

**Relief from LDC 4.2.63(D)'s 600-foot rule where Short Term Rentals cannot be located closer than 600 feet to any property on which another approved short-term rental that required a conditional use permit is located.**

- I. Relief from the 600-foot rule is not necessary as the rule should not apply in these circumstances.

Relief from the 600-foot rule is not necessary because the only short term rental (“STR”) conditional use permit (“CUP”) within 600 feet of the Applicant’s property should be excluded under the “property” that is the “primary residence of the host” clause in Land Development Code (“LDC”) 4.2.63.D. The STR CUP that was granted in 22-CUP-0317 is located at 953 S. 7<sup>th</sup> Street, which is within 600 feet of the Applicant’s property at 940 S. 6<sup>th</sup> Street. However, the property at 953 S. 7<sup>th</sup> Street is a duplex where the owner sought only to use the second unit, being a one-bedroom unit, as a STR and only for “special local events close to downtown Louisville such as the Kentucky Derby and music festivals nearby.” *See* Exhibit 1, *infra*. Otherwise, when not in use, the owner planned to “utilize it for visiting family[.]” *Ibid*.

Pursuant to LDC 4.2.63.D, which is the 600-foot rule for STR CUPs, “This provision shall not apply to a property in the TNZD district which required a conditional use permit even though it is the primary residence of the host.” The STR CUP at 953 S. 7<sup>th</sup> Street, which is located in the TNZD district, should be found to fit that definition and not apply to the 600 foot rule. As evidence thereof, the application in 22-CUP-0317 stated that only the second unit was being used as an STR, which, by implication, means that the owner was planning on using the first unit as her primary residence. Additionally, Exhibit A to the deed for this property states that the grantee of the deed, being Elizabeth Turner, as a condition of her FHA loan must “reside in this property as their primary residence for a period of 5 years from the loan closing or certificate of project completion.” *See* Exhibit 2, *infra*, Deed Book 12031, Page 324, Jefferson County Clerk’s Office. An FHA mortgage on the property, with Elizabeth Turner listed as the borrower, was recorded on May 27, 2021, in MTG Book 17409, Page 751 at the Jefferson County Clerk’s Office. *See* Exhibit 3, *infra*. Elizabeth Turner is also listed as the owner on the application for 22-CUP-0317. *See* Exhibit 4, *infra*. Accordingly, it should be found that 953 S. 7<sup>th</sup> Street fits all elements of LDC 4.2.63.D’s exclusions: (1) it is a “property”; (2) it is “in the TNZD district”; (3) it “required a conditional use permit even though it is the primary residence of the host.”

Admittedly, at the December 5, 2022 BOZA hearing on 22-CUP-0317 it was testified to by staff that the primary residence of the host was unit 1, not unit 2, thus it was not believed that this provision would apply to this property. The Applicant herein respectfully submits that such interpretation is too narrow for LDC 4.2.63.D’s exclusion, as it specifically states it applies to a “property” that is the “primary residence of the host.” As the evidence has shown, 953 S. 7<sup>th</sup> Street, though a duplex, is a property owned by Turner, and that property is her primary residence, regardless of whether she is utilizing unit 1 or unit 2 as her primary residence. As such, it should be deemed to fit within the exclusion. Accordingly, the Applicant herein proffers that the 600-foot rule should not apply to his application.

II. If relief from the 600-foot rule is necessary, it is justified in these circumstances.

Should the 600-foot rule be determined to apply in these circumstances, relief should be granted. Application of the rule here is largely a result of timing. The Applicant herein is now on his second hearing before the Board of Zoning Adjustments on this same CUP request for an STR. At the conclusion of the first hearing, there was a tie vote on a motion to approve the CUP, which resulted in the applicant immediately re-applying, conducting a new neighborhood meeting to clear up any questions about his request, and now re-appearing before the Board of Zoning Adjustments for a second time. In the interim, a STR CUP was approved in 22-CUP-0317, which is located on the same block but one street to the west at 953 S. 7<sup>th</sup> Street. Thus, while the initial request for a CUP was the only one within 600 feet of any other STR CUP, there now exists one other that just happened to be heard while the Applicant in this case was waiting to get re-docketed for the Board of Zoning Adjustments.

