

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

THIS FIRST AMENDMENT TO LOAN AGREEMENT ("First Amendment") is made and entered into this 14th day of November, 2023 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 (hereinafter referred to as "LFUCG") through its **OFFICE OF AFFORDABLE HOUSING**, and **330 NEWTOWN, LLC**, a Kentucky limited liability company, whose principal address is 1390 Olivia Lane, Lexington, Kentucky 40511 (hereinafter referred to as the "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 (the "Board") oversees and manages the administration of the Fund; and

WHEREAS, LFUCG and the Borrower entered into that certain Loan Agreement ("Agreement") dated August 12, 2021, (attached hereto and incorporated herein as **Exhibit A**), whereby the parties agreed to Affordable Housing Loan Program terms to fund a construction project known as 330 Newtown Apartments located at the real property known as 330 Newtown Pike, Lexington, Kentucky 40508 (herein referred to as the "Project" and the "Property" respectively); and

WHEREAS, the Borrower has requested additional funding in the amount of **ONE MILLION DOLLARS AND 00/100 CENTS (\$1,000,000.00)** to complete the Project; and

WHEREAS, the Board has agreed to provide this funding, as evidenced by the Commitment Letter dated August 18, 2023 (attached hereto and incorporated herein as **Exhibit B**), to bring the loan total for the Project to **ONE MILLION FIVE HUNDRED THOUSAND DOLLARS AND 00/100 CENTS (\$1,500,000.00)**; and

WHEREAS, in accordance with Section 7.8, LFUCG and Borrower desire to memorialize a modification to the Agreement to reflect the new understanding between the parties as set forth in this First Amendment below.

NOW, THEREFORE, the parties agree to the following modifications to the Agreement:

1. Section 1.1 of the Agreement, titled "LFUCG's Commitment," shall be amended as follows:

Pursuant to the Application and this Agreement, LFUCG will make available an amount not to exceed **ONE MILLION FIVE HUNDRED THOUSAND DOLLARS AND 00/100 CENTS (\$1,500,000.00)** (“AHF Loan”) to Borrower from the Affordable Housing Fund. Affordable Housing Funds will be disbursed by LFUCG to Borrower in accordance with the requirements set forth in this Agreement and in the Commitment, conditioned upon Borrower’s continued satisfactory performance under the terms of this Agreement. The AHF Loan will be evidenced by one or more promissory notes in form and substance satisfactory to LFUCG payable to LFUCG and signed by Borrower. The AHF Loan shall be repaid according to the terms and conditions set forth in (i) the First Amended and Restated Deferred Promissory Note, (ii) First Amended and Restated Repayable Promissory Note, and (iii) Repayable Promissory Note (Bridge) all executed on November 6, 2023 (collectively herein “Notes”) (attached hereto and incorporated herein as **Exhibit C**). Principal and interest (if any) of the AHF Loan shall be amortized in equal, consecutive installments of principal, unless the Notes specify otherwise. Accrued but unpaid interest (if any) shall continue to accrue until principal and interest have been paid in full. All unpaid principal and interest shall be due and payable by Mortgagor on the respective **Maturity Dates**, more particularly described in the Notes attached and incorporated herein on **Exhibit C**, in accordance with the terms and conditions set forth in the Notes. In the event of any inconsistency between the Application and this Agreement, this Agreement will control. The AHF Loan will be expended only for the purpose of construction, renovation and/or rehabilitation on the Property (defined below) described in the mortgage(s) executed pursuant to Section 1.2 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.

2. In the event of a conflict between the terms of this First Amendment and the terms of the Agreement, this First Amendment shall control. All other terms of the Agreement shall remain unchanged and in full force and effect.

WITNESS the signatures of the parties hereto as of the date and year first above written.

**THE REMAINDER OF THIS PAGE LEFT INTENTIONALLY BLANK
SIGNATURE PAGES TO FOLLOW**

EXHIBIT A

August 12, 2021 Loan Agreement

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

THIS LOAN AGREEMENT ("Agreement") is made and entered into this 12 day of August 2021 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 (hereinafter referred to as "LFUCG") through its **OFFICE OF AFFORDABLE HOUSING**, and **330 NEWTOWN, LLC**, a Kentucky limited liability company, whose principal address is 1390 Olivia Lane, Lexington, Ky., 40511 (hereinafter referred to as the "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 17, 2021 (hereinafter referred to as 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 (hereinafter referred to as 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 the terms of its Commitment Letter, dated July 2, 2021 (hereinafter referred to as the "Commitment") attached hereto and incorporated herein as Exhibit B; and

WHEREAS, the project for which Borrower has been approved includes new construction activities on property.

