

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

THIS LOAN AGREEMENT ("Agreement") is made and entered into this 14 day of November 2017 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 ("LFUCG") through its **OFFICE OF AFFORDABLE HOUSING**, and **EMERSON CENTER, INC.**, a Kentucky non-profit corporation, whose principal address is 2050 Garden Spring Drive, Lexington, Kentucky 40504 ("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 May 12, 2017 (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 (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

WHEREAS, on September 21, 2017, LFUCG issued to Borrower a Commitment Letter under LFUCG's Affordable Housing Fund Program which was accepted by Borrower on October 13, 2017 ("Commitment Letter"), attached hereto as Exhibit B and the terms and conditions of which are incorporated herein; and

WHEREAS, the project for which Borrower has been approved includes rehabilitation and/or renovation activities.

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

ARTICLE 1 – COMMITMENT

1.1 LFUCG'S COMMITMENT. Pursuant to the Application, the Commitment Letter and this Agreement, LFUCG will make available an amount not to exceed **TWO HUNDRED FIFTY THOUSAND AND 00/100 DOLLARS (\$250,000.00)** 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 conditioned upon Borrower's continued satisfactory performance under the terms of this Agreement. The Funds will be made available in the form of a **TWO HUNDRED FIFTY THOUSAND AND 00/100 DOLLARS (\$250,000.00)** interest only loan, which such interest shall accrue at the rate of two percent (2%) per annum. Upon completion and obtaining secured funding of all remaining improvements to the Emerson Center Apartments, as outlined in the Physical Capital Needs Assessment ("PCNA") dated July 27, 2016 (attached hereto as Exhibit C), the loan shall be converted to a 15-year forgivable loan. If funding is not secured by January 1, 2019, this loan shall convert to a permanent 15-year amortizing loan, with equal

monthly payments due and payable beginning February 1, 2019. All Funds will be evidenced by a promissory note (“Note”) in form and substance satisfactory to LFUCG payable to LFUCG and signed by the Borrower. The loan and interest is due in full on January 1, 2034 (“Maturity Date”). In the event of any inconsistency between the Application, the Commitment Letter and this Agreement, this Agreement will control. The Funds will be expended only for the purpose of rehabilitation, repairs, and modernization of the elevators on the Property (defined 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 PROMISSORY NOTE; OTHER SECURITY. The performance of the Borrower’s obligations under this Agreement shall be secured by a Promissory Note, in favor of LFUCG in the total principal amount of the Funds in form and substance satisfactory to LFUCG. (collectively, the Note and the other security documents described in this subsection are referred to as the “Security Documents”, and attached hereto as Exhibit D and the terms and conditions of which are incorporated herein).

1.3 ELIGIBLE ACTIVITY. The Funds have been made available based upon the information provided by Borrower in the Application. The sole purpose of this allocation of funds is and will be to rehabilitate, repair, and/or modernize the elevators (the “Project”) on the real property located at Emerson Center Apartments, 2050 Garden Springs Drive, Lexington, Kentucky (the “Property”).

1.4 SITES. In the event the Project includes new construction activities and/or rehabilitation 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 the permitted encumbrance listed in the Security Documents, 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; and
- (b) All funds disbursed hereunder will be used only for rehabilitation, renovation, and/or modernization 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 rehabilitation, renovation, and/or modernization 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 the Funds provided by LFUCG 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 Note, 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 Funds 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; and
- (c) proof of costs in adherence to LFUCG's requirements for draws and inspections for the Program activity under this Agreement (construction draws); and
- (d) execution of the Note, recordation of a valid mortgage lien against the Property securing repayment of the Funds 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 the Funds, 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 forty (40%) of the Project's developer fee may be disbursed at the initial draw; and
- (b) the remaining sixty (60%) may be drawn based upon the percentage of construction completion.

3.3 AFFORDABILITY PERIOD. Property assisted with the Funds must be restricted to 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 date the Funds are first expended on the Project. Affordability must be ensured by recorded deed restrictions for all properties receiving Affordable Housing Funds.

3.4 SECTION 8 RENTAL ASSISTANCE. If Affordable Housing Funds are used to construct or rehabilitate 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 the entirety of the Project and any improvements to be constructed thereon in an amount of not less than the Funds made available to Borrower for 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 CLOSING COSTS. All costs associated with funding under this Agreement will be borne by the Borrower, including but not limited to the cost of attorneys' fees, documentation, recording fees, and costs associated with disbursement. There will be a one percent (1%) Closing Cost Fee of **TWO THOUSAND FIVE HUNDRED AND 00/100 DOLLARS (\$2,500.00)**.

