

**LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT
AFFORDABLE HOUSING FUND
LOAN AGREEMENT**

THIS LOAN AGREEMENT ("Agreement") is made and entered into this 17th day of September, 2021, by and between **LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT**, an urban county government created pursuant to KRS Chapter 67A, whose principal address is 200 East Main Street, Lexington, Kentucky 40507 (hereinafter referred to as "LFUCG") through its **OFFICE OF AFFORDABLE HOUSING**, and **TATES CREEK INVESTMENTS, LLC**, a Kentucky limited liability company, whose principal address is 1285 Centre Parkway #4, Lexington, Ky. 40517 (hereinafter referred to as the "Borrower").

WITNESSETH:

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

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

WHEREAS, Borrower by application dated April 16, 2021 (hereinafter referred to as the "Application"), attached hereto and incorporated herein as Exhibit A, has applied for and has received approval for funds for a specific housing related project described below (hereinafter referred to as the "Eligible Activity"); and

WHEREAS, in order to assist Borrower in the funding of the Eligible Activity, LFUCG is willing to make funds available to Borrower from the Fund under the terms and conditions of this Agreement and the terms of its Commitment Letter, dated August 16, 2021 (hereinafter referred to as the "Commitment") attached hereto and incorporated herein as Exhibit B; and

WHEREAS, the project for which Borrower has been approved includes rehabilitation of property.

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

Article 1 - Commitment

1.1 LFUCG'S COMMITMENT. Pursuant to the Application and this Agreement, LFUCG will make available an amount not to exceed **FOUR HUNDRED THOUSAND DOLLARS (\$400,000.00)** ("AHF Loan") to Borrower from the Fund. Affordable Housing Funds will be disbursed by LFUCG to Borrower in accordance with the requirements set forth in this Agreement and in the Commitment, conditioned upon Borrower's continued satisfactory performance under the terms of this Agreement. The Loan will be made available in the form of a fifteen-year loan, which shall accrue interest at the rate of zero percent (0%) per annum. The Loan will be evidenced by one or more promissory notes ("Notes") in form and substance satisfactory to LFUCG payable to LFUCG and signed by Borrower. Principal and interest (if any) of the Loan shall be amortized in equal, consecutive installments of principal and accrued but unpaid interest, commencing as set forth in the Notes and continuing until principal and interest have been paid in full. All unpaid principal and accrued interest shall be due October 1, 2036 ("Maturity Date"). In the event of any

inconsistency between the Application and this Agreement, this Agreement will control. The Loan will be expended only for the purpose of new construction on the Property (defined below) described in the mortgage(s) executed pursuant to Section 1.2 below and in conformity with the other provisions of this Agreement, the Commitment and the Application. Further, LFUCG will not be required to advance any amount under this Agreement if an Event of Default (as hereinafter defined) has occurred and is continuing.

1.2 MORTGAGE; OTHER SECURITY. The performance of the Borrower's obligations under this Agreement shall be secured by a mortgage lien, or mortgage liens, in favor of LFUCG in the total principal amount of the Loan in form and substance satisfactory to LFUCG. In the sole discretion of LFUCG, the performance of Borrower's obligations under this Agreement may also be secured by an Assignment of Leases and Rents, Security Agreement, UCC-1 Financing Statement, Fixture Filing, and such other documents as LFUCG may in its sole discretion require (collectively, the mortgage(s) and the other security documents described in this subsection are referred to as the "Security Documents," the terms and conditions of which are incorporated herein).

1.3 ELIGIBLE ACTIVITY. The Loan has been made available based upon the information provided by Borrower in the Application. The sole purpose of this allocation is to rehabilitate 40 units known as Fair Oaks Apartments on the property located at 1285 Centre Parkway ("Project" or "Property").

1.4 SITES. In the event the Project includes new construction activities, Borrower must identify specific units (the "Units") to be assisted. Once identified, Units may not be changed, removed or substituted without prior written approval of LFUCG.

ARTICLE 2 - REPRESENTATIONS AND WARRANTIES OF BORROWER

2.1 Borrower represents and warrants that:

(a) The Property will be free and clear of all encumbrances, except for that Certain senior loan from the Bank of Lexington ("Senior Lender") in the amount of \$1,075,000.00 ("Senior Loan"), secured with a First Mortgage and an Assignment of Rents, and that certain subordinate loan from Fair Oaks Apartments, LLC, assigned to Emily K. Mayberry, in the amount of \$187,500.00 ("Subordinate Loan," together with the Senior Loan, the "Permitted Encumbrances"), and clear of easements, restrictions, stipulations and rights-of-way of record, applicable zoning rules and regulations and taxes which may be due and payable or which have been assessed and become a lien against the property whether or not yet due and payable. The AHF Loan shall be in all respects subordinate to the Senior Loan. The Subordinate Loan shall be in all respects subordinate to the AHF Loan.

(b) All funds disbursed hereunder will be used only for acquisition or development expenses, as applicable, of the Property, as approved by LFUCG, and said funds will not be used in any other manner or for any other purpose; and

(c) The acquisition or construction work has been approved by the appropriate local, regional and state agencies, including those concerned with planning and zoning, public works and health.

2.2 Borrower understands and acknowledges that projects assisted with LFUCG Funds must, at a minimum, meet the requirements set out in this Agreement. Borrower will supply, at LFUCG's request, all necessary documentation to substantiate compliance with this paragraph.

2.3 Borrower represents and warrants that, at the time any advances are made by LFUCG as provided herein, the Property will contain no substance known to be hazardous such as hazardous waste, lead-based paint (in violation of Federal or State law), asbestos, methane gas, urea formaldehyde, insulation, oil, toxic substances, polychlorinated biphenyls (PCBs) or radon, and Borrower shall take all action necessary to insure that the Property contains no such substances. Further, the Property will not be affected by the presence of oil, toxic substances or other pollutants that could be a detriment to the Property, nor is Borrower or the Property in violation of any local, state or federal environmental law or regulation and no violation of the Clean Air Act, Clean Water Act, Resource Conservation and Recovery Act, Toxic Substance Control Act, Safe Drinking Water Control Act, Comprehensive Environmental Resource Compensation and Liability Act or Occupational Safety and Health Act has occurred or is continuing. Borrower will take all actions within its control necessary to insure that no such violation occurs. Borrower will immediately deliver to LFUCG any notice it may receive about the existence of any of the foregoing hazardous conditions on the Property or about a violation of any such local, state or federal law or regulation with respect to the Property.

2.4 Borrower is duly organized and validly existing and in good standing under the laws of the Commonwealth of Kentucky; has the power and authority, corporate or otherwise, to own its properties and carry on its business as being conducted; and is duly qualified to do business wherever qualification is required. Borrower has been organized pursuant to state law for the primary purpose of providing housing to persons and families of lower and moderate income. Borrower is not presently under any cease or desist order or other orders of a similar nature, temporary or permanent, of any federal or state authority which would have the effect of preventing or hindering the performance of its duties under this Agreement, nor are there any proceedings presently in progress or to its knowledge contemplated which would, if successful, lead to the issuance of any cease or desist order.

2.5 Plans and specifications for the Project are satisfactory to Borrower and, to the extent required by applicable law, have been approved by all governmental agencies and authorities having jurisdiction thereof, and the use of the Project site(s) contemplated hereby will comply with all local zoning requirements.

2.6 There are no actions, suits or proceedings pending or, to the knowledge of the Borrower, threatened against or affecting it or the Project or involving the validity or enforceability of any mortgage or the priority of the mortgage lien granted by or to Borrower, at law or in equity, on or before or by any governmental authority or any other matters which would substantially impair the ability of Borrower to pay when due any amounts which may become payable in respect to the Notes, and to the Borrower's knowledge, it is not in default with respect to any order, writ, judgment, injunction, decree or demand of any court of any governmental authority.

2.7 The consummation of the transaction contemplated hereby and the performance of this Agreement and any Mortgage, if so required, will not result in any breach of, or constitute a default under, any mortgage, deed of trust, lease, bank loan or other loan, credit agreement, corporate charter, bylaw or any other instrument to which the Borrower is a party or by which it

may be bound or affected.

ARTICLE 3 – REQUIREMENTS FOR DISBURSEMENT

3.1 DISBURSEMENT OF AFFORDABLE HOUSING FUNDS. The Loan will be disbursed to Borrower upon receipt by LFUCG of the following:

- (a) an executed original of the Authorized Signature form; and
- (b) evidence that the Project will remain affordable as provided below;
- (c) an executed LFUCG Construction Start-Up Form;
- (d) proof of costs in adherence to LFUCG's requirements for draws and inspections for the Program activity under this Agreement (construction draws);
- (e) execution of the Notes, recordation of a valid mortgage lien against the Property securing repayment of the Loan, recordation of a Declaration of Covenants and Restrictions, and execution of any and all other Security Documents which may be required by LFUCG.

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

3.2 DISBURSEMENT OF DEVELOPER FEE. If a Developer fee is paid with the Loan proceeds, it will be disbursed on a pro-rata share equal to the percent of the Project completion, with the exception of the initial draw as follows:

- (a) up to 40% of the Project's developer fee may be disbursed at the initial draw;
- and
- (b) the remaining 60% may be drawn based upon the percentage of construction completion.

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

3.3 AFFORDABILITY PERIOD. The Property must remain affordable to persons at or below eighty percent (80%) of the area median income pursuant to the guidelines of the United States Department of Housing and Urban Development (HUD) for a minimum of fifteen (15) years from the date the Loan proceeds are first expended on the Project. Affordability must be ensured by recorded deed restrictions for all properties receiving Affordable Housing Funds. Only LFUCG, or its successors and assigns, has the right to release the deed restrictions prior to the date on which the restrictions expire.

3.4 SECTION 8 RENTAL ASSISTANCE. If Loan proceeds are used to construct rental property, Borrower will not refuse to lease any Unit assisted with Affordable Housing Funds to a holder of a voucher or certificate of eligibility under Section 8 of the United States Housing Act of 1937, as amended, solely because of the status of the prospective tenant as a holder of a certificate or voucher. Provided, however, if the rent required for the Unit is based upon a percentage of the prospective tenant's income through project design, or the assisted housing unit(s) utilize project-based rental housing assistance through another source, this section will not apply. This section does not apply to homeowner-occupied units of housing assisted with Affordable Housing Funds.

3.5 INSURANCE. For all properties assisted with Affordable Housing Funds, the Borrower or Property Owner must maintain all risk, fire and extended coverage, in form and with companies acceptable to LFUCG, for each Unit of the Project and any improvements to be constructed thereon in an amount of not less than the Affordable Housing Funds made available to Borrower for each Unit of the Project. Each policy must include appropriate loss payable clauses in favor of LFUCG or Borrower, as applicable, as beneficiary and without right of cancellation or change except upon thirty (30) days' written notice to LFUCG. Borrower will deliver proof of all insurance to LFUCG upon request.

3.6 REPAYMENT. In the event that repayment of the Affordable Housing Funds is required, Borrower agrees to repay funds to the Fund through LFUCG on a timely basis.

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

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

ARTICLE 4 - CONSTRUCTION LOAN TERMS

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

4.2 NO LIENS. Borrower will cause all work to be performed, including all labor, materials, supervision, supplies, equipment, architectural, and engineering services necessary to complete the improvements, in accordance with the Plans and Specifications. The Borrower will complete the improvements free from all materialmen's liens and all mechanic's liens and claims. All contracts with subcontractors and materialmen will contain, upon the request of LFUCG, a

provision for not less than ten percent (10%) retainage to ensure adequate and complete performance in connection with interim or progress payments hereunder. Advances of the Affordable Housing Funds by LFUCG will not be made until a representative of LFUCG has inspected the improvements, certified their completion and received from the general contractor and all subcontractors affidavits, in form and substance satisfactory to LFUCG, stating that payment will constitute payment in full of all amounts due and owing to them and their suppliers.

4.3 DEADLINE ON PROPERTY DEVELOPMENT. Borrower will begin development of the Property within 30 days after an advance is made hereunder for the Property and will cause all development work to be pursued with diligence and without delay. Borrower will cause the improvements to be constructed in a good and workmanlike manner in substantial compliance with the Plans and Specifications and in all respects in full compliance with all laws, rules, permits, requirements and regulations of any governmental agency or authorities having jurisdiction over the Property.

4.4 USE OF FUNDS. Borrower will cause all Affordable Housing Funds borrowed or advanced pursuant hereto to be applied entirely and exclusively for the acquisition or development, as applicable, of the Property and payment of labor and materials in the completion of development work in substantial compliance with the Plans and Specifications and for the payment of such other costs incidental thereto as may be specifically approved in writing by LFUCG.

4.5 RIGHT OF INSPECTION. Borrower will permit access by LFUCG to the books and records of Borrower and to the Property and all improvements at reasonable times. In the event LFUCG determines that any work or materials are not substantially in conformance with the Plans and Specifications, or are not in conformance with any applicable laws, regulations, permits, requirements or rules of any governmental authority having or exercising jurisdiction thereover or are not otherwise in conformity with sound building practices, LFUCG may stop the work and order replacement or correction of any such work or materials. Such inspection will not be construed as a representation or warranty by LFUCG to any third party that the improvements are, or will be, free of faulty materials or workmanship.