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

Article 1 - Commitment

1.1 LFUCG's COMMITMENT. Pursuant to the Application and this Agreement, LFUCG will make available an amount not to exceed **FIVE HUNDRED THOUSAND DOLLARS (\$500,000.00)** ("AHF Loan") 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 in the Commitment, conditioned upon Borrower's continued satisfactory performance under the terms of this Agreement. The Loan will be made available in the form of a twenty-year deferred loan and a twenty-year surplus cash loan, which shall accrue interest at the rate of zero percent (0%) per annum. The Loan will be evidenced by one or more promissory notes ("Notes") in form and substance satisfactory to LFUCG payable to LFUCG and signed by Borrower. Principal and interest (if any) of the Loan shall be amortized in equal, consecutive installments of principal and accrued but unpaid interest, commencing as set forth in the Notes and continuing until principal and interest have been paid in full. All unpaid principal and accrued interest shall be due September 1, 2041 ("Maturity Date"). In the event of any inconsistency between the Application

and this Agreement, this Agreement will control. The Loan will be expended only for the purpose of new construction on the Property (defined below) described in the mortgage(s) executed pursuant to Section 1.2 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 MORTGAGE; OTHER SECURITY. The performance of the Borrower's obligations under this Agreement shall be secured by a mortgage lien, or mortgage liens, in favor of LFUCG in the total principal amount of the Loan in form and substance satisfactory to LFUCG. In the sole discretion of LFUCG, the performance of Borrower's obligations under this Agreement may also be secured by an Assignment of Leases and Rents, Security Agreement, UCC-1 Financing Statement, Fixture Filing, and such other documents as LFUCG may in its sole discretion require (collectively, the mortgage(s) and the other security documents described in this subsection are referred to as the "Security Documents," the terms and conditions of which are incorporated herein).

1.3 ELIGIBLE ACTIVITY. The Loan has been made available based upon the information provided by Borrower in the Application. The sole purpose of this allocation is to construct 208 affordable housing units known as 330 Newtown Pike on the property located at 330 Newtown Pike, Lexington, Ky., 40508 ("Project" or "Property").

1.4 SITES. In the event the Project includes new 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 for that certain mortgage made in favor of Kentucky Housing Corporation for a loan in the amount of \$25,000,000 and assigned to and for the benefit of HOPE of Kentucky, LLC, which will be subsequently assigned to and for the benefit of Cedar Rapids Bank and Trust Company, securing a permanent loan in the amount of \$22,855,003.00 ("First Mortgage Holder"), that certain Swap Mortgage, Security Agreement, Assignment of Leases and Rents and Fixture Financing Statement dated as of even date herewith, by Mortgagor in favor of Cedar Rapids Bank and Trust Company a(the "Second Mortgage"), and that certain mortgage made in favor of Kentucky Housing Corporation in the amount of \$1,500,000.00 ("Third Mortgage Holder"), (together with the First Mortgage Holder and the Second Mortgage the "Permitted Encumbrances"), and clear of 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. The AHF Loan shall be in all respects subordinate to the Permitted Encumbrances. The AHF Loan is subject to the terms and conditions of the Subordination and Standstill Agreement dated as of even date herewith, by and among Borrower, LFUCG and Cedar Rapids Bank and Trust Company. In addition, PNC Bank, National Association, as the equity bridge lender holds a first priority security interest in limited partner capital contributions and partnership interests.

(b) All funds disbursed hereunder will be used only for acquisition or development 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 acquisition or construction 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 LFUCG Funds 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 Notes, 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 Loan 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;
- (c) an executed LFUCG Construction Start-Up Form;
- (d) proof of costs in adherence to LFUCG's requirements for draws and inspections for the Program activity under this Agreement (construction draws);
- (e) execution of the Notes, recordation of a valid mortgage lien against the Property securing repayment of the Loan, recordation of a Declaration of Covenants and Restrictions, 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 with the Loan proceeds, 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 40% of the Project's developer fee may be disbursed at the initial draw;
- and
- (b) the remaining 60% may be drawn based upon the percentage of construction completion.