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 Fund 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 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 demolition and/or reconstruction 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 the Funds borrowed or advanced pursuant hereto to be applied entirely and exclusively for the demolition and/or reconstruction, 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 the 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 the Affordable Housing Funds and/or require repayment of the Affordable Housing Funds already disbursed 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 the Funds have been awarded; or
- (b) Borrower violates of any of the terms of this Agreement, the Affordable Housing Program Rules, the Note evidencing the Funds under this Agreement or any other Security Document entered into pursuant to this Agreement; or
- (c) Borrower does not submit reports or submits inadequate reports pursuant to Article 6 below; or
- (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; or
- (e) Borrower is unable to draw all the Funds, as set forth in the closing documents, in no instance later than twenty-four (24) months from the date of this Agreement; or
- (f) 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
- (g) 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 Promissory Note remains unpaid for more than ten (10) days after the due date thereof; or
- (b) Any representation or warranty made herein, or in any certificate, report or statement furnished to LFUCG in connection the Funds or the Note proves to have been untrue or misleading in any material respect when made; or
- (c) Failure of Borrower to perform any of the provisions of the Note, this Agreement or any other document executed in connection with this Agreement; or
- (d) Borrower's violation of the affordability requirements, whether evidenced by recorded Deed Restriction or owner certification of continued compliance; or

- (e) The entry of any lien or encumbrance against the Project site(s), 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; or
- (f) Borrower fails to prosecute Project site development work with diligence so that construction thereof will be completed in a timely manner; or
- (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; or
- (h) Borrower discontinues the demolition/reconstruction work and abandonment continues for a period of ten (10) days; or
- (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; or
- (j) Borrower (A) becomes bankrupt, or ceases, becomes unable, or admits in writing its inability to pay its debts as they mature, or makes a general assignment for the benefit of, or enters into any composition or arrangement with, creditors; (B) applies for, or consents (by admission of material allegations of a petition or otherwise) to the appointment of a trustee, receiver or liquidator of the Borrower or of a substantial portion of its assets, or authorizes such application or consent, or proceedings seeking such appointment are commenced without such authorization, consent or application against it and continue un-dismissed and unstayed for a period of fifteen (15) days; (C) authorizes or files a voluntary petition in bankruptcy, reorganization, readjustment of debt, insolvency, dissolution, liquidation or other similar law of any jurisdiction; or authorizes such application or consent; or proceedings to such end are instituted against the Borrower without such authorization, application or consent and are approved as properly instituted, remain undismissed for fifteen (15) days, or result in adjudication of bankruptcy or insolvency; or
- (k) Borrower is found to have violated any law or regulation, whether federal or state.

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, 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 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 Note 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; or
- (b) Exercise its rights under the Note or any other Security Document; or
- (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; or
- (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; or
- (e) Have discharged of record any mechanic's and materialmen's lien or other lien against the Project site(s); or
- (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; or
- (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 to 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 Note, 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.

ARTICLE 6 – RECORDS; REPORTING

6.1 RECORDS; ACCESS. Borrower agrees to keep adequate records pertaining to the Project and the uses of the 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 the 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 CAPITAL NEEDS ASSESSMENT. If applicable, LFUCG requires a Project Capital Needs Assessment (“PCNA”) for all rehabilitation and adaptive reuse projects that includes a capital reserve replacement schedule which projects either beyond the term of any LFUCG loan or twenty (20) years if the project only requires Housing Credits; furthermore, LFUCG requires a subsequent PCNA in year 15 with corresponding adjustment to the capital reserve replacement schedule for all projects obtaining Risk-Sharing, HOME or Affordable Housing Funds gap financing through LFUCG.

6.5 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.

6.6 PROGRAM COMPLIANCE. Borrower agrees to comply with LFUCG Affordable Housing program guidelines and criteria relating to the Affordable Housing 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 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: Emerson Center Apartments
c/o Kirkpatrick Management Company
125 Trade Street, Suite C
Lexington, Kentucky 40511
ATTN: Jean Peyton, Regional Property Manager

LFUCG: Lexington-Fayette Urban County Government
101 East Vine Street, Suite 400
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 any document delivered to LFUCG or by Borrower, or any other person on behalf of Borrower 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 or 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.

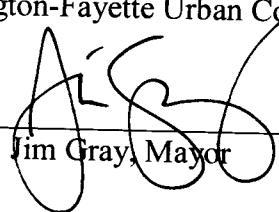
7.10 WAIVER. LFUCG may waive Borrower's performance of any of the terms of this Agreement or Borrower's default hereunder; provided, however, such waiver must be in writing, signed by LFUCG, and any such written waiver hereunder will not be construed as a waiver of any other term or condition of this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


IN WITNESS WHEREOF, this Agreement is executed as of the date and year first above written.

