

Prepared by:

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### DECLARATION OF RESTRICTIVE COVENANTS

This **DECLARATION OF COVENANTS AND RESTRICTIONS** ("Declaration") is made this \_\_\_\_\_ day of \_\_\_\_\_, 2023, by **DAVIS PARK STATION, LLLP**, a Kentucky limited liability limited partnership, whose principal address is 159 Old Georgetown Street, Lexington, Kentucky 40508 (herein "Borrower"), **LEXINGTON FAYETTE URBAN COUNTY GOVERNMENT**, an urban county government of the Commonwealth of Kentucky pursuant to Chapter 67A of the Kentucky Revised Statutes, 200 East Main Street, Lexington, Fayette County, Kentucky 40507 ("Government"), and **LEXINGTON COMMUNITY LAND TRUST, INC.**, a Kentucky non-profit corporation, whose address is P. O. Box 171, Lexington, Kentucky 40588 ("Owner"). Owner is the holder of a fee simple interest, and Borrower is the holder of a leasehold interest, in that certain real estate located in Fayette County, Kentucky, more particularly described in **Exhibit A**, attached hereto, and incorporated herein by reference (the "Property"), by virtue of that certain Ground Lease Agreement dated as of \_\_\_\_\_, by and between Owner and Borrower (the "Ground Lease"). This Ground Lease is further evidenced by that certain Memorandum of Lease dated as of \_\_\_\_\_, by and between **LEXINGTON COMMUNITY LAND TRUST, INC.**, a Kentucky non-profit corporation, as landlord, and **DAVIS PARK STATION LLLP**, a Kentucky limited liability limited partnership, as tenant, and of record in Deed Book \_\_\_\_\_, Page \_\_\_\_\_ in the Office of the Clerk of Fayette County, Kentucky.

#### WITNESSETH:

**WHEREAS**, the Owner has retained a fee simple interest in certain real property known and designated as 757 De Roode Street, Lexington (Fayette County) Kentucky 40508 and more particularly described in Exhibit A, which is attached hereto and incorporated herein by reference ("Site"); and the Borrower has a leasehold interest on the Site, upon which the Borrower intends to construct 73 apartments, known as Davis Park Station, with the Owner's consent;

**WHEREAS**, the Government, through its HOME-ARP Program, works to increase the supply of affordable, standard residential rental units to low and very low income households by providing loans to property owners; and

**WHEREAS**, said Government, through its HOME-ARP Program, has loaned funds to the Borrower in the amount of \$950,000.00 to Borrower for the construction of a 5-unit dwelling units in Davis Park Station for very low-income households;

**WHEREAS**, Borrower has agreed that five (5) units are HOME-ARP-assisted and that only these five (5) units are subject to the herein described affordability restrictions;

**WHEREAS**, said Government program is being conducted pursuant to the HOME Investment Partnerships Program of the United States Department of Housing and Urban Development ("HUD") which requires, as a condition of receipt of funds thereunder, that Restrictive Covenants, running with the land in conformance with the eligibility and affordability provisions of the program, be declared and filed of record as to each property developed with program funds; and

**WHEREAS**, the Borrower has borrowed the sum of \$950,000.00 pursuant to the Government's HOME-ARP Program and HUD's HOME Investment Partnerships Program for the construction of 5 affordable rental units on the herein described Site, and in consideration of such

loan, Owner intends to establish covenants, conditions and restrictions running with the land to comply with the requirements of the HOME-ARP program;

**WHEREAS**, the Government holds a leasehold mortgage lien interest in the site and is required by HUD regulations relating to the HOME Investment Partnerships Program to require the establishment of covenants, conditions and restrictions running with the land and to enforce such covenants, conditions and restrictions;

**NOW, THEREFORE**, the Owner and Borrower, for their assigns, subsequent purchasers, lessees and successors in interest hereby jointly declare that the Site is and shall be held, transferred, sold, conveyed and occupied, subject to the conditions, restrictions and reservations hereinafter set out, which are hereby established and declared to be covenants running with the land:

**1. RESTRICTED USES:**

(a) The Site shall be maintained solely as residential property. Owner and Borrower, and each of their respective assigns, subsequent purchasers, lessees and successors in interest, jointly agree that the five (5) HOME-ARP-assisted units shall be rented to low income and very low households. Low income households are those households with gross incomes at or below sixty percent (60%) of the median income for the community. Very low income households are those households with adjusted gross incomes at or below fifty percent (50%) of the median income for the community. During the duration of these covenants, there is no minimum of the number of the HOME-assisted units that shall be rented to very low income households except as provided elsewhere herein.