Developer fee shall be used to cover all funding shortfalls before additional funds can be requested. LFUCG will continue to hold the ten percent (10%) retainage until all project completion and closeout documents are received.

3.3 **AFFORDABILITY PERIOD.** The Property must 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 the date the Loan proceeds are first expended on the Project. Affordability must be ensured by recorded deed restrictions for all properties receiving Affordable Housing Funds. Only LFUCG, or its successors and assigns, has the right to release the deed restrictions prior to the date on which the restrictions expire.

3.4 **SECTION 8 RENTAL ASSISTANCE.** If Loan proceeds are used to construct 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 each Unit of the Project and any improvements to be constructed thereon in an amount of not less than the Affordable Housing Funds made available to Borrower for each Unit of 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 FIVE THOUSAND DOLLARS (\$5,000.00).

3.7 REPAYMENT. In the event that repayment of the Affordable Housing Funds is required, Borrower agrees to repay funds to the Fund through LFUCG on a timely basis.

3.8 LEGAL MATTERS. All legal matters incident to the contemplated transaction will be concluded to the satisfaction of LFUCG's Department of Law.

3.9 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 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 Affordable Housing 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 development 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 Affordable Housing Funds borrowed or advanced pursuant hereto to be applied entirely and exclusively for the acquisition or development, 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 Affordable Housing 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 Affordable Housing Funds and/or require repayment of Affordable Housing Funds already disbursed or the amount including and up to an amount which has not been forgiven 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 Affordable Housing Funds have been awarded;

(b) Borrower violates any of the terms of this Agreement, the Affordable Housing Program ordinances, the Notes evidencing the Affordable Housing Funds under this Agreement, the Declaration of Covenants and Restrictions, or any other Security Document entered into pursuant to this Agreement;

(c) Borrower does not submit reports or submits inadequate reports pursuant to Article 6 below;

(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;

(e) Borrower is unable to draw all Affordable Housing Funds, as set forth in the closing documents, in no instance later than twenty-four (24) months from the date of this Agreement;

(f) Borrower is unable to document its participation in the project throughout the compliance period as required of nonprofit material participation per IRC Section 42;

(g) 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

(h) 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 Notes remains unpaid for more than ten (10) days after the due date thereof;

(b) Any representation or warranty made herein, or in any certificate, report or statement furnished to LFUCG in connection the Affordable Housing Funds or the Notes proves to have been untrue or misleading in any material respect when made;

(c) Failure of Borrower to perform any of the provisions of the Notes, Mortgage, this Agreement or any other document executed in connection with this Agreement;

(d) Borrowers violation of the affordability requirements, whether evidenced by recorded deed restriction or owner certification of continued compliance;

(e) The entry of any lien or encumbrance against the Project site(s), (other than liens or encumbrances evidencing loan proceeds for the Permitted Encumbrances), 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;

(f) Borrower fails to prosecute Project site development work with diligence so that construction thereof will be completed in a timely manner;

(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;

(h) Borrower discontinues the construction work and abandonment continues for a period of ten (10) days;

(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;

(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 un-dismissed for fifteen (15) days, or result in adjudication of

bankruptcy or insolvency;

(k) Borrower is found to have violated any law or regulation, whether federal or state; or,

(l) A foreclosure proceeding is filed against the Property.

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 in writing, 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 a material misrepresentation in any document furnished to LFUCG in connection with the Borrower's Application for Funds, 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 Notes 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;

(b) Exercise its rights under the Notes or any other Security Document;

(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;

(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;

(e) Have discharged of record any mechanic's and materialmen's lien or other lien against the Project site(s);

(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.

(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.

Borrower's investor members shall have the right, but not the obligation, to cure any default by Borrower under the loan documents, and LFUCG agrees to accept any such cure tendered by Borrower's investor members within any applicable grace period or cure period available to Borrower.

