

**NEIGHBORHOOD STABILIZATION PROGRAM
DEVELOPMENT AGREEMENT BETWEEN
LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT
AND
THE FAYETTE COUNTY LOCAL DEVELOPMENT CORPORATION**

THIS AGREEMENT, made and entered into on this ____ day of _____ 2012 by and between the Lexington-Fayette Urban County Government, an urban county government of the Commonwealth of Kentucky, pursuant to KRS Chapter 67A, and located at 200 East Main Street, Lexington, Fayette County, Kentucky 40507 (hereinafter referred to as the “GOVERNMENT”) and THE FAYETTE COUNTY LOCAL DEVELOPMENT CORPORATION, hereinafter referred to as “DEVELOPER”, a non-stock, nonprofit Kentucky corporation, organized pursuant to KRS Chapter 273, and whose mailing address is 148 Deweese Street, Lexington, Kentucky 40507.

RECITALS

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

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

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

WHEREAS, GOVERNMENT has selected DEVELOPER to receive properties for redevelopment for rental housing opportunities;

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

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

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

ARTICLE I

OBLIGATIONS OF THE FAYETTE COUNTY LOCAL DEVELOPMENT CORPORATION

1. DEVELOPER will be responsible for carrying out NSP activities in a manner satisfactory to the GOVERNMENT and consistent with all standards required as a condition of receiving these properties.
2. DEVELOPER agrees to comply with all applicable terms of Funding Agreement No. 09N-043, as amended, for Project entitled "Lexington-Fayette Urban County Government Landbank NSP-1 Program" between the Kentucky Department for Local Government and Lexington-Fayette Urban County Government. Funding Agreement No. 09N-043, as amended, is made a part of this agreement by reference.
3. DEVELOPER agrees to comply with all applicable regulations in Title III of Division B of the Housing and Economic Recovery Act of 2008, as amended.
4. DEVELOPER agrees that all NSP properties shall be completed as provided for in Exhibit A, within the prescribed time periods. Only the GOVERNMENT may approve later completion dates.
5. DEVELOPER agrees that all NSP properties shall be maintained and operated as rental property for income-eligible households for a period of twenty years.
6. DEVELOPER hereby agrees to provide in a timely manner all necessary progress reports and other reports required by GOVERNMENT on forms to be provided by GOVERNMENT.
7. **DURATION OF THE AGREEMENT**

DEVELOPER agrees to have all construction activities completed in accordance with Exhibit A. Project Completion is defined as all construction work completed, issuance of a Certificate of Occupancy by the Lexington-Fayette Urban County Government Division of Building Inspection, and the rental of the unit(s) to eligible households. The terms of this Agreement shall be in effect for the full period of affordability, which is a period of twenty (20) years, beginning with the date property is first occupied by an income-eligible tenant.

8. **PERIOD OF AFFORDABILITY**

The period of affordability is defined as a period of twenty (20) years, beginning on the project completion date, established as the date that units are first rented to income-eligible tenants.

9. **TENANT ELIGIBILITY**

For a period of twenty (20) years from the date on which development of the Project is completed, one hundred percent (100%) of the units assisted with these funds will be rented to low- and moderate-income households. Low-income households are those households with adjusted gross incomes at or below sixty percent (60%) of the median income for the community.

10. **MORTGAGES AND NOTES**

DEVELOPER shall deliver to the GOVERNMENT Mortgages, Mortgage Notes, and Deed Restrictions, where applicable, in favor of the GOVERNMENT for the purpose of securing all property on which the GOVERNMENT has spent NSP funds for construction of rental unit(s). Mortgages shall be for a twenty-year term at 0% interest rate, with full forgiveness of all indebtedness at the expiration of the twenty-year Period of Affordability, absence any breach of this agreement. Mortgages shall provide for repayment of full amount of the NSP-investment by DEVELOPER to the GOVERNMENT in the event of Developers' failure to meet the affordability requirements for the full twenty-year period of affordability. In the event of default by the DEVELOPER, the GOVERNMENT may take such measures as may be lawful to it for the recovery of indebtedness and including, but not limited to, foreclosure and sale of the DEVELOPER'S rights in the properties and/or the assignment and collection of the rents and profits of the Project.

12. **RENT RESTRICTIONS**

For a period of twenty (20) years from the date on which development of the Project is completed, DEVELOPER shall charge applicable 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 rent must be reduced by a utility allowance approved by GOVERNMENT if tenant is required to pay separately for utilities. Should HUD revise these or other rent guidelines set out herein so as to permit DEVELOPER to adjust the rent charged, DEVELOPER must provide tenants with no less than thirty (30) days written notice before adjustments are implemented. GOVERNMENT will notify DEVELOPER of changes in rent and utility schedules.

13. **LEASES**

DEVELOPER shall offer tenants leases for terms of at least one year. Leases of less than one year are permitted only by mutual agreement between the tenant and DEVELOPER. Any lease entered into between DEVELOPER and a tenant shall require the tenant to provide information as to family size and income as set out herein. Non-renewable leases shall not be utilized. The lease shall be in conformance with the Uniform Residential Landlord and Tenant Act to the extent the Uniform Residential Landlord and Tenant Act is applicable to DEVELOPER and to the requirements of 24 CFR 92.253. The requirements set forth in this paragraph shall be in effect for a period of twenty (20) years from the date on which development of the project is completed.

