

## **LEASE AGREEMENT**

THIS LEASE, made and entered into this \_\_\_\_\_ day of October, 2011 by and between the **LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT**, whose address is 200 East Main Street, Lexington, Kentucky 40507, (the "Owner"), Party of the First Part, and **NURSING HOME OMBUDSMAN AGENCY**, with offices at 1530 Nicholasville Road, Lexington, Kentucky 40503, (the "Tenant"), Party of the Second Part:

### **WITNESSETH:**

1. **PREMISES.** The leased premises, hereinafter called the "Premises", are identified and described as follows: office space consisting of approximately 310 square feet and pro-rata share of Work Area space consisting of approximately 295 square feet (Exhibit A) located on the first (1<sup>st</sup>) physical floor of the Senior Center at 1530 Nicholasville Road, Lexington, Kentucky, 40503.

2. **USE.** The Tenant shall use the Premises as office space for the purpose of oversight and direction of the services provided relating to nursing facility activities.

3. **TERM.** The initial term of this lease shall be for a period of eight (8) months, automatically renewable for three (3) subsequent terms of one year each, whereas the 8 month period begins November 1, 2011 and ends June 30, 2012, and subsequent terms begin July 1 and end June 30 the following year, subject to the termination provision stated in Section 15.

4. **BASIC RENTAL FEES.** The Tenant agrees to pay the Owner at an annual rental rate as specified in Exhibit B for use of the assigned office space, use of shared Work Area, and for pro-rata share of common area maintenance (CAM) space at the facility (Tenant's share is approximately 341 square feet). The rental payment shall be made on a monthly basis on or before the first (1<sup>st</sup>) day of the month due at the Owner's notice address.

5. **UTILITIES AND SERVICES.** The Owner shall be responsible for providing and paying for all utilities to the premises. The Owner shall provide janitorial and cleaning services. The Tenant shall pay a proportionate share of the telephone costs, monthly charges for copying, and monthly operation of the fax machine, as determined by the Senior Center Manager or designee. Owner does not warrant that any services to be provided by Owner will be free from interruption due to causes beyond Owner's reasonable control. The temporary interruption of services or delay in the making of repairs will not be deemed an eviction nor disturbance of Tenant's use and possession of the Premises nor render Owner liable to Tenant for damage by set-off or abatement of Rent or otherwise, nor will it relieve Tenant from performance of Tenant's obligations under this lease.

6. **SECURITY DEPOSIT.** The Owner shall not require the Tenant to pay a Security Deposit, however, the Tenant shall maintain the Premises in good condition at all times.

7. TAXES AND FEES. The Tenant agrees to pay all applicable taxes and assessments against its personnel property, and any applicable permit, regulatory and/or license fees. The Tenant is not responsible for any applicable real property taxes.

8. COMPLIANCE WITH ORDINANCES, STATUTES, AND STATE AND FEDERAL LAWS. The Tenant shall comply and cause its employees and agents to comply with all ordinances, statutes, and state and federal laws in connection with the use of the Premises.

9. INSPECTIONS. The Owner's Commissioner of General Services or designee shall have the right to inspect the Premises at any time during the Tenant's normal hours of operation. The Owner shall have free access to the Premises at all reasonable times for the purpose of examining the same, or to make any alterations or repairs to the Premises that the Owner deems necessary for its safety or preservation. The Owner shall have the right to inspect the Premises outside of normal hours of operation with prior notice.

10. ALTERATIONS TO THE PREMISES AND FIT-UP COSTS. Any physical improvements or changes in the status of the Premises made by the Tenant, including painting, is to be done by approval in writing from the Commissioner of General Services or designee, which shall not be unreasonably withheld. Any and all improvements once installed, affixed or located in or on the Premises shall be and remain on the Premises and belong to the Owner as further consideration of this lease, provided however that all inventory, furnishings, fixtures and other equipment installed and paid for by the Tenant may be removed by the Tenant upon termination of the Lease, at Tenant's expense, if such removal does not damage the Premises.

11. MAINTENANCE AND USAGE OF THE PREMISES.

a. The Owner shall maintain the exterior of the Premises, including the roof, foundation, and structural portion of the Premises, and the exterior doors and window frames, and shall replace all broken and cracked glass except where such replacement is required by reason of the acts of the Tenant or its invitees, in which event Tenant shall make such replacements. The Owner shall make all necessary repairs to the parking areas, service driveways and sidewalks. The Owner shall further be responsible for making all major repairs to the interior structures of the Premises as necessary to preserve and keep it in good condition, and shall keep the heating, ventilation, air conditioning, plumbing, electrical and like systems in good working order.

b. The Owner shall make repairs as may be necessary for keeping and maintaining the interior of the Premises in good order, condition and repair. Excepted from this are repairs made necessary by reason of damage due to fire or other casualty covered by standard fire and extended coverage insurance.

c. The Tenant shall use common areas in such manner so as not to interfere with the use of the areas by other occupants of the Premises.

d. The Tenant shall reimburse Owner for any fines, penalties and costs and all liability for violation or non-compliance with any requirements related to the property imposed as a result of Tenant's failure to repair. Intentional damage

to the Premises shall entitle the Owner to terminate the Lease and to recover the Premises.

e. With the exception of service animals, dogs and other animals are not permitted on the Premises.