5.6 PAYMENTS DUE TO DEFAULT. Borrower shall 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 Notes, 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.

5.7 TRANSFERS OF INTERESTS. Notwithstanding anything to the contrary herein, any transfers of a member's interests in the Borrower (including the removal of a member) are expressly permitted and shall not constitute a default hereunder.

ARTICLE 6 – RECORDS; REPORTING

6.1 RECORDS; ACCESS. Borrower agrees to keep adequate records pertaining to the Project and the uses of Affordable Housing 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 Affordable Housing 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 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.

6.5 PROGRAM COMPLIANCE. Borrower agrees to comply with the LFUCG Affordable Housing Program guidelines and criteria relating to the 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, First Mortgage Holder, Cedar Rapids Bank and Trust Company, Third Mortgage Holder, 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: 330 Newtown, LLC
c/o Winterwood Development, LLC (Attention: Zach Worsham)
P.O. Box 12830
Lexington KY 40583

with a copy to:
PNC Real Estate (Attention: Asset Manager)
121 S.W. Morrison Street, Suite 1300
Portland, Oregon 97204

with a copy to:
Kutak Rock LLP (Attention: Shane Deaver)
1650 Farnam Street
Omaha, Nebraska 68105

Second Mortgage Holder: Cedar Rapids Bank and Trust Company (Attention: Sam D. Kramer)
500 First Avenue Northeast
Cedar Rapids, Iowa 52401

with a copy to:
Winthrop & Weinstine, P.A. (Attention: Holly A. Stocker)
225 South Sixth Street, Suite 3500
Minneapolis, Minnesota 55402

Third Mortgage Holder : Kentucky Housing Corporation (Attn: Jeremy Ratliff, General Counsel)
1231 Louisville Road
Frankfort, KY 40601

LFUCG: Lexington-Fayette Urban County Government
200 East Main Street, Sixth Floor
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 nor 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.

7.12 COUNTERPARTS. This Agreement may be executed by the parties in any number of counterparts, each of which shall be an original, but such counterparts together shall constitute one and the same instrument.

WITNESS the signatures of the parties hereto as of the date and year first above written.

LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT

By: *Linda Gorton*
Linda Gorton, Mayor

ATTEST:

Maureen Sommers
Clerk, Urban County Council

Exhibit A – Loan Application



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: Three Thirty Newtown Manager, LLC.

MWBE Status: N/A

Tax Status: For- Profit

Type of Entity: Limited Liability Company

Development Name: Three Thirty Newtown

Development Location: 330 Newtown Lexington KY

Contact Person: Zach Worsham

Contact Title: Member

Mailing Address: 1390 Olivia Lane Ste 100

City: Lexington **State:** KY **Zip:** 40511

Phone: (859)276-5388

Fax: (859)212-6699

Email Address: zach.worsham@winterwoodinc.com

Funds Requested: \$500,000.00

Other Funding (Specify on Pro-Forma):

Total Development Cost:

Lexington, KY Affordable Housing Fund – Application For Funding

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: 208

Total Number of Buildings: 1

Square Feet of Units by Bedroom Size:

Unit Size: 1 Square Footage: 656
Unit Size: 2 Square Footage: 835
Unit Size: 3 Square Footage: 1,107
Unit Size: Square Footage:
Unit Size: Square Footage:

Monthly Rents by Bedroom Size:

Unit Size: 1 Monthly Rent: \$834, HOME \$672
Unit Size: 2 Monthly Rent: \$1,002, HOME \$827
Unit Size: 3 Monthly Rent: \$1,159
Unit Size: Monthly Rent:
Unit Size: Monthly Rent:

Target Area Median Income (AMI): 60%, 50% HOME

Amenities (Check all that apply):

- Stove:
Refrigerator:
Dishwasher:
Garbage Disposal:
Dishwasher:
Wash/Dryer Hookup:
Help/Call System:
Community Room:
Playground:
Other (Please specify):

Location Amenities (Check all that apply):