4.6 UNDERTAKING. If required by LFUCG prior to disbursement of Affordable Housing Funds hereunder and thereafter as LFUCG may require, Borrower will deliver to LFUCG (a) an agreement between Borrower and the architect who has prepared the Plans and Specifications whereby such architect agrees that the agreement is assignable to LFUCG upon the same terms and conditions as exist in said agreement; (b) an agreement between Borrower and Borrower's contractor whereby Borrower's contractor agrees that the agreement is assignable to LFUCG upon the same terms and conditions as exist in said agreement; (c) copies of all subcontracts and material purchase orders between Borrower's contractor and any persons, firms, or corporations with whom it has contracted to provide labor, materials or services with respect to the construction of the improvements, where any such contract exceeds a minimum price of Five Thousand Dollars (\$5,000.00); and (d) if requested in writing by LFUCG, a list of all persons, firms and corporations who have provided or proposed to provide labor, materials or services in connection with construction of the improvements.

4.7 NONLIABILITY OF LFUCG. This Agreement will not be construed to make LFUCG liable to materialmen, contractors, craftsmen, laborers or others for goods and services delivered by them to or upon the Property or for debts or claims accruing to said parties against the Borrower. There are no contractual relationships, either express or implied, between LFUCG

and any materialman, contractors, craftsmen, laborers or any other persons supplying work, labor or materials on the job, nor will any third person or persons, individual or corporate, be deemed to be beneficiaries of this Agreement or any term, condition or provisions hereof or on account of any actions taken or omitted by LFUCG pursuant hereto.

ARTICLE 5 – BREACH OR DEFAULT

5.1 RECAPTURE OF FUNDS; BREACH OF AGREEMENT. In the event of a breach, LFUCG may suspend Borrower's authority to draw Affordable Housing Funds at any time by giving notice to Borrower. LFUCG has the right, in its sole discretion, to terminate disbursement of funds and/or recapture any remaining portion of Affordable Housing Funds and/or require repayment of Affordable Housing Funds already disbursed or the amount including and up to an amount which has not been forgiven upon the occurrence of one or more of the following events (“Breach”):

- (a) Borrower does not diligently pursue the activity detailed in Borrower’s Application and for which Affordable Housing Funds have been awarded;
- (b) Borrower violates of any of the terms of this Agreement, the Affordable Housing Program ordinances, the Notes evidencing the Affordable Housing Funds under this Agreement, the Declaration of Covenants and Restrictions, or any other Security Document entered into pursuant to this Agreement;
- (c) Borrower does not submit reports or submits inadequate reports pursuant to Article 6 below;
- (d) Borrower defaults under any of the terms of this Agreement or any other document executed in conjunction with funding under this Agreement, and such default is not cured within any applicable cure period;
- (e) Borrower is unable to draw all Affordable Housing Funds, as set forth in the closing documents, in no instance later than twenty-four (24) months from the date of this Agreement;
- (f) Borrower is unable to document its participation in the project throughout the compliance period as required of nonprofit material participation per IRC Section 42;
- (g) the information submitted to LFUCG by Borrower, upon which LFUCG relied in its decision to allocate funds to Borrower, proves to be untrue or incorrect in any material respect; or
- (h) LFUCG determines in its sole discretion that it would be inadvisable to disburse Affordable Housing Funds to Borrower because of a material and adverse change in Borrower’s condition.

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

- (a) Any installment of principal or interest required by the Notes remains unpaid for more than ten (10) days after the due date thereof;
- (b) Any representation or warranty made herein, or in any certificate, report or statement furnished to LFUCG in connection the Affordable Housing Funds or the Notes proves to have been untrue or misleading in any material respect when made;

(c) Failure of Borrower to perform any of the provisions of the Notes, Mortgage, this Agreement or any other document executed in connection with this Agreement;

(d) Borrowers violation of the affordability requirements, whether evidenced by recorded deed restriction or owner certification of continued compliance;

(e) The entry of any lien or encumbrance against the Project site(s), (other than liens or encumbrances evidencing loan proceeds for the Permitted Encumbrances), except for ad valorem taxes which are not yet due and payable and liens incurred in the ordinary course of business with respect to amounts which are not yet due and payable without penalty or interest;

(f) Borrower fails to prosecute Project site development work with diligence so that construction thereof will be completed in a timely manner;

(g) Any party obtains or seeks an order or decree in any court of competent jurisdiction seeking to enjoin the construction of the improvements or to delay construction of the same or to enjoin or prohibit Borrower or LFUCG from carrying out the terms and conditions hereof, and such proceedings are not discontinued or such decree is not vacated within thirty (30) days after LFUCG has given Borrower notice under the provisions hereof;

(h) Borrower discontinues the rehabilitation work and abandonment continues for a period of ten (10) days;

(i) Borrower permits cancellation or termination of any insurance policy required under this Agreement or fails, if required, to obtain any renewal or replacement thereof satisfactory to LFUCG;

(j) Borrower (A) becomes bankrupt, or ceases, becomes unable, or admits in writing its inability to pay its debts as they mature, or makes a general assignment for the benefit of, or enters into any composition or arrangement with, creditors; (B) applies for, or consents (by admission of material allegations of a petition or otherwise) to the appointment of a trustee, receiver or liquidator of the Borrower or of a substantial portion of its assets, or authorizes such application or consent, or proceedings seeking such appointment are commenced without such authorization, consent or application against it and continue un-dismissed and unstayed for a period of fifteen (15) days; (C) authorizes or files a voluntary petition in bankruptcy, reorganization, readjustment of debt, insolvency, dissolution, liquidation or other similar law of any jurisdiction; or authorizes such application or consent; or proceedings to such end are instituted against the Borrower without such authorization, application or consent and are approved as properly instituted, remain undismissed for fifteen (15) days, or result in adjudication of bankruptcy or insolvency;

(k) Borrower is found to have violated any law or regulation, whether federal or state; or,

(l) Any entity files an action seeking to foreclose the Property.

5.3 CURE OF BREACH OR DEFAULT; PENALTIES. If any breach or default is not cured within thirty (30) days from the date LFUCG notifies Borrower of the breach or default in writing, LFUCG may continue suspension of disbursements. Additionally, LFUCG may declare the loan and/or grant immediately due and payable and may institute proceedings for its collection. LFUCG may terminate this Agreement by giving written notice to Borrower. In the event of a termination, Borrower's authority to draw Affordable Housing Funds will terminate as of the date

of the notice of termination and Borrower will have no right, title or interest in or to any remaining Affordable Housing Funds.

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

5.5 RIGHTS UPON DEFAULT. If one or more of the events of default described above occur, LFUCG may declare Borrower to be in default under this Agreement by giving not less than then (10) days prior written notice (or other notice required by applicable default provisions in other LFUCG loan documents) to Borrower, except for a default in payment, in which case no notice is required, and thereafter, LFUCG may exercise any one or more of the following remedies:

(a) Terminate the credit hereby extended, declare the entire unpaid balance and all accrued but unpaid interest under the Notes due and payable and institute proceedings for collection thereof; provided, however, LFUCG may make advances under the occurrence of an event of default without waiving any of its rights hereunder;

(b) Exercise its rights under the Notes or any other Security Document;

(c) Enter upon the Project site(s), expel and eject Borrower and all persons claiming through or under Borrower and collect the rents and profits therefrom;

(d) Complete the Project site development work at the cost and expense of Borrower and add such cost to the debt evidenced by the Loan and/or grant and this Agreement and secured by the Security Documents;

(e) Have discharged of record any mechanic's and materialmen's lien or other lien against the Project site(s);

(f) Institute such legal proceedings or other proceedings in the name of Borrower or LFUCG as LFUCG may deem appropriate for the purpose of protecting the Project site(s) and LFUCG's interests therein; or

(g) Do and perform all acts and deeds in the name of Borrower or LFUCG as LFUCG deems necessary or desirable to protect the Project site(s) and LFUCG's interests therein.

(h) All of the rights and remedies of LFUCG under this Agreement shall be cumulative and to the fullest extent permitted by law and shall be in addition to all those rights and remedies afforded LFUCG at law or in equity or in bankruptcy.

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

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

ARTICLE 6 – RECORDS; REPORTING

6.1 RECORDS; ACCESS. Borrower agrees to keep adequate records pertaining to the Project and the uses of Affordable Housing Funds. Borrower agrees to provide LFUCG or its designee access to all of its books and records, including fiscal records, for the purpose of program assessment reviews, and to retain all books and records until the later of three (3) years from the termination of this Agreement, or until all audits of performance during the term of this Agreement have been completed, or until any pending litigation involving this grant or related books and records is settled. Borrower agrees to maintain its books and records in accordance with generally accepted accounting principles. Nothing in this Agreement will be construed to limit the ability of LFUCG to monitor implementation of the project funded by this Agreement.

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

6.3 ANNUAL FINANCIAL REPORTING. Borrower agrees to provide LFUCG or its designee audited financials and/or Financial Compilation Reports on an annual basis during the term of this Agreement.

6.4 WARRANTY AS TO INFORMATION. Borrower acknowledges that its award of Affordable Housing Funds has been based upon information received from Borrower. Borrower warrants that the financial and other information furnished by Borrower to LFUCG was, at the time of application, and continues to be, true and accurate.

6.5 PROGRAM COMPLIANCE. Borrower agrees to comply with the LFUCG Affordable Housing Program guidelines and criteria relating to the Fund.

ARTICLE 7 - MISCELLANEOUS

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

Borrower: Tates Creek Investments, LLC
 1285 Centre Parkway #4,
 Lexington, Ky. 40517
 Attn: Martin Mayberry

Senior Lender: Bank of Lexington
761 Corporate Drive
Lexington, KY. 40503
ATTN: Cindy Burton

LFUCG: Lexington-Fayette Urban County Government
200 East Main Street, Sixth Floor
Lexington, Kentucky 40507
ATTN: Richard McQuady, Affordable Housing Manager

7.2 COSTS TO BE PAID BY BORROWER. All items which Borrower agrees to furnish under this Agreement will be furnished at Borrower's sole cost and expense.

7.3 NON-DISCRIMINATION AND FAIR HOUSING RULES. The Project and all contractors and major subcontractors engaged in connection therewith shall comply with all fair housing and non-discrimination statutes and regulations as they are amended from time to time, which include but are not limited to the following, each of which is hereby incorporated by reference into this Agreement:

Fair Housing Act (Title VIII of the Civil Rights Act of 1968);
24 CFR § 5.105, which prohibits discrimination on the basis of actual or perceived sexual orientation or gender identity, and marital status
Title VI of the Civil Rights Act of 1964;
Section 504 of the Rehabilitation Act of 1973;
Section 109 of Title I of the Housing and Community Development Act of 1974;
Title II of the Americans with Disabilities Act of 1990;
Architectural Barriers Act of 1968;
Age Discrimination Act of 1975;
Title IX of the Education Amendments Act of 1972; and
Presidential Executive Orders 11063, 11246, 12892, 12898, 13166, 13217.
Nondiscrimination and Equal Opportunity requirements [24 CFR §5.105(a)]
Chapter 2, Article 2, §§2-26 – 2-46 of the Code

7.4 SUSPENSION AND DEBARMENT. Borrower certifies by submission of its application and execution of this Agreement that to the best of its knowledge and belief after reasonable investigation, that it and/or its principals are not presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in any transaction under this Agreement by any federal department or agency, or under LFUCG's Suspension and Debarment Policy. Borrower further agrees that any future principal will meet the requirements of this section.

7.5 INDEMNIFICATION. Borrower shall indemnify, defend and hold LFUCG harmless from and against any and all liabilities, claims, demands, losses, damages, costs and expenses (including without limitation, reasonable attorney's fees and litigation expenses), actions or causes of actions, arising out of or relating to any breach of any covenant or agreement or the incorrectness or inaccuracy of any representation and warranty of Borrower contained in this Agreement or in

pursuant to the terms of this Agreement, except for that which occurs as a result of LFUCG's gross negligence or willful misconduct.

7.6 GOVERNING LAW. This Agreement and the loan referred to herein will be governed by the laws of the Commonwealth of Kentucky.

7.7 ASSIGNABILITY. Borrower may not assign this Agreement nor any part hereof without the prior written consent of LFUCG. Subject to the foregoing restriction, this Agreement will inure to the benefit of LFUCG, its successors and assigns and will bind Borrower, Borrower's successors, assigns and representatives.

7.8 MODIFICATION. No variance or modification of this Agreement will be valid and enforceable except by supplemental agreement in writing, executed and approved in the same manner as this Agreement.

7.9 EXHIBITS. Any exhibits attached to this Agreement and the matters contained therein are incorporated herein and deemed to be a part hereof as if fully recited in this Agreement prior to the date of execution hereof.

7.10 WAIVER. LFUCG may waive Borrower's performance of any of the terms of this Agreement or Borrower's default hereunder; provided, however, such waiver must be in writing, signed by LFUCG, and any such written waiver hereunder will not be construed as a waiver of any other term or condition of this Agreement or of any act of continuing default.

7.11 INVALID PROVISIONS. The invalidity or unenforceability of a particular provision of this Agreement will not affect the other provisions hereof, and this Agreement will be construed in all respects as if such invalid or unenforceable provisions were omitted.

7.12 COUNTERPARTS. This Agreement may be executed by the parties in any number of counterparts, each of which shall be an original, but such counterparts together shall constitute one and the same instrument.

