responsible for construction inspections and shall provide copies of all inspections to the Government. The Government shall also inspect for work in progress and shall make a final inspection.

1.16 The Owner shall maintain all units within a building containing a unit receiving a HOME subsidy in good condition and repair in accordance with Chapter 12.1 of the Code of Ordinances of the Lexington-Fayette Urban County Government, as amended, for the full twenty (20) year-term of this loan. Owner shall not remove or demolish any portion of any unit. Owner shall complete or restore promptly and in good workmanlike manner any unit which may be constructed, damaged or destroyed to the extent insurance proceeds are actually received and to pay when due all claims for labor performed and materials furnished. Owner shall not create, permit or suffer to be created or to exist any claims or liens for the labor or materials supplied for the development of the units set out herein. Owner will comply with all laws affecting said project and will not commit or permit any waste thereon or commit or permit any act thereon in violation of law.

Government may conduct inspections of units annually for purposes of determining Owner's compliance with maintenance requirements during the twenty (20) year period of affordability. Upon written notification of violations of maintenance requirements, Owner shall make corrections within 60 days.

1.17 Except for such interests in the real property as may be conveyed, assigned or otherwise transferred by Owner in connection with the Additional Indebtedness, 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 or without the consent of the Government which shall not be unreasonably withheld. Notwithstanding anything to the contrary herein, any transfers of partnership interests in the Owner are expressly permitted and shall not constitute a default hereunder.

1.18 The loan set out herein may be assumed by an individual or entity capable and able to enter into enforceable contracts, agreements or other loan documents as may be required to ensure compliance with the requirements and intent of the HOME Program upon the prior written consent of the Government's Division of Grants and Special Programs, which consent shall not be unreasonably withheld or delayed.

1.19 Any lease entered into between Owner and a tenant shall require the tenant to provide information as to family size and income as set out herein. Non-renewable leases shall not be utilized. The lease shall be in conformance with the Uniform Residential Landlord and Tenant Act to the extent the Uniform Residential Landlord and Tenant Act is applicable to Owner and the requirements of 24 CFR 92.253. Leases for the HOME-assisted units shall be submitted to the Government for approval prior to execution. The requirements set forth in this paragraph shall be in effect for a period of twenty (20) years from the date on which development of the project is completed.

1.20 The real property and improvements described herein shall be residential rental units and related administrative offices and common areas for the full twenty (20) years term of the loan. Owner shall not convert the units to condominium ownership or any form of cooperative ownership during the twenty (20) years term of the loan, without the prior written consent of the Government.

1.21 The Owner 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.

1.22 The Owner shall pay all taxes, legal assessments, water rates, utilities, special assessments or other charges when the same shall become due and without delinquency and shall not permit any liens to be imposed on this property by any reason of delinquency.

1.23 The Owner shall not seek relief under the bankruptcy laws or declare insolvency, make assignments for the benefit of its creditors or be placed in receivership.

1.25 The Owner shall act in conformity with the requirements of the Fair Housing Act (42 U.S.C. 3601-20) and implementing regulations at 24 CFR Part 100 et seq.; Equal Opportunity in Housing (Executive Order 11063, as amended by Executive Order 12259 [3 CFR, 1959-1963 Comp., p 652 and 3 CFR, 1980 Comp., p 307] and implementing regulations at 24 CFR part 107); and Title VI of the Civil Rights Act of 1964 as amended (42 U.S.C. 2000d et seq.) regarding Nondiscrimination in Federally Assisted Programs and implementing regulations issued at 24 CFR part 1. The Owner shall not discriminate against prospective tenants on the basis of race, color, national origin, religion, sex, familial status or disability. The Owner shall also comply with the provisions of the Violence Against Women Act ("VAWA"), as amended in March 2013.

1.26 The Owner shall act in conformity with the Age Discrimination Act of 1975, (42 U.S.C. 6101-6107) and implementing regulations at 24 CFR Part 146.

