

**NEIGHBORHOOD STABILIZATION PROGRAM  
DEVELOPMENT AGREEMENT BETWEEN  
LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT  
AND  
LEXINGTON HABITAT FOR HUMANITY**

**THIS AGREEMENT**, made and entered into on this \_\_\_\_ day of \_\_\_\_\_ 2012 by and between the Lexington-Fayette Urban County Government, an urban county government of the Commonwealth of Kentucky, pursuant to KRS Chapter 67A, and located at 200 East Main Street, Lexington, Fayette County, Kentucky 40507 (hereinafter referred to as the "GOVERNMENT") and LEXINGTON HABITAT FOR HUMANITY, hereinafter referred to as "DEVELOPER", a non-stock, nonprofit Kentucky corporation, organized pursuant to KRS Chapter 273, and whose mailing address is 700 East Loudon Avenue, Lexington, Kentucky 40505.

**RECITALS**

**WHEREAS**, the Kentucky Department for Local Government has received federal funding from the U.S. Department for Housing and Urban Development under the Neighborhood Stabilization Program as authorized by Title III of Division B of the Housing and Economic Recovery Act of 2008, as amended;

**WHEREAS**, the GOVERNMENT has applied for and received federal Neighborhood Stabilization Program-1 funds from the Kentucky Department for Local Government for purchase of residential properties under Landbank and Redevelopment Activities.

**WHEREAS**, GOVERNMENT has purchased hereindescribed residential properties and has issued a request for applications from developers interested in purchase of residential properties for use as rental or homeownership by low- and moderate-income households.

**WHEREAS**, GOVERNMENT has selected DEVELOPER to receive properties for redevelopment for homeownership opportunities;

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

**WHEREAS**, Kentucky Department for Local Government's regulations require the GOVERNMENT to enter into a written agreement with DEVELOPER ensuring compliance with all applicable federal regulations.

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

## ARTICLE I

### OBLIGATIONS OF LEXINGTON HABITAT FOR HUMANITY

1. DEVELOPER will be responsible for carrying out NSP activities in a manner satisfactory to the GOVERNMENT and consistent with all standards required as a condition of receiving these properties.
2. DEVELOPER agrees to comply with all applicable terms of Funding Agreement No. 09N-043, as amended, for Project entitled "Lexington-Fayette Urban County Government Landbank NSP-1 Program" between the Kentucky Department for Local Government and Lexington-Fayette Urban County Government. Funding Agreement No. 09N-043, as amended, is made a part of this agreement by reference.
3. DEVELOPER agrees to comply with all applicable regulations in Title III of Division B of the Housing and Economic Recovery Act of 2008, as amended.
4. DEVELOPER will carry out this program in accordance with the policies, procedures and other provisions of the Lexington Habitat for Humanity Partner Family Manual - updated September 2011 ("Program Manual"), incorporated herein by reference.
5. DEVELOPER is responsible for providing the deliverables that are described in Exhibit A Homes Sales Activities and NSP Budget, within the prescribed time periods .
6. DEVELOPER agrees that the maximum sale price may not exceed the after-construction market value of the home or the total amount of NSP and non-NSP expenditures, whichever is less. The market value of a home will be determined in accordance with the provisions established by the Kentucky Department for Local Government.
7. DEVELOPER, upon identification of final homebuyer, will complete and submit Project Closeout Report (PCR) to GOVERNMENT for prior approval. Final amount of program income payable to GOVERNMENT will be calculated at this time.
8. DEVELOPER agrees that upon sale of an NSP-funded home to an eligible final consumer, DEVELOPER will cause the homebuyer to execute a promissory note and mortgage in favor of the KENTUCKY DEPARTMENT FOR LOCAL GOVERNMENT for the combined amount of the Homeowner Financial Assistance as defined herein. The note and mortgage must be prepared by DEVELOPER using forms provided by GOVERNMENT. GOVERNMENT must review and approve the language inserted in these documents prior to their being executed by the homebuyer(s). Mortgage must be recorded in the Office of the Fayette County Clerk.

9. DEVELOPER agrees that upon sale of an NSP-funded home DEVELOPER will transmit the net proceeds of sale to GOVERNMENT. All program income received by the GOVERNMENT shall be remitted to the Kentucky Department for Local Government.
10. DEVELOPER hereby agrees to provide in a timely manner all necessary progress reports and other reports required by GOVERNMENT on forms to be provided by GOVERNMENT.
11. DEVELOPER agrees that all NSP properties shall be completed and sold to income-eligible households as provided for in Exhibit A. Only the GOVERNMENT may approve later completion dates.

## ARTICLE II OBLIGATIONS OF THE GOVERNMENT

1. GOVERNMENT agrees to convey properties, described in Exhibit A, to the DEVELOPER for new construction and rehabilitation for homeownership by eligible low-income households. Properties shall be conveyed by deed with promissory note signed by DEVELOPER.
2. The GOVERNMENT agrees to prepare and submit any and all required reports to the Kentucky Department for Local Government.
3. The GOVERNMENT agrees to provide technical assistance to DEVELOPER in fulfilling its obligations under this agreement.
4. The GOVERNMENT agrees to notify DEVELOPER with any changes in the NSP regulations, program limits for income, rent and property value, and all other pertinent information received in regards to the program.

