

**DECLARATION OF RESTRICTIVE COVENANTS**

**THIS DECLARATION OF RESTRICTIVE COVENANTS** is made this 30th day of March, 2017, by and between **PARKWAY MANOR 2015, LLC**, a Kentucky limited liability limited partnership, 431 Rogers Road, Lexington, Fayette County, Kentucky 40505 ("Declarant/Owner"), owner of certain real property in Lexington, Fayette County and the **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").

**WITNESSETH:**

**WHEREAS**, the Declarant/Owner is the owner of certain real property known and designated as 431 Rogers Road, Lexington (Fayette County) Kentucky and more particularly described in Exhibit A which is attached hereto and incorporated herein by reference ("site"); and

**WHEREAS**, the Government, through its HOME 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 Program, has loaned funds in the amount of \$410,000 to Declarant/Owner for the rehabilitation of a 180-unit apartment complex for low-income households;

**WHEREAS**, Government and Declarant/Owner have agreed that eight units are HOME-assisted and that only these eight (8) 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 Declarant/Owner has borrowed the sum of \$410,000.00 pursuant to the Government's HOME Program and HUD's HOME Investment Partnerships Program for the rehabilitation of 180 affordable rental units on the herein described site, and in consideration of such loan intends to establish covenants, conditions and restrictions running with the land to comply with the requirements of the HOME program;

**WHEREAS**, the Government holds a 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 Declarant/Owner, for its assigns, subsequent purchasers, lessees and successors in interest hereby declares 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. Declarant/Owner and its assigns, subsequent purchasers, lessees and successors in interest agree that the eight (8) HOME-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, a minimum of two of the HOME-assisted units shall be rented to very low income households except as provided elsewhere herein.

(b) Declarant/Owner and its assigns, subsequent purchasers, lessees and successors in interest shall charge rents no higher than low HOME and high HOME rents 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 Declarant/Owner and its assigns, subsequent purchasers, lessees and successors in interest to adjust the rent charged, Declarant/Owner and its 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. Declarant/Owner and its

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. Declarant/Owner and its 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. Declarant/Owner and its 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 Declarant/Owner and its 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. Declarant/Owner and its assigns, subsequent purchasers, lessees and successors in interest shall not evict over-income tenants based on income. Declarant/Owner and its 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 Declarant/Owner and its 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. Declarant/Owner and its 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 Cash Management System accepts and records the Completion report showing that nine units assisted by this loan have been rented to low-income and very low-income households, for a period of twenty (20) years and shall be binding upon the Declarant/Owner, its 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 Declarant/Owner, 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 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:**

Declarant/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 of 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.

6. **HUD RIDER.** The HUD Rider to Restrictive Covenants is attached as Exhibit B and incorporated herein as referenced.

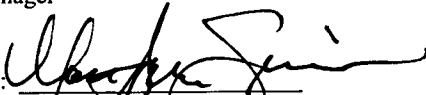
IN WITNESS WHEREOF, Declarant/Owner, and Government have executed this Deed and Declaration of Restrictive Covenants effective as of the day and year first above written.

**OWNER:**

**PARKWAY MANOR 2015, LLC**, a Kentucky limited liability company

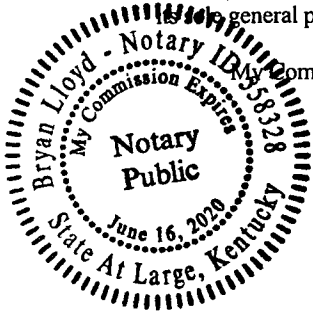
By: Parkway Manor MM, LLC, a Kentucky limited liability company, its sole general partner

By: The Ezekiel Foundation, Inc., a Kentucky nonprofit corporation, its manager

By:   
Mary Anne Simmons  
Board President

State of Kentucky)  
  )SCT  
County of Fayette)

The foregoing instrument was subscribed, sworn to and acknowledged before me this the 27<sup>th</sup> day of March, 2017, by Mary Anne Simmons Manager of Parkway Manor MM, LLC, by and on behalf of Parkway Manor 2015, LLC, a Kentucky limited liability corporation, as sole general partner.