- | | | | |
|------------------------|-------------------------------------|---------------------------|--------------|
| Public Transportation: | <input checked="" type="checkbox"/> | Proximity to Development: | Description: |
| Shopping: | <input checked="" type="checkbox"/> | Proximity to Development: | Description: |
| Restaurants: | <input checked="" type="checkbox"/> | Proximity to Development: | Description: |
| Medical Facilities: | <input checked="" type="checkbox"/> | Proximity to Development: | Description: |
| Banks: | <input checked="" type="checkbox"/> | Proximity to Development: | Description: |
| Other: | <input type="checkbox"/> | Proximity to Development: | Description: |

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:

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: Zach Worsham

Title: Member

Date: 05/17/21

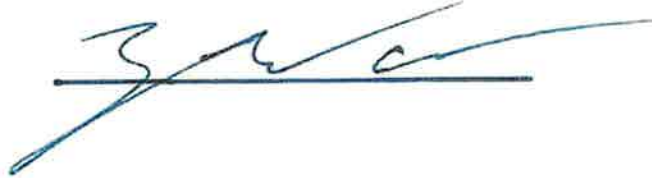


Exhibit B – Commitment Letter

MAYOR LINDA GORTON



LEXINGTON

RICHARD MCQUADY
DIRECTOR
AFFORDABLE HOUSING

July 2, 2021

Mr. Zach Worsham
330 Newtown Pike Development, LLC
1390 Olivia Street, Suite 100
Lexington, Kentucky 40511

Dear Mr. Worsham,

The Board of Directors of the Lexington-Fayette Urban County Government's Affordable Housing Fund has approved an allocation of \$500,000 for the construction of 208 affordable housing units at 330 Newtown Pike in Lexington, Kentucky. The allocation is in the form of a \$250,000, 15 year deferred loan at an interest rate of 0% and a \$250,000, 15 year surplus cash note at an interest rate of 0%. The annual payment due on the surplus cash note must be remitted prior to any annual repayment of the deferred developer fee.

This allocation is contingent upon your acceptance of a 15 year Deed Restriction on the property, ensuring the units remain affordable to households whose incomes are at or below 80% of area median income in Fayette County, Kentucky.

There will be a \$5,000 fee due at closing.

Please indicate your acceptance of this commitment letter by signing below. We look forward to working with you on this much needed development.

Sincerely,


Richard L. McQuady
Affordable Housing Manager

Accepted:






EXHIBIT B

August 18, 2023 Commitment Letter

MAYOR LINDA GORTON



LEXINGTON

RICHARD MCQUADY
DIRECTOR
AFFORDABLE HOUSING

August 18, 2023

Mr. Mike Hynes, President
Winterwood, Inc.
1390 Olivia Street, Suite 100
Louisville, Kentucky 40511

Dear Mr. Hynes,

The Lexington-Fayette Urban County Affordable Housing Fund Board of Directors has approved your request and will provide \$1,000,000 in additional funding for the 330 Newtown development. The funds will be allocated as follows:

1. \$200,000 will be added to the current 20-year deferred mortgage loan dated August 12, 2021 and maturing September 1, 2041. This will bring the balance of the amended deferred note to \$450,000.
2. \$200,000 will be added to the current repayable promissory note dated August 12, 2021 and maturing September 1, 2041. This will result in a \$450,000 balance for this surplus cash note with payments scheduled to begin on September 1, 2024. The annual payment of \$22,500 must be made prior to the annual repayment of the deferred developer fee.
3. \$600,000 in the form of an 18-month construction/bridge loan at a 3% rate of interest. The loan will be repaid from permanent loan receipts and/or equity investments.
4. The Loan Agreement, Mortgage and other documents will be updated to reflect the additional funding. A closing fee will not be assessed on the additional loan amounts.

Please sign below indicating your acceptance of the terms of this allocation and we will immediately begin preparation of the legal documents.

Sincerely,

Richard L. McQuady, Affordable Housing Manager

Accepted:



EXHIBIT C

Promissory Notes

**LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT
AFFORDABLE HOUSING FUND
FIRST AMENDED AND RESTATED DEFERRED PROMISSORY NOTE**

\$450,000.00

November 16th, 2023

FOR VALUE RECEIVED, 330 NEWTOWN, LLC, a Kentucky limited liability company, whose principal address is 1390 Olivia Lane, Lexington, Kentucky 40511 (herein “Maker”, whether singular or plural), promises to pay to **LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT (“LFUCG”)**, an urban county government of the Commonwealth of Kentucky created pursuant to KRS Chapter 67A, whose address is 200 East Main Street, Lexington, Kentucky 40507, its successors and assigns, the principal sum of **FOUR HUNDRED FIFTY THOUSAND DOLLARS AND 00/100 CENTS (\$450,000.00)** or so much thereof as may be advanced under the Loan Agreement (the “Agreement”) and outstanding, together with interest thereon at the rate of interest (0%) per annum to be computed from the earlier of October 1, 2023, or the date of the final disbursement of funds from Affordable Housing funds.