Lexington-Fayette Urban County Government

By: _____


Jim Gray, Mayor

ATTEST:


Clerk, Urban County Council

Emerson Center, Inc.

By: _____

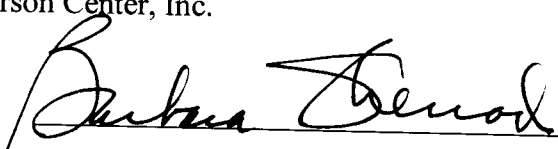

Title: President

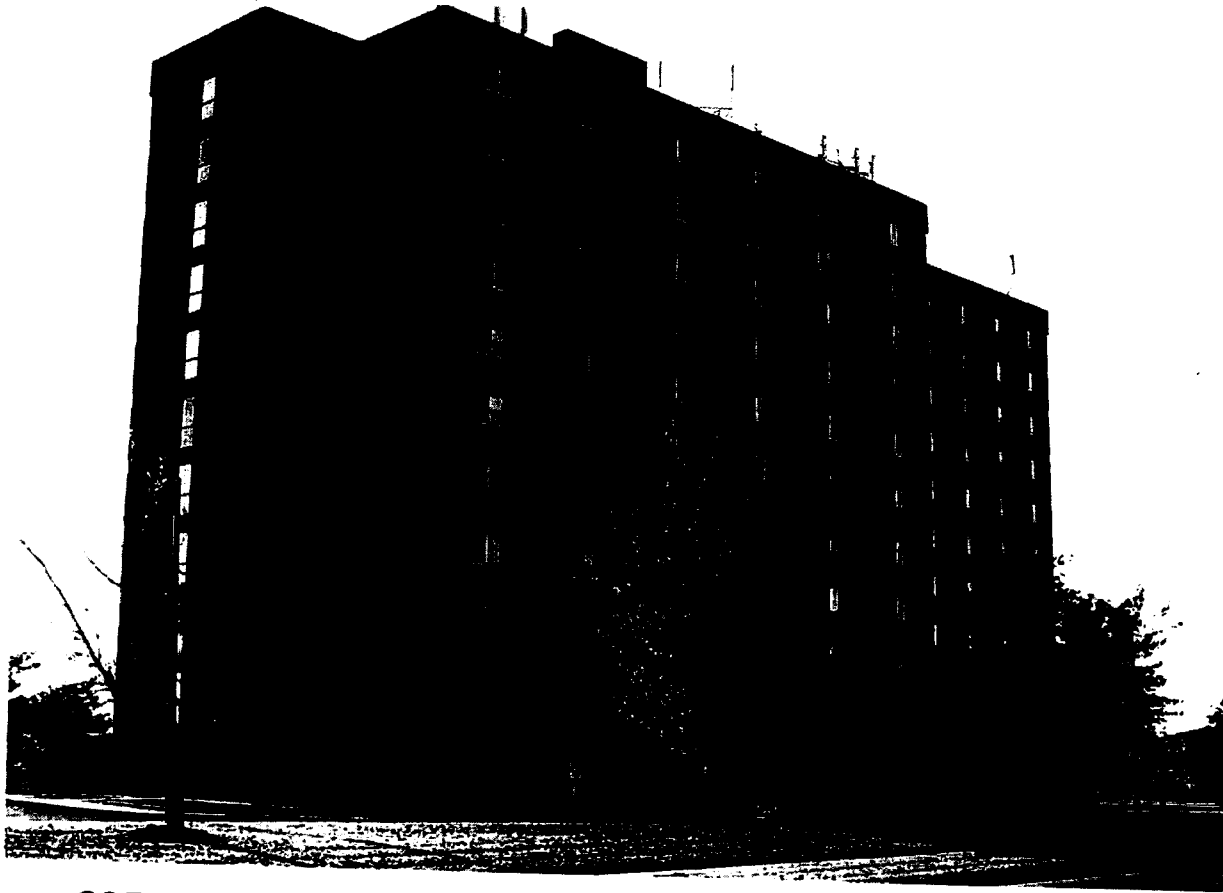
EXHIBIT A
(The LFUCG Affordable Housing Fund Application)

City of Lexington, Kentucky
Affordable Housing Trust Fund
Grant Application

(Date Submitted: May 12, 2017)

for

Emerson Center, Inc.



2050 Garden Springs Drive, Lexington, Kentucky 40504
(859) 278-0526 (Office & TDD)/ (859) 277-7908 (Fax)



Professionally Managed by Kirkpatrick Management Company, Inc.



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: Emerson Center, Inc.