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

LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT

By: Linda Gorton
Linda Gorton, Mayor

ATTEST:

Shila
Clerk, Urban County Council

EXHIBIT "A"

Application



Affordable Housing Fund

Application for Funding

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

General Information

Applicant Name: *Tates Creek Investments, LLC*

MWBE Status: N/A

Tax Status: Non-Profit (CHDO)

Type of Entity: General Partnership

Development Name: *Fair Oaks Apartments*

Development Location: *1285 Centre Parkway, Lexington KY 40517*

Contact Person: *Martin Mayberry*

Contact Title: *OWNER*

Mailing Address: *628 Maidenlane Dr.*

City: *Lexington* **State:** *KY* **Zip:** *40509*

Phone: *859-595-8133*

Fax:

Email Address: *fairoaksapartments@gmail.com*

Funds Requested: *\$ 720,000*

Lexington, KY Affordable Housing Fund – Application For Funding

Other Funding (Specify on Pro-Forma):

Total Development Cost:

Development Information

Development Type (Check all that apply):

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

Total Number of Units: 40

Total Number of Buildings: 1

Square Feet of Units by Bedroom Size:

Unit Size: 1 bed Square Footage: 750
Unit Size: Square Footage:
Unit Size: Square Footage:
Unit Size: Square Footage: All Same
Unit Size: Square Footage:

Monthly Rents by Bedroom Size:

Unit Size: 1 bed Monthly Rent: base rent \$450
Unit Size: Monthly Rent:
Unit Size: Monthly Rent: # charges for # of tenants
Unit Size: Monthly Rent: + pets
Unit Size: Monthly Rent:

Target Area Median Income (AMI): 80% and below

Amenities (Check all that apply):

- Stove:
Refrigerator:
Dishwasher:
Garbage Disposal:

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

Location Amenities (Check all that apply):

- | | | |
|--|-----------------------------------|-------------------------------------|
| Public Transportation: <input checked="" type="checkbox"/> | Proximity to Development: 100ft | Description: Lexington BUS stop |
| Shopping: <input checked="" type="checkbox"/> | Proximity to Development: 2 miles | Description: Kroger, CVS |
| Restaurants: <input checked="" type="checkbox"/> | Proximity to Development: 2 miles | Description: Cheddars, Waffle house |
| Medical Facilities: <input type="checkbox"/> | Proximity to Development: | Description: |
| Banks: <input checked="" type="checkbox"/> | Proximity to Development: 2 miles | Description: Bank of Lexington |
| Other: <input type="checkbox"/> | Proximity to Development: | Description: |

Populations to be Served (Check all that apply):

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


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

Electric - Kentucky Utilities - Tenant Paid
 Water - KAWC - Property Paid, included in rent
 Sewer - LFUCG - " "

Application for Funding Agreement

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

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

Name: Martin R. Mauberry 

Title: Owner

Date: 4-16-2021

EXHIBIT "B"

Commitment Letter

MAYOR LINDA GORTON



LEXINGTON

RICHARD MCQUADY
DIRECTOR
AFFORDABLE HOUSING

August 16, 2021

Mr. Martin Mayberry
Tates Creek Investments, LLC
1285 Centre Parkway
Lexington, Kentucky 40517

Dear Mr. Mayberry,

The Board of Directors of the Lexington-Fayette Urban County Government's Affordable Housing Fund has approved an allocation of \$400,000 for the rehabilitation of Fair Oaks Apartments, a 40 unit development located at 1285 Centre Parkway in Lexington, Kentucky. The allocation is in the form of a 15 year, 0% deferred/forgivable loan with one-fifteenth (1/15) of the loan principal forgiven for each year the units remain in compliance with Affordable Housing Fund Guidelines.

Please know that should you sell Fair Oaks Apartments within 5 years of the closing of this loan, the entire principal amount plus interest at 5% from the date of the loan closing will be due and payable to Lexington-Fayette Urban County Government.

This allocation is contingent upon the following:

1. Your acceptance of a 15 year Deed Restriction on the property, ensuring the units remain affordable to households whose incomes are at or below 80% of area median income in Fayette County, Kentucky.
2. You obtain bank financing for the remaining costs associated with the rehab work.

Please indicate your acceptance of this commitment letter by signing below.


Sincerely,

Richard L. McQuady
Affordable Housing Manager

Accepted:



THIS INSTRUMENT PREPARED BY:



Brittany Griffin Smith, Attorney
Lexington-Fayette Urban County Government
200 East Main Street, 11th floor
Lexington, Kentucky 40507
(859) 258-3500

**LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT
AFFORDABLE HOUSING FUND
SUBORDINATE MORTGAGE**

This **SUBORDINATE MORTGAGE** ("Mortgage"), is made and entered into this 17th day of September, 2021, by and between **LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT**, an urban county government created pursuant to KRS 67A, whose principal address is 200 East Main Street, Lexington, Kentucky 40507 (herein "LFUCG") through its **OFFICE OF AFFORDABLE HOUSING**, and **TATES CREEK INVESTMENTS, LLC**, a Kentucky limited liability company, whose principal address is 1285 Centre Parkway #4, Lexington, Ky. 40517 (herein "Mortgagor").

WITNESSETH:

Mortgagor hereby recites and agrees as follows, which recitations and agreements constitute a part of this Mortgage:

WHEREAS, Mortgagor is indebted to LFUCG for monies loaned or to be loaned to Mortgagor under the terms of an Affordable Housing Fund Loan Agreement (the "Loan Agreement") of even date herewith, between Mortgagor and LFUCG providing for an Affordable Housing Fund Mortgage Loan in the amount of **FOUR HUNDRED THOUSAND DOLLARS (\$400,000.00)**, (the "Mortgage Loan "); and

A. Mortgagor has determined that it is to Mortgagor's direct and indirect economic benefit that LFUCG make the Mortgage Loan to Mortgagor, and therefore have agreed to execute and deliver this Mortgage in order to secure repayment of the Mortgage Loan.

Terms used herein and not otherwise defined shall have the meaning set forth in the Loan Agreement.

NOW, THEREFORE, MORTGAGOR, in consideration of the Mortgage Loan, hereby conveys to LFUCG, with covenant of general warranty all of Mortgagor's right, title and interest in and to Mortgagor's interest in certain real estate located in Fayette County, Kentucky (more particularly described in Exhibit A attached hereto and incorporated herein by reference) (the "Property");

TOGETHER with all privileges and appurtenances thereunto belonging, Mortgagor's interest as lessor in any leases affecting the premises, and all revenues, rents, issues and profits from the premises (whether payable under a lease or otherwise), and all the estate, right, title and interest of Mortgagor, at law or in equity, of, in and to the Mortgagor's interest in the Property herein described, and every part thereof, and together with all buildings and improvements now existing or hereafter constructed or placed thereon; and together with all heating, ventilating, and air conditioning equipment relative thereto and all fixtures, now or hereafter located in or upon or affixed to the Property, and all machinery, apparatus, equipment and articles of personal property of every kind and description belonging to Mortgagor, now or hereafter located in or upon or affixed to the Property, all of which are and shall be a part of said Property and a portion of the security for the Mortgage Loan; and together with all insurance or condemnation proceeds accruing or arising or relative to any of the foregoing during the term of this Mortgage;

ALL the foregoing property, interests and rights encumbered by this Mortgage are hereafter collectively referred to as the "Premises".

TO HAVE AND TO HOLD the Premises with the privileges and appurtenances thereunto belonging, and all rents, revenues, issues and profits therefrom, unto LFUCG, its successors and assigns, forever, for the uses and purposes herein expressed. Mortgagor covenants that Mortgagor is well seized of the Premises and each portion thereof, and has full right and power to grant, bargain, sell, convey, mortgage and warrant the Mortgagor's interest in the same in the manner and form written. Mortgagor represents and warrants to LFUCG that the granting of this Mortgage has been and is duly authorized. Mortgagor covenants that the Premises are free from all liens and encumbrances whatsoever, excepting; (i) the lien of general taxes not yet due and payable, easements and restrictions of record, and restrictions and zoning laws affecting the Premises, if any; (ii) Permitted Encumbrances (as hereinafter defined); and (iii) any leases as may now or hereafter affect any portion of the Premises. Mortgagor warrants and will defend the Premises, with the privileges and appurtenances thereunto belonging, to LFUCG, its successors and assigns forever, against all claims and demands whatsoever adverse to the interest of LFUCG, at Mortgagor's sole expense.

THIS MORTGAGE is given to secure: (a) Payment of the Mortgage Loan, same being evidenced by a promissory note or notes (hereafter the "Notes") of even date herewith and any modifications, extensions or renewals thereof, executed and delivered by Mortgagor to LFUCG, in the principal amount of **FOUR HUNDRED THOUSAND DOLLARS (\$400,000.00)**, and payment of interest thereon at the rate(s) and in the manner provided therein; the entire principal amount advanced and all interest thereon, if not sooner paid, being due and payable by Mortgagor on October 1, 2036, as more particularly described in the Notes; and (b) payment by Mortgagor of its obligations to LFUCG of all sums expended or advanced by LFUCG pursuant to any provisions and performance of each and every of LFUCG's and Mortgagor's respective covenants, conditions and agreements contained in this Mortgage, the Notes, the Mortgage Loan Agreement and any

other instrument or agreement evidencing, securing or otherwise pertaining to the Mortgage Loan (hereafter collectively, the "Mortgage Loan Documents"). (Hereafter all references to the "Mortgage Loan" where appropriate shall include all advances made and expenses incurred by LFUCG pursuant to this Mortgage for the protection of the Premises and all other security for the Mortgage Loan).

AND MORTGAGOR, AND EACH OF THEM, AND WHEN AND AS APPLICABLE, HEREBY COVENANTS AND AGREES THAT:

1. Mortgagor agrees to pay the principal of and interest on the Mortgage Loan evidenced by the Notes and secured hereby, to be paid at the times and in the manner provided in the Notes.
2. Mortgagor will pay or will have paid all taxes, assessments, and other similar charges levied upon the Premises before the same become delinquent, and will promptly deliver to LFUCG, if requested, receipts of the proper officers therefor; Mortgagor's failure to pay or to have paid any such charges shall at LFUCG's election constitute a default hereunder. Or, at LFUCG's sole option in the event of delinquency, LFUCG may pay such delinquent taxes, assessments, and charges, including any penalties or interest thereon (of which payment, amount and validity thereof, the receipt of the proper officer shall be conclusive evidence) and any amount so paid by LFUCG shall become immediately due and payable by Mortgagor, shall be secured by this Mortgage and shall bear interest from date of advance until paid at an annual rate equal to twelve percent (12%).
3. Mortgagor hereby assigns to LFUCG all leases and rents, revenues, issues and profits of the Premises (whether or not payable under a lease) as further security for the payment of all amounts by Mortgagor and performance of all Mortgagor's obligations under the Mortgage Loan Documents, and grants LFUCG the right to enter on the Premises for the purpose of collecting same, and to promote, manage and/or operate the Premises or any part thereof in such manner as LFUCG may elect, and to apply the revenues received therefrom, after payment of all necessary charges and expenses, to the obligations secured by this Mortgage, the occurrence and continuation of an Event of Default as defined herein. While this is a present assignment, LFUCG will not exercise its rights hereunder unless and until an Event of Default occurs and is continuing. Mortgagor shall, and hereby agrees that it will, indemnify LFUCG, its officers, agents and employees for and hold each of them harmless from any and all claims and demands whatsoever which may be asserted against LFUCG, its officers, agents or employees by reason of any actual or alleged undertakings or obligations on LFUCG's part to perform or discharge any terms, covenants or agreements relative to use or occupancy of the Premises or any part thereof or for waste committed or permitted on the Premises, or by reason of any actual or allegedly dangerous or defective condition or conditions of the Premises resulting in loss or injury to any lessee or to any other person, including LFUCG's reasonable costs and attorney's fees incurred by reason of any of the foregoing. Provided, that said obligation to indemnify LFUCG shall not apply to any loss, injury or damage caused by the gross negligence or willful misconduct of LFUCG, its officers, agents or employees.
4. Mortgagor, at its own expense will maintain with admitted insurers authorized to do business in the Commonwealth of Kentucky against claims for bodily injury, personal injury, death or property damage occurring on, in or about the Premises or as a result of ownership of the

improvements located on the Premises in amounts not less than as set forth in the Mortgage Loan Agreement. Mortgagor further covenants to keep the improvements now existing or hereafter erected on or in the Premises insured against loss or damage by, or abatement of rental income, resulting from fire and "all risk" perils. Mortgagor covenants to maintain flood insurance as required by the Flood Disaster Protection Act of 1973, as amended and any additional flood insurance required by LFUCG. All perils insured shall be in an amount not less than the full replacement value of the property. Mortgagor agrees to promptly pay or have paid when due all premiums on such insurance and further agrees, if requested by LFUCG, to furnish a certificate from the company carrying such insurance acknowledging that such insurance is adequate in an amount to prevent the operation of any coinsurance provision contained therein. All such insurance shall be carried by companies approved by LFUCG in its reasonable discretion, and the policies and renewals thereof shall be deposited with and held by LFUCG. All policies of insurance required to be maintained by Mortgagor pursuant to this paragraph name as the insured parties Mortgagor and LFUCG, shall be reasonably satisfactory to LFUCG, and shall: (a) provide for the benefit of such holder or holders, that thirty (30) days' prior written notice of suspension, cancellation, termination, modification, non-renewal or lapse or material change of coverage shall be given to all insured parties and that such insurance shall be given to all insured parties and that such insurance shall not be invalidated by any act or neglect of Mortgagor or LFUCG or any owner of the Premises, nor by any foreclosure or other proceedings or notices thereof relating to the Premises or any interest therein, nor by occupation of the Premises for purposes more hazardous than are permitted by such policy and (b) not contain a provision relieving the insurer thereunder of liability for any loss by reason of the existence of other policies of insurance covering the Premises against the peril involved, whether collectible or not.