(b) Owner and Borrower, and each of their respective assigns, subsequent purchasers, lessees and successors in interest shall charge HOME rents in HOME-ARP units as established from time to time by HUD pursuant to any regulations promulgated by HUD or the Government. The rents so charged must include utility costs. The maximum allowable HOME rent must be reduced by a utility allowance approved by Government if tenant is required to pay separately for utilities. Utility allowances approved by Government may vary as periodic adjustments are made. Should HUD revise these or other rent guidelines set out herein so as to permit Owner and Borrower and their assigns, subsequent purchasers, lessees and successors in interest to adjust the rent charged, Owner and Borrower and their assigns, subsequent purchasers, lessees and successors in interest must obtain the prior approval of the Government and provide tenants with no less than thirty (30) days written notice before adjustments are implemented.

(c) The family size and the gross income for all tenants must be determined at the time of initial occupancy and annually for the duration of these covenants. Owner and Borrower, and each of their respective assigns, subsequent purchasers, lessees and successors in interest shall obtain and verify income and family size information from each tenant upon initial rent up and annually during the duration of these covenants. Owner and Borrower, and each of their respective assigns, subsequent purchasers, lessees and successors in interest shall provide information on family size, gross income and rent charged for all tenants to the Government within sixty (60) days after the initial rent up and the annual review date. Owner and Borrower, and each of their respective assigns, subsequent purchasers, lessees and successors in interest shall obtain any necessary releases from tenant to allow Government to independently verify the information provided.

(d) The Owner and Borrower, and each of their respective assigns, subsequent purchasers, lessees and successors in interest shall, on an annual basis, for the duration of these covenants, review the income, family size and exclusions of all tenants and determine if any are over-income. An over-income tenant is a household with a gross income exceeding eighty percent (80%) of the median for the community. Owner and Borrower, and each of their respective assigns, subsequent purchasers, lessees and successors in interest shall not evict over-income tenants based on income. Owner and Borrower, and each of their respective assigns, subsequent purchasers, lessees and successors in interest shall increase the rent of the site to not less than thirty percent (30%) of the households adjusted gross income, except tenants of HOME-assisted units that have been allocated low-income housing tax credits by a housing credit agency pursuant to Section 42 of the Internal Revenue Code of 1986 (26 U.S.C. 42) must pay rent governed by Section 42. Units vacated by an over-income tenant must be rented to an income-eligible tenant for the duration of these covenants.

(e) Should the adjusted gross income of a very low income tenant renting a unit at the low HOME rate increase to greater than fifty percent (50%) of the median for the community but less than eighty percent (80%) of the median for the community during the term of the tenancy and for the duration of these covenants, the Owner and Borrower, and each of their respective assigns, subsequent purchasers, lessees and successors in interest may increase the rent for such tenant up to the high HOME rate for the duration of the tenancy. Owner and Borrower, and each of their respective assigns, subsequent purchasers, lessees and successors in interest shall not evict such a tenant on the basis of the increase of the adjusted gross income. The next vacancy shall be rented to a very low income

tenant whose income is at or below fifty percent (50%) of the area median income at a rent no higher than the established low HOME rent.

(f) No sale of the site shall be completed without giving notice to the Government in writing at least ten (10) days prior to the closing.