Commission Expires: 06/16/2020

  
NOTARY PUBLIC, STATE AT LARGE, KENTUCKY

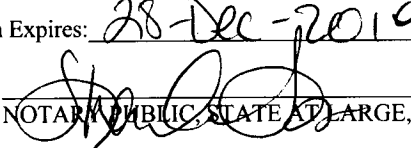
LEXINGTON-FAYETTE URBAN  
COUNTY GOVERNMENT

BY:   
JIM GRAY, MAYOR

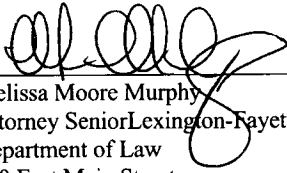
State of Kentucky)  
)SCT  
County of Fayette)

The foregoing instrument was subscribed, sworn to, and acknowledged before me this the  
28<sup>th</sup> day of March, 2017, by Jim Gray, as Mayor of the Lexington-Fayette  
Urban County Government.

My Commission Expires: 28-Dec-2019

  
NOTARY PUBLIC, STATE AT LARGE, KENTUCKY #547793

Prepared by:



Melissa Moore Murphy  
Attorney Senior Lexington-Fayette Urban County Government  
Department of Law  
200 East Main Street  
11th Floor  
Lexington, Kentucky 40507

EXHIBIT A  
LEGAL DESCRIPTION

Located in Fayette County, Kentucky, to-wit:

Being all of Tract 3, Block A, Tract 4, Block A, and Lot 2, Block B all of which containing 10.045 acres as depicted on the final record plat of Parkway Plaza as shown by plat of record in Plat Book 25, Page 50, now Plat Cabinet A, Slide 408, in the Fayette County Clerk's Office.

Said property is also described as follows:

Lot 2- Block B: All that tract or parcel of land situated in the west side of Rogers Road near Paris Pike in Lexington, Fayette County, Kentucky and more fully described and bounded as follows, to-wit:

Beginning at a point in the west property line of Rogers Road, said point being 307.72 feet north of the division line between Tract 1 and Lot 1 of Parkway Plaza as shown by Plat of Record in Plat Book 25 at Page 50 in the Fayette County Court Clerk's Office; thence S 58° 35' W 119.68 feet to a point in the line of Thoroughbred Acres; thence with the line of Thoroughbred Acres N 29° 33' W 344.47 feet to a point in the line of Mary Todd Elementary School; thence with Mary Todd Elementary School for three calls N 58° 25' E 99.93 feet, N 30° 30' W 193.70 feet and N 30° 42' W 256.17 feet to the line of Parkway Plaza, Inc.; thence with Parkway Plaza, Inc. N 62° 15' E 150.36 feet to the aforesaid west property line of Rogers Road; thence with the west property line of Rogers Road S 30° 31' E 192.43 feet; thence continuing with the west property line of Rogers Road along a curve to the right having a radius of 589.63 feet for a chord measurement of S 18° 12' E 251.55 feet; thence again continuing with the west property line of Rogers Road along a curve to the left having a radius of 885.16 feet for a chord measurement of S 15° 33' E 307.41 feet; thence continuing with the west property line of Rogers Road S 25° 53' E 51.55 feet to the beginning and containing 2.5868 acres and being all of Lot 2, Block B of Parkway Plaza as shown by Plat of Record in Plat Book 2 at Page 50 in the Fayette County Court Clerk's Office.

Tract 3-Block A: All that tract or parcel of land situated in the east side of Rogers Road near Paris Pike in Lexington, Fayette County, Kentucky and more fully described and bounded as follows, to-wit:

Beginning at point in the east property line of Rogers Road at the division line between Tract 2 and Tract 3 of the Final Record Plat of Parkway Plaza as shown by plat of record in Plat Book 25 at Page 50 in the Fayette County Court Clerk's Office; thence along the east property line of Rogers Road with a curve to the right whose radius is 825.16 feet for a chord measurement of N 15° 53' W 286.57 feet; thence continuing along the east property line of Rogers Road along a curve to the left whose radius is 649.63 feet for a distance of 81.52 feet to the line of Tract 4; thence with Tract 4, N 59° 28' E 426.76 feet to a point in the line of Robinson; thence with Robinson for two calls, S 30° 37' E 182.40 feet and S 30° 32' E 175.38 feet to the aforesaid line of Tract 2; thence with Tract 2, S 59° 28' W 528.73 feet to the beginning and containing 4.0036 acres and being all of Tract 3, Block A of the final record Plat of Parkway Plaza as shown by Plat of Record in Plat Book 25 at Page 50 in the Fayette County Court Clerk's Office.