The originals of all such policies shall be delivered to LFUCG. In the event of Mortgagor's failure to comply with any of the requirements of this paragraph, same shall at LFUCG's option constitute a default hereunder. Or, LFUCG may, in its discretion, obtain any insurance required hereunder and pay the premiums due therefor, and any amounts so paid by LFUCG shall become immediately due and payable by Mortgagor with interest thereon at the rate specified in numerical paragraph (2) hereof until paid, and same shall be secured by this Mortgage.

In the event of any loss or damage to the Premises or any portion thereof, Mortgagor will give immediate notice thereof to LFUCG, and LFUCG may thereupon make proof of claim relative to such loss or damage, if same is not promptly made by Mortgagor. Mortgagor hereby authorizes LFUCG (should LFUCG so elect) to settle, adjust, or compromise any claims for loss, damage, or destruction under any such policy or policies of insurance and collect the proceeds thereof, and to this end hereby grants LFUCG the Mortgagor's power of attorney for such purposes (which power of attorney is a power coupled with an interest, same being irrevocable for the term of this Mortgage); provided, that LFUCG will exercise its rights under this sentence only if an Event of Default occurs and is continuing. All such proceeds of fire and extended coverage insurance, to the full extent of the Mortgage Loan, are hereby assigned to LFUCG and shall be payable to LFUCG if LFUCG should so elect, and Mortgagor hereby authorizes and directs any affected insurance company to make payment thereof directly to LFUCG. All such insurance proceeds or any portion thereof shall be applied in whole or in part to restoration, repair, replacement, or rebuilding of the Premises. The delivery to LFUCG of any such policies or certificates of insurance, or renewals thereof, shall constitute an assignment to LFUCG of all unearned premiums thereon as further security for the payment of the Mortgage Loan. In the event of foreclosure of

this Mortgage or other transfer of title to the Premises in extinguishment of the Mortgage Loan, all right, title and interest of Mortgagor in and to any insurance policies then in force shall pass to LFUCG.

5. Mortgagor will have maintained or will maintain the Premises in good condition and repair and will not commit or allow any waste or destruction, reasonable wear and tear excepted. Mortgagor will comply with, or cause to be complied with, any applicable statutes, ordinances, regulations, or requirement of any governmental authority relative to the Premises and the use and maintenance thereof, and will promptly repair, restore, replace, or rebuild any part of the Premises now or hereafter subject to the lien of this Mortgage which may be damaged or destroyed by any casualty or as the result of any proceeding referred to in paragraph (7) hereof. No buildings, structures, or improvements hereafter erected on the Premises shall be removed, demolished, or substantially or structurally altered in any respect by Mortgagor, on Mortgagor's behalf, or by any tenant or by any other party without the prior written consent of LFUCG by its duly authorized officer, LFUCG, and any person authorized by LFUCG, may enter upon and inspect the Premises at all reasonable times.

6. Except for a mortgage and assignment of rents granted by Mortgagor in favor of a senior loan from **Bank of Lexington** in the amount of **\$1,075,000.00** ("**First Mortgage Loan**"), which is superior to the within Mortgage, and that certain subordinate loan from **Fair Oaks Apartments, LLC**, assigned to Emily K. Mayberry, in the amount of **\$187,500.00** ("**Subordinate Loan**," and together with the First Mortgage Loan, the "**Permitted Encumbrances**"), which is subordinate to the within Mortgage, Mortgagor will not create, suffer or allow any charge, lien or encumbrance, without the prior written consent of LFUCG by its duly authorized officer, which consent shall not be unreasonably withheld, conditioned or delayed. Mortgagor will pay or will have paid promptly when due any charges for utilities or services including but not limited to electricity, gas and water; should Mortgagor or any tenant fail to pay such charges, LFUCG may pay the same, and any amount so paid by LFUCG shall become immediately due and payable by Mortgagor with interest at the rate specified in numerical paragraph (2) hereof until paid, and same shall be secured by this Mortgage. Notwithstanding anything to the contrary contained herein, LFUCG expressly acknowledges and agrees that this Mortgage (and the lien created by this Mortgage) and all of LFUCG's rights and remedies hereunder are fully subject and subordinate to the First Mortgage Loan. The Subordinate Loan shall in all respects be subordinate to the AFH Loan.

7. If all or any part of the Premises are damaged, taken, or acquired, either temporarily or permanently, in any condemnation proceeding, or by exercise of the right of eminent domain, or by the alteration of the grade of any street affecting the Premises, the amount of any award or other payment for such taking or damages made in consideration thereof, to the extent of the full amount of the Mortgage Loan then remaining unpaid, is hereby assigned by Mortgagor to LFUCG, who may collect and receive the same and give proper receipts therefor in the name of Mortgagor, and the same shall be paid forthwith to LFUCG. To such end, Mortgagor hereby grants to LFUCG the Mortgagor's power of attorney (which power of attorney is a power coupled with an interest and shall be irrevocable for the term of this Mortgage). Any award or payment so received by LFUCG during the continuation of any default may, at the sole option of LFUCG, be retained and applied, in whole or in part, to the Mortgage Loan (whether or not then due and payable), in such manner as LFUCG may determine and/or released, in whole or in part, to Mortgagor for the purpose of altering, restoring, or rebuilding any part of the Premises which may have been affected by such

taking, alteration, or proceeding. Provided that absent the occurrence and continuation of an Event of Default, LFUCG will release said sums to Mortgagor, to be applied to restoration of the Premises. LFUCG shall not be obligated to see to the application of any amounts so released to Mortgagor. In the event of a material and adverse effect upon the value of the Premises by reason of any such damage, taking or acquisition, and should the proceeds or award payable therefor not satisfy in full the Mortgage Loan, same shall constitute an Event of Default.

8. If LFUCG shall incur or expend any sums, including reasonable attorneys' fees, to sustain the lien of this Mortgage or its priority, or to protect or enforce any of LFUCG's rights hereunder or under any other Mortgage Loan Document, to protect the Premises as collateral for the Mortgage Loan, or to recover any portion of the Mortgage Loan, all such sums shall become immediately due and payable by Mortgagor with interest thereon at the rate specified in numerical paragraph (2) hereof until paid. All such sums shall be secured by this Mortgage and shall be a lien on the Premises prior to any right, title, interest, or claim, in, to or upon the Premises attaching or accruing subsequent to the lien of this Mortgage.

9. Mortgagor will not hereafter lease the Premises, except leases executed in Mortgagor's ordinary course of business, nor will Mortgagor assign, alter, terminate or otherwise materially modify the terms of any lease affecting the Premises to which Mortgagor is a party, except residential leases, nor further encumber or assign (in whole or in part) the rents, revenues, income, or profits arising from the Premises or any portion thereof (except in connection with the Permitted Encumbrances) without the prior written consent of LFUCG by its duly authorized officer, or in any other manner impair the value of the Premises or the security of this Mortgage for the payment of the Mortgage Loan.

10. Mortgagor will observe and perform all covenants, conditions, and agreements imposed on it by any lease or leases now or hereafter affecting the Premises, or any portion thereof. If Mortgagor shall default in its performance of any of the terms, covenants, conditions, or obligations imposed upon it by any such lease or leases, which default would give the other party or parties thereto the right to terminate or cancel said lease or leases and if same may have a material adverse effect on the value of the Premises as security or the Mortgage Loan then, at the sole option of LFUCG, the entire Mortgage Loan shall become immediately payable and collectible by foreclosure or otherwise, without notice or demand. Provided, that in the event of any such default by Mortgagor (whether as lessor, lessee, sub lessee or otherwise), after the expiration of all applicable cure periods, LFUCG shall have the right but not the obligation to cure any such default of Mortgagor, in such manner and to the extent LFUCG may deem advisable to protect its interest in the Premises. In the event that LFUCG should so elect, then any and all sums so expended by LFUCG relative to affecting any such cure shall become immediately due and owing LFUCG by Mortgagor, shall be secured hereby and shall bear interest at the rate specified in numerical paragraph (2) hereof until paid.

With respect to the Premises and the operation and promotion thereof, Mortgagor will keep or will cause to be kept proper books of record and account in accordance with generally accepted accounting principles consistently applied. LFUCG shall have the right to examine said books of record and account at such reasonable times and intervals as LFUCG may elect.

11. In the event that LFUCG (a) grants any extension of time or forbearance for payment of any portion of the Mortgage Loan; (b) takes, or realizes, other additional security for the payment thereof; (c) waives or does not exercise any right granted herein, under the Notes or under any other Mortgage Loan Document; (d) grants any release, with or without consideration, of all or any part of the security held for the payment of the Mortgage Loan; (e) amends or modifies in any respect with the consent of Mortgagor any of the terms and provisions hereof or of the Notes; then and in any such event, such act or failure to act shall not release Mortgagor or (if applicable) any of its principals or any co-maker, sureties, or guarantors of this Mortgage or of the Notes, under any covenant of this Mortgage, the Notes or other Mortgage Loan Documents nor preclude LFUCG from exercising any right or privilege herein or therein granted or intended to be granted in the event of any other existing or subsequent default and without in any manner impairing or affecting the lien or priority of this Mortgage.

12. Mortgagor will not hereafter make or permit, without the prior written consent of LFUCG by its duly authorized officer: (a) any sale of the Premises, or the execution of any contract for deed relative to the Premises, or any assumption of the Mortgage Loan, any condominium conversion or any use of the Premises or any part thereof for any purpose other than that presently contemplated by the parties hereto; (b) after completion of the renovations contemplated by the Plans and Specifications, any material alteration, removal or demolition of any buildings, improvements, fixtures, apparatus, machinery, and equipment now or hereafter located or erected upon the Premises except in the ordinary course of business; (c) any purchase or conditional sale, lease or agreement under which title is reserved in the vendor of any fixtures, apparatus, machinery, equipment or personal property in or upon any of the buildings or improvements comprising a part of the Premises; (d) except in connection with the Permitted Encumbrances, any assignment of the revenues, rents, income or profits from the Premises; (e) except for the Permitted Encumbrances, any mortgage, lien or encumbrance upon the Premises, or any part thereof (whether prior or inferior to the lien of this Mortgage) affecting or adverse to the lien hereof, general and special taxes duly levied and assessed and not yet due and payable and any lease now or hereafter affecting any portion of the Premises. Any of the foregoing without LFUCG's prior written consent, which consent shall not be unreasonably withheld, conditioned, or delayed shall be and constitute a default by Mortgagor on this Mortgage and on the Mortgage Loan.

13. In the event of Mortgagor's default in the performance of any of the covenants and conditions contained in this Mortgage or in the event of Mortgagor's default in payment of the Mortgage Loan or any part thereof, or in the Notes or under any other Mortgage Loan Document, or under any other covenant or condition contained in any documented executed in connection with the Permitted Encumbrances, and (absent an express contrary grace or curative period) shall such failure, omission or default not have been fully corrected by Mortgagor, as applicable, to the complete satisfaction of LFUCG within thirty (30) days after LFUCG gives Mortgagor written notice of the occurrence of any such default, at the address set forth in the Loan Agreement; and shall such default remain uncured beyond any applicable grace or curative period; or in the event any representation or warranty of the Mortgagor herein contained, or in the event any representation or warranty of the Mortgagor contained in any other Mortgage Loan Document shall prove to be untrue or misleading in any material respect; or in the event of any petition in bankruptcy, receivership, or reorganization filed by or against Mortgagor and shall same not be vacated within sixty (60) days; or any assignment or composition for the benefit of creditors made or entered into by Mortgagor; or in the event the Borrower defaults under any loan document

executed between the Borrower and a senior lienholder on the Premises; or in the event of any judgment or proceeding entered or brought against Mortgagor or the Premises or to foreclose any lien thereon or on any part thereof; or in the event of a substantial adverse change in financial position of Mortgagor; or in the event of an unauthorized encumbrance or change in ownership of the Premises or of any other security for the Mortgage Loan; or if in the opinion of LFUCG there is any material decline in the value of the Premises or any other security for the Mortgage Loan; or should Mortgagor default on any other indebtedness now or hereafter owing LFUCG by Mortgagor beyond any applicable grace or curative period; then, and in such event, at LFUCG's sole option, without further notice or demand, the same being hereby expressly waived by Mortgagor as evidenced by Mortgagor's execution of this Mortgage, the Mortgage Loan shall become due, payable and collectible. Upon the happening of any such event (hereinafter an "Event of Default"), in addition to any other right of remedy which LFUCG may now or hereafter have at law or in equity, and not by way of limitation, LFUCG shall have the right and power to exercise any or all or any combination of the following remedies: (a) to declare the Mortgage Loan due and payable (and same shall thereupon be due and payable and to foreclose upon this Mortgage and the lien hereof; (b) to sell the Premises according to law as an entirety or in separate parcels; (c) to apply without notice (same being hereby expressly waived by Mortgagor) for the appointment of a receiver to collect the revenues and profits of the Premises and to preserve the security hereof as a matter of right, either before or after any foreclosure sale, without regard to the value of the Premises or any other property as security for the amount due LFUCG, or the solvency of any entity liable for the payment of such amounts; (d) to enter upon and take possession of the Premises without application to any court, with the irrevocable consent of Mortgagor as evidenced by Mortgagor's execution of this Mortgage, and collect the revenues, issues and profits thereof, and, without the appointment of any receiver or application being made therefor, to manage, promote and/or operate the Premises, either in LFUCG's name or Mortgagor's name, by whatever means LFUCG may elect, and receive all the revenues, issues and profits therefrom, and apply the same, after payment of all necessary charges and expenses deemed by LFUCG to be necessary, to payment of the Mortgage Loan. All the foregoing rights and powers are effective and may be enforced by LFUCG either in conjunction with or without any action to foreclose this Mortgage, and without applying at any time for a receiver for the Premises. The foregoing rights and remedies are independent of and in addition to any statutory right to appointment of a receiver. Written notices required by the foregoing paragraph shall be sent by certified mail to the addresses provided in the Mortgage Loan Agreement.