MWBE Status: N/A

Tax Status: Non-Profit

Type of Entity: HUD Subsidized Senior Citizens (Age 55+) Apartment Community

Development Name:

Development Location: Property Address: 2050 Garden Springs Drive, Lexington, KY 40504

Contact Person: Jean Peyton

Contact Title: Regional Property Manager, Kirkpatrick Management Company-KY Division, Mgt. Agent

Mailing Address: 125 Trade Street, Suite C

City: Lex. **State:** KY **Zip:** 40511

Phone: (859) 225-3334 ext. 105

Fax: (859) 225-3103

Email Address: jpeyton@ekirkpatrick.com

Funds Requested: \$250,000.00

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: 178

Total Number of Buildings: 1

Square Feet of Units by Bedroom Size:

Unit Size: 0 BDRM Square Footage: 256
Unit Size: 1 BDRM Square Footage: 344
Unit Size: Square Footage:
Unit Size: Square Footage:
Unit Size: Square Footage:

Monthly Rents by Bedroom Size:

Unit Size: 0 BDRM Monthly Rent:
Unit Size: 0 BDRM Monthly Rent:
Unit Size: 1 BDRM Monthly Rent:
Unit Size: 1 BDRM Monthly Rent:
Unit Size: Monthly Rent:

Target Area Median Income (AMI): (Low Income Limit 80%) \$63,100

Amenities (Check all that apply):

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

- Dishwasher:
- Wash/Dryer Hookup:
- Help/Call System:
- Community Room:
- Playground:

Other (Please specify): Coin-operated Laundry Onsite, 24 Hour Staff, Locked Entry Doors with Entry Telephone Access

Location Amenities (Check all that apply):

- | | | |
|--|---------------------------------------|---|
| Public Transportation: <input checked="" type="checkbox"/> | Proximity to Development: 120 feet | Description: Lex Tran Bus Stop in front of bldg. |
| Shopping: <input checked="" type="checkbox"/> | Proximity to Development: 1/2- 1 mile | Description: Dollar General, Big Lots, Staples, Home Depot, Krogers |
| Restaurants: <input checked="" type="checkbox"/> | Proximity to Development: 1/2- 1 mile | Description: Chick-Fila, City Barbecue, McDonald's, Cane's |
| Medical Facilities: <input checked="" type="checkbox"/> | Proximity to Development: 1/2- 1 mile | Description: Frisch's, Burger King, O'Charley's |
| Banks: <input checked="" type="checkbox"/> | Proximity to Development: 1/2-5 miles | Description: UK Health Care, Family Practice & Assoc. |
| Other: Pharmacies <input checked="" type="checkbox"/> | Proximity to Development: 1/2- 1 mile | Description: Chase, United, Republic, First Southern |
| | | Description: Walgreen's, CVS |

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: N/A

Application for Funding Agreement

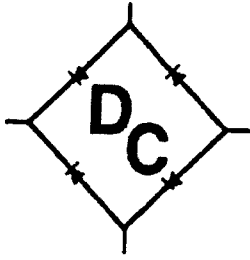
The applicant certifies that the information submitted in this application is accurate and consistent with the applications submitted to other funding sources. The applicant commits to keeping the staff and board of the Affordable Housing Fund of Lexington, KY updated with changes in the project structure, 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: Jean Peyton

Title: Regional Property Manager, Kirkpatrick Management Company-KY Division, Mgt. Agent

Date: 5/12/2017



DC ELEVATOR COMPANY

"An Employee-Owned Company"



May 12, 2017

Corporate Office

124 Venture Court, Suite 1
Lexington, KY 40511
(859) 254-8224
Fax (859) 231-8740

Branch Offices

140 East Woodlawn Ave.
Louisville, KY 40214
(502) 363-5961
Fax (502) 363-6026

182 Swartz Drive
Suite 200
Hazard, KY 41701
(606) 436-2288
Fax (606) 436-1140

512 Slack St.
Charleston, WV 25301
(304) 345-7222
Fax (304) 346-1086

Field Offices

8459 US 42 Suite 253F
Florence, KY 41042
(859) 746-8990

3240 Lone Oak Road
P.M.B. 153
Paducah, KY 42003
(270) 444-7952

An Equal Opportunity
Employer

Member



National Association of
Elevator Contractors



Kirkpatrick Management Company of Kentucky
125-C Trade Street
Lexington, KY 40511

Attn: Jean Peyton
Regional Property Manager

Re: Elevator Upgrades for Emerson Center
2050 Garden Springs Drive
Lexington, KY 40503

Jean,

Per our recommendations and based on the age and condition of the existing elevators, we have submitted a proposal for the following upgrades to the existing equipment to prolong the life of the existing elevators and provide excellent elevator service for your client for years to come.

Please see attached a list of components required to provide these upgrades. Also, please see the attached isometric drawing of where this components are located.