## EXHIBIT B

### HUD RIDER

(a) In the event of any conflict between any provision contained elsewhere in the Restrictive Covenants and any provision contained in this Rider, the provision contained in this Rider shall govern and be controlling in all respects as set forth more fully herein.

(b) The following terms shall have the following definitions:

"Code" means the Internal Revenue Code of 1986, as amended.

"HUD" means the United States Department of Housing and Urban Development.

"HUD Regulatory Agreement" means the Regulatory Agreement between Borrower and HUD with respect to the Project, as the same may be supplemented, amended or modified from time to time.

"Lender" means Red Mortgage Capital, LLC, its successors and assigns.

"Mortgage Loan" means the mortgage loan made by Lender to the Borrower pursuant to the Mortgage Loan Documents with respect to the Project.

"Mortgage Loan Documents" means the Security Instrument, the HUD Regulatory Agreement and all other documents required by HUD or Lender in connection with the Mortgage Loan.

"National Housing Act" means the National Housing Act of 1934, as amended.

"Program Obligations" has the meaning set forth in the Security Instrument.

"Residual Receipts" has the meaning specified in the HUD Regulatory Agreement.

"Security Instrument" means the mortgage or deed of trust from Borrower in favor of Lender, as the same may be supplemented, amended or modified.

"Surplus Cash" has the meaning specified in the HUD Regulatory Agreement.

(c) Notwithstanding anything in the Restrictive Covenants to the contrary, to the extent applicable, the provisions hereof are expressly subordinate to (i) the Mortgage Loan Documents, including without limitation, the Security Instrument, and (ii) Program Obligations (the Mortgage Loan Documents and Program Obligations are collectively referred to herein as the "HUD Requirements"). Borrower covenants that it will not take or permit any action that would result in a violation of the Code, HUD Requirements or Restrictive Covenants. In the event of any conflict between the provisions of the Restrictive Covenants and the provisions of the HUD Requirements, HUD shall be and remains entitled to enforce the HUD Requirements. Notwithstanding the foregoing, nothing herein limits the Agency's ability to enforce the terms of the Restrictive Covenants, provided such terms do not conflict with statutory provisions of the National Housing Act or the regulations related thereto. The Borrower represents and warrants that to the best of Borrower's knowledge the Restrictive Covenants impose no terms or requirements that conflict with the National Housing Act and related regulations.

(d) In the event of foreclosure (or deed in lieu of foreclosure), the Restrictive Covenants (including without limitation, any and all land use covenants and/or restrictions contained herein) shall automatically terminate.

(e) Borrower and the Agency acknowledge that Borrower's failure to comply with the covenants provided in the Restrictive Covenants does not and shall not serve as a basis for default under the HUD Requirements, unless a default also arises under the HUD Requirements.

(f) Except for the Agency's reporting requirement, in enforcing the Restrictive Covenants the Agency will not file any claim against the Project, the Mortgage Loan proceeds, any reserve or deposit required by HUD in connection with the Security Instrument or HUD Regulatory Agreement, or the rents or other income from the property other than a claim against:

Available surplus cash, if the Borrower is a for-profit entity;

Available distributions of surplus cash and residual receipts authorized for release by HUD, if the Borrower is a limited distribution entity; or

Available residual receipts authorized by HUD, if the Borrower is a non-profit entity, or

A HUD-approved collateral assignment of any HAP contract.

(g) For so long as the Mortgage Loan is outstanding, Borrower and Agency shall not further amend the Restrictive Covenants, with the exception of clerical errors or administrative correction of non-substantive matters, without HUD's prior written consent.

(h) Subject to the HUD Regulatory Agreement, the Agency may require the Borrower to indemnify and hold the Agency harmless from all loss, cost, damage and expense arising from any claim or proceeding instituted against Agency relating to the subordination and covenants set forth in the Restrictive Covenants, provided, however, that Borrower's obligation to indemnify and hold the Agency harmless shall be limited to available surplus cash and/or residual receipts of the Borrower.