The request for relief will not adversely affect adjacent property owners or the public because there is only one STR CUP currently within the 600-foot area, and that property should be of limited impact on this block in particular because that applicant in 22-CUP-0317 stated that she would be utilizing the second unit in her duplex, which is a one-bedroom unit, as a STR for special local events, but otherwise would be using it for visiting family when it was not being used for STR use. Accordingly, it is by all appearances a limited-use STR. Additionally, while on the same block, the other CUP is located on a different street, being 953 S. 7<sup>th</sup> Street, while the Applicant's property here is located on 940 S. 6<sup>th</sup> Street, thus limiting or mitigating parking impacts when both are rented. Moreover, the proscribed diameter of the 600-foot rule application encompasses a large area representing dozens and dozens of separate addresses for properties located on at least three different blocks. Other than 22-CUP-0317, there appear to be few to no other approved STRs in the eight blocks directly to the east, west, or north of this property. Two STRs in this area, one of which is of limited use for special local events, is in keeping with the intent of the regulation in that STRs do not proliferate a neighborhood.

This request is for the minimum relief necessary, as the relief is only from one STR CUP of admitted limited use in the surrounding area. Additionally, the request only recently arose between the first and second hearing, thus it was never a request that the Applicant herein anticipated requesting when he purchased this property for this intended use. The Applicant does not anticipate that approval of an STR CUP at 940 S. 6<sup>th</sup> Street will have any substantial or meaningful negative impact on the fabric of the neighborhood, as it provides an off-street parking pad for renters to utilize, and it is expected to be of positive economic impact through substantial rents and resulting taxes, through the highlighting of local establishments for its renters to patronage during their stays, and through employment of local contractors to maintain the high standards of maintenance this property requires.

And, finally, strict application of the provisions of the regulation would deprive the Applicant of a reasonable use of the land or would create an unnecessary hardship in large part because the Applicant was heard first and is now only being heard second in time due in part to

the fact that the Applicant in this case had a new neighborhood meeting to further answer questions from interested parties while the applicant for 953 S. 7<sup>th</sup> Street did not hold a second neighborhood meeting, even though it appears both original applications held neighborhood meetings on the same day. The procedural ramifications of this case ostensibly amount to an arbitrary action and penalty against the Applicant should he not be granted relief from the 600-foot rule to be able to utilize his property for his intended use. Had both applicants held second neighborhood meetings, it is possible that the Applicant herein would have been heard first and not be requesting relief from the 600-foot rule. Either way, the Applicant posits that he should be granted relief from the 600-foot rule because the intention of the rule – to prohibit transformation of a residential block into STRs – is not circumvented by granting both STR CUPs on this block when one of the STR CUPs is a one-bedroom unit specifically designed to be minimally rented for special events.

## **EXHIBIT 1**

### **Letter from 22-CUP-0317 Application**

10/26/22

I propose to utilize the short-term rental conditional use permit for my second unit in my duplex at 953 S 7<sup>th</sup> St Louisville, Ky 40203 unit 2. It is a one-bedroom unit on the second floor of the duplex with a full bath, washer and dryer, full kitchen and all utilities included. My goal is to rent the unit out as an Air BnB unit to be used for special local events close to downtown Louisville such as the Kentucky Derby and music festivals nearby. It is currently being leased for a year by a tenant but it would benefit me most to rent it out short term so I can utilize it for visiting family when it is not being used for Air Bnb.

Please contact me with any further questions,

Elizabeth Turner

**EXHIBIT 2**

**Deed Book 12031, Pages 324-328, Jefferson County Clerk's Office**



**Bobbie Holsclaw**  
Jefferson County Clerk's Office

As evidenced by the instrument number shown below, this document  
has been recorded as a permanent record in the archives of the  
Jefferson County Clerk's Office.