In this upgrade we will be converting from the old D.C. motor/generator and relay-logic controls to a modern A.C. drive motor and a non-proprietary microprocessor controllers providing a much more efficient elevator system. The new geared machine will have AC permanent magnet motors with absolute floor encoding for very accurate leveling and dual drive sheave brakes for unintended car movement (New code requirement). This equipment will provide lower power consumption and maybe a KU rebate by reducing your electric bills. New wiring throughout the system will eliminate many of the current problem of the old brittle original wiring. Also, on this 11 story building with 23 doors openings, the new door operator equipment will decrease troublecalls by replacing and adjusting the doors. Other new items will include updated signal fixtures,

including large 2" digital position indicators at the ground floor and in the elevators new car operating panels. Other items will be included for code requirements including ADA compliant emergency telephones and line monitors, firefighter's service operation and fire alarm upgrades for elevator recall, electrical upgrades as required and a crane to lift equipment from and to the roof.

The timeline for this work would be as follows:

- After award, 12-16 weeks for engineering, approval drawings and delivery of equipment
- Take one of the elevators out of service for upgrades, 11-12 weeks to complete the first elevator and inspected by the State before returning to service
- Remove the second car from service for upgrades, 9-10 weeks to complete the second elevator and final inspection on elevator and fire alarm recall
- The estimated total project will be between 32-38 weeks

If you have any questions, please let me know.

Sincerely,

Dale E. Howard

Dale E. Howard
Senior Project Manager



About Us

Employee-Owned...a commitment to quality with six branches to serve you, locally!

D-C Elevator Company, Inc. has been providing unrivaled service and experience throughout the state of Kentucky and surrounding areas since 1977. Our clients depend on us for timely, expert maintenance, repairs, installation, and modernization.

As the largest independent elevator company in the state of Kentucky, D-C Elevator operates from **six branch locations**, ensuring fast arrival to your job site. Our **newest branch** provides all our expert services throughout the state of West Virginia.

D-C Elevator has a well-earned reputation for quality, reliability, and value. Our total commitment is reflected in our quick response time, consistent and thorough maintenance, advanced technical expertise, and minimization of service interruptions.

Our commitment remains the same, today, and in the words of our co-founder, Danny L. Breaden, *"Our goal is to provide you with skilled technicians and prompt, personalized service at a competitive price. We continually strive to improve our standards of excellence and maintain the high quality of service our customers deserve".*

Copyright 2014

D-C Elevator Co., Inc., 124 Venture Court Suite #1, Lexington KY 40511, 888-445-4414

EMERSON CENTER – PROPOSED ELEVATOR UPGRADES BY DC ELEVATOR COMPANY - 2017

LIST OF PROPOSED ELEVATOR EQUIPMENT TO BE REPLACED:

- NEW AC MACHINES BY TORIN WITH DUAL BRAKES AND MOTOR ENCODERS
- NEW MICRO-PROCESSOR AC DRIVE CONTROLLERS
- NEW SPEED GOVERNORS
- NEW DOOR OPERATORS AND EQUIPMENT FOR ALL FLOORS
- NEW SIGNAL FIXTURES TO MEET ADA AND KBC CODES
- NEW CAR DOOR PANELS TO MATCH NEW DOOR EQUIPMENT
- NEW HOIST AND GOVERNOR ROPES
- NEW WIRING AND TRAVELING CABLES
- ADD NEW CAR TOP GUARDS, PIT LADDERS, TOE GUARDS TO MEET CODE

INCLUDES AN ELECTRICAL SUBCONTRACTOR FOR ELECTRICAL & FIRE
ALARM UPGRADES.

ALSO INCLUDES A CRANE FOR REMOVING AND LIFTING NEW EQUIPMENT
TO ROOF.

(https://oneteam.net)

D. C. ELEVATOR, INC.

Profile

Cage Code: 33PU8 086756939	Entity Structure: Corporate Entity (Not Tax Exempt) Business Start Date: Sep 1, 1977	DBA (Doing Business As): none listed	DUNS:
-------------------------------	---	--------------------------------------	-------

Address

124 VENTURE COURT STE 1,
LEXINGTON, KY, UNITED STATES 40511

Congressional District

06

State of Incorporation

KY

Government Business POC

DAVID
FRYMAN

DALE

HOWARD

Past Performance POC

RICK HARDIN

DALE

HOWARD

Electronic Business POC

JAMES

BOWLDS

RENNY ROSS

You must be signed in to view contact info. Sign in (/SignIn) or Register (/Register)

Primary NAICS Code

- 238990 - All Other Specialty Trade Contractors

PSC (Product and Service Code) Codes

- 3960 - FREIGHT ELEVATORS

NAICS Codes

- 238290 - Other Building Equipment Contractors
- 238990 - All Other Specialty Trade Contractors
- 561210 - Facilities Support Services