14. Any sale under this Mortgage shall operate to divest all right, title and interest of Mortgagor in and to the Premises and rights so sold; shall be a perpetual bar both in law and equity against the Mortgagor; and shall be in bar of any equity or right of redemption, the same being expressly waived by Mortgagor.

15. Mortgagor represents and warrants, to its knowledge and belief, that no hazardous substances are present on the Premises, except in compliance with all applicable state and federal laws and regulations relating thereto (collectively, "Environmental Laws"). Furthermore, Mortgagor represents, warrants, and agrees that Mortgagor will not use, generate, treat, store, dispose of or otherwise introduce any such hazardous substances into or on the Premises, except in compliance with all applicable Environmental Laws. Mortgagor represents, warrants and agrees that there is no current and will be no future unlawful physical (including environmental, natural, artificial, structural or chemical) hazard or potential hazard (including, without limitation, the

presence, accumulation or storage of any toxin, toxic waste, toxic affluent or discharge) or condition in or on or affecting the Premises or affecting the health of any person in or on the Premises, except in compliance with all applicable Environmental Laws. The Mortgagor shall pay immediately when due the cost of removal of any such wastes or substances, and shall keep the Premises free of any lien imposed pursuant to laws, rules, regulations and orders pertaining to hazardous wastes or substances and the removal thereof; in the event Mortgagor fails to do so, it shall be deemed an Event of Default. The Mortgagor shall indemnify LFUCG and hold LFUCG harmless from and against all loss, cost, damage and expense (including, without limitation, attorneys' fees and costs incurred in the investigation, defense and/or settlement of claims) that LFUCG may incur as a result of or in connection with the assertion against LFUCG of any claim relating to the presence or removal of any hazardous waste or substance referred to in this paragraph, or compliance with any federal, state or local laws, rules, regulations or orders relating thereto. The obligations of Mortgagor under this paragraph to indemnify LFUCG and hold LFUCG harmless shall survive payment of the Mortgage Loan and Note and shall survive release of this Mortgage and shall extend to the representatives, successors and assigns of LFUCG.

16. Whenever used in this Mortgage, unless the context shall otherwise clearly require, the term "Mortgagor" shall include the heirs, representatives, successors and assigns, as the case may be, of Mortgagor and all persons claiming by, through, or under Mortgagor; the term "Mortgagor" shall include the successors and assigns, as the case may be, of Mortgagor and all persons claiming by, through, or under Mortgagor; the term "person" shall include any individual, partnership, corporation, trustee, or unincorporated association. The singular shall include the plural and the plural, the singular; the gender used shall include the other genders. The invalidity or unenforceability of any one (1) or more phrases, sentences, clauses or paragraphs of this Mortgage shall not affect the validity or enforceability of the remaining portions of this Mortgage or of any part hereof. If this Mortgage is invalid or unenforceable as to any part of the Mortgage Loan, or if this Mortgage is invalid or unenforceable as to any part of the Premises, the unsecured or partially unsecured portion of the Mortgage Loan shall be completely paid prior to the payment of the remaining secured or partially secured portion of the Loan; and all payments made on the Loan, whether voluntary or under foreclosure or other enforcement action or procedure, shall be considered to have been first paid on and applied to the full payment of that portion of the Loan which is not secured or fully secured by this Mortgage.

17. All the terms, covenants, conditions and agreements herein set forth shall be binding upon and inure to the benefit of the respective heirs, executors, administrators, attorneys, representatives, successors and assigns, as the case may be, of the parties hereto.

18. No delay or omission on the part of LFUCG in exercising any right or remedy hereunder or under any other Loan Documents shall operate as a waiver of such right or remedy or any other right or remedy. A waiver by LFUCG on any one occasion shall not be a bar to or waiver of any right or remedy on any further occasion. The rights and remedies provided herein and in the other Loan Documents are cumulative, and LFUCG may resort to any other right or remedy or any combination thereof available under the other Loan Documents or at law or in equity without first exhausting and without affecting or impairing the security of or any right or remedy afforded by this Mortgage. No waiver shall be effective as to LFUCG unless same shall be in writing by its duly authorized officer; any such waiver shall be construed strictly according to its terms.

19. Immediately upon the delivery of a written request, but subject to the terms of the Permitted Encumbrances, Mortgagor will pay or will have paid to LFUCG for the term of this Mortgage, on the same dates as payments of principal and/or interest are required to be made by Mortgagor, an amount equal to one-twelfth (1/12) of the annual premiums for insurance as may be required by LFUCG relative to the Premises, and one-twelfth (1/12) of the annual taxes and assessments assessed against the Premises. LFUCG shall hold all such sums so received for, and shall apply same to, payment of such taxes, assessments and insurance. Mortgagor shall receive no interest on any such sums received and held by LFUCG for the benefit of Mortgagor.

20. In the event of any inconsistency, in the terms and provisions of this Mortgage or any other Loan Document as to the rights and remedies of LFUCG, or in the event of any such inconsistency as between or among any two (2) or more Loan Documents, then in any such event LFUCG shall have the right at its sole option to elect which of such provisions shall govern.

21. If Mortgagor shall pay to LFUCG all sums due LFUCG under the Notes and the interest thereon, in the manner and at the times mentioned in the Notes, or otherwise in connection with the Loan, and Mortgagor shall pay LFUCG any and all other sums due from Mortgagor to LFUCG under this Mortgage and shall fully keep and perform the terms, covenants, conditions and agreements under this Mortgage or otherwise due LFUCG relative to the Loan, then this Mortgage and the estate granted thereby shall cease and be void, and this Mortgage shall thereupon be released by LFUCG at the cost and expense of Mortgagor.

22. This Mortgage may be executed by the parties in any number of counterparts, each of which shall be an original, but such counterparts together shall constitute one and the same instrument.

23. This Mortgage is taken, in part, to secure a loan made for the purpose of erecting, improving or adding to a building.

Notwithstanding any provision in any of the Loan Documents to the contrary, Lender acknowledges and agrees that (a) the Premises is or will be subject to a Land Use Restriction Agreement (as defined below), (b) the recordation of the Land Use Restriction Agreement against the Premises is permitted under the terms of the Loan Documents and (c) this Mortgage, and the terms and provision thereof, shall be subordinate to the Land Use Restriction Agreement regardless of the order of recording of either document. "Land Use Restriction Agreement" means the extended low-income housing commitment, regulatory agreement or restrictive covenants executed or to be executed by Mortgagor setting forth certain terms and conditions under which the Premises is to be operated.

Notwithstanding Lender's right to invoke any remedies under the Agreement, the Notes, or this Mortgage ("Lender's Loan Documents"), the Lender agrees as follows:

- a. Lender shall, upon serving Mortgagor with any notice of default pursuant to Lender's Loan Documents, simultaneously serve a copy of such notice upon Senior Lender, or else to its successors and assigns ("Senior Lender"). Such notice shall outline in detail the default(s) under the Lender's Loan Documents. Senior Lender shall thereupon have 60 days after service of such notice upon it to remedy or cause to be remedied the defaults complained of, and at the instigation of Senior Lender as if the same had been done by Mortgagor.

- b. Lender will not proceed to enforce any of its rights and remedies under the Lender's Loan Documents, including without limitation the right to accelerate the indebtedness under the Mortgage Note or initiate foreclosure proceedings to enforce the lien of this Security Instrument until it has given Senior Lender at least 60 days prior written notice as set forth above.

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

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

25. Notwithstanding the foregoing, the Mortgagor shall have no personal liability under this Mortgage, the Notes, or any other Loan Document for the payment of the indebtedness evidenced by the Notes and the performance of any other obligations of the Mortgagor under the Loan Documents (collectively, the "Indebtedness") and the Lender's only recourse for the satisfaction of the Indebtedness and the performance of such obligations shall be the Lender's exercise of its rights and remedies under the Loan Documents with respect to the Mortgaged Property.

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

IN TESTIMONY WHEREOF, LFUCG and the Mortgagor have caused this instrument to be executed by LFUCG and the Mortgagor's duly authorized officers this day and date first hereinabove appearing.

THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK.

EXHIBIT A

Being all of Parcel 4 as shown by that Consolidation Record Plat of Lots 1, 2, and 3, Unit 8, of the Southeastern Hills Subdivision, Fayette County, Kentucky, of record in Plat Cabinet B, Slide 623, in the Fayette County Clerk's Office; the improvements thereon being known and designated as 1285 Centre Parkway.

Being the same property conveyed from Fair Oaks Apartments, LLC, a Kentucky limited liability company, to Tates Creek Investments, LLC, a Kentucky limited liability company, by Deed dated January 24, 2020, of record in Deed Book 3730, Page 154 in the Fayette County Clerk's Office.

THIS INSTRUMENT PREPARED BY:



Brittany Griffin Smith, Attorney
Lexington-Fayette Urban County Government
200 East Main Street, 11th floor
Lexington, Kentucky 40507
(859) 258-3500

**LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT
AFFORDABLE HOUSING FUND
DECLARATION OF COVENANTS AND RESTRICTIONS**

This **DECLARATION OF COVENANTS AND RESTRICTIONS** ("Declaration") is made this 17th day of September, 2021, by **TATES CREEK INVESTMENTS, LLC**, a Kentucky limited liability limited company, whose principal address is 1285 Centre Parkway #4, Lexington, Ky., 40517 (herein "Borrower"). Borrower is the holder of an interest of the property in Fayette County, Kentucky, described on Exhibit A attached hereto and made a part hereof (the "Property"). To facilitate the rehabilitation of 40 apartment units, known as Fair Oaks Apartments, Borrower has been awarded funds in the amount of **FOUR HUNDRED THOUSAND DOLLARS (\$400,000.00)** (the "AHF Funds") from the Affordable Housing Fund (the "AHF Program").

1. **OCCUPANCY BY LOW-INCOME PERSONS OR FAMILIES.** In consideration of Lexington-Fayette Urban County Government ("LFUCG") by and through the Office of Affordable Housing, making funds available to Borrower for the construction of the dwelling on the Property, Borrower covenants that the dwelling constructed on the Property described herein shall be maintained as housing for low-income persons or families, which shall be defined as individuals/families with annual gross incomes at or below eighty percent (80%) of the area median income, adjusted for size, as defined by the U.S. Department of Housing and Urban Development ("HUD"). All tenants of the Property, at the time of initial leasing, shall be low-income persons or families, which shall be defined as individuals/families with annual gross incomes at or below eighty percent (80%) of the AMI, adjusted for size, as defined by HUD.

2. **RENT REQUIREMENTS.** Borrower further covenants that the rent charged for any of the dwelling units subject to this restriction constructed or rehabilitated on the property described herein will comply with the limits on rents chargeable to tenants pursuant to the rent restrictions of the Affordable Housing Program as determined by LFUCG.

3. **ENFORCEMENT.** The covenants set forth in this Deed shall run with the land described above and, to the fullest extent permitted by law and equity, shall be binding for the

EXHIBIT A

Being all of Parcel 4 as shown by that Consolidation Record Plat of Lots 1, 2, and 3, Unit 8, of the Southeastern Hills Subdivision, Fayette County, Kentucky, of record in Plat Cabinet B, Slide 623, in the Fayette County Clerk's Office; the improvements thereon being known and designated as 1285 Centre Parkway.

Being the same property conveyed from Fair Oaks Apartments, LLC, a Kentucky limited liability company, to Bates Creek Investments, LLC, a Kentucky limited liability company, by Deed dated January 24, 2020, of record in Deed Book 3730, Page 154 in the Fayette County Clerk's Office.

**LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT
AFFORDABLE HOUSING FUND
FORGIVABLE LOAN PROMISSORY NOTE**

\$400,000.00

September 17, 2021

FOR VALUE RECEIVED, TATES CREEK INVESTMENTS, LLC, a Kentucky limited liability company, whose principal address is 1285 Centre Parkway #4, Lexington, Ky. 40517 (the "Maker) promises to pay to LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT ("LFUCG"), an urban county government of the Commonwealth of Kentucky created pursuant to KRS Chapter 67A, whose address is 200 East Main Street, Lexington, Kentucky 40507, its successors and assigns, the principal sum of **FOUR HUNDRED THOUSAND DOLLARS (\$400,000.00)** or so much thereof as may be advanced under the Loan Agreement (the "Agreement") and outstanding, together with interest thereon at the rate of interest rate (0%) per annum to be computed from the earlier of October 1, 2021 or the date of the final disbursement of funds from Affordable Housing Funds.