**INST # 2021130207**

**BATCH # 304568**

JEFFERSON CO, KY FEE \$50.00

STATE OF KY DEED TAX \$233.00

PRESENTED ON: 05-27-2021 11:25:24 AM

LODGED BY: BORDERS & BORDERS

RECORDED: 05-27-2021 11:25:24 AM

BOBBIE HOLSCRAW

CLERK

BY: RAY BENSON

LEGAL RECORDS

**BK: D 12031**

**PG: 324-328**

When Recorded Return To:  
Borders & Borders, PLC  
920 Dupont Road  
Louisville, KY 40207  
2021-547

**DEED**

THIS DEED, made and entered into this 26th day of May, 2021, by and between 17061707 Liberty Bell Way, LLC, a Kentucky Limited Liability Company, First Party, with a mailing address of ; AND Elizabeth Hope Turner, an unmarried woman, Second Party, **whose mailing address and in-care-of address, for tax purposes, 9535 7<sup>th</sup> St. Louisville KY 40203**

WITNESSETH:

THAT, for a valuable consideration of \$233,000.00, the receipt of which is hereby acknowledged, the First Party has BARGAINED AND SOLD and does hereby GRANT AND CONVEY unto Second Party, in fee simple, the following described property located in Jefferson County, Commonwealth of Kentucky:

BEGINNING at a point on the East side of Seventh Street 194.8 feet Northwardly from the Northeast corner of Seventh and Kentucky Street; running thence Northwardly along the East line of Seventh Street 25 feet, and extending back Eastwardly of the same width throughout, between lines parallel with Kentucky Street, 200 feet to a 20 feet alley.

Being the same property conveyed to the Party of the First Part by deed dated 8/20/2019 and of record in Deed Book 11489, Page 103 in the office of the Clerk of Jefferson County, Kentucky.

**See Attached Exhibit "A" which is incorporated herein and made a part hereof by reference.**

TO HAVE AND TO HOLD the above-described property, together with all appurtenances and privileges thereunto belonging, unto Second Party, in fee simple.

FIRST PARTY does hereby release and relinquish unto the Second Party, in fee simple, all of its right, title and interest in and to the above-described property, including all exceptions allowed by law, and does hereby covenant to and with Second Party, in fee simple, that it is lawfully seized in fee simple title to said property and has good right to convey the same as is herein done; that said property is free and clear of all encumbrances of whatsoever nature, except as herein stated, and that it will WARRANT GENERALLY the title to said property.

PROVIDED, HOWEVER, that there is expected from the foregoing warranty and covenants of title and this conveyance is made subject to any restrictions, easements and conditions of record affecting said title.

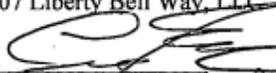
Second Party assumes and agrees to pay all ad valorem taxes assessed against the above described property for the current fiscal year and all subsequent years, the current taxes and assessments to be prorated as of the date of transfer of this Deed.

The parties hereto state the consideration reflected in this Deed is the FULL CONSIDERATION paid for the property. The Party of the Second Part joins in this Deed for the sole purpose of certifying the consideration pursuant to KRS 382.

IN WITNESS WHEREOF, the Parties have hereunto set their hands, this the day and year first above written.

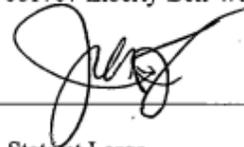
FIRST PARTY:

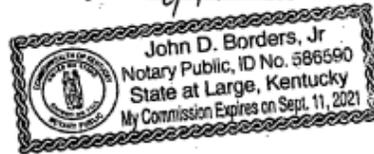
17061707 Liberty Bell Way, LLC

By    
As  

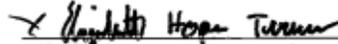
STATE OF KENTUCKY  
COUNTY OF JEFFERSON

The foregoing instrument was subscribed, sworn to and acknowledged before me on this 26th day of May, 2021 by Cary Eibel & Sherry Eibel as members for 17061707 Liberty Bell Way, LLC, a Kentucky Limited Liability Company, First Party.