12. SECURITY. The Tenant shall have adequate procedures in place to ensure that, if needed, office doors are secured at the end of the business day and that outside doors are secured and keys are distributed to personnel only as necessary. Owner shall maintain a Master Key in its possession for emergency access to the Premises.

13. PARKING. Tenant shall direct all Tenant employees to park only in those spaces that may be assigned by the Department of General Services or designee.

14. INDEMNIFICATION AND INSURANCE.

a. Indemnification - The Tenant agrees to indemnify, defend and hold harmless the Owner and its agents, officials and employees, from any and all claims, liabilities, loss, damage or expense resulting from the Tenant's or its invitees' use of the Premises. The Owner shall not be liable for any loss or damage to persons or property of the Tenant or others located on the Premises or the loss of or the damage to any property of the Tenant or others by theft or otherwise from the Premises. The Owner shall not be liable for any injury or damage to persons or property resulting from fire, explosion, falling material, steam, gas, electricity, water, rain, snow, leaks from any part of the Premises, pipes, appliances or plumbing works, or any other cause of any nature, except to the extent such injury or damage results from a negligent or willful act or failure to act of the Owner. Any property of Tenant kept for storage at the Premises shall be so kept or stored at the risk of the Tenant only.

b. Insurance – The Tenant shall procure and maintain, at its cost, throughout the term of this lease, and annually for any extension thereof, Commercial General Liability Insurance, including Premises and Operations Liability, Broad Form Contractual Coverage, and Fire legal Liability for said Premises, and any other appropriate insurance, deemed proper and necessary for their use and occupation of the facility. Liability limits should be in an amount not less than \$1,000,000.00 per occurrence with an aggregate of not less than \$2,000,000.00. Said insurance company shall be authorized to do business in the Commonwealth of Kentucky, with a Best's Key Rating of no less than Excellent (A or A-) and a financial size category of no less than VIII, and must include the provision that "it is agreed and understood that the Lexington-Fayette Urban County Government, its agents, employees, officers and elected officials, as their interests may appear, are additional insured, under the provisions of this lease agreement." The Tenant shall furnish to the Owner's Division of Risk Management a certificate of insurance and make available for inspection a copy of the policy.

c. Other requirements – The Tenant shall require that all contractors/vendors used by Tenant for fit-up improvements and betterments of the space during occupancy shall be pre-approved by Owner's Division of Building Maintenance and Construction. Furthermore, Tenant shall comply with Owner's

Risk Management provisions and shall provide Owner with copies of certificates of insurance and/or any contracts entered into relating to the above, prior to commencement of work.

15. TERMINATION. Either party may terminate the Lease at any time, without penalty, upon ninety (90) days written notice to the other party. The lease shall terminate ninety (90) days upon receipt of the notice. Tenant shall immediately vacate the Premises and terminate this lease if it does not utilize the space provided herein in the manner as Tenant has represented. The Commissioner of Social Services shall perform ongoing evaluations to determine whether the Premises are being utilized by the Tenant as required.

16. SIGNAGE. The Tenant will be allowed to place, at its expense, its name or sign on the offices being used in the building, provided such signage complies with the applicable guidelines as set forth by the Owner.

17. LEASE NOT ASSIGNABLE. This lease is not assignable and Tenant may not sub lease or grant any other individual, agency or organization use of their space or any space internal or external to the Senior Citizens Center.

18. PROPERTY ON PREMISES IS RESPONSIBILITY OF TENANT. All personal property which may be kept upon the Premises shall be at the sole risk and responsibility of the Tenant. This shall include property of contractors/vendors secured by Tenant to perform fit-up, or conduct other maintenance or improvement activities throughout the term of this lease.