1.27 The Owner shall act in conformity with the Americans with Disabilities Act (42 U.S.C. 12131; 47 U.S.C. 155, 201, 218, and 225) which provides comprehensive civil rights to individuals with disabilities in the areas of employment, public accommodations, state and local government services and telecommunications; the Fair Housing Act (42 U.S.C. 3601-19) as implemented by 24 CFR 100.205; and Section 504 of the Rehabilitation Act of 1973 prohibiting the discrimination in federally assisted programs on the basis of handicap (29 U.S.C. 791 et seq) and implementing regulations at 24 CFR part 8.

1.28 The Owner shall comply with the requirements of Executive Order 11625, as amended by Executive Order 12007 (3 CFR, 1971-1975 Comp., p. 616 and 3 CFR, 1977 Comp., p. 139) concerning the use of Minority Business Enterprises; Executive Order 12432 (3 CFR, 1983 Comp., p. 198) regarding Minority Enterprise Development; and, Executive Order 12138, as amended by Executive Order 12608 (3 CFR, 1977 Comp., p. 393 and 3 CFR, 1987 Comp., p. 245) regarding Women's Business Enterprises. The Owner shall require its contractors and subcontractors to provide disadvantaged business enterprises with opportunities to participate in the project to ensure equal opportunity to socially and economically disadvantaged small businesses.

1.29 Owner and Government acknowledge that all laborers and mechanics, etc., employed in the construction of any project containing twelve (12) or more dwelling units and assisted with HOME funds, whether employed by Owner, contractors, or subcontractors, shall be paid wages complying with the Davis-Bacon Act (40 U.S.C. Section 276(A)-7). The Owner further agrees to comply with the applicable provisions of the Contract Work Hours and Safety Standards Act (40 U.S.C. Section 327-333), and the applicable provisions of the Fair Labor Standards Act of 1938, as amended (29 U.S.C. et seq.). Owner agrees that it will be responsible for compliance with these regulations and shall provide Government with evidence of compliance upon request.

1.30 Regulations Pursuant to So-Called "Anti-Kickback Act"

The Owner and/or his Contractor shall comply with the applicable regulations of the Secretary of Labor, United States Department of Labor, made pursuant to the so-called "Anti-Kickback Act" of June 13, 1934, (48 STAT. 948; 62 Stat. 862; title 18 U.S.C. section 874; and title 40 U.S.C. section 276c), and any amendments or modifications thereof, shall cause appropriate provisions to be inserted in subcontractor's contract to insure compliance therewith by all subcontractors thereunder, except as said Secretary of Labor may specifically provide for reasonable limitations, variations, tolerances, and exemptions from the requirements thereof.

1.31 The Owner 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.

1.32 The Owner shall comply with the "Lead Based Paint Poisoning Prevention Act of 1971" and HUD Regulations 24 CFR 35 and Section 8 Conforming Rule at 24 CFR 982.401(j). All interior and exterior paints, enamels, finishes, and/or primers used on any surfaces of housing and its environs shall not contain more than .06 of 1 percent of lead by weight (calculated as lead metal) in the total non-volatile content of liquid paints.

1.33 To assure and protect its rights under this Loan, the Government shall have right of access and inspection of the Project at reasonable times and with reasonable notice to the Owner.

1.34 The Owner shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, age, national origin or handicap. The Owner shall state in all solicitations and advertisements for employees placed by or on behalf of Owner that all qualified applicants will receive equal consideration for employment without regard to race, color, religion, sex, age, national origin, or handicap.

1.35 The Owner shall act in conformity with the "Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970" (42 U.S.C. 4201-4655) and 49 CFR part 24 pertaining to the acquisition of real property and relocation assistance for displaced persons. The Owner shall adhere to the terms and conditions of the Tenant Assistance/Relocation Policy (TARP) dated May 1990, and issued by the Government's Division of Grants and Special Programs. The Owner shall provide all information to the Government necessary to the monitoring of the Owner's marketing strategy to ensure compliance with this section, as if said policy were fully set out herein in writing.