  
\_\_\_\_\_  
Notary Public  
KENTUCKY, State at Large  
My Commission Expires: 9/11/2021



SECOND PARTY:

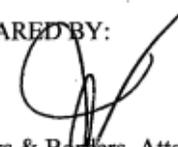
  
Elizabeth Hope Turner

STATE OF KENTUCKY  
COUNTY OF JEFFERSON

The foregoing instrument was subscribed, sworn to and acknowledged before me on this 26th day of May, 2021 by Elizabeth Hope Turner, an unmarried woman, Second Party.

  
Notary Public  
KENTUCKY, State at Large  
My Commission Expires: 9/11/2021

PREPARED BY:

  
Borders & Borders, Attorneys  
920 Dupont Road  
Louisville, KY 40207  
(502) 894-9200

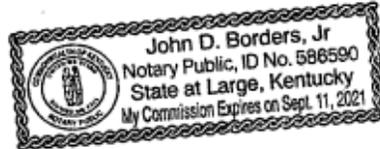


EXHIBIT "A"

Grantee(s), for and in consideration of receiving direct subsidy funds from the Federal Home Loan Bank of Cincinnati's (the FHLB Cincinnati) Affordable Housing Program, must maintain ownership in this property and reside in this property as their primary residence for a period of five (5) years (Retention Period) from the date of the loan closing or certification of project completion.

- (i) The FHLB Cincinnati, whose mailing address is P.O. Box 598; Cincinnati, OH 45201-0598, is to be given written notice of any sale, transfer, assignment of title or deed such as to the Secretary of HUD, foreclosure, or refinancing of the unit by the household occurring during the AHP 5-year Retention Period.
- (ii) In the case of a sale, transfer, assignment of title or deed, or refinancing of the unit by the household during the Retention Period, the Bank shall be repaid the lesser of: (A) the AHP subsidy, reduced on a pro rata basis per month until the unit is sold, transferred, or its title or deed transferred, or is refinanced, during the AHP 5-year retention period; or (B) any net proceeds from the sale, transfer, or assignment of title or deed of the unit, or the refinancing, as applicable, minus the AHP-assisted household's investment; unless one of the following exceptions applies:
  - 1. The unit was assisted with a permanent mortgage loan funded by an AHP advance;
  - 2. The subsequent purchaser, transferee, or assignee is a very low- or low- or moderate-income household as defined in the applicable Federal Housing Finance Agency regulations for the AHP (in which case the retention period ends with the conveyance to such purchaser);
  - 3. The amount of the AHP subsidy that would be required to be repaid is \$2,500 or less; or
  - 4. Following a refinancing, the unit continues to be subject to a deed restriction or other legally enforceable retention agreement or mechanism, incorporating the requirements of clauses (i), (ii), and (iii) contained herein.
- (iii) The obligation to repay Subsidy to the FHLB Cincinnati shall terminate after any event of foreclosure or conveyance by deed in lieu of foreclosure, an assignment of a Federal Housing Administration first mortgage to the Secretary of HUD, or death of the AHP-assisted homeowner.

**EXHIBIT 3**

**MTG Book 17409, Page 751-769, Jefferson County Clerk's Office**



**Bobbie Holsclaw**  
Jefferson County Clerk's Office

As evidenced by the instrument number shown below, this document  
has been recorded as a permanent record in the archives of the  
Jefferson County Clerk's Office.



**INST # 2021130208**

**BATCH # 304568**

**JEFFERSON CO, KY FEE \$126.00**

PRESENTED ON: 05-27-2021 1 11:27:15 AM

LODGED BY: BORDERS & BORDERS

RECORDED: 05-27-2021 11:27:15 AM

BOBBIE HOLSCLOW

CLERK

BY: RAY BENSON

LEGAL RECORDS

**BK: M 17409**

**PG: 751-769**

99

AFTER RECORDING RETURN TO  
BORDERS & BORDERS, ATTORNEYS  
920 DUPONT ROAD  
LOUISVILLE, KY 40207

After Recording Return To:  
WILSON & MUIR BANK & TRUST COMPANY  
130 SAINT MATTHEWS AVE STE 202  
LOUISVILLE, KENTUCKY 40207  
Loan Number: 1097264

[Space Above This Line For Recording Data]

### MORTGAGE

FHA Case No:  
201-6938210-703

MIN: 100088600010972644

MERS Phone: 888-679-6377

#### DEFINITIONS

Words used in multiple sections of this document are defined below and other words are defined in Sections 3, 10, 12, 17, 19 and 20. Certain rules regarding the usage of words used in this document are also provided in Section 15.