## ARTICLE III OTHER FEDERAL REQUIREMENTS

1. **FAIR HOUSING AND EQUAL OPPORTUNITY**  
Under any program funded in whole or in part with NSP funds, DEVELOPER shall not exclude from participation in, deny the benefits of, or subject to discrimination any person in the United States on the grounds of race, color, national origin, religion, sex, familial status or disability.

DEVELOPER agrees to comply with the requirements of the Fair Housing Act (42 U.S.C. 3601-20) and implementing regulations at 24 CFR, part 100; Executive Order 11063, as

amended by executive Order 12259 (3CFR, 1958-1963 Comp., p. 652 and 3 CFR, 1980 Comp., p. 307) (Equal Opportunity in Housing) and implementing regulations at 24 CFR part 107; and Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d) (Nondiscrimination in Federally Assisted Programs) and implementing regulations issued at 24 CFR part 1; Section 109 of the Housing and Community Development Act of 1974, as amended, and the regulations issued pursuant thereto (24 CFR 570.601).

DEVELOPER agrees to comply with the requirements of the Age Discrimination Act of 1975 (42 U.S.C. 6101-07) and implementing regulations at 24 CFR part 146; the requirements of section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and implementing regulations at 24 CFR part 8.

2. **EMPLOYMENT AND EQUAL OPPORTUNITY**

DEVELOPER agrees to comply with the requirements of Equal Employment Opportunity, Executive Order 11246, as amended (3CFR 1964-65, Comp., p. 339) (Equal Employment Opportunity) and the implementing regulations issued at 41 CFR chapter 60.

3. **SECTION 3**

DEVELOPER agrees to comply with Section 3 of the Housing and Urban Development Act of 1968, as amended, requiring that to the greatest extent feasible opportunities for training and employment be given to lower-income persons residing within the unit of local government in which the project is located; and that contracts for work in connection with the project be awarded to eligible business concerns which are located in, or owned in substantial part by, persons residing within the unit of local government.

4. **AFFIRMATIVE MARKETING**

As applicable, DEVELOPER agrees to comply with the Affirmative Marketing Plan as adopted by the GOVERNMENT and as approved by the U.S. Department of Housing and Urban Development.

5. **DISADVANTAGED BUSINESS ENTERPRISES**

To the maximum extent possible, DEVELOPER agrees to afford minority- and women-owned business enterprises the opportunity to participate in the performance of this Agreement. As used in this Agreement, the term "minority and female business enterprise" means a business at least fifty-one (51) percent owned and controlled by minority group members or women. For the purpose of this definition, "minority group members" are African-Americans, Spanish-speaking, Spanish surnamed or Spanish-heritage Americans, Asian-Americans, and American Indians.

6. **ENVIRONMENTAL REVIEW**

DEVELOPER agrees to provide property addresses and work specifications to the GOVERNMENT prior to commitment of NSP Funds for purposes of completing environmental review requirements under 24 CFR Part 58. DEVELOPER agrees to comply

with the Advisory Council on Historic Preservation's Rules and Regulations for the Protection of Historic and Cultural Properties (36 CFR, Part 800) pursuant to the National Historic Preservation Act of 1966, The National Environmental Policy Act of 1969, and Executive Order 11593.

**7. CONFLICT OF INTEREST**

DEVELOPER certifies that he is legally entitled to enter into this contract with the Lexington-Fayette Urban County Government, and by holding and performing this contract will not be violating either any conflict of interest statute (KRS 45A.330.45A.340. 45A.990, 164.390), or KRS 11A.040 of the executive branch code of ethics, relating to the employment of former public servants.

**8. LABOR**

DEVELOPER acknowledges that all laborers and mechanics, etc., employed in the construction of any project containing eight (8) or more dwelling units and assisted with NSP funds, whether employed by LEXINGTON HABITAT FOR HUMANITY, contractors, or subcontractors, shall be paid wages complying with the Davis-Bacon Act (40 U.S.C. Section 3141, et seq.). DEVELOPER further agrees to comply with the applicable provisions of the Contract Work Hours and Safety Standards Act (40 U.S.C. Section 327-333), and the applicable provisions of the Fair Labor Standards Act of 1938, as amended (29 U.S.C. et seq.).

**9. LEAD-BASED PAINT**

DEVELOPER agrees to comply with the Lead Based Paint Poisoning Prevention Act (42 U.S.C. 4821-4846), The Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851-4856), and implementing regulations at 24 CFR 35, subparts A, B, J, K, M and R. DEVELOPER is responsible for testing and abatement activities as may be required.

**10. DRUG-FREE WORKPLACE**

DEVELOPER shall administer a policy designed to ensure that the organization is free from the illegal use, possession, or distribution of drugs or alcohol by its employees and beneficiaries.