14. **VERIFICATION AND REPORTING OF TENANT ELIGIBILITY**

The family size and the adjusted gross income for all tenants must be determined at the time of initial occupancy and annually for a period of twenty (20) years from the date on which development of the Project is completed. DEVELOPER shall obtain and verify income and family size information from each tenant upon initial rent up and annually during the twenty (20) year period. DEVELOPER shall provide information on family size, adjusted gross income and rent charged for all tenants to the GOVERNMENT'S Division of Grants and Special Programs within sixty (60) days after the initial rent up and the annual review date. DEVELOPER shall obtain any necessary releases from tenant to allow GOVERNMENT to independently verify the information provided. The definition of income for this project is the same as the U.S. Department of Housing and Urban Development's Section 8 (Part 5) Annual (gross) Income.

DEVELOPER shall, on an annual basis, during a period of twenty (20) years from the date on which development is completed, 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 an adjusted gross income exceeding eighty percent (80%) of the median for the community. DEVELOPER shall not evict over-income tenants based on income. DEVELOPER shall increase the rent of the unit to thirty percent (30%) of the household's adjusted gross income. Units vacated by an over-income tenant must be rented to an income-eligible tenant during the twenty (20) year period.

15. **PROPERTY STANDARDS**

For new dwellings, DEVELOPER agrees to comply with the Kentucky Building Code, as applicable. DEVELOPER agrees to submit plans and specifications to the GOVERNMENT'S Division of Grants and Special Programs for approval prior to commencement of rehabilitation and construction activities. DEVELOPER agrees to comply with all local and state laws regarding the submission of plans and specifications to, and approval by, the appropriate Building Official prior to the start of construction.

DEVELOPER further agrees to maintain all units in good condition and repair in accordance with Section 12-1, Code of Ordinances, Lexington-Fayette Urban County Government, as amended, for the full 20-year Period of Affordability. Upon written notification of violations of maintenance requirements, DEVELOPER shall make corrections within 60 days.

16. **REPORTS**

DEVELOPER agrees to provide any reports and information as required by the GOVERNMENT. DEVELOPER shall be responsible for providing the following data: the number of affordable units developed, size of units (number of bedrooms), years of affordability, the number of units meeting Energy Star standards, the number of units made fully accessible under Section 504 accessibility standards, and the number of units occupied by elderly households (either the head or co-head is age 62 or older).. In addition, an annual report shall also provide the following information about the employees of the DEVELOPER'S organization: race, ethnicity, national origin, age,

gender, and disability. The annual report shall be submitted to the GOVERNMENT no later than thirty days after the end of the GOVERNMENT'S fiscal year.

18. **SALE OF PROPERTY**

All sales of property during the period of affordability must have the prior written approval of the GOVERNMENT'S Division of Grants and Special Programs. No property sales will be approved that do not maintain the tenant income eligibility requirements and rent restrictions provided by the period of affordability. With the prior written approval of the GOVERNMENT'S Division of Grants and Special Programs, properties may be sold to income-eligible tenants for homeownership.

ARTICLE II

OBLIGATIONS OF THE GOVERNMENT

1. GOVERNMENT agrees to convey properties, described in Exhibit A, to the DEVELOPER for new construction of residential units for rent to eligible low-income households. Properties shall be conveyed by deed with promissory note signed by DEVELOPER.
2. The GOVERNMENT agrees to monitor the performance of the DEVELOPER to assure compliance with all applicable federal regulations during the twenty (20) year Period of Affordability; however, monitoring does not relieve the DEVELOPER of primary responsibility for compliance.
3. GOVERNMENT shall conduct inspections of units at least every three years for purposes of determining DEVELOPER'S compliance with maintenance requirements.
4. The GOVERNMENT agrees to prepare and submit any and all required reports to the Kentucky Department for Local Government.
5. The GOVERNMENT agrees to provide technical assistance to DEVELOPER in fulfilling its obligations under this agreement.
6. The GOVERNMENT agrees to notify DEVELOPER with any changes in the NSP regulations, program limits for income, rent and property value, and all other pertinent information received in regards to the program.

ARTICLE III
OTHER FEDERAL REQUIREMENTS

1. FAIR HOUSING AND EQUAL OPPORTUNITY

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

DEVELOPER agrees to comply with the requirements of the Fair Housing Act (42 U.S.C. 3601-20) and implementing regulations at 24 CFR, part 100; Executive Order 11063, as amended by executive Order 12259 (3CFR, 1958-1963 Comp., p. 652 and 3 CFR, 1980 Comp., p. 307) (Equal Opportunity in Housing) and implementing regulations at 24 CFR part 107; and Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d) (Nondiscrimination in Federally Assisted Programs) and implementing regulations issued at 24 CFR part 1; Section 109 of the Housing and Community Development Act of 1974, as amended, and the regulations issued pursuant thereto (24 CFR 570.601).