- (A) "Security Instrument" means this document, which is dated MAY 26, 2021, together with all Riders to this document.
- (B) "Borrower" is Elizabeth Hope Turner an unmarried woman

Borrower is the mortgagor under this Security Instrument.

(C) "MERS" is Mortgage Electronic Registration Systems, Inc. MERS is a separate corporation that is acting solely as a nominee for Lender and Lender's successors and assigns. **MERS is the mortgagee under this Security Instrument.** MERS is organized and existing under the laws of Delaware, and has an address and telephone number of P.O. Box 2026, Flint, MI 48501-2026, tel. (888) 679-MERS.

(D) "Lender" is WILSON & MUIR BANK & TRUST COMPANY

Lender is a KENTUCKY CORPORATION organized

and existing under the laws of KENTUCKY

Lender's mailing address is 107 N THIRD ST., BARDSTOWN, KENTUCKY 40004.

tel. (502) 348-5996

and the address of Lender's principal place of business is 107 N THIRD ST., BARDSTOWN, KENTUCKY 40004

Borrower Initials:   ET  



(E) "Note" means the promissory note signed by Borrower and dated MAY 26, 2021. The Note states that Borrower owes Lender TWO HUNDRED TWENTY-EIGHT THOUSAND SEVEN HUNDRED THIRTY-FOUR AND 00/100 Dollars (U.S. \$228,734.00) plus interest. Borrower has promised to pay this debt in regular Periodic Payments and to pay the debt in full not later than JUNE 1, 2051.

This Security Instrument secures 150% of the principal amount of the Note, but any amount secured in excess of the amount stated in the second sentence of this paragraph must be a "Protective Advance" as defined by Section 26 hereof (or, if the rate of interest is adjustable, may be interest added to principal, commonly called "negative amortization").

(F) "Property" means the property that is described below under the heading "Transfer of Rights in the Property."

(G) "Loan" means the debt evidenced by the Note, plus interest, late charges due under the Note, and all sums due under this Security Instrument, plus interest.

(H) "Riders" means all Riders to this Security Instrument that are executed by Borrower. The following Riders are to be executed by Borrower [check box as applicable]:

- Adjustable Rate Rider
- Planned Unit Development Rider
- Condominium Rider
- Other(s) [specify] 1 - 4 Family Rider

(I) "Applicable Law" means all controlling applicable federal, state and local statutes, regulations, ordinances and administrative rules and orders (that have the effect of law) as well as all applicable final, non-appealable judicial opinions.

(J) "Community Association Dues, Fees, and Assessments" means all dues, fees, assessments and other charges that are imposed on Borrower or the Property by a condominium association, homeowners association or similar organization.

(K) "Electronic Funds Transfer" means any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, which is initiated through an electronic terminal, telephonic instrument, computer, or magnetic tape so as to order, instruct, or authorize a financial institution to debit or credit an account. Such term includes, but is not limited to, point-of-sale transfers, automated teller machine transactions, transfers initiated by telephone, wire transfers, and automated clearinghouse transfers.

(L) "Escrow Items" means those items that are described in Section 3.

(M) "Miscellaneous Proceeds" means any compensation, settlement, award of damages, or proceeds paid by any third party (other than insurance proceeds paid under the coverages described in Section 5) for: (i) damage to, or destruction of, the Property; (ii) condemnation or other taking of all or any part of the Property; (iii) conveyance in lieu of condemnation; or (iv) misrepresentations of, or omissions as to, the value and/or condition of the Property.