1.36 The Owner shall 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.

1.37 In accordance with section 2-33 of the Code of Ordinances of the Lexington-Fayette Urban County Government, the Owner shall ensure that projects being assisted with HOME funds pursuant to this agreement shall be made available without regard to actual or perceived sexual orientation, gender identity or marital status of any applicant or prospective tenant. Neither Owner nor any of its agents will inquire about the sexual orientation or gender identity of any applicant or prospective tenant



1.38 The Owner shall comply with the Violence Against Women Act (VAWA) requirements set forth in 24 CFR §5.2005, specifically protections for victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking, including but not limited to, providing notification of occupancy rights, constructing lease terms of assistance for victims, and providing emergency transfer plans.

1.39 Source and Uses of Funds:

HOME funds provided to the Owner hereunder shall be used only for eligible project costs in accordance with the HOME regulations at 24 CFR 92.206. The specific Sources and Uses of Funds must be delivered to and approved by the Government prior to the delivering of a mortgage and note.

1.40 Changes in the Project work requested by the Owner, for any reason whatsoever must be submitted in writing, properly itemized and supported by sufficient substantiating data to be evaluated and certified by the Division of Grants and Special Programs. The Government will issue a written authorization for such changes and no such modification shall be made without a written agreement signed by the Owner and the Government.

1.41 Time of Completion

The Owner agrees to deliver mortgage and note in favor of the Government within one year of the date of this Agreement and agrees to complete the development covered by this agreement on or before December 31, 2020, unless the time for completion is extended in writing by the Government. All HOME-assisted units shall be occupied by eligible tenants within six months of completion of development. The Owner shall submit a marketing plan to the Government if it fails to lease units within six months of completion of development. If HOME-assisted units are not occupied by eligible tenants within eighteen months of completion of development, Owners shall repay HOME funds in the amount of \$900,000, less pro-rated amount for occupied units.

Time is of the essence, and it is agreed that if all development work is not completed in the time specified for completion and stated herein that it may result in the Government withdrawing funds which have been made available under this agreement.

1.42 Progress Payments

The Government shall disburse loan proceeds from time to time as the work progresses, as requested by the OWNER, but not more frequently than once a month. At the Government's request, lien releases shall be submitted with each request for progress payments.

No progress payment shall exceed ninety percent (90%) of the value of work in place, as estimated by an inspection by the Government less the aggregate of previous payments. The remaining ten percent (10%) shall be held by the Government as retainage. At such time as the Government deems appropriate, based on quality of work performed and other pertinent factors, the rate of retainage may be reduced; although, any reduction in retainage, below the ten percent (10%)

level, is made solely at the Government's discretion. All remaining retainage held will be included in the final payment to the Owner.

#### 1.43 Acceptance and Final Payment

Upon receipt of notice that the development is ready for final inspection and acceptance, the Government shall promptly make such inspection within five (5) days of receipt of such notice; and when it finds the development acceptable under this agreement and the agreement fully performed, shall authorize the payment to the Owner and/or his Contractor the final progress payment which shall be the entire balance then due to Owner and/or his Contractor. Before the Owner and/or his Contractor shall be paid in full, however, he shall submit evidence satisfactory to the Government that all payrolls, materials, bills, and other indebtedness connected with the work have been paid and the Owner and/or his Contractor shall provide satisfactory releases of liens or claims for liens by any Contractors, Subcontractors, Laborers and material suppliers.

Prior to final payment, the Owner will provide a satisfactory summary of all project expenses to document that the additional funds expended by the Owner for development equaled or exceeded the amount so specified in the approved Sources and Uses of Funds. Should the Owner's actual and final share of total project expenses be less than the amount specified in the approved Sources and Uses of Funds, then the Owner will repay to the Government, or have HOME funds withheld in an amount sufficient to reduce the Government's HOME Deferred Loan amount to a sum no greater than the amount needed for HOME gap financing.

Prior to final payment, the Owner shall provide post construction appraisal, copies of all Lexington-Fayette Urban County Government Division of Building Inspection reports including Certificate of Occupancy, Final Sources and Uses of Funds, leases, HOME Annual Certification Report, completed tenant-funded utilities form, and final report of contractors/subcontractors employed on the project, with Federal Employer Identification Numbers/Social Security numbers, complete mailing addresses, type of trade/skill, total contract dollar amount, and indication of Disadvantaged Business Enterprise status: women-owned and/or the following race/ethnicity categories: Alaskan Native/American Indian, Asian or Pacific Islander, Black Non-Hispanic, Hispanic, or White/Non-Hispanic. Owner shall also provide written report on all efforts made by its contractor and subcontractors to comply with Section 3.