**2. DURATION**

The covenants and restrictions herein established shall be a covenant running with the land and shall be effective from the date of project completion, established as the date the HUD's Integrated Disbursement and Information System (IDIS) accepts and records the Completion report showing that ten units assisted by this loan have been rented to low-income and very low-income households, for a period of fifteen (15) years and shall be binding upon the Owner, Borrower, and each their respective assigns, subsequent purchasers, lessees and successors in interest and all parties and persons claiming under them during the term hereof.

It is intended and agreed that the Government and its successors and assigns and the United States of America shall be deemed a beneficiary of the covenant provided, both for and in their or its own right and also for the purpose of protecting the interest of the community and other parties, public or private, in whose favor or for whose benefits such agreements or covenants have been provided. Said covenant shall run in favor of the Government and the United States for the duration of these covenants. The Government and the United States shall have the right, in the event of any breach of any such covenant, to exercise all the rights and remedies, and to maintain any actions or suits at law or in equity or other proper proceedings to enforce the curing of such breach of agreement or covenant, or to collect the full amount of any disbursement made to Borrower, to which it or any other beneficiaries of such agreement or covenant may be entitled.

**3. PURCHASER AT FORECLOSURE:**

During the term hereof, should any mortgage or deed of trust be foreclosed on the Site, then the title acquired by such foreclosure, and the person or persons who thereby and thereafter become the owner or owners of such property, shall be subject to and bound by all the restrictions, conditions and covenants set forth in this instrument. In the event of foreclosure by, acceptance of deed-in-lieu of foreclosure by, or assignment by any Superior Mortgage(s) to the U.S. Department of Housing and Urban Development (HUD), all restrictions relating to affordable housing programs provided for in this Deed and Declaration of Restrictive Covenants or provided for in any other document related to this transaction shall automatically and permanently terminate and shall have no further force to or effect on subsequent owners or purchasers of the property.

**4. FUTURE DEEDS:**

Owner, its assigns, subsequent purchasers, lessees and successors in interest agree that all of the covenants, conditions and restrictions contained in this deed shall be inserted in full in all future deeds related to the Site during the term hereof.

**5. SEVERABILITY OF PROVISIONS:**

Invalidation of any one of these provisions by judgment or Court order shall not affect any other provisions which shall remain in effect.

**IN WITNESS WHEREOF**, Owner and Borrower, have executed this Deed and Declaration of Restrictive Covenants effective as of the day and year first above written.

**BORROWER:**

**DAVIS PARK STATION, LLLP,**

a Kentucky limited liability limited partnership

BY: **DAVIS PARK STATION GP, LLC,**

a Kentucky limited liability company, its general partner

BY: **AU ASSOCIATES, INC.,**

a Kentucky corporation, its member

BY: \_\_\_\_\_

Johan Graham, President

COMMONWEALTH OF KENTUCKY )

) SCT

COUNTY OF FAYETTE )

The foregoing instrument was subscribed, sworn to and acknowledged before me this \_\_\_\_\_ day of October, 2023, by Johan Graham, as **President** of Davis Park Station, LLLP, a Kentucky limited liability limited partnership; as General Partner of Davis Park Station GP, LLC, a Kentucky limited liability company; and as **Member** of AU Associates, Inc., a Kentucky corporation, for and on behalf of said corporation.

\_\_\_\_\_

Notary Public, State At Large, Kentucky

My Commission Expires: \_\_\_\_\_

Commission Number: \_\_\_\_\_

**OWNER:**                    **LEXINGTON COMMUNITY LAND TRUST, INC.,**  
a Kentucky non-profit corporation

BY: \_\_\_\_\_

Byron C. Mitchell, President

COMMONWEALTH OF KENTUCKY )

) SCT

COUNTY OF FAYETTE

The foregoing instrument was subscribed, sworn to and acknowledged before me this \_\_\_\_\_ day of October, 2023, by Byron C. Mitchell, as **President of the Board** of Lexington Community Land Trust, Inc., a Kentucky non-profit corporation, for and on behalf of said corporation.

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Notary Public, State At Large, Kentucky

My Commission Expires: \_\_\_\_\_

Commission Number: \_\_\_\_\_

EXHIBIT A