

**LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT  
AFFORDABLE HOUSING FUND  
HOUSING REHABILITATION GRANT AGREEMENT**

**THIS HOUSING REHABILITATION GRANT AGREEMENT** ("Agreement") is made and entered into this 7<sup>th</sup> day of July, 2015 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 ("LFUCG") through its **OFFICE OF AFFORDABLE HOUSING**, and **FOUNDATION FOR AFFORDABLE HOUSING, INC.**, a non-profit Kentucky corporation, whose principal address is 169 DeWeese Street, Lexington, Kentucky 40507 ("Recipient").

**RECITALS**

**WHEREAS**, pursuant to Chapter 2, Article XXXXV, Section 2-482 of the Lexington-Fayette County Code of Ordinances (the "Code"), the Affordable Housing Fund ("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**, Recipient by application dated December 5, 2014 (the "Application"), attached hereto as Exhibit A and incorporated herein, has applied for and has received approval for funds in the form of a grant for a specific housing related project described below (the "Eligible Activity"); and

**WHEREAS**, in order to assist Recipient in the funding of the Eligible Activity, LFUCG is willing to make funds available to Recipient from the Fund under the terms and conditions of this Agreement; and

**WHEREAS**, the project for which Recipient has been approved includes construction or rehabilitation activities.

**NOW, THEREFORE**, in consideration of the covenants set out herein, the parties agree as follows:

**ARTICLE 1 – COMMITMENT OF FUNDS**

**1.1 LFUCG's COMMITMENT.** Pursuant to the Application and this Agreement, LFUCG will make available an amount not to exceed **FOUR HUNDRED AND THREE THOUSAND** Dollars (\$403,000) to Recipient from the Affordable Housing Fund. Funds will be disbursed by LFUCG to Recipient in accordance with the requirements set forth in this Agreement and conditioned upon Recipient's continued satisfactory performance under the terms of this Agreement. The Funds will be in the form of a grant. The funds will be expended only for the purpose of construction and rehabilitation of the Property (defined below) described in the Eligible Activity pursuant to Section 1.2 below and in conformity with the other provisions of this Agreement. 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 ELIGIBLE ACTIVITY.** The Funds have been made available based upon the information provided by Recipient in the Application. The sole purpose of this allocation of funds is and will be the rehabilitation of resident rooms, common areas, kitchens and showers, as well as relocate the security station and create a resident patio ("Project") on the real property located at and known as, St. James Place Apartments, 169 Deweese Street, Lexington, KY 40507 (more particularly described in Exhibit B attached hereto and incorporated herein by reference) (the "Property"). Phase I includes rehabilitation of all first floor resident rooms, the common area, kitchen and showers on the first floor as well as the main entrance hall. Phase I also includes construction of a new security cubicle and re-purposing the flower beds into a patio for the residents. Rehabilitation of additional residence rooms, kitchens and showers will be permitted if funds are available and the work is approved by the Office of Affordable Housing.

**1.3 SITES.** In the event the Project includes new construction activities and/or rehabilitation construction activities, Recipient 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's Office of Affordable Housing.

**ARTICLE 2 - REPRESENTATIONS AND WARRANTIES OF RECIPIENT**

**2.1** Recipient represents and warrants that:

(a) All funds disbursed hereunder will be used only for the eligible activity and Project as described above for, the Property, as approved by LFUCG, and said funds will not be used in any other manner or for any other purpose; and

(b) Where applicable, the rehabilitation 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** Recipient understands and acknowledges that projects assisted with LFUCG Affordable Housing Funds must, at a minimum, meet the requirements set out in this Agreement. Recipient will supply, at LFUCG's request, all necessary documentation to substantiate compliance with this paragraph.

**2.3** Recipient 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 Recipient 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 Recipient 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. Recipient will take all actions within its control necessary to insure that no such violation occurs. Recipient 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** Recipient 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. Recipient has been organized pursuant to state law for the primary purpose of providing housing to persons and families of lower and moderate income. Recipient 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 Recipient 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 Recipient, threatened against or affecting it or the Project.

### **ARTICLE 3 – REQUIREMENTS FOR DISBURSEMENT**

**3.1 DISBURSEMENT OF FUNDS.** Funds will be disbursed to Recipient 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) proof of costs in adherence to LFUCG's requirements for draws and inspections for the Program activity under this Agreement (construction draws); and

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 Funds, 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.