Business Types

- For Profit Organization
- Contracts and Grants
- Subchapter S Corporation

SBA Certifications

none listed

Award Summary

Prime Awards

Group by Agency



EXHIBIT B
(Executed Commitment Letter)

MAYOR JIM GRAY



LEXINGTON

RICHARD MCQUADY
DIRECTOR
AFFORDABLE HOUSING

September 21, 2017

Ms. Jean Peyton, Regional Property Manager
Kirkpatrick Management Company
125 Trade Street, Suite C
Lexington, KY. 40511

Dear Ms. Peyton,


This letter serves as a commitment of \$250,000 in funding from the Affordable Housing Fund of Lexington-Fayette Urban County Government (LFUCG) for the rehabilitation and modernization of the elevators at Emerson Center Apartments, located at 2050 Garden Springs Drive in Lexington, Kentucky. The funding will be in the form of an interest only loan at the rate of 2% per annum. Once the modernization of the elevators is completed and funding is secured for the remaining improvements to Emerson Center Apartments (as outlined in the Physical Capital Needs Assessment (PCNA) dated July 27, 2016 or as described in a future PCNA) all remaining principal and interest due on the loan will be forgiven over a 15 year period. The only other requirement for this loan forgiveness is that the property remains in compliance with Affordable Housing Fund guidelines by leasing to households whose incomes are at or below 80% of area median income over the term of the forgivable loan.

If funding for the additional improvements is not secured by January 1, 2019, the loan will convert to a permanent 15 year loan with principal and interest payments due monthly beginning February 1, 2019.

This commitment is contingent upon the acceptance of a 15 year deed restriction on the property that will ensure the units remain in compliance with Affordable Housing Fund guidelines.

Please indicate your acceptance of this contingent commitment and upon acceptance LFUCG will work to close the transaction.

Sincerely,


Richard L. McQuady
Affordable Housing Manager

Accepted by:

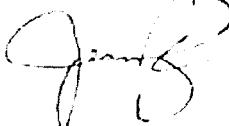
Approved by Emerson Center, Inc. Board of Directors 10/12/17
 10/13/17



EXHIBIT C
(Physical Capital Needs Assessment dated July 27, 2016)



**PHYSICAL CAPITAL NEEDS ASSESSMENT (PCNA)
EMERSON CENTER APARTMENTS
2050 GARDEN SPRINGS DRIVE
LEXINGTON, KENTUCKY 40504**

**D3G PROJECT NUMBER:
2016-0881**

**REPORT ISSUE DATE: JULY
27, 2016**

**INSPECTION DATE:
MAY 27, 2016**

**PREPARED FOR:
EMERSON CENTER APARTMENTS
125-C TRADE STREET
LEXINGTON, KENTUCKY 40511**

Joshua Morrison, BPI-MFBA, Construction Inspector

Mike Ferguson, P.E., BPI-BA, Director of Engineering Services

EXECUTIVE PROPERTY DESCRIPTION



Property: Emerson Center Apartments
2050 Garden Springs Drive
Lexington, Kentucky 40504

Site Description: Emerson Center Apartments, located at 2050 Garden Springs Drive in Lexington, Fayette County, Kentucky consists of one (1) eleven-story age-restricted apartment building. The apartment building contains one hundred seventy-eight (178) dwelling units. According to tax records, the building was constructed in 1970, is situated on approximately 3.789 acres, and features an approximate gross area of 105,140 square feet. The property is in fair physical condition.