WHEREAS, LFUCG and the Borrower entered into a previous Deferred Promissory Note on August 12, 2021. The parties hereby agree that this First Amended and Restated Deferred Promissory Note will supersede the terms of the previous Deferred Promissory Note.

A. Payments shall be required as follows:

1. Interest on the outstanding principal *calculated in the manner set forth below* shall be due and payable in arrears on the 1st day of each month beginning on the earlier of October 1, 2023, or the month following the date of the final draw of Affordable Housing funds and continuing on the *first* day of each succeeding month thereafter until the principal balance shall be paid in full.
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 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 September 1, 2041 (“Maturity Date”).

- B. Notwithstanding the foregoing, so long as Maker does not commit or participate in any event of breach or default as defined in the Loan Agreement, or if such event of breach or default has occurred with cure or continues to occur with cure under the Maker's ownership, the Maker's obligation to pay this Deferred Loan Promissory Note shall be deferred until the Maturity Date.

If any payment required under this Note is not paid within ten (10) days after such payment is due, the Maker 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"), a Loan Agreement dated August 12, 2021, as amended by the First Amendment to the Loan Agreement, executed contemporaneously herewith, between the Maker and LFUCG ("Amended Loan Agreement"), providing for a total loan of **ONE MILLION FIVE HUNDRED THOUSAND DOLLARS AND 00/100 CENTS (\$1,500,000.00)** ("Loan") and this Note is expressly subject to and will be bound by the terms and conditions set forth in such Commitment and Amended 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 Amended Loan Agreement, Amended Mortgage 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 Maker should be the subject of any voluntary or involuntary bankruptcy, receivership or other insolvency proceeding; or (3) the Maker fails to observe or perform any of the terms of this Note; (4) there is any default by Maker under the Amended Loan Agreement, the amended Mortgage, or any other document, instrument or agreement providing any security for this Note; or (5) there is any action filed to foreclose or otherwise enforce the terms of any mortgage or other loan document executed by a senior lender, 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.

This Note is also secured by, and is one of the Notes mentioned in an amended real estate Mortgage of even date herewith, executed in favor of LFUCG by the Maker for real estate located at 330 Newtown Pike, Lexington, Kentucky 40508, and this Note is expressly made subject to and will

be bound by the terms and conditions set forth in said amended Mortgage as if all of such terms and conditions were expressly set forth herein. All sums which shall or may become due and payable by the Maker in accordance with the provisions of this Note shall be deemed to constitute additional interest on, and shall be evidenced by this Note, shall be secured by the amended Mortgage and other Loan Documents.

The Maker 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; and
- (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 Maker may prepay the principal amount outstanding in whole or in part at any time without penalty, after receiving the written consent of all Senior Lenders as identified and defined in the Loan Agreement.

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 Maker 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 Maker 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 Agreement. This limitation on the Maker's liability shall not limit or impair LFUCG's enforcement of its rights

against any indemnitor or guarantor pursuant to any agreement of indemnity or guaranty.

Notwithstanding the foregoing provisions, the undersigned shall be fully and personally liable for damages to LFUCG resulting from (i) the undersigned's fraud or misrepresentation, whether affirmative or by omission; (ii) the misapplication of (a) proceeds of insurance covering any portion of the Premises, or (b) proceeds of condemnation of any portion of the Premises or proceeds from the sale or conveyance of any portion of the Premises in lieu of condemnation; (iii) the amount of any loss caused by the undersigned's failure to comply with any hazardous substance laws described in Paragraph 2.3 of the Loan Agreement, dated August 12, 2021, such loss to include expenses, clean-up costs, penalties and damages incurred by the undersigned and any resulting diminution in the fair market value of the Premises caused by the undersigned or agents; and (iv) all reasonable costs and expenses including court costs and reasonable attorney's fees incurred in collecting any of the foregoing.