(c) the amount of the developer fee payable from funds is limited to seven and one-half percent (7.5%) of the principal amount of the loan.

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.** Property assisted with Funds must be restricted to 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 date the Funds are first expended on each unit in the Project. Affordability must be ensured by recorded deed restrictions.

**3.4 SECTION 8 RENTAL ASSISTANCE.** If Affordable Housing Funds are used to construct or rehabilitate rental property, Recipient 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 Recipient 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 Recipient for each Unit of the Project. Each policy must include appropriate loss payable clauses in favor of LFUCG or Recipient, as applicable, as beneficiary and without right of cancellation or change except upon thirty (30) days' written notice to LFUCG. Recipient will deliver proof of all insurance to LFUCG upon request.

**3.6 RESERVE FUND FOR REPLACEMENT.** Upon completion of rehabilitation, Recipient will deposit the amount of ONE HUNDRED AND TWENTY and 00/100 Dollars (\$120.00) per unit annually into a Reserve Fund for Replacements Account ("Reserve Fund"). The amount required to be deposited into the Reserve Fund will increase by three percent (3%) annually. All funds will be deposited into an account maintained by Kentucky Housing Corporation.

The Reserve Fund will be maintained in accordance with KHC policy including minimum balances that must be maintained, frequency of requests for disbursements, as well as eligible disbursements.

**3.7 Legal Matters.** All legal matters incident to the contemplated transaction will be concluded to the satisfaction of LFUCG's Department of Law.

**3.8 PROOF OF CORPORATE ACTION.** Prior to execution of this Agreement, LFUCG shall have received (i) copies of Recipient's organizational documents; (ii) confirmation from the Secretary of State of Recipient's organizational jurisdiction that Recipient is a validly existing entity in good standing, and (iii) a resolution from the Recipient'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 Recipient 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 – REHABILITATION AND CONSTRUCTION TERMS**

**4.1 PLANS AND SPECIFICATIONS.** If applicable, Recipient will develop the Property in accordance with plans and specifications which have been approved by the LFUCG's Office of Affordable Housing and all other necessary LFUCG divisions and/or departments. 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, Recipient 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." Recipient will not deviate nor permit any such deviation from the Plans and Specifications without the prior written consent of LFUCG.

**4.2 NO LIENS.** Recipient 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 Recipient 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. Disbursement 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.** Recipient can begin development of the Property upon approval of the Affordable Housing Fund Staff. Construction work is to be pursued with diligence and without delay. Recipient 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.** Recipient will cause all Affordable Housing Funds dispersed 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.** Recipient will permit access by LFUCG to the books and records of Recipient 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, Recipient will deliver to LFUCG (a) an agreement between Recipient 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 Recipient and Recipient's contractor whereby Recipient'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 Recipient'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 Recipient. 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.

**4.8 ADDITIONAL REQUIREMENTS.** The Recipient agrees to participate fully in the

Homeless Management Information System (HMIS), including collection and entry of all necessary data and information for the System.

### **Article 5 – Breach or Default**

**5.1 RECAPTURE OF FUNDS; BREACH OF AGREEMENT.** In the event of a breach, LFUCG may suspend Recipient's authority to draw Affordable Housing Funds at any time by giving notice to Recipient. 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 upon the occurrence of one or more of the following events ("Breach"):

- (a) Recipient does not diligently pursue the activity detailed in Recipient's Application and for which Affordable Housing Funds have been awarded;
- (b) Recipient violates of any of the terms of this Agreement, the Affordable Housing Governing Board policies, the Note evidencing the Affordable Housing Funds under this Agreement or any other Security Document entered into pursuant to this Agreement;
- (c) Recipient does not submit reports or submits inadequate reports pursuant to Article 6 below;
- (d) Recipient 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) Recipient 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) Recipient 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 Recipient, upon which LFUCG relied in its decision to allocate funds to Recipient, 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 Recipient because of a material and adverse change in Recipient'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 representation or warranty made herein, or in any certificate, report or statement furnished to LFUCG in connection the Affordable Housing Funds proves to have been untrue or misleading in any material respect when made;
- (b) Failure of Recipient to perform any of the provisions of this Agreement or any other document executed in connection with this Agreement;
- (c) Recipients violation of the affordability requirements, whether evidenced by recorded Deed Restriction or owner certification of continued compliance;
- (d) The entry of any lien or encumbrance against the Project site(s), 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;
- (e) Recipient fails to prosecute Project site development work with diligence so that construction thereof will be completed in a timely manner;
- (f) 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 Recipient 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 Recipient notice under the provisions hereof;
- (g) Recipient discontinues the construction/rehabilitation work and abandonment continues for a period of ten (10) days;
- (h) Recipient 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;