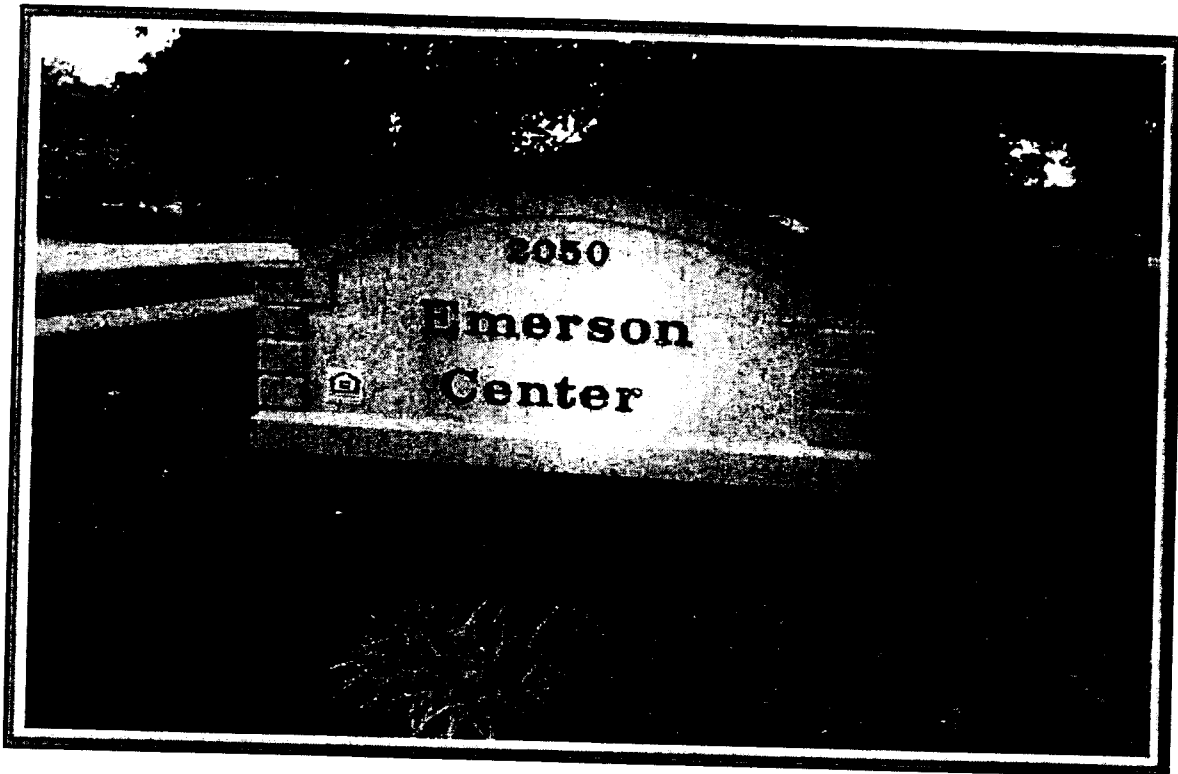


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6.0 OPINIONS OF PROBABLE COST TO REMEDY PHYSICAL DEFICIENCIES

6.1 Immediate Repairs (Immediate Needs)

Immediate Repairs are physical deficiencies that require immediate action as a result of: existing potentially unsafe conditions, building code violations, poor or deteriorated conditions of a critical element or system, or a condition that if left "as is" would result in a critical element or system failure. Additionally, included are issues that affect sustainable occupancy or ingress and egress to the property, as well as accessibility related deficiencies when applicable. An investigation of the subject property identified the following "Immediate Repairs" which will require repair during the next twelve (0-12 months). Items with no cost can be repaired as routine maintenance items:

Sect	IMMEDIATE REPAIRS (IMMEDIATE NEEDS)	TOTAL
3.4.1	1. One (1) of the two (2) 1000-gallon Domestic Hot Water (DHW) storage tanks in the ground floor mechanical room were reported and observed to be out of service and beyond it's Estimated Useful Life (EUL). Replacement of the DHW storage tank is recommended. Property management further reported that funds have been allocated for this repair; therefore, no cost is associated with this repair. (1 Each @ \$.00)	No Cost
ACCESSIBILITY		
7.1	2. Designated handicapped accessible dwelling units 1011 and 613 were observed to be missing scald and abrasion protection at the bathroom sinks. Designated accessible dwelling units 706 and 411 were observed to be missing scald and abrasion protection at the bathroom and kitchen sinks. In order to comply with Uniform Federal Accessibility Standards (UFAS), the installation of scald and abrasion protection at exposed under sink piping of these designated accessible dwelling unit sinks is required. (6 Each @ \$35.00)	\$210.00
7.1	3. The eight (8) designated accessible dwelling units (1011, 1005, 1110, 812, 706, 609, 613, and 411) were observed with bathroom and hall closet clear door opening widths of approximately 29.5" (30.5" frame to frame). These walls are not constructed of concrete. In order to comply with UFAS, these doorways must be widened to provide a 32" wide clear door opening. (16 Each @ \$750.00)	\$12,000.00
7.1	4. The bathrooms of the eight (8) designated accessible dwelling units were observed with doors swinging into the bathroom, impeding the clear floor space at the fixtures inside the room. In order to comply with UFAS, the door swing must be reversed to swing out (into the hall) in order to provide the required 30"x48" clear floor space within the bathroom and at the fixtures. As these doors will swing out into the hallway, D3G recommends installing swing-free hinges and locating them on the opposite side of the widened door frame. (8 Each @ \$200.00)	\$1,600.00
7.1	5. The community room kitchen sink does not feature a roll under forward approach. In order to comply with UFAS, removal of the base cabinetry to	Included in the Management