A. Payments shall be required as follows:

1. Interest on the outstanding principal *calculated in the manner set forth below* shall be due and payable in arrears on the 1st day of each month beginning on the earlier of October 1, 2021 or the month following the date of the final draw of Affordable Housing funds and continuing on the *first* day of each succeeding month thereafter until the principal balance shall be paid in full.
2. Unless otherwise agreed to in writing, or otherwise required by applicable law, payments shall be applied first to accrued, unpaid interest, then to principal, and any remaining amount to any unpaid costs or charges, provided however, upon an Event of Default, LFUCG reserves the right to apply payments in its sole discretion.
3. Any payment due under this Note on a day which is not a business day shall be made on the succeeding business day and any resulting extension of time shall be included in the computation of the interest payment amount.
4. All interest hereunder shall be computed on the basis of a year of 360 days, and in each case shall be payable for the actual number of days elapsed.
5. Subject to Paragraph B below, the entire principal balance, together with all interest accrued and unpaid thereon and all other sums due under this Note shall be due and payable on October 1, 2036, (the "Maturity Date")
6. If any property assisted by this loan is sold prior to October 1, 2026, all unpaid principal and accrued and unpaid interest on the amortizing mortgage loan of the sold properties shall be immediately due and repayable to LFUCG. The amount of interest due will be calculated at a rate of 5% from the earlier of October 1, 2021 or the date of the final draw of Affordable Housing Funds.

B. However, so long as Maker does not commit or participate in any event of breach or default as defined in Sections 5.1 and 5.2 of the Loan Agreement, and if such event of breach or default has occurred without cure or continues to occur without cure under the Maker's ownership, the Maker's obligation to pay this Forgivable Loan Promissory Note shall be forgiven. The Loan shall be forgiven as follows:

1. 1/15th of the above stated principal sum shall be forgiven beginning on October 1, 2022, and each year thereafter for each full year during the Affordability Period.
2. The entire principal sum shall be forgiven in full on October 1, 2036, as long as all terms and conditions of all Loan Documents have been satisfactorily complied and fulfilled.

If any payment required under this Note is not paid within ten (10) days after such payment is due, the undersigned will pay to LFUCG or the subsequent holder of this Note a late charge equal to five percent (5%) of the amount of such payment or Twenty-five Dollars (\$25.00), whichever is greater, up to a maximum of One Thousand Five Hundred Dollars (\$1,500.00) per late charge to compensate LFUCG for administrative expenses and other costs of delinquent payments. This late charge may be assessed without notice, shall be immediately due and payable and shall be in addition to all other rights and remedies available to LFUCG.

This Note evidences indebtedness incurred under, and is subject to the terms and provisions of, a Commitment Letter (the "Commitment Letter") dated August 16, 2021 and a Loan Agreement between the undersigned and LFUCG ("Loan Agreement"), of even date herewith providing for a loan of **FOUR HUNDRED THOUSAND DOLLARS (\$400,000.00)** and this Note is expressly subject to and will be bound by the terms and conditions set forth in such Commitment and Loan Agreement as if all of such terms and conditions were expressly set forth herein. Terms used herein and not otherwise defined shall have the meaning set forth in the Loan Agreement, Mortgage and any other agreement related to the Loan (collectively, "Loan Documents").

If (1) any installment of interest or the payment of principal required by this Note remains unpaid for more than 10 days after the due date thereof; (2) the undersigned or any guarantor should be the subject of any voluntary or involuntary bankruptcy, receivership or other insolvency proceeding; or (3) the undersigned fails to observe or perform any of the terms of this Note; (4) there is any default by undersigned under the Loan Agreement, the Mortgage or any other document, instrument or agreement providing any security for this Note; or (5) there is any action filed to foreclose or otherwise enforce the terms of any mortgage or other loan document executed by a senior lender, then in any of those events LFUCG or the holder of this Note may declare the remaining principal balance of this Note (or so much thereof as may have been advanced) to be immediately due and payable. In the event of default under this Promissory Note, interest shall accrue on the entire unpaid balance at a rate of twelve percent (12%) per annum from the date the default is declared until the default has been cured.

Any waiver of any default hereunder or under the instruments securing this Note at any time will not, at any other time, constitute a waiver of the terms of this Note or the instruments securing it, and the acceptance of payments upon the indebtedness evidenced hereby will not constitute a waiver of the option of LFUCG or the holder of this Note to accelerate repayment of the entire unpaid balance, unless LFUCG or the holder expressly grants such waiver in writing.

This Note is also secured by and is the same Note mentioned in a real estate Mortgage of even date herewith executed in favor of LFUCG by the undersigned for real estate located at 1285 Centre Parkway in Lexington, Kentucky, and this Note is expressly made subject to and will be bound by the terms and conditions set forth in said Mortgage as if all of such terms and conditions were expressly set forth herein. All sums which shall or may become due and payable by the Maker in accordance with the provisions of this Note shall be deemed to constitute additional interest on, and

shall be evidenced by this Note, shall be secured by the Mortgage and other Loan Documents.

The undersigned and all persons now or hereafter liable, whether primarily or secondarily, for the whole or any part of the indebtedness evidenced by this Note jointly and severally:

- (a) agree to remain and continue to be responsible for the payment of the principal of and interest on this Note notwithstanding any extension or extensions of time of the payment of the principal or interest, or any change or changes by way of release or surrender of any collateral, real or personal, held as security for the payment of this Note, and waive all and every kind of notice of such extension or extensions, change or changes and agree that the same may be made without the joinder of any such persons; and
- (b) waive presentment, notice of dishonor, protest, notice of protest and diligence in collection and all exemptions, whether homestead or otherwise, to which they or any of them may now or hereafter be entitled under the laws of Kentucky or any other state; and
- (c) agree, upon default, to pay all costs of collection, securing or attempting to collect or secure this Note, including a reasonable attorney's fee, whether same be collected or secured by suit or otherwise, providing the collection of such costs and fees is permitted by applicable law.

This Note may be assigned in whole or in part by LFUCG or any other holder hereof.


The undersigned may prepay the principal amount outstanding in whole or in part at any time without penalty.

The Maker (and the undersigned representative(s) of the Maker) represents that the Maker has full power, authority and legal right to execute and deliver this Note and that this Note constitutes a valid and binding obligation of the Maker.

This Note will be governed by and construed in accordance with the laws of the Commonwealth of Kentucky.

The undersigned shall have no personal liability under this Note or any other Loan Document for the repayment of the indebtedness evidenced by this Note or for the performance of any other obligations of the undersigned under the Loan Documents (collectively, the "Indebtedness"), and LFUCG's only recourse for the satisfaction of the Indebtedness and the performance of such obligations shall be LFUCG's exercise of its rights and remedies under the Agreement. This limitation on the undersigned's liability shall not limit or impair LFUCG's enforcement of its rights against any indemnitor or guarantor pursuant to any agreement of indemnity or guaranty. Notwithstanding the foregoing provisions, the undersigned shall be fully and personally liable for damages to LFUCG resulting from (i) the undersigned's fraud or misrepresentation, whether affirmative or by omission; (ii) the misapplication of (a) proceeds of insurance covering any portion of the Premises, or (b) proceeds of condemnation of any portion of the Premises or proceeds from the sale or conveyance of any portion of the Premises in lieu of condemnation; (iii) the amount of any loss caused by the undersigned's failure to comply with any hazardous substance laws described in Paragraph 2.3 of the Agreement, such loss to include expenses, clean-up costs, penalties and damages incurred by the undersigned and any resulting diminution in the fair market value of the Premises caused by the undersigned or agents; and (iv) all reasonable costs and expenses including court costs and reasonable attorney's fees incurred in

INSTRUMENT PREPARED BY:



Brittany Griffin Smith
LFUCG Department of Law
200 E. Main St. Lexington, Ky. 40507

SUBORDINATION AGREEMENT

NOTICE: THIS SUBORDINATION AGREEMENT RESULTS IN CERTAIN INTERESTS IN THE PROPERTY BECOMING SUBJECT TO AND OF LOWER PRIORITY THAN THE LIEN OF SOME OTHER OR LATER SECURITY INSTRUMENT.

THIS SUBORDINATION AGREEMENT ("*Agreement*"), effective as of September 17, 2021, is by and among TATES CREEK INVESTMENTS, LLC, a Kentucky limited liability limited company ("*Borrower*"), the LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT, an urban county government of the Commonwealth of Kentucky organized pursuant to Chapter 67A of the Kentucky Revised Statutes ("*LFUCG*"), and EMILY K. MAYBERRY, a Florida resident ("*Mayberry*").

RECITALS

A. Borrower owns a 40-unit affordable housing apartment project (the "*Project*") located on real property in the City of Lexington, Fayette County, Kentucky, as more particularly described on Exhibit "A" attached hereto and made a part hereof (the "*Property*").

B. Borrower has applied to LFUCG for a loan (the "*Loan*") in the maximum principal amount of Four Hundred Thousand Dollars (\$400,000.00), for the purpose of rehabilitating the Project.

C. Borrower's obligations to repay the Loan are further evidenced by a Loan Agreement ("*Loan Agreement*"), dated as of September 17, 2021, and Promissory Note dated as of September 17, 2021, executed by Borrower in the original principal amount of Four Hundred Thousand Dollars (\$400,000.00), (the "*Note*").

D. Borrower's obligations to LFUCG under the Note are secured by, among other things, that certain Mortgage ("*Senior Mortgage*"), dated September 17, 2021, made by Borrower for the benefit of LFUCG, and a Declaration of Covenants and Restrictions, entered contemporaneously therewith. The Senior Mortgage is being recorded substantially concurrently herewith in the Office of the County of Fayette, Commonwealth of Kentucky ("*Official Records*"). The Senior Mortgage, the Note and any other documents related to the Loan are hereinafter collectively referred to as the "*Senior Loan Documents*".

E. Borrower also received a loan from Fair Oaks Apartments, LLC, and said loan was secured by a Mortgage, of record in Mortgage Book 9519, Page 335, recorded January 27, 2020, in the principal amount of \$187,500.00 ("**Junior Loan**"). The Mortgage was then assigned to Mayberry. That Assignment in favor of Mayberry was then filed of record in Miscellaneous Book 551, Page 513, recorded on June 14, 2021. Each of the documents attached hereto collectively as Exhibit "B", together with all other documents and materials entered into with Mayberry with respect to the Property, shall be referred to collectively as the "**Junior Obligation Documents**".

F. As used herein, the term "**Junior Obligations**" means any and all indebtedness, claims, debts, liabilities or other obligations from Borrower to Mayberry under the Junior Obligation Documents, together with all costs and expenses, including attorneys' fees, of collection thereof, whether the same accrues or is incurred before or after the commencement of any bankruptcy case by or against Borrower.

G. As used herein, the term "**Indebtedness**" means any and all indebtedness, claims, debts, liabilities or other obligations from Borrower to Senior Lienholder under the Senior Loan Documents, together with all interest accruing thereon and all costs and expenses, including attorneys' fees, of collection thereof, whether the same accrues or is incurred before or after the commencement of any bankruptcy case by or against Borrower.

H. It is a condition precedent to LFUCG to entering into the Senior Loan Documents that the Senior Mortgage and the other Senior Loan Documents be and remain at all times a lien or charge upon the Property, prior and superior to the liens or charges of the Junior Obligation Documents.

I. LFUCG is willing to enter into the Senior Loan Documents, provided that (1) the Senior Mortgage and the other Senior Loan Documents are a lien or charge upon the Property prior and superior to the liens or charges of the Junior Obligation Documents, and (2) Mayberry will specifically subordinate the liens or charges of the Junior Obligation Documents to the lien or charge of the Senior Loan Documents.

J. Mayberry has had an opportunity to review this Agreement and seek the advice of counsel.

K. Mayberry is willing that the Senior Loan Documents shall constitute a lien or charge upon the Property which is prior and superior to the liens or charges of the Junior Obligation Documents. The parties hereto enter into this Agreement for the purposes set forth in these Recitals.

L. Capitalized terms used herein and not otherwise defined shall have the meanings set forth for them in the Senior Loan Documents.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual benefits accruing to the parties hereto and other valuable consideration, the receipt and sufficiency of which consideration is hereby acknowledged, and in order to induce LFUCG to make the "**Loan**" described in the Loan Agreement and Note, it is hereby declared, understood, and agreed as follows:

1. Subordination. The Senior Mortgage in favor of the LFUCG, and all amendments, modifications, extensions and renewals thereof, shall unconditionally be and remain at all times a lien or

charge on the Property prior and superior to the lien or charge of the Junior Obligation Documents. Mayberry intentionally and unconditionally subordinates the lien or charge of the Junior Obligation Documents, including but not limited to the Mortgage recorded at Mortgage Book 9519, Page 335 of the Fayette County, Kentucky, County Court Clerk's Office, and assigned via Assignment recorded at Miscellaneous Book 551, Page 513 of the County, Kentucky, County Court Clerk's Office, in favor of the lien or charge upon said land of the Senior Mortgage in favor of LFUCG, and understands that in reliance upon and in consideration of this subordination, specific loans and advances are being and will be made and, as part and parcel thereof, specific monetary and other obligations are being and will be entered into which would not be made or entered into but for said reliance upon this subordination.

2. Consent and Approval. Mayberry consents to the Senior Loan Documents, including but not limited to any extension, modification and/or amendment of said agreements, between Borrower and LFUCG. No decision by Mayberry to review or not review the Senior Loan Documents, including but not limited to the disbursement provisions contained therein, shall impair or otherwise limit the enforceability of this Agreement.

3. Other Agreements. Mayberry and Borrower declare, agree, and acknowledge that:

3.1 Subordination of Indebtedness. Any and all Junior Obligations are hereby subordinated and subject to any and all Indebtedness, as set forth herein.

3.2 Permitted Payments. Borrower may make payments under the Junior Obligation Documents, if required, as long as all payments under the Senior Mortgage and the other Senior Loan Documents are current and not delinquent or in arrears, and only so long as no Event of Default exists under the Senior Loan Documents.

3.3 Repayment of Indebtedness. This Agreement shall remain in full force and effect until all amounts due under the Note are fully repaid in accordance with its terms and all of the terms of this Agreement have been complied with.