(i) Recipient (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 Recipient 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 Recipient 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; or

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

**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 Recipient of the breach or default, LFUCG may continue suspension of disbursements. Additionally, LFUCG may declare the grant immediately repayable and may institute proceedings for its collection. LFUCG may terminate this Agreement by giving written notice to Recipient. In the event of a termination, Recipient's authority to draw Affordable Housing Funds will terminate as of the date of the notice of termination and Recipient will have no right, title or interest in or to any remaining Affordable Housing Funds.

**5.4 MISAPPROPRIATION OF FUNDS.** Recipient 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 Recipient to repay to LFUCG a portion of or all Affordable Housing Funds drawn by Recipient in cases of breach involving 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 Recipient to be in default under this Agreement by giving not less than ten (10) days prior written notice to Recipient, 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) Exercise its rights under this Agreement;
- (b) Enter upon the Project site(s), expel and eject Recipient and all persons claiming through or under Recipient and collect the rents and profits therefrom;
- (d) Complete the Project site development work at the cost and expense of Recipient and add such cost to the debt evidenced by the grant and this Agreement;
- (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 Recipient 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 Recipient 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.

**5.6 PAYMENTS DUE TO DEFAULT.** Recipient 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 executed by Recipient, (b) by reason

of the neglect by Recipient of any duty or undertaking hereunder and (c) in the exercise of any right or remedy hereunder.

**ARTICLE 6 – RECORDS; REPORTING**

**6.1 RECORDS; ACCESS.** Recipient agrees to keep adequate records pertaining to the Project and the uses of Affordable Housing Funds. Recipient 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. Recipient 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.** Recipient agrees that all program and financial reports must be submitted as requested by LFUCG, on the forms provided by LFUCG, on annual basis. Beginning the first calendar quarter after Recipient receives a disbursement of Affordable Housing Funds and every year thereafter.

**6.3 ANNUAL FINANCIAL REPORTING.** Recipient 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.** Recipient acknowledges that its award of Affordable Housing Funds has been based upon information received from Recipient. Recipient warrants that the financial and other information furnished by Recipient to LFUCG was, at the time of application, and continues to be, true and accurate.

**6.5 PROGRAM COMPLIANCE.** Recipient agrees to comply with LFUCG program guidelines and criteria relating to the Affordable Housing 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 Recipient 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:

Recipient: Foundation for Affordable Housing, Inc.  
169 DeWeese Street  
Lexington, Kentucky 40507  
ATTN: Phillip N. Gray

LFUCG: Lexington-Fayette Urban County Government  
200 East Main Street  
Lexington, Kentucky 40507  
ATTN: Richard McQuady, Affordable Housing Manager

**7.2 COSTS TO BE PAID BY RECIPIENT.** All items which Recipient agrees to furnish under this Agreement will be furnished at Recipient'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 Lexington-Fayette County, Code of Ordinances

**7.4 SUSPENSION AND DEBARMENT.** Recipient 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 or state department or agency, or under LFUCG's Suspension and Debarment Policy. Recipient further agrees that any future principal will meet the requirements of this section.

**7.5 INDEMNIFICATION.** Recipient 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 Recipient contained in this Agreement or in any document delivered to LFUCG or by Recipient, or any other person on behalf of Recipient 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.** Recipient 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 Recipient, Recipient'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 Recipient's performance of any of the terms of this Agreement or Recipient'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.

IN WITNESS WHEREOF, this Agreement is executed as of the day first written above.