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

2. EMPLOYMENT AND EQUAL OPPORTUNITY

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

3. SECTION 3

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

A. The work to be performed under this contract is subject to the requirements of section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (section 3). The purpose of section 3 is to ensure that employment and other economic

opportunities generated by HUD assistance or HUD-assisted projects covered by section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.

B. The parties to this contract agree to comply with HUD's regulations in 24 CFR part 135, which implement section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the part 135 regulations.

C. The contractor agrees to send to each labor organization or representative of workers with which the contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the contractor's commitments under this section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.

D. The contractor agrees to include this section 3 clause in every subcontract subject to compliance with regulations in 24 CFR part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR part 135. The contractor will not subcontract with any subcontractor where the contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR part 135.

E. The contractor will certify that any vacant employment positions, including training positions, that are filled (1) after the contractor is selected but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR part 135 require employment opportunities to be directed, were not filled to circumvent the contractor's obligations under 24 CFR part 135.

F. Noncompliance with HUD's regulations in 24 CFR part 135 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.

G. With respect to work performed in connection with section 3 covered Indian housing assistance, section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e) also applies to the work to be performed under this contract. Section 7(b) requires that to the greatest extent feasible (i) preference and opportunities for training and employment shall be given to Indians, and (ii) preference in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned Economic Enterprises. Parties to this contract that are subject to the provisions of section

3 and section 7(b) agree to comply with section 3 to the maximum extent feasible, but not in derogation of compliance with section 7(b).

3. **AFFIRMATIVE MARKETING**

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

4. **DISADVANTAGED BUSINESS ENTERPRISES**

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

5. **ENVIRONMENTAL REVIEW**

DEVELOPER agrees to provide property addresses and work specifications to the GOVERNMENT prior to commitment of NSP Funds for purposes of completing environmental review requirements under 24 CFR Part 58. DEVELOPER agrees to comply with the Advisory Council on Historic Preservation's Rules and Regulations for the Protection of Historic and Cultural Properties (36 CFR, Part 800) pursuant to the National Historic Preservation Act of 1966, The National Environmental Policy Act of 1969, and Executive Order 11593.

6. **CONFLICT OF INTEREST**

DEVELOPER certifies that he is legally entitled to enter into this contract with the Lexington-Fayette Urban County Government, and by holding and performing this contract will not be violating either any conflict of interest statute (KRS 45A.330, 45A.340, 45A.990, 164.390), or KRS 11A.040 of the executive branch code of ethics, relating to the employment of former public servants.

7. **LABOR**

DEVELOPER acknowledges that all laborers and mechanics, etc., employed in the construction of any project containing eight (8) or more dwelling units and assisted with NSP funds, whether employed by THE FAYETTE COUNTY LOCAL DEVELOPMENT CORPORATION, contractors, or subcontractors, shall be paid wages complying with the Davis-Bacon Act (40 U.S.C. Section 276(A)-7). DEVELOPER further agrees to comply with the applicable provisions of the Contract Work Hours and Safety Standards Act (40

U.S.C. Section 327-333), and the applicable provisions of the Fair Labor Standards Act of 1938, as amended (29 U.S.C. et seq.).

9. DEBARRED CONTRACTORS

DEVELOPER shall require all of its contractors and subcontractors to certify that neither they nor their principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in federally funded activities.

8. LEAD-BASED PAINT

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

9. DRUG-FREE WORKPLACE

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

ARTICLE IV

ADDITIONAL PROVISIONS

1. PROPERTY STANDARDS

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

2. AUDITS AND INSPECTIONS

All DEVELOPER records with respect to any matters covered by this Agreement shall be made available to the GOVERNMENT, grantor agency, their designees or the federal government, at any time during normal business hours, as often as the grantor agency deems necessary, to audit, examine, and make excerpts or transcripts of all relevant data. Any

deficiencies noted in audit reports must be fully cleared by GOVERNMENT within 30 days after receipt by DEVELOPER. Failure of DEVELOPER to comply with the above audit requirements will constitute a violation of this Agreement and may result in the withholding of the future payments. DEVELOPER hereby agrees to have an annual agency audit conducted in accordance with current GOVERNMENT policy concerning sub-recipient audits and, as applicable, OMB Circular A-133.

3. **ESTABLISHMENT AND MAINTENANCE OF RECORDS**

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

4. **DEVELOPER STAFFING**

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

Chief Executive: P. G. Peebles

Vice President: Norman Franklin

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

5. **PERFORMANCE MONITORING**

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

GOVERNMENT, or the GOVERNMENT'S internal auditor(s) access to all records related to performance of activities in this agreement.

6. **REPORTS**

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

7. **ENFORCEMENT OF THE AGREEMENT**

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

ARTICLE V

ADDITIONAL PROVISIONS

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

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

LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT

BY: _____

Jim Gray, Mayor

ATTEST:

Clerk of Urban County Council

THE FAYETTE COUNTY LOCAL DEVELOPMENT CORPORATION

BY: _____

Signature of Authorized Official

Printed Name and Title of Authorized Official