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SIGNATURE PAGE TO FOLLOW

**LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT
AFFORDABLE HOUSING FUND
FIRST AMENDED AND RESTATED REPAYABLE PROMISSORY NOTE**

\$450,000.00

November 10th, 2023

FOR VALUE RECEIVED, 330 NEWTOWN, LLC, a Kentucky limited liability company, whose principal address is 1390 Olivia Lane, Lexington, Kentucky 40511 (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 **FOUR HUNDRED FIFTY THOUSAND DOLLARS (\$450,000.00)**, or a lesser amount as may be endorsed on this Promissory Note on behalf of LFUCG, at the rate of interest rate (0%) per annum.

WHEREAS, LFUCG and the Borrower entered into a previous Repayable Promissory Note on August 12, 2021. The parties hereby agree that this First Amended and Restated Repayable Promissory Note will supersede the terms of the previous Repayable Promissory Note.

A. Payments shall be required as follows:

1. This Note shall be payable to LFUCG in annual installments only from available "Cash Flow" of the Borrower, as that term is defined in the Maker's Amended Company Operating Agreement dated August 12, 2021 in an amount up to the sum of **TWENTY TWO THOUSAND FIVE HUNDRED DOLLARS AND 00/100 CENTS (\$22,500.00)** ("Target Annual Payment"), commencing on September 1, 2024, and continuing on the first day of September thereafter until September 1, 2041. The Maker agrees to make the Target Annual Payment prior to making any annual payment of any developer fee.
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 balance, together with all interest accrued and unpaid thereon and all other sums due under this Note shall be due and payable on September 1, 2041 ("Maturity Date").

- B. In the event there is sufficient cash flow to make a Target Annual Payment and if any such Target Annual Payment required under this Note is not paid within ten (10) days after such payment is due, the Maker 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 Loan Agreement, dated August 12, 2021, as amended through the First Amendment to the Loan Agreement, executed contemporaneously herewith, between the Maker and LFUCG (“Amended Loan Agreement”), providing a total loan of **ONE MILLION FIVE HUNDRED THOUSAND DOLLARS AND 00/100 CENTS (\$1,500,000.00)** and this Note is expressly subject to and will be bound by the terms and conditions set forth in such Amended 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 Amended Loan Agreement, amended Mortgage and any other agreement related to the Loan (collectively, “Loan Documents”).

If (1) any payment of principal required by this Note remains unpaid for more than 10 days after the due date thereof, (2) the Maker or any guarantor should be the subject of any voluntary or involuntary bankruptcy, receivership or other insolvency proceeding, (3) the Maker fails to observe or perform any of the terms of this Note; or (4) there is a default by the Maker under the Amended Loan Agreement, the amended Mortgage 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.

This Note is also secured by and is the same Note mentioned in an amended real estate Mortgage of even date herewith executed in favor of LFUCG by the Maker for the real estate located at 330 Newtown Pike, Lexington, Kentucky 40508, and this Note is expressly made subject to and will be bound by the terms and conditions set forth in said amended Mortgage as if all of such terms and conditions were expressly set forth herein. All sums which shall or may become due and payable by the Maker in accordance with the provisions of this Note shall be deemed to constitute additional interest on, and shall be evidenced by this Note, shall be secured by the

amended Mortgage and the other Loan Documents.

The Maker 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 Maker may prepay the principal amount outstanding in whole or in part at any time without penalty, but prepayment shall not affect or change the terms of any document executed in connection with the Loan, including but not limited to the terms of any deed restriction(s).

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 Maker 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 Maker 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 Agreement. This limitation on the Maker's liability shall not limit or impair LFUCG's enforcement of its rights against any indemnitor or guarantor pursuant to any agreement of indemnity or guaranty.