3.4 Standstill. Mayberry agrees that, without the LFUCG's prior written consent, it will not accelerate the Junior Obligations, commence foreclosure proceedings with respect to the Property, collect rents, appoint (or seek the appointment of) a receiver or institute any other collection or enforcement action.

4. Miscellaneous. This Agreement may be executed in multiple counterparts and the signature page(s) and acknowledgment(s) assembled into one original document for recordation, and the validity hereof shall not be impaired by reason of such execution in multiple counterparts.

5. Choice of Law. This Agreement is to be governed according to the laws of the Commonwealth of Kentucky.

6. Attorney's Fees. In the event of action, suit, proceeding or arbitration to enforce any term of this Agreement, the prevailing party shall be entitled to recover from the non-prevailing party, as determined by the court or arbitrator, all of the prevailing party's costs and expenses, including without limitation attorneys' fees and expert witness fees, incurred by the prevailing party in connection therewith.

7. Future Liens. If Mayberry or any affiliate of Mayberry shall acquire, by indemnification, subrogation or otherwise, any lien, estate, right or other interest in the Property, that lien, estate, right or other interest shall be subordinate to the Senior Mortgage and the other Senior Loan Documents as provided herein, and Mayberry hereby waives, on behalf of itself and such affiliate, until all amounts owed under the Senior Loan Documents have been indefeasibly paid in full. The Agreement shall inure to the benefit of, and the binding upon, the parties hereto and the respective successors and assigns.

[Remainder of Page Intentionally Left Blank; Signature Pages to Follow]

EXHIBIT "A"

Legal Description

Being all of Parcel 4 as shown by that Consolidation Record Plat of Lots 1, 2, and 3, Unit 8, of the Southeastern Hills Subdivision, Fayette County, Kentucky, of record in Plat Cabinet B, Slide 623, in the Fayette County Clerk's Office; the improvements thereon being known and designated as 1285 Centre Parkway.

Being the same property conveyed from Fair Oaks Apartments, LLC, a Kentucky limited liability company, to Tates Creek Investments, LLC, a Kentucky limited liability company, by Deed dated January 24, 2020, of record in Deed Book 3730, Page 154 in the Fayette County Clerk's Office.

EXHIBIT "B"

Junior Obligation Documents

REAL ESTATE MORTGAGE
(With Provision for Additional Advances)

<p>Lender's Names and Address</p> <p>FAIR OAKS APARTMENTS, LLC 245 Lexington Avenue Lexington, KY 40508</p> <p>(referred to as "Mortgagee")</p>	<p>Date of Mortgage: January 24, 2020</p> <p>Date(s) of Note: January 24, 2020</p> <p>Principal Amount of Note: \$187,500.00</p> <p>Final Maturity Date: January 24, 2035</p>	<p>Mortgagor's Name and Address</p> <p>TATES CREEK INVESTMENTS, LLC 1285 Centre Pkwy #4 Lexington, Kentucky 40517</p> <p>(referred to as "Mortgagor")</p>
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THIS MORTGAGE is made and entered into on the Date of Mortgage shown above between the above-named Mortgagor and Mortgagee.

WITNESSETH, That for the purpose of securing payment of the indebtedness herein mentioned, any and all renewals, extensions and modifications thereof, any additional advances made pursuant to paragraph 20 hereof, any amounts expended or incurred by Mortgagee to protect the security of this mortgage, and for the purpose of securing fulfillment of all covenants and conditions herein contained, Mortgagor hereby mortgages, grants and conveys to Mortgagee with covenant of general warranty the following described property:

BEING all of Parcel 4 as shown by that Consolidation Record Plat of Lots 1,2, and 3, Unit 8, of Southeastern Hills Subdivision, Fayette County, Kentucky, of record in Plat Cabinet B, Slide 623, Fayette County Clerk's Office, to which plat reference is hereby made for a more particular description of the property, said property also known as 1285 Centre Parkway.

Being the same property conveyed to TATES CREEK INVESTMENTS, LLC, from FAIR OAKS APARTMENTS, LLC, by deed dated January 24, 2020, placed to record in Deed Book 3730, Page 154, in the Fayette County Clerk's Office immediately prior hereto.

Fayette County Clerk Recording
Related Documents

From 144
To 147

MAIL/RETURN TO:
FRANKLIN & RAPP
1001 MONARCH ST.
SUITE 120
LEXINGTON, KY 40513

11/1

16

TOGETHER with all buildings and improvements now or to be erected thereon, and all rights, privileges and appurtenances thereto belonging, and all fixtures, movable and immovable, now or hereafter on or affixed to the realty or its improvements, replacements of such property and additions thereto (all of which is hereinafter referred to collectively as the "Property"), together with all rents, issues and profits therefrom.

Mortgagor warrants and covenants that Mortgagor is lawfully seized of the Property and has the right to mortgage and convey same; that the Property is free from all encumbrances, liens, claims and charges, except the following encumbrances of record:

First Mortgage in the amount of \$750,000.00 in favor of Bank of Lexington of even date herewith

and that Mortgagor's heirs, executors, administrators, successors, and assigns will defend generally the title to the Property against all other claims and demands.

TO HAVE AND TO HOLD same unto Mortgagee, its successors and assigns forever.

NOW THEREFORE, the condition and consideration of this mortgage is that Mortgagor is justly indebted to Mortgagee for the principal sum shown above as Principal Amount Of Note with interest thereon as provided in a promissory note or notes (hereafter, whether one or more, called the "Note") of the date or dates shown above as Date(s) of Note. Said Note has been executed and delivered by Mortgagor to the order of Mortgagee, with payment of principal and interest to be made as shown therein, and with other provisions and obligations, all of which Mortgagor hereby recognizes. Said Note is incorporated herein by this reference, and bears the Final Maturity Date shown above.

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

- 1. Payment of Indebtedness.** Mortgagor shall promptly pay when due the principal of and interest on the Note, any fees, charges, costs and expenses due under the Note, and any other indebtedness secured hereby.
- 2. Subrogation to Prior Liens.** Mortgage shall be subrogated for further security to the lien, though released, of any prior encumbrance, lien or charge of any kind, against the Property paid out of the proceeds of the loan for which the Note is executed.
- 3. Taxes and Assessments.** Mortgagor shall pay all taxes and assessments now or hereafter levied against the Property. In default thereof, Mortgagee may pay such taxes and assessments and Mortgagor shall reimburse Mortgagee therefor together with interest thereon at the highest rate allowed in the Note.
- 4. Insurance.** Mortgagor shall maintain insurance on the Property against damage by fire and the other hazards covered by a standard extended coverage insurance policy, and shall maintain any additional insurance coverage specified in paragraph 22 hereof, for the full insurable value of the Property (which, unless Mortgagee otherwise agrees in writing, means full repair and replacement value thereof without reduction or depreciation or co-insurance).

In addition, Mortgagee may require Mortgagor to carry such other insurance on the Property, in such amounts as may from time to time be reasonably required by institutional lenders, against insurable casualties that at the time are commonly insured against in the case of property similarly situated, due regard being given to the site and type of buildings, construction, location, utilities, and occupancy of the Property.

In addition, from time to time, upon the occurrence of any change in use, operation, or value of the Property, or in availability of insurance in the area in which the Property is located, Mortgagor shall, within five days after demand by Mortgagee, take out such additional amounts and/or such other kinds of insurance as Mortgagee may reasonably require. Otherwise, Mortgagor shall not take out any separate or additional insurance that is contributing in the event of loss unless it is properly endorsed and otherwise satisfactory to Mortgagee in all respects.

Mortgagor will pay the premiums on such policies when due, deliver to Mortgagee upon its request the official receipt for such premium payments, cause such policies to be issued and promptly deposit same with Mortgagee. Delivery to Mortgagee of policies of insurance thereunder, or renewals thereof, shall constitute an assignment to Mortgagee of all unearned premiums thereon as further security for the payment of the indebtedness secured hereby.

Mortgagor further covenants to deliver to Mortgagee at least ten days before expiration of any such insurance policy, a renewal of such policy, together with official receipt for payment of the premium thereon. All insurance required hereunder shall be written in such form and by such companies as are satisfactory to Mortgagee, with waiver of subrogation and a standard form of mortgage clause payable to Mortgagee, and shall not be cancelable except upon not less than 30 days prior written notice to Mortgagee.

In the event of any loss or damage, Mortgagor will give immediate notice to Mortgagee, and Mortgagee may thereupon make proof of such loss or damage, if same is not promptly made by Mortgagor. All proceeds of insurance, in the event of such loss or damage, shall be payable to Mortgagee, and any affected insurance company is authorized and directed to make payment thereof directly to Mortgagee instead of to Mortgagor and Mortgagee jointly. Mortgagee is authorized and empowered to settle, adjust or compromise any claims for loss, damage or destruction under any policy of insurance. All such insurance proceeds may, at the sole discretion of Mortgagee, be applied to the restoration, repair, replacement or rebuilding of the Property, or to reduction of any indebtedness secured by this mortgage.

Should Mortgagor fail to maintain such insurance or to keep the policies therefor deposited with Mortgagee, Mortgagee may at its option procure and pay for such insurance and Mortgagor shall reimburse Mortgagee for all sums expended therefor together with interest at the highest rate allowed in the Note.

5. Maintenance of Property. Mortgagor will keep the Property in good condition and repair, and will not commit or permit any waste, impairment or deterioration beyond natural wear and tear of the Property. Mortgagor shall not destroy or remove any part of the Property, nor erect any new buildings or improvements on the Property, nor add to or alter existing improvements without prior written consent of Mortgagee. Mortgagee shall have the right to inspect the Property upon reasonable notice and at reasonable times to ensure compliance with this covenant and Mortgagee may effect any repairs Mortgagee deems proper, the cost thereof to be reimbursed to Mortgagee by Mortgagor together with interest thereon at the highest rate allowed in the Note.

6. No Further Encumbrances. Mortgagor shall not further encumber the Property and shall keep the Property free of all liens and encumbrances not specifically mentioned herein as being of record this date. Mortgagor shall not increase the amount of indebtedness secured by any mortgage prior or superior to the lien of this mortgage and Mortgagor shall, upon request of Mortgagee, obtain a release of record of any lien prior to this mortgage securing additional but unadvanced indebtedness.

7. Assignment of Rents, Issues and Profits. Mortgagor hereby assigns to Mortgagee the rents, issues and profits of the Property as further security, and Mortgagor grants to Mortgagee, upon default under any covenant, condition or agreement contained herein, the right to enter upon the Property for the purpose of collecting the rents, issues and profits. After paying all expenses of such collections, and a reasonable compensation for itself, Mortgagee shall apply the money collected to payment of the indebtedness secured hereby.

8. Appointment of Receiver. In the event of any default hereunder, Mortgagee may at its option apply to any court of competent jurisdiction for appointment of a receiver of the Property to manage same and to collect the rents, issues and profits therefrom, and after deducting the costs and expenses of such receivership, including without limitation receiver's fees, premiums on receiver's bonds and reasonable attorney fees, shall apply the remainder of such rents, issues and profits collected to payment of the indebtedness secured hereby. The grounds for appointment of a receiver herein set out shall be in addition to and not in limitation of the statutory remedy of receivership and may be invoked either in aid of or without proceeding for foreclosure and sale of the Property.

9. Condemnation of Property. If the Property or any part thereof is condemned and/or taken under the power of eminent domain, or if any award for any change of grade of streets affecting the Property is made, or any conveyance is made in lieu of condemnation, all damages and awards for the Property so taken, damaged or conveyed shall be paid to Mortgagee, to the extent of the unpaid balance of the indebtedness hereby secured, regardless of whether the unpaid balance is then due and payable; and the amount so paid shall be credited against the indebtedness and, if sufficient to pay the entire amount thereof, may, at Mortgagee's option, be applied to the last maturing installments. Mortgagor agrees to execute such further assignment of any compensation, award, damages, rights of actions and proceeds as Mortgagee may require.

10. Forbearance Not a Waiver. Any forbearance by Mortgagee in exercising any of its options, rights or remedies hereunder shall not be a waiver of or preclude exercise of same. In the event of a waiver of any one of the obligations assumed by Mortgagor hereunder, it shall not at any time thereafter be held to be a waiver of any of the terms or conditions hereof, except such as are expressly waived in writing by Mortgagee.

11. Compliance with Laws and Regulations. Mortgagor will comply with all laws, ordinances, and regulations (including without limitation those that relate to use, health, safety and environmental protection), and all covenants, conditions and restrictions affecting the Property, and will not suffer or permit any violation thereof.

12. Hazardous Materials; Indemnity. Neither Mortgagor nor, to the best knowledge of Mortgagor, any other person has ever caused or permitted any Hazardous Material (as hereinafter defined) to be located or disposed of on, under or at the Property or any part thereof, and neither the property nor any part thereof has ever been used (whether by Mortgagor or, to the best knowledge of Mortgagor, by any other person) as a dump site or permanent or temporary storage site for any Hazardous Material.

Mortgagor agrees to indemnify and hold Mortgagee harmless from and against any and all losses, liabilities,

damages, injuries, costs, expenses (including without limitation reasonable attorney and consultant fees), claims for damage to the environment, claims for fines or civil penalties, costs of any settlement or judgment, and respect to, or as a direct or indirect result of, the presence on or under the Property of, or the actual or threatened escape, spillage, discharge, emission, or release from the Property of, or transportation of, any Hazardous Material or any noncompliance with any Environmental Law. This indemnity shall apply notwithstanding any negligent or other contributory conduct by or on the part of Mortgagee or any other person, and shall survive payment of the indebtedness hereby secured satisfaction and release of this mortgage, foreclosure of this mortgage or conveyance of the Property in lieu thereof.