**LEXINGTON-FAYETTE URBAN  
COUNTY GOVERNMENT**

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

  
Jim Gray, Mayor





**EXHIBIT A**

**(The LFUCG Affordable Housing Fund Application)**

# RENTAL PRODUCTION APPLICATION

## LFUCG HOME Program

Last Date Modified: 12/5/2014

Project/IDIS #: \_\_\_\_\_

### A. General Information

#### Development Information

Project Name: St. James Place Apartments

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Street Address: 169 Deweese Street Neighborhood: \_\_\_\_\_

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Louisville, KY Zip: 40507 Council District: \_\_\_\_\_ Census Tract: KY067000101

Total Rental Units: 102 Construction Type: Rehabilitation

# of HOME Units: 102 Fixed or Floating HOME Units? Fixed

Low Income Housing Tax Credit Project? No Type of LIHTCs: 4%

#### Project Summary *Briefly describe your project.*

With over 20 years of use by thousands of residents, St. James Place shows it's age. The objective of this project is to rehabilitate the resident rooms, common areas, kitchens, and showers, as well as move the current security station and rebuild the crumbling front retaining wall and cap it with concrete, creating an aesthetically friendly resident patio. The resident room rehab will include stripping the room down to the walls and floor, resurfacing the floor, installing new cabinets, sink, toilet, as well as energy-efficient window kits and PTACs.

#### Assistance Requested *(info comes from other worksheets)*

|                                       |                    |                 |
|---------------------------------------|--------------------|-----------------|
| Total Project Development Costs (TDC) | \$1,362,861        | \$13,361        |
| HOME Permanent Subsidy                | \$1,362,861        | \$13,361        |
| Other Permanent Subsidy               | \$0                | \$0             |
| <b>Total Permanent Subsidy</b>        | <b>\$1,362,861</b> | <b>\$13,361</b> |

#### Developer Information

Entity Name: FOUNDATION FOR AFFORDABLE HOUSING Federal I.D. #: 61-1192747

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Contact Person: DEAN C. HAMMOND JR Phone: 859-227-2879

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Address: 115 WHISPERING WOOD LANE Email: DEAN@AFTEN.COM

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City: LEXINGTON State: KY Zip: 40505

Legal Form: Non-Profit Corp

If non-profit, registered with the State of KY?

Yes

Non-profit determination been made by the Internal Revenue Service?

Yes

If yes, indicate IRS designation:

501(c)(3)

Community Housing Development Organization (CHDO)?

No

Is the CHDO designation from LFUCG?

\_\_\_\_\_

Explain the role and activities of the non-profit sponsor in the development. Check which apply

|                    |                                     |                             |                                     |        |
|--------------------|-------------------------------------|-----------------------------|-------------------------------------|--------|
| Developer          | <input checked="" type="checkbox"/> | Marketing                   | <input checked="" type="checkbox"/> | Other: |
| General Contractor | <input checked="" type="checkbox"/> | Carries Liability Insurance | <input checked="" type="checkbox"/> |        |
| Owner              | <input checked="" type="checkbox"/> | Carries Liability/Property  | <input checked="" type="checkbox"/> |        |

Describe the ownership structure of the project and explain the role of any non-profits in the project.

The Foundation for Affordable Housing, Inc. was the initial developer and General Partner of the Limited Partnership. Three banks were limited partners during the initial compliance period. Since then, two of the banks have donated their partial ownerships to the Foundation, and Central Bank remains a limited partner. The project was initially funded through HUD-insured debt, HOME Funds Debt, and Tax Credits purchased by the banks. The Foundation remains the General Partner and Majority Partner, as well as the HUD-approved Management Agent.

**General Partner/Corporate Officer Information (if applicable)**

(List Managing General Partner on first line.)

|       |                                   |                     |            | Ownership % |
|-------|-----------------------------------|---------------------|------------|-------------|
| Name: | FOUNDATION FOR AFFORDABLE HOUSING | Fed. ID/Soc. Sec. # | 61-1192747 | 61.45%      |
| Name: | CENTRAL BANK AND TRUST CO         | Fed. ID/Soc. Sec. # | 61-0353605 | 38.55%      |
| Name: |                                   | Fed. ID/Soc. Sec. # |            |             |