19. DESTRUCTION OF PREMISES. If the Premises should be destroyed or damaged by fire or other casualty covered by the Owner's policy of fire and extended coverage insurance, Owner shall, with due diligence, make repairs or restoration at its expense; provided, however, that should damage to the extent of fifty percent (50%) or more of the value thereof occur, then the Government may at its option cancel this Lease instead of making the necessary repairs or restoration; and, provided further, that if the Premises are damaged to such extent that repairs or restoration cannot be effected within one hundred twenty (120) days, either party shall have the right to cancel this Lease by giving the other party notice in writing within thirty (30) days from the date such damage occurred. In the event no such notice is given, or, if notice be waived in writing by the parties, Owner shall proceed with due diligence to complete the restoration of the Premises. In the event of partial destruction or damage whereby Tenant shall be deprived of the use or occupancy of only a portion of said Premises, then minimum rent shall be equitably apportioned according to the area of the Premises which is usable by tenant until such time as the Premises shall be repaired or restored. Owner shall commence the repair and reconstruction of the Premises promptly after it receives the proceeds of insurance in connection with such partial loss. Should the destruction or damage be of such extent that the Premises are entirely untenable, then the Lease shall automatically terminate and a new lease may be entered into, by agreement of the parties once the Premises are restored or repaired and are once again tenable, unless the Lease has been terminated as provided herein.

20. HAZARDOUS MATERIALS. Tenant will not discharge, release, dispose of or deposit on the Premises any waste, including any

pollutants or hazardous materials ("Hazardous Materials"), in violation of any federal, state or local law or regulation. Any Hazardous Materials generated by the tenant will be removed at tenant's expense in the manner required by law from the Premises and disposed of in compliance with federal, state and local laws and regulations. If at any time Tenant fails to comply with the terms of this Section, Owner may remedy such default and Tenant must fully reimburse for any cost or expense it incurs in so acting within ten (10) days of receipt of written notice from Owner.

21. QUIET ENJOYMENT. Owner hereby covenants and agrees that if Tenant shall perform all the covenants and agreements herein stipulated to be performed on Tenant's part, Tenant shall at all times during the Lease term and any extensions or renewals thereof have the peaceable and quiet enjoyment and possession of the Premises without any manner of, or hindrance from, the Owner or any person or persons lawfully claiming the Premises.

22. VACATION OF PREMISES. The Tenant shall deliver up and surrender to the owner possession of the Premises upon the expiration or termination of the Lease in as good a condition and repair as the Premises shall be at the commencement of said terms (the elements and ordinary wear and deterioration excepted) and deliver the keys to the Owner.

23. MEMORANDUM OF LEASE. The Lease, or a memorandum describing the property herein demised, stating the term of the Lease, and referring to this lease, may be recorded by either party, but is not required.

24. NOTICES. Any notice or consent required to be given by or on behalf of either party upon the other shall be in writing and shall be given by hand delivering or mailing such notice or consent. If mailed, such notice shall be mailed via certified mail, return receipt requested.

**Notice shall be sent to the Tenant at the following:**

Nursing Home Ombudsman Agency  
1530 Nicholasville Road  
Lexington, KY 40503

**Notice shall be sent to the Owner at the following:**

Lexington-Fayette Urban County Government  
Department of General Services  
200 East Main Street  
Lexington, KY 40507

25. WAIVER. No waiver of any condition of legal right shall be implied by the failure of either party to declare forfeiture, or for any other reason, and no waiver of condition or covenant shall be valid unless it be in writing signed by party so waiving. The waiver of a breach by either party of any condition shall not excuse, or be claimed to excuse, a future breach of the same condition or covenant or any other condition or covenant.

26. EMINENT DOMAIN. In the event that the Premises or any part thereof shall be at any time after the execution of the Lease taken for public or quasi-public use, or condemned under eminent domain, the Tenant shall not be entitled to claim or have paid to it any compensation or damages whatsoever for or on account of any loss, injury, damage or taking of any right, interest or estate of the Tenant, and the Tenant hereby relinquishes to the Owner any rights to any such damages. Should all of the Premises be taken by eminent domain, then this Lease shall be deemed terminated, and the Tenant shall be entitled to no damages or any consideration by reason of such taking.

27. INTERPRETATION. If any clause, sentence, paragraph or part of the Lease shall for any reason be adjudged by a court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder of this Lease, but be confined in its operation to the clause, sentence, paragraph or part thereof directly involved in the controversy in which such judgment shall have been rendered, and in all other aspects said Lease shall continue in full force and effect. The Lease, having been negotiated in good faith between the parties with advice of their respective counsel, shall not be construed against one party or the other.

28. INTERPRETATION AS PARTNERSHIP PROHIBITED. It is understood and agreed that nothing herein contained shall be construed in any way to constitute a partnership between the parties.

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

30. ENTIRE AGREEMENT. This Lease contains the entire agreement of the parties with respect to the Tenant's occupancy and lease of the Premises, and there are no other promises or conditions in any other agreement either oral or written. The Lease may be amended only in writing and only if such writing is signed by both parties. The parties acknowledge that any amendment to the Lease must be approved by the Lexington-Fayette Urban County Council.