For purposes of this mortgage, "Environmental Law" shall mean any Federal, State or local statute, law, ordinance, code, rule, regulation, order or decree regulating, relating to, or imposing liability or standards of conduct concerning any Hazardous Material, as now or at any time hereafter in effect. "Hazardous Material" shall mean any hazardous, toxic or dangerous waste, substance or material defined as such in, or for purposes of, any Environmental Law.

Mortgagor shall promptly give Mortgagee written notice of any investigation, claim, demand, lawsuit or other action by any governmental or regulatory agency or private party involving the Property and any Hazardous Material or Environmental Law.

13. Successors and Assigns. Subject to the covenants and agreement stated in this Mortgage on transfer of Mortgagor's interest, this Mortgage shall be binding upon and inure to the benefit of the parties, their successors and assigns. Any Mortgagor who executes this Mortgage but does not execute the Note: (a) is executing this Mortgage only to mortgage, grant and convey the Mortgage interest in the Property under the terms of this Mortgage; (b) is not personally obligated to pay the indebtedness secured by this Mortgage; and (c) agrees that Lender and any other Borrower may agree to extend, modify, forbear or make any accommodations with regard to the terms of this Mortgage or the Note without that Borrower's consent. If the Mortgagor transferred all or part of the Property pursuant to paragraph 14, "Transfers; Maintenance of Existence," the Lender has the rights spelled out in that paragraph.

14. Transfers; Maintenance of Existence. Except as prohibited by law, if all or any part of the Property or any interest therein is sold, leased or transferred by Mortgagor without Mortgagee's prior written consent (including without limitation a contract for deed or any other conveyance, legal or equitable, of the Property by operation of law or otherwise), or if Mortgagor is not a natural person, any of the actual or beneficial ownership of Mortgagor is transferred, Mortgagee may, at its option, declare all sums secured by this mortgage to be immediately due and payable and may forthwith proceed to collect same and enforce this mortgage by suit or otherwise.

If Mortgagor is not a natural person, Mortgagor will do all things necessary to preserve and keep in effect its existence, franchises, rights and privileges under the laws of the state of its incorporation, or formation, as the case may be.

15. Acceleration of Indebtedness. Should: (a) Mortgagor fail to pay any installment or other amounts due under, or otherwise fail to comply with any and all terms of, or otherwise be in default under, the Note or other agreement relating to the indebtedness secured hereby; or (b) Mortgagor fail to keep or perform any covenant or stipulation of this mortgage; or proceedings be instituted involving title to the Property or any part thereof, including foreclosure of any second or other inferior mortgage or any other lien against the Property; or (c) Mortgagor or any obligor on the Note or other agreement evidencing the indebtedness hereby secured (1) file a voluntary petition under, or is the subject of an involuntary petition filed under, the Bankruptcy Act of the United States, or (2) be adjudicated a bankrupt under such Act, or (3) be the subject of a petition filed in Federal or State court for appointment of a trustee or receiver in bankruptcy or insolvency, or (4) make a general assignment for the benefit of creditors, then and on the occurrence of any such conditions, at Mortgagee's option, the entire balance of the principal sum secured hereby, together with all accrued interest, shall become immediately due and payable, and Mortgagee may forthwith proceed to collect same and enforce this mortgage by suit or otherwise.

16. Protection of Mortgagee's Interest. If any action or proceeding is commenced, including without limitation an action to foreclose this mortgage or collect the indebtedness secured hereby, in which it is necessary to defend or assert the lien of this mortgage or Mortgagee's rights hereunder, whether or not Mortgagee is made or becomes a party to such action or proceeding, all costs and expenses incurred or expended by or on behalf of Mortgagee in such prosecution or defense of the rights and lien created by this Mortgage, including without limitation reasonable attorney fees, shall be reimbursed to Mortgagee by Mortgagor together with interest thereon at the highest rate allowed in the Note.

Any amounts expended or incurred by Mortgagee to protect the security of this Mortgage, including without limitation amounts expended or incurred by Mortgagee in exercise of its rights hereunder, are to be reimbursed to Mortgagee by Mortgagor and shall become additional debt secured hereby, but shall not constitute or be deemed to be additional advances pursuant to paragraph 20 hereof.

17. Releases and Extensions. Without affecting the liability of any person, including Mortgagor, for payment of any indebtedness secured hereby, or the lien of this mortgage on the remainder of the Property for the full amount of any

indebtedness unpaid Mortgagee may from time to time and without notice: (a) release any person liable for payment of any indebtedness secured hereby; (b) extend the time of or otherwise alter the terms of payment of any such indebtedness; accept additional security therefor of any kind, including deeds of trust or mortgages; (d) alter, substitute or release any property securing such indebtedness; or (e) join in any subordination or other agreement affecting this Mortgage or the lien thereof.

18. Financial Statements. Mortgagor agrees to furnish Mortgagee from time to time and upon Mortgagee's request, current financial statements which shall, at Mortgagee's option, be certified without qualification by audit or certified public accountants approved by Mortgagee. Mortgagee may further, at its option, require such financial statements on any parent company, subsidiary and/or guarantor of Mortgagor.

19. Construction-Purpose Mortgage. (If this box is checked, these provisions apply to this transaction.). This mortgage is made for the purpose of erecting, improving, or adding to a building on the Property or improving the Property.

In the event such construction should cease or progress of construction be so slow that construction may be said to have ceased, determination of whether or not construction has ceased shall rest entirely with Mortgagee. Mortgagee may, at its option, as an alternative remedy, enter upon the Property and complete construction. Mortgagor hereby giving to Mortgagee full power and authority to make such entry, and to enter into such contracts or arrangements as may be necessary to complete construction; and the moneys expended by Mortgagee in connection with such completion of construction shall be added to the principal amount advanced under the terms of the Note and be secured hereby and shall be payable by Mortgagor on demand, with interest at the rate set forth in the Note, with every interest, right lien and security held by Mortgagee continued in full force and effect.

20. Additional Advances. (If this box is checked, these provisions apply to this transaction.). Prior to release of this mortgage, Mortgagee, at its option, may make additional advances to Mortgagor. Such additional advances, with interest thereon, shall be secured by this mortgage unless Mortgagee expressly waives such security, provided, however, that if any particular advance would confer upon any person the right to rescind the transaction pursuant to Section 125 of the federal Truth in Lending Act (15 U.S.C. 1635) or its implementing Regulation Z (12 C.F.R.226.23) that particular advance shall be secured by this mortgage only if Mortgagee timely delivers to each person who has the right to rescind at least one copy of the disclosures and two copies of the notice of the right to rescind required by said Act. At no time shall the principal amount of the indebtedness secured by this mortgage, not including sums advanced in accordance herewith to protect the security of this mortgage, exceed the original amount of the Note, plus \$_____. All additional advances secured by this mortgage shall be due and payable on or before the Final Maturity Date of the Note, or such time as demand for payment may be made by Mortgagee.

21. Submission of Interest in Property Only. (If this box is checked, these provisions apply to this transaction.). The named person: _____ joins herein solely to submit his or her interest in the Property, if any, and/or release his or her dower or curtesy interest in the Property, and to waive, release and renounce any appraisal, exemption, or homestead rights now provided or which may hereafter be provided by the Constitution or laws of the United States or any State against enforcement of the obligations evidenced hereby, but does not assume any further liability with regard to the Note or other indebtedness secured hereby or this mortgage by execution hereof.

22. Additional Insurance Required. (If this box is checked, these provisions apply to this transaction.). Mortgagor shall maintain the following insurance coverage on the Property in addition to that required by, and subject to the covenants and conditions of, paragraph 4 hereof: _____.

23. Revolving Credit Plan/Line of Credit. The secured Indbtedness includes a revolving credit plan and or Line of Credit as defined by K.R.S. 382.385. Although the Secured Debt may be reduced to a zero balance, this Mortgage will remain in effect until released.

24. Notices. Any notice, demand or request to Mortgagor under this mortgage shall be given by delivery in person or by first class mail, unless applicable law requires use of another method, and shall be directed to the Mortgagor's address shown above or such other address Mortgagor designates by written notice to Mortgagee. Any notice to Mortgagee shall be given by first class mail to Mortgagee's address stated herein or any other address Mortgagee designates by written notice to Mortgagor.

25. Governing Law; Severability. This mortgage shall be governed by the law of the State of Kentucky and any applicable Federal law. In the event any provision or clause of this mortgage or the Note or other agreement evidencing debt secured hereby conflicts with applicable law, such conflict shall not affect other provisions of this mortgage, the Note or such other agreement which can be given effect without the conflicting provision. To this end the provisions of this mortgage and the Note and other agreements evidencing debt secured hereby are declared to be severable.

25. **Waivers.** Mortgagor waives, releases and renounces any appraisal, exemption or homestead rights now provided or which may hereafter be provided by the Constitution or laws of the United States or any State against enforcement of the obligations evidenced hereby.

26. **Sale in One Parcel.** In the event of a foreclosure sale, the Property, or so much thereof as may at that time be affected by this mortgage, may be sold in one parcel.

27. **General Provisions.** This mortgage may not be modified or terminated orally. If there is more than one Mortgagor herein, their obligations hereunder shall be joint and several. The covenants herein contained shall bind, and the benefits and advantages shall inure to, the respective heirs, executors, administrators, successors and assigns of Mortgagor and Mortgagee, and wherever used, the singular number shall include the plural, the plural, the singular, and the use of any gender shall include all genders. The paragraph captions used herein are for each of reference only, and if any such caption is deemed to conflict with the text hereof, the text shall control.

PROVIDED, IF MORTGAGOR KEEPS AND PERFORMS ALL COVENANTS AND STIPULATIONS OF THIS MORTGAGE AND PAYS THE ENTIRE OUTSTANDING BALANCE OF THE NOTE AND ALL OTHER INDEBTEDNESS SECURED HEREBY, MORTGAGEE SHALL RELEASE THIS MORTGAGE.

IN WITNESS WHEREOF, Mortgagor has executed this mortgage on the date of Mortgage shown above.

TATES CREEK INVESTMENTS, LLC

By: 
Martin Mayberry, Member


STATE OF KENTUCKY)
)
COUNTY OF FAYETTE)

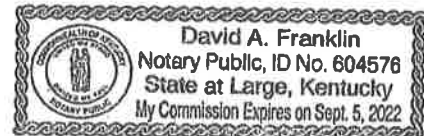
The foregoing Mortgage was acknowledged before me on the 24th day of January, 2020, by Martin Mayberry, Member of TATES CREEK INVESTMENTS, LLC, a Kentucky limited liability company.

My Commission Expires: 9.5.22


NOTARY PUBLIC, KENTUCKY STATE AT LARGE

This instrument prepared by:


Damon R. Brown
Webb, Hoskins, Brown & Thompson, PSC
2393 Alumni Drive, Suite 101
Lexington, Kentucky 40517
(859) 296-9229



MORTGAGE BOOK 9519 PAGE 341

**I, Donald W Blevins Jr, County Court Clerk
of Fayette County, Kentucky, hereby
certify that the foregoing instrument
has been duly recorded in my office.**



By: EMILY GENTRY ,dc

202001270147

January 27, 2020 13:46:45 PM

Fees \$80.00 Tax \$.00

Total Paid \$80.00

THIS IS THE LAST PAGE OF THE DOCUMENT

7 Pages

335 - 341

nr

ASSIGNMENT OF MORTGAGE

KNOW ALL MEN BY THESE PRESENTS that FAIR OAKS APARTMENTS, LLC, 245 Lexington Avenue, Lexington, Kentucky, for good and valuable consideration received, does hereby sell, assign, transfer, and set over, without recourse, unto EMILY K. MAYBERRY* her heirs and assigns, all of its right, title and interest in and to that certain mortgage dated the 24th day of January, 2020, executed and delivered to FAIR OAKS APARTMENTS, LLC, by TATES CREEK INVESTMENTS, LLC, and recorded in Mortgage Book 9519, Page 335, in the Fayette County Clerk's Office, Lexington, Kentucky on the 27th day of January, 2020 together with a promissory note secured thereby and referred to therein; and all sums of money due and to become due thereon.

FAIR OAKS APARTMENTS, LLC

* with a mailing address of 2110 Delong Road Lexington, KY 40515

BY: *Emily K. Mayberry*
Emily K. Mayberry, Member

STATE OF KENTUCKY

COUNTY OF FAYETTE

The foregoing instrument was acknowledged before me this 3 day of November, 2020 by Emily K. Mayberry as Member of FAIR OAKS APARTMENTS, LLC.

My Commission Expires: 5-22-2021

Billy Dalton Sizemore
NOTARY PUBLIC, STATE AT LARGE



PREPARED BY:

Alex Huber Cain
ALEX HUBER CAIN
WEBB, HOSKINS, BROWN & THOMPSON, P.S.C.
2393 Alumni Drive, Suite 101
LEXINGTON, KENTUCKY 40517

I, Donald W Blevins Jr, County Court Clerk
of Fayette County, Kentucky, hereby
certify that the foregoing instrument
has been duly recorded in my office.



By: MELISSA STELTER ,dc

202106140066

June 14, 2021 11:07:11 AM

Fees	\$46.00	Tax	\$0.00
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Total Paid	\$46.00
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THIS IS THE LAST PAGE OF THE DOCUMENT

2 Pages

512 - 513