**B. Development Plan Information**

Primary Unit Type: Elevator Apts Target Population: Multiple Populations  
 Additional Unit Type: \_\_\_\_\_ Group Home? No  
 Total Residential Square Feet: 14,484 Avg Square Feet Per Unit: #NAME?  
 Total number of Buildings planned 1 buildings  
 Year Oldest Existing Building Constructed 1994

Structural System Frame Basement Partial Exterior Brick & Vinyl  
 Parking Parking Pad/Driveway

**Energy and Equipment Information**

Heating System: Electric Energy Star? No Other Green Certification(s) \_\_\_\_\_  
 Air Conditioning System: Other No  
 Domestic Hot Water: Gas No

**Equipment included with Income Restricted Units (check those that apply)**

|   |   |  |                              |
|---|---|--|------------------------------|
| <input checked="" type="checkbox"/> Microwave | <input checked="" type="checkbox"/> Refrigerator  | <u>_____</u> Kitchen Exhaust Duct                          | Other:                       |
| <u>_____</u> Range & Oven                     | <u>_____</u> Ceiling Fans                         | <input checked="" type="checkbox"/> Common On-site Laundry | <u>Kitchen on each floor</u> |
| <u>_____</u> Garbage Disposal                 | <u>_____</u> Fireplace                            | <u>_____</u> Security Alarm                                |                              |
| <u>_____</u> Dishwasher                       | <input checked="" type="checkbox"/> Blinds/Drapes | <input checked="" type="checkbox"/> Laundry Equipment      |                              |

### C. Site Information

On the worksheet "1a)Properties" enter all properties included in the project site(s).

Project Site Area (utilized for proposed development): 1.11 Acres  
 Are any project buildings in a National or local historic district? No  
 Have you already acquired the project property? Yes  
 Was the property occupied at the time you obtained ownership? No  
 If vacant at purchase, how many months had it been vacant? \_\_\_\_\_  
 Did/will you acquire the property with clear title and no debt? Yes  
 Is this an "Arms-Length" Transaction, meaning the buyer and seller are acting independently and have no relationship to one another? \_\_\_\_\_

If this is not an Arm's Length Transaction, explain the relationship between buyer and seller.

Current Zoning: B-2A

If the project requires a zoning change/waiver, explain where you are in this process.

No zoning change or waiver is required.

Will the current site(s) require lots to be subdivided? No

Are the following utilities now located on the site?

|                                 |          |
|---------------------------------|----------|
| Public Water Supply             | <u>X</u> |
| Public Sewer System             | <u>X</u> |
| Natural Gas Distribution System | <u>X</u> |
| Electric Power System           | <u>X</u> |

Are the following conditions present at the proposed development site?

|                                   |                   |                             |                   |
|-----------------------------------|-------------------|-----------------------------|-------------------|
| All or part in 100-yr. floodplain | <u>          </u> | Standing water              | <u>          </u> |
| Railroad tracks within 300 feet   | <u>          </u> | Creek, lake, river frontage | <u>          </u> |
| High tension wires                | <u>          </u> | Ravines or steep grades     | <u>          </u> |
| High noise levels                 | <u>          </u> | Industrial sites            | <u>          </u> |
| Hazardous waste sites             | <u>          </u> | Commercial sites            | <u>          </u> |
| Proximity to an airport           | <u>          </u> |                             |                   |

Describe any unusual site conditions:

No unusual conditions exist.

## D. Neighborhood & Market Information

Applicants must submit some form of in-house or 3rd party market analysis demonstrating demand for the proposed project. KHC needs/market analyses are acceptable. An appraisal supporting acquisition price will be required.

Explain the need/market demand for the proposed project that insures units will lease up within program deadlines:

The occupancy rate for St. James Place Apartments was 91.27% in 2012, 97.13% in 2013, and is at 96.07% so far in 2014. In 2013 we added two new rooms by retrofitting unused common area, and those were filled immediately. In that same year, the percentage went up. 2014 is following suit. According to the Mayor's study on homelessness, the homeless population (our clients) has increased more than 78% since 2007.

Explain how you arrived at the projected rents:

Over the last several years, we have charged the maximum rent authorized by HOME guidelines. Since the maximum rent has decreased over the last three determinations, and our expenses have gone up with increasing utility costs and higher maintenance and furniture replacement as our inventory ages, it continues to be necessary.