#### 1.44 Reporting

The Owner agrees to provide any reports and information as required by the Participating Jurisdiction. The Owner 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). The Owner shall also provide an annual report on the number of persons that applied for tenancy but were not served to include race, ethnicity, and single-headed households, both male and female. In addition, an annual report shall also provide the following information about the employees of the Owner's organization: race, ethnicity, national origin, age, gender, and disability. The annual report shall be submitted to the Participating Jurisdiction no later

than thirty days after the end of the Participating Jurisdiction's fiscal year. Annual reports shall be submitted throughout the twenty (20) year period of affordability.

## SECTION 2

### MISCELLANEOUS

#### 2.01 Interest of Certain Federal and Other Officials

No member of or delegate to the Congress of the United States and no resident commissioner shall be admitted to any share or part of this Agreement or to any benefits to arise from same provided that the foregoing provision of this Section shall not be construed to extend to this agreement if made with a corporation for its general benefit.

No officer, employee or member of the governing body of the Government who exercises any functions or responsibilities in connection with the carrying out of the project to which this Agreement pertains shall have any private interest, direct or indirect, in this Agreement.

2.02 The Owner shall act in conformity with the federal prohibition regarding the employment of, awarding contracts to, or otherwise engaging the services of any contractor, owner, or subcontractor during any period of debarment, suspension or placement of ineligibility status.

#### 2.03 Executive Order 11246

The Owner shall comply with the provisions of Executive Order 11246, as amended by Executive Orders 11375, 11478, 12086, and 12107 (3 CFR, 1964-1965 Comp., p. 339; 3 CFR, 1966-1970 Comp., p. 684; 3 CFR, 1966-1970 Comp., p. 803; 3 CFR, 1978 Comp., p. 230; and 3 CFR, 1978 Comp., p. 264, respectively) concerning Equal Employment Opportunity Programs and implementing regulations at 41 CFR Chapter 60.

2.04 The Owner shall comply with the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u) Section 3 Clause and implementing regulations at 24 CFR part 135.

The Owner and/or his Contractor agrees to abide by the Section 3 Clause set forth above and will also cause this section to be inserted in any subcontracts entered into with third parties for work covered by this Agreement.

2.05 The Owner agrees to comply with the Historic Preservation requirements set forth in the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470) and the procedures set forth in 36 CFR, Part 800, insofar as they apply to the performance of the contract.

2.06 The Owner agrees to defend, indemnify, and hold harmless Government from any and all losses or claims of whatever kind, that are in any way incidental to, or connected with, or that arise or allege to have arisen, directly or indirectly, in whole or in part, from the execution, performance, or breach of this agreement by Owner, including any environmental problems, including, without limitation, soil and/or water contamination, and remedial investigations and feasibility studies

thereof, which exist at or prior to the agreement commencement date, regardless of when such losses or claims are made or incurred. This indemnity agreement shall in no way be limited by any financial responsibility, or loss control requirements below, and shall survive the termination of this agreement;

For the purposes of this Indemnity Provision:

1. The word "defend" includes, but is not limited to, investigating, handling, responding to, resisting, providing a defense for, and defending claims, at Owner's expense, using attorneys approved in writing by Government, which approval shall not be unreasonably withheld.
2. The word "claims" includes, but is not limited to, claims, demands, liens, suits, notices of violation from Governmental agencies, and other causes of action of whatever kind.
3. The word "losses" includes, but is not limited to: attorney fees and expenses; costs of litigation; court or administrative costs; 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 Owner and Government, and damage to, or destruction of, any property, including the property of Government.

#### 2.07 Access to Records

The Secretary and the Inspector General of HUD, the Comptroller General of the United States of America, or the Mayor of the Government, or any of their duly authorized representatives, shall have access to all books, accounts, reports, files, and other papers or property of the Owner and the Owner pertaining to this Loan and related development for the purpose of making surveys, audits, examinations, excerpts, and transcripts.