Notwithstanding the foregoing provisions, the undersigned shall be fully and personally liable for damages to LFUCG resulting from (i) the undersigned's fraud or misrepresentation,

whether affirmative or by omission; (ii) the misapplication of (a) proceeds of insurance covering any portion of the Premises, or (b) proceeds of condemnation of any portion of the Premises or proceeds from the sale or conveyance of any portion of the Premises in lieu of condemnation; (iii) the amount of any loss caused by the undersigned's failure to comply with any hazardous substance laws described in Paragraph 2.3 of the Loan Agreement, dated August 12, 2021, such loss to include expenses, clean-up costs, penalties and damages incurred by the undersigned and any resulting diminution in the fair market value of the Premises caused by the undersigned or agents; and (iv) all reasonable costs and expenses including court costs and reasonable attorney's fees incurred in collecting any of the foregoing.

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SIGNATURE PAGE TO FOLLOW

**LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT
AFFORDABLE HOUSING FUND
REPAYABLE PROMISSORY NOTE (BRIDGE)**

\$600,000.00

November 6th, 2023

FOR VALUE RECEIVED, 330 NEWTOWN, LLC, a Kentucky limited liability company, whose principal address is 1390 Olivia Lane, Lexington, Kentucky 40511 (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 **SIX HUNDRED THOUSAND DOLLARS AND 00/100 CENTS (\$600,000.00)** or lesser amount as may be endorsed on this Promissory Note on behalf of LFUCG, at the interest rate of three percent (3%) per annum.

A. Payments shall be required as follows:

1. Interest on the outstanding principal *calculated in the manner set forth below* shall be due and payable in full on April 1, 2025.
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 balance, together with all interest accrued and unpaid thereon and all other sums due under this Note shall be due and payable on **April 1, 2025 ("Maturity Date")**.
6. If any property assisted by this loan is sold prior to April 1, 2025 all unpaid principal and accrued and unpaid interest on the amortizing mortgage loan of the sold properties shall be immediately due and repayable to LFUCG. The amount of interest due will be calculated at a rate of 5% from the earlier of April 1, 2025 or the date of the final draw of Affordable Housing Funds.

B. If any payment required under this Note is not paid within ten (10) days after such payment is due, the Maker 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 Loan Agreement, executed August 12, 2021, and the First Amendment to Loan Agreement, executed contemporaneously herewith between the Maker and LFUCG ("Amended Loan Agreement"), providing a total loan of **ONE MILLION FIVE HUNDRED THOUSAND DOLLARS AND 00/100 CENTS (\$1,500,000.00)** and this Note is expressly subject to and will be bound by the terms and conditions set forth in such 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 Amended Loan Agreement, amended Mortgage 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 Maker or any guarantor should be the subject of any voluntary or involuntary bankruptcy, receivership or other insolvency proceeding, (3) the Maker fails to observe or perform any of the terms of this Note; or (4) there is a default by the Maker under the Amended Loan Agreement, the amended Mortgage 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.

This Note is also secured by and is the same Note mentioned in an amended real estate Mortgage of even date herewith executed in favor of LFUCG by the Maker for the real estate located at **330 Newtown Pike, Lexington, Kentucky 40508**, and this Note is expressly made subject to and will be bound by the terms and conditions set forth in said amended Mortgage as if all of such terms and conditions were expressly set forth herein. All sums which shall or may become due and payable by the Maker in accordance with the provisions of this Note shall be deemed to constitute additional interest on, and shall be evidenced by this Note, shall be secured by the amended Mortgage and the other Loan Documents.

The Maker 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 Maker 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.

Neither the Maker nor its partners shall have any 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 Maker 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 Loan Documents with respect to the Premises (as defined in the Mortgage) and any other collateral held by LFUCG as security for the Indebtedness. This limitation on the Maker's liability shall not limit or impair LFUCG's enforcement of its rights against any indemnitor or guarantor pursuant to any agreement of indemnity or guaranty.

Notwithstanding the foregoing provisions, the undersigned shall be fully and personally liable for damages to LFUCG resulting from (i) the undersigned's fraud or misrepresentation, whether affirmative or by omission; (ii) the misapplication of (a) proceeds of insurance covering any portion of the Premises, or (b) proceeds of condemnation of any portion of the Premises or proceeds from the sale or conveyance of any portion of the Premises in lieu of condemnation; (iii) all reasonable costs and expenses including court costs and reasonable attorney's fees incurred in collecting any of the foregoing.