**IN WITNESS WHEREOF**, the parties hereto have set their hands the date first above written.

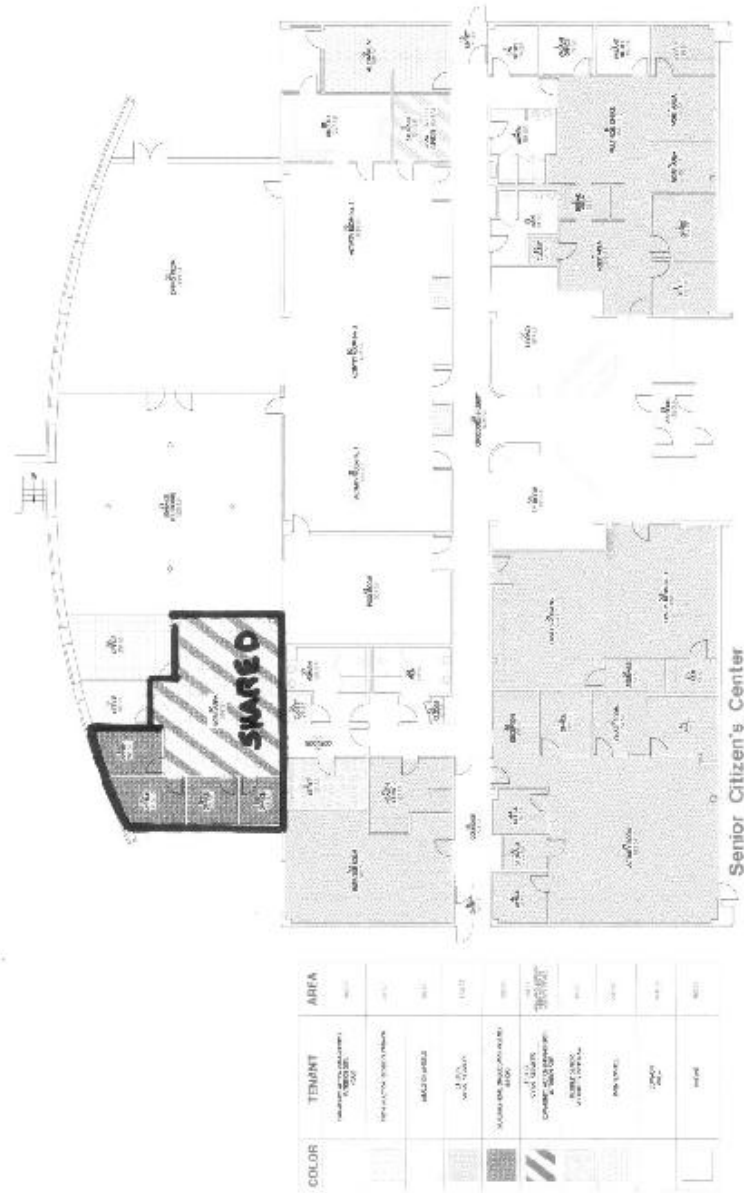
**Lexington Fayette Urban  
County Government**

BY: \_\_\_\_\_  
Jim Gray, Mayor

**Nursing Home Ombudsman Agency**

BY: \_\_\_\_\_  
Executive Director

# EXHIBIT A



**EXHIBIT B**  
**RENT SCHEDULE**  
1530 Nicholasville Road  
Senior Citizens Center  
**NURSING HOME OMBUDSMAN AGENCY**

**ANNUAL RENTAL RATE SCHEDULE**  
**\*NEW RATE BECOMES EFFECTIVE JULY 1<sup>st</sup> EACH YEAR**

	FY 2012	FY 2013	FY 2014	FY 2015
Base (534 sf)	\$0.00	\$2,136.00	\$3,204.00	\$4,272.00
Change (71sf @ \$8.00)	\$568.00	\$568.00	\$568.00	\$568.00
CAM area (341sf @ \$2.00)	\$0.00	\$682.00	\$682.00	\$682.00
<b>Total Lease:</b>	<b>\$568.00</b>	<b>\$3,386.00</b>	<b>\$4,454.00</b>	<b>\$5,522.00</b>
<b>Monthly Rental Due</b>	<b>\$47.33</b>	<b>\$282.17</b>	<b>\$371.17</b>	<b>\$460.17</b>

**Payments shall be forwarded to the Owner at the following:**  
Lexington-Fayette Urban County Government  
Department of General Services  
200 East Main Street  
Lexington, KY 40507