### SECTION 3

#### DEFAULT

3.01 If within one year from the date of completion of the development of the Project, Owner breaches any of the provisions of Sections 1 and 2 of this Agreement, such shall be considered a default and the full amount of the disbursed amount of the Deferred Payment Loan, plus fifteen percent (15%) of that full amount, shall be immediately due and payable; provided, before the Government may accelerate any amount due under the Deferred Payment Loan or take advantage of any other remedies, Owner shall have a thirty (30) day grace period from receipt of written notice of the fault to cure such default.

3.02 If during the second through the end of the forty-second year of the Deferred Payment Loan, the Owner breaches any of the provisions of Sections 1 and 2 of this Agreement, such shall be considered a default and the full disbursed amount of the Deferred Payment Loan shall be

immediately due and payable; provided, before the Government may accelerate any amount due under the Deferred Payment Loan or take advantage of any other remedies, Owner shall have a thirty (30) day grace period from receipt of written notice of the fault to cure such default.

3.03 Any forbearance by the Government with respect to any of the terms and conditions of this Loan in no way constitutes a waiver of any of the Government's rights or privileges granted hereunder.

3.04 In the event of default by the Owner, the Government may take such measures as may be lawful to it for the recovery of indebtedness and including, but not limited to, foreclosure and sale of the Owner's rights in the Project and/or the assignment and collection of the rents and profits of the Project.

3.05 Owner acknowledge that any default on a superior lien or any initiation of a foreclosure based on any lien shall be a default under this Loan Agreement and that the amount immediately due and payable as a result of such a default shall be governed by Section 3.01 and Section 3.02 of this Agreement.

3.06 If an event of default occurs under the terms of any documents executed in connection with this HOME Agreement or any other document executed in connection herewith (collectively, the "Loan Documents"), prior to exercising any right or remedy thereunder, Government shall give Owner and its limited partner (the "Limited Partner") simultaneous written notice of such default. If the default is reasonably capable of being cured within thirty (30) days, Owner shall have 30-days (or such longer period of time as may be specified in the Loan Documents) to effect a cure prior to the exercise by Government of any rights or remedies under the Loan Documents. If the default is such that it is not reasonably capable of being cured within thirty (30) days or such longer period if so specified, and if Owner (a) initiates corrective action within said period, and (b) diligently, continually, and in good faith works to effect a cure as soon as possible, then Borrower shall have such additional time as is reasonably necessary to cure the default prior to the exercise of any rights or remedies by Lender. If Owner fails to take corrective action or cure such default within a reasonable period of time, Government shall give Owner and the Limited Partner written notice of such failure, whereupon the Limited Partner may elect to remove and replace the general partner with a substitute general partner, who shall effect a cure within a reasonable time thereafter in accordance with the foregoing provisions. The Limited Partner shall have the right (but not the obligation) to cure any default within any applicable cure period

## **SECTION 4**

### **SURVIVAL OF COVENANTS**

4.01 Notwithstanding anything to the contrary contained herein, the covenants and agreements contained in Sections 1 through 3 shall survive the closing.

This instrument, with documents described herein, constitutes the entire agreement between the parties.

IN TESTIMONY WHEREOF, the parties have hereto caused this Agreement to be executed upon signatures by proper officers and representatives.

**OWNER:**

LEESTOWN VA HOUSING, LLLP, a Kentucky limited liability limited partnership

By: AU DEVELOPMENT, LLC, a Kentucky limited liability company, its General Partner

By: [Signature]

Name: HOLLY B. WIEDERMANN

Title: Managing Member

Date: 12/3/18



COMMONWEALTH OF KENTUCKY )  
COUNTY OF FAYETTE )

The foregoing instrument was subscribed, sworn to and acknowledged before me this the 3 day of December, 2018, by Holly B. Wiedemann, AS SPECIFIED, by and on behalf of LEESTOWN VA HOUSING, LLLP, a Kentucky limited liability limited partnership.

My commission expires: 11.15.2021

[Signature]  
NOTARY PUBLIC, STATE AT LARGE, KY

**LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT**

By: [Signature]  
Jim Gray, Mayor

Date: 12/4/18

ATTEST:  
[Signature]  
COUNCIL CLERK