How will you insure lease-up to eligible tenants within 18 months?

we will be leased up when we start the renovation, and plan to have no more than seven rooms down at any one time. That leaves an occupancy rate greater than 93%. Even with some vacancies from normal attrition, the percentage should not fall below 90%. We have developed efficient techniques to turn and rehad units. We will use specialty teams specifically hired for the rehab and dedicated to the tasks, instead of waiting for subs.

Describe how this project builds on existing and emerging neighborhood anchors (hospital, university, park, school, retail amenities, etc.):

There is a bus stop 200 feet from the building, a park .5 miles from the building, and a small grocery 3 blocks away. There are multiple transportation resources available through Lextran and DAV for hospital and clinic runs, as well as shopping. The newest and largest Kroger is being built an easy bus ride to Euclid Ave. VA Cooper, UK, Good Samaritan, and Central Baptist hospitals are all accessible through public transportation.

Describe how this project has been coordinated with other neighborhood projects, investments or redevelopment initiatives.

In 2005 the Foundation built St. James Place II and adjacent building for 38 units of transitional housing for homeless veterans who have undergone treatment through the VAMC. It is presently full and remains well above 90% occupancy. The newly upgraded Lyric Theatre is only 3 blocks away, and a new park is nearing completion 5 blocks away. New units in the neighborhood continue to enhance the community.

Describe the project's proximity to existing transportation & infrastructure assets (sidewalks, bus routes, etc.).

There are sidewalks all the way around the building and the parking lots. The bus stop is 200 feet from the building, and Lextran Wheels and DAV provide most of the transportation for those who do not have a car, or are physically unable to go to the bus stop. St. James is only two blocks off of Main St., so access to government buildings, tax offices, public defenders, both court houses, police, and sheriff's office are all walkable.

### E. Development & Draw Schedule

In the chart below, enter the date the item was accomplished, or when it is expected to be accomplished. If an item does not apply to your development, enter N/A or leave blank. NOTE: This or a revised schedule will be included in your written agreement with LFUCG should you be funded.

| IDIS Commitment Date (For LFUCG to input)        |                               | Month   | Year | Est. Draw on LFUCG Funds |
|--|-------------------------------|---------|------|--------------------------|
| Site Control & Predevelopment                    | Option                        |         |      |                          |
|  | Contract                      |         |      |                          |
|  | Closing                       |         |      |                          |
|  | Zoning                        |         |      |                          |
|  | Site Analysis                 |         |      |                          |
|  | Working Construction Drawings | July    | 2015 | \$140,000                |
| Construction Loan Closing                        |                               | July    | 2015 | \$120,000                |
| Construction Start                               |                               | July    | 2015 | \$150,000                |
| Construction 1/2 Completed & Drawn               |                               | May     | 2016 | \$300,000                |
| Marketing Start-Up                               |                               | October | 2016 | \$350,000                |
| Construction Complete (Certificate of Occupancy) |                               | March   | 2017 | \$166,575                |
| All Units Leased                                 |                               | April   | 2017 | \$136,286                |

Total Development Schedule: 20 months \$1,362,861

### F. Experience & Affiliates

#### Previous Development Experience

Has the developer completed other residential development projects? Yes

How many housing development projects has the developer completed? 2

How many rental units has the developer been responsible for producing?

New Construction # units: 142 Rehab # units: 4

How many full-time equivalent staff does developer employ? 5

List most recently completed projects:

| Project Name       | Address        | Construction Type | Tenure Type | Target Residents | # Units | Total Devel. Costs |
|--------------------|----------------|-------------------|-------------|------------------|---------|--------------------|
| St. James Place    | 169 Deweese St | New               | Rental      | Low/Mod Income   | 102     | \$2,897,795        |
| St. James Place II | 169 Deweese St | New               | Rental      | Low/Mod Income   | 40      | \$3,000,000        |
|                    |                |                   |             |                  |         |                    |
|                    |                |                   |             |                  |         |                    |
|                    |                |                   |             |                  |         |                    |

If developer has been involved in residential development projects in some other capacity, please specify:

**Ongoing Management Experience, Structure & Capacity**

Who will perform property management? Developer/Owner will manage in-house

Name of management staff/company: Foundation For Affordable Housing, Inc.