**ARTICLE IV**

**ADDITIONAL PROVISIONS**

**1. PROPERTY STANDARDS**

For new dwellings, DEVELOPER agrees to comply with the Kentucky Building Code, as applicable. For rehabilitation of existing structures, DEVELOPER agrees to comply at minimum with the International Property Maintenance Code, as amended and approved by the Lexington-Fayette Urban County Council as Ordinance 339-99. DEVELOPER agrees to submit plans and specifications to the GOVERNMENT'S Division of Grants and Special Programs for approval prior to commencement of rehabilitation and construction activities. DEVELOPER agrees to comply with all local and state laws regarding the submission of

plans and specifications to, and approval by, the appropriate Building Official prior to the start of construction.

**2. AUDITS AND INSPECTIONS**

All DEVELOPER records with respect to any matters covered by this Agreement shall be made available to the GOVERNMENT, grantor agency, their designees or the federal government, at any time during normal business hours, as often as the grantor agency deems necessary, to audit, examine, and make excerpts or transcripts of all relevant data. Any deficiencies noted in audit reports must be fully cleared by GOVERNMENT within 30 days after receipt by DEVELOPER. Failure of DEVELOPER to comply with the above audit requirements will constitute a violation of this Agreement and may result in the withholding of the future payments. DEVELOPER hereby agrees to have an annual agency audit conducted in accordance with current GOVERNMENT policy concerning sub-recipient audits and, as applicable, OMB Circular A-133.

**3. ESTABLISHMENT AND MAINTENANCE OF RECORDS**

DEVELOPER agrees to establish and maintain records sufficient to document compliance with the grant requirements of the Neighborhood Stabilization Program. DEVELOPER agrees that officials of the GOVERNMENT, officials of the Kentucky Department for Local Government, officials of the Kentucky Finance and Administration Cabinet, officials of the U.S. Department of Housing and Urban Development, officials of the Comptroller General of the United States, or any of their duly authorized representatives shall have access to any books, documents, papers, and records of DEVELOPER which are directly pertinent to the specific grant program for the purpose of making audit, examination, excerpts, and transcriptions. DEVELOPER further agrees to retain records for five years after the expiration of the period of affordability; and in the event that DEVELOPER discontinues to operate as a legal entity, said records shall be delivered to the GOVERNMENT.

**4. DEVELOPER STAFFING**

The names and roles of DEVELOPER's key personnel (staff or contractors) executing the project are as follows:

Chief Executive: Rachel Childress

Construction Manager: Joe Reckelhoff

Any changes in the key personnel assigned or their general responsibilities under this project are subject to the prior approval of the GOVERNMENT.

5. **PERFORMANCE MONITORING**

The GOVERNMENT will monitor the performance of the DEVELOPER based on goals and performance standards as stated above along with all other applicable federal, state and local laws, regulations, and policies governing the funds provided under this contract. Substandard performance as determined by the GOVERNMENT will constitute noncompliance with this Agreement. If corrective action is not taken by the DEVELOPER within a reasonable period of time after being notified by the GOVERNMENT, contract suspension or termination procedures will be initiated. DEVELOPER agrees to provide HUD, the HUD Office of Inspector General, the General Accounting Office, the Kentucky Department for Local Government, the GOVERNMENT, or the GOVERNMENT's internal auditor(s) access to all records related to performance of activities in this agreement.

6. **REPORTS**

DEVELOPER agrees to provide any reports and information as required by the GOVERNMENT and the Kentucky Department for Local Government.

7. **ENFORCEMENT OF THE AGREEMENT**

This agreement, in accordance with 24 CFR 85.43 can be terminated if DEVELOPER fails to comply with any term of the agreement. This agreement may be terminated for convenience in accordance with 24 CFR 85.44 upon written notice by the participating jurisdiction. Failure to perform

**ARTICLE V**

**ADDITIONAL PROVISIONS**

1. No right, benefit, or advantage inuring to DEVELOPER and no burden imposed on DEVELOPER hereunder may be assigned or otherwise transferred without the prior written approval of the GOVERNMENT.
2. This agreement, or any part hereof, may be amended from time to time hereafter only in writing executed by the GOVERNMENT and DEVELOPER.
3. DEVELOPER agrees to be responsible (in the manner and to the extent permitted by law) for all lawfully proven claims, losses, actions, and expenses (including legal expenses), including claims against the GOVERNMENT, arising from the performance of the terms of this agreement in accordance with the requirements of the NSP Program but excepting any such claims, losses, causes of action and expenses arising as a result of fault on the part of the GOVERNMENT, its officers, agents and employees. DEVELOPER is not responsible for negligent acts of the GOVERNMENT, its officers, agents, and employees.
4. All notices hereunder shall be sufficiently given and shall be deemed given when delivered or mailed by certified mail, postage prepaid, return receipt requested, to the parties at their respective addresses as first set out herein.

IN WITNESS WHEREOF, the parties have executed this Agreement at Lexington, Kentucky the day and year first above written.

LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT

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

ATTEST:

\_\_\_\_\_  
Clerk of Urban County Council

LEXINGTON HABITAT FOR HUMANITY

BY: \_\_\_\_\_  
Rachel Smith Childress, Executive Director