Sect	IMMEDIATE REPAIRS (IMMEDIATE NEEDS)	TOTAL
	provide a roll under forward approach with a base cabinet countertop height of not more than 34" above the finished floor and the installation of scald and abrasion protection at the exposed plumbing pipes is required. It should be noted that the bottom shelf of compliant wall cabinets (or an additional wall mounted storage shelf) should not be greater than 48" above the finished floor. Replacement of the community kitchen cabinetry is included in the management proposed scope of work; therefore, no cost is associated with this repair. (1 Each @ \$.00)	Proposed Scope of Work
7.1	6. The dwelling unit entry doors at the handicapped designated units do not feature compliant approach access to the pull side of the door. The hallway into the dwelling unit from the entry door does not feature the necessary width to accommodate the width of the entry door and the additional 18 inches of clear space at the pull side of the door. These hallway walls are reportedly not constructed of concrete; however, they divide the bathroom and kitchen on one side and the closet on the other side from the hallway. Enlarging the hallway at the unit entry door would result in reconfiguration of the bathroom and/or closet, which would reduce the needed clear floor space in the bathroom and/or closet. Therefore, D3G recommends that automatic door openers be installed at the designated handicap accessible unit entry doors to comply with UFAS. (8 Each @ \$1,000.00)	\$0.00
7.1	7. Designated handicap accessible dwelling unit 1005 was observed with a bathroom sink that does not feature accessible hardware. The installation of accessible hardware (levered) is required to comply with UFAS. (1 Each @ \$125.00)	\$125.00
7.1	8. The property does not feature any units with audio visual smoke alarms. The installation of audio visual smoke alarms in 2% or four (4) units is required to comply with UFAS. The audio-visual smoke alarms should be installed in units that are not designated as handicap accessible. (4 Each @ \$250.00)	\$1000.00
	Subtotal:	\$14,935.00
	MANAGEMENT PROPOSED SCOPE OF WORK	
7.3	8. Completion of the Management Proposed Scope of Work (SOW) is required. Please see Exhibit 12.5 (Site Specifics) for a copy of the SOW. ** It should be noted that all repairs in the SOW must comply with KHC's Minimum Design Standards. In addition, a final cost for the proposed rehabilitation is pending contractor bids. Current cost is estimated. (1 Lump Sum @ \$1,892,000.00)	\$1,892,000.00
	TOTAL:	\$1,906,935.00

EXHIBIT D
(Executed Promissory Note)

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

\$250,000.00

November 13th, 2017

FOR VALUE RECEIVED, EMERSON CENTER, INC., a Kentucky non-profit corporation, whose principal address is 2050 Garden Spring Drive, Lexington, Kentucky 40504 (the "Maker") promises to pay to LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT ("LFUCG"), an urban county government created pursuant to KRS Chapter 67A, whose principal address is 200 East Main Street, Lexington, Kentucky 40507, its successors and assigns, the principal sum of **TWO HUNDRED FIFTY THOUSAND AND 00/100 (\$250,000.00)** or lesser amount as may be endorsed on this Promissory Note on behalf of LFUCG, at the rate of two percent (2%) per annum

- A. Payments shall be required as follows:
1. Interest only payments shall be required from first date of disbursement from the fund until January 1, 2019, payments shall be due and payable on the 1st day of each month beginning on January 1, 2018 and continuing on the *first* day of each succeeding month thereafter. Interest only payments shall be billed and paid on a monthly-basis.
 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 or C 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 January 1, 2034, (the "Maturity Date").
- B. However, so long as the Maker is able to secure funding as required by Section 1.1 of the Loan Agreement, 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 the principal of this 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 January 1, 2019, as long as all terms and conditions of all Loan Documents have been satisfactorily complied and fulfilled, and each year thereafter for each full year during the Affordability Period.

2. The entire principal sum shall be forgiven in full on January 1, 2034, as long as all terms and conditions of all Loan Documents have been satisfactorily complied and fulfilled.
- C. Notwithstanding section B of this Note, if the Maker is not able to secure funding as required by Section 1.1 of the Loan Agreement, the Loan shall be converted to a 15-year amortizing loan on January 1, 2019.
1. Under these circumstances, payments shall be due and payable on the 1st day of each month beginning on February 1, 2019 and continuing on the *first* day of each succeeding month thereafter
 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. The entire principal sum shall be due and payable on January 1, 2034.

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 September 21, 2017, and a Loan Agreement between the undersigned and LFUCG ("Loan Agreement"), of even date herewith, providing a loan of **TWO HUNDRED FIFTY THOUSAND AND 00/100 (\$250,000.00)** 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, 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, (3) the undersigned fails to observe or perform any of the terms of this Note or (4) there

is any default by undersigned under the Loan Agreement or any other document, instrument or agreement providing any security for this Note, 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.

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;

(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