How many units is your staff or 3rd party mgt company currently managing? 142

How many HUD income-restricted units is your staff/mgt company currently managing? 142

Describe staff/mgt company's experience managing HUD income-restricted rental units.

The Foundation for Affordable Housing (FFAH) has developed St. James Place and St. James Place II. A Management Company was hired in 1995 to manage the first property, and the same company was hired to manage the second property in 2006. In 2010 it was determined that the management company was not performing it's duties and was terminated. FFAH was approved as Management Agen by HUD at that time, and has been managing the property and performing all accounting functions in-house for both properties, since then.

Describe how the roles of property management, asset management & ongoing compliance will be delegated.

The management staff consists of Phil Gray, President (2 years at St. James), Susan Murrell, Housing and Accounting Manager (5 years at St. James), and Dean C. Hammond Jr., Previous Chairman of the Board, President, and current Consultant to the Board (9 Years at St. James). The Board of Directors, consists for one CPA, one Attorney, one retired Veterans Administration Licensed Clinical Social Worker, one retired bank President, and one hotel manager, among several others.

**Affiliated Entities**

List any legally affiliated entities (parent organization, subsidiaries, partnerships, etc.).

1. Name: \_\_\_\_\_ Fed. ID #: \_\_\_\_\_  
Relationship to Applicant: \_\_\_\_\_
2. Name: \_\_\_\_\_ Fed. ID #: \_\_\_\_\_  
Relationship to Applicant: \_\_\_\_\_
3. Name: \_\_\_\_\_ Fed. ID #: \_\_\_\_\_  
Relationship to Applicant: \_\_\_\_\_
4. Name: \_\_\_\_\_ Fed. ID #: \_\_\_\_\_  
Relationship to Applicant: \_\_\_\_\_

**Properties Currently Owned by Applicant & Affiliate Entities**

*On the worksheet "1a)Properties" enter all properties owned by the applicant and its affiliated entities. LFUCG will check each address for outstanding taxes, code violations, etc.*

**G. Development Team Information**

|                 | Name                              | Address                                       | Phone        | Worked Together Previously? |
|-----------------|-----------------------------------|---|--------------|-----------------------------|
| Project Mgr:    | Dean Hammond                      | 115 Whispering Wood Lane, Lexington, KY 40505 | 859-227-2879 | Yes                         |
| Contractor:     | Foundation For Affordable Housing | 169 Deweese St, Lexington, KY 40407           | 859-388-9260 | Yes                         |
| Consultant:     |                                   |   |              |                             |
| Attorney:       | Robert Ryan                       | Wyatt Terrant & Combs                         | 859-252-6700 | Yes                         |
| Tax Accountant: | Greg Mullins                      | Blue and Company                              | 859-253-1100 | Yes                         |
| Architect:      | SNAPP & Assoc                     | 103 Wind Haven Dr, Nicholasville, KY          | 859-523-1500 | Yes                         |
| Engineer:       |                                   |   |              |                             |
| Property Mgr:   | Susan Murrell                     | 169 Deweese St, Lexington, KY 40407           | 859-252-6642 | Yes                         |
| Other:          |                                   |   |              |                             |



List subcontractors:

|  | MBE or WBE? |
|--|-------------|
| 1. David Sparks (Plumber), 859-621-1224        |             |
| 2. Scott McFarland (Electrician), 859-699-7848 |             |
| 3.   |             |
| 4.   |             |
| 5.   |             |

Are there any identities of interest between team members? (An identity of interest is a legal, financial, business, or familial relationship that may make it difficult for parties to act independently or "at arm's length" from one another.)

No

If yes, provide details of the relationship(s):

Is the Developer, Sponsor, or any other Development Team Member related to an Lexington Urban County Government elected official or employee?

No

If yes, provide details:

Is the Developer, Sponsor, or any other Development Team Member, including any of their owners, partners, or board members CURRENTLY debarred from Federal contracting opportunities by any agency of the Federal Government? (search at [www.sam.gov](http://www.sam.gov))

No

If yes, provide details:

Has the Developer, Sponsor, or any other Development Team Member listed on the previous page, including any of their owners, partners, or board members EVER been debarred from Federal contracting opportunities by any agency of the Federal Government?

No

If yes, provide details:

## H. Supportive Services Information

If you plan to provide supportive services to your tenants, please provide the following:

Description of the population to be served:

The Lexington area homeless population is to be served, as it has been for 20 years. St. James Place provides affordable housing to the homeless, using the HOME rent determinations, provided through LFUCG.

Will participation in supportive services be mandatory?

No

Description of the services to be provided and how they will be provided:

No formal supportive services are provided, however, numerous agencies provide case managers, payees, medical support teams, like comp care, and Eastern State Hospital is often involved for psychiatric cases. Our staff maintains an excellent working rapport with these agencies and refer residents to them for assistance.

## I. Relocation

Relocation is the moving of existing residential or commercial occupants from their current space.

Was the property occupied at the time you obtained ownership?

No

If vacant at purchase, how many months had it been vacant?

0

Will your development require any households to move temporarily?

Yes

# of households to move temporarily:

75

Will your plans require any occupants to move permanently?

No

# of households to move permanently:

0

Will your development require any commercial occupants to move?

No

# of commercial occupants to move:

0

If you answered yes to any of the above questions, describe your relocation plan.

If funded, as we approach the commencement date, we will allow for 7 units to be vacant. With our turnover, this should be easy to accomplish. We plan to have approximately 7 units down at any one time. With normal attrition other rooms may come open as we complete the rehab on others, so that we can move new applicants into the rehabilitated rooms. If there are no moveouts to accommodate our schedule, we will invite current residents to move to new units, so that we can rehab their old ones. We already have volunteers to

**J. Required Application Attachments** *(in addition to this Excel file)*

- |   |   |
|---|---|
| 1 Project Area Map                              | 8 Marketing Plan for Lease Up*                        |
| 2 Proof of Site Control*                        | 9 Current Letters for Project Funding/Financing       |
| 3 Plans, Specs, Drawing, Renderings*            | 10 Organizational or Personal Financial Statement     |
| 4 Market Study/Needs Assessment                 | 11 Organization's Annual Operating Budget or Audit    |
| 5 Appraisal Supporting Pricing for Acquisition* | 12 Plan/Description of Tenant Services*               |
| 6 Staff Resumes/References                      | 13 Any info required by the LFUCG application or RFP. |
| 7 Detailed Relocation Plan*                     |   |

*\*If Applicable. Some documents listed above may be submitted later in the funding process.*

**K. Applicant Certification**

I certify that submission of this application has been duly authorized by the governing body of the applicant and that all information contained in this application and its attachments is complete, true, and accurate to the best of my knowledge.

I certify that all forms of governmental assistance sought or already secured for this project are listed on the Sources & Uses section of this application. The applicant also certifies that should other governmental assistance be sought/secured in the future, applicant shall notify LFUCG promptly (within 5 business days).

I understand that awards will be made on a competitive basis and LFUCG may award an amount less than requested. I understand that LFUCG has no obligation to make a grant or loan to the applicant. I am aware that incomplete or late applications may not be accepted or considered for funding.

I further understand that submission of this application renders it a public document subject to the Freedom of Information Act.

**Applicant Signatures:**

**Owner, Developer, Executive Director:**

Dean C. Hammond Jr.  
*Printed Name*

\_\_\_\_\_  
*Signature*

Acting President, Past Chairman  
*Title*

12-05-2014  
*Date*

**Chief Elected Officer Signature** (Board Chair)

Jonathan Edwards  
*Printed Name*

\_\_\_\_\_  
*Signature*

Chairman of the Board of Directors  
*Title (Board Chair, President, etc.)*

12-05-2014  
*Date*

**EXHIBIT B**  
**(Property Description)**

Being all of Parcel 3 as shown on the Consolidated Plat of Central Christian Church Property - S.R.O. LTD. Property & Closed Portions of Spruce Street Right of Way, Lexington, Kentucky, of record in Plat Cabinet M, Slide 487, in the Fayette County Clerk's office, to which plat reference is hereby made for a more particular description of said property.

Being the same property quitclaimed to SRO, LTD., a Kentucky limited partnership, by deed dated April 14, 2005, of record in Deed Book 2542, Page 609 in the Fayette County Clerk's Office.