(N) "Mortgage Insurance" means insurance protecting Lender against the nonpayment of, or default on, the Loan.

(O) "Periodic Payment" means the regularly scheduled amount due for (i) principal and interest under the Note, plus (ii) any amounts under Section 3 of this Security Instrument.

(P) "RESPA" means the Real Estate Settlement Procedures Act (12 U.S.C. § 2601 et seq.) and its implementing regulation, Regulation X (12 C.F.R. Part 1024), as they might be amended from time to time, or any additional or successor legislation or regulation that governs the same subject matter. As used in this Security Instrument, "RESPA" refers to all requirements and restrictions that are imposed in regard to a "federally related mortgage loan" even if the Loan does not qualify as a "federally related mortgage loan" under RESPA.

(Q) "Secretary" means the Secretary of the United States Department of Housing and Urban Development or his designee.

Borrower Initials: ET

(R) "Successor in Interest of Borrower" means any party that has taken title to the Property, whether or not that party has assumed Borrower's obligations under the Note and/or this Security Instrument.

**TRANSFER OF RIGHTS IN THE PROPERTY**

This Security Instrument secures to Lender: (i) the repayment of the Loan, and all renewals, extensions and modifications of the Note; and (ii) the performance of Borrower's covenants and agreements under this Security Instrument and the Note. For this purpose, Borrower does hereby mortgage, grant and convey to MERS (solely as nominee for Lender and Lender's successors and assigns) and to the successors and assigns of MERS, with power of sale, the following described property located in the

COUNTY

of

Jefferson

[Type of Recording Jurisdiction]

[Name of Recording Jurisdiction]

SEE EXHIBIT "A" ATTACHED HERETO AND BY THIS REFERENCE MADE A PART HEREOF.

Metes & Bounds

A.P.N.: 08-029E-0030-0000

which currently has the address of 953 S 7th St

[Street]

LOUISVILLE

, Kentucky

40203-3301

("Property Address"):

[City]

[Zip Code]

TOGETHER WITH all the improvements now or hereafter erected on the property, and all easements, appurtenances, and fixtures now or hereafter a part of the property. All replacements and additions shall also be covered by this Security Instrument. All of the foregoing is referred to in this Security Instrument as the "Property." Borrower understands and agrees that MERS holds only legal title to the interests granted by Borrower in this Security Instrument, but, if necessary to comply with law or custom, MERS (as nominee for Lender and Lender's successors and assigns) has the right: to exercise any or all of those interests, including, but not limited to, the right to foreclose and sell the Property; and to take any action required of Lender including, but not limited to, releasing and canceling this Security Instrument.

BORROWER COVENANTS that Borrower is lawfully seized of the estate hereby conveyed and has the right to mortgage, grant and convey the Property and that the Property is unencumbered, except for encumbrances of record. Borrower warrants and will defend generally the title to the Property against all claims and demands, subject to any encumbrances of record.

THIS SECURITY INSTRUMENT combines uniform covenants for national use and non-uniform covenants with limited variations by jurisdiction to constitute a uniform security instrument covering real property.

Borrower Initials: CT

**UNIFORM COVENANTS.** Borrower and Lender covenant and agree as follows:

**1. Payment of Principal, Interest, Escrow Items, and Late Charges.** Borrower shall pay when due the principal of, and interest on, the debt evidenced by the Note and late charges due under the Note. Borrower shall also pay funds for Escrow Items pursuant to Section 3. Payments due under the Note and this Security Instrument shall be made in U.S. currency. However, if any check or other instrument received by Lender as payment under the Note or this Security Instrument is returned to Lender unpaid, Lender may require that any or all subsequent payments due under the Note and this Security Instrument be made in one or more of the following forms, as selected by Lender: (a) cash; (b) money order; (c) certified check, bank check, treasurer's check or cashier's check, provided any such check is drawn upon an institution whose deposits are insured by a federal agency, instrumentality, or entity; or (d) Electronic Funds Transfer.

Payments are deemed received by Lender when received at the location designated in the Note or at such other location as may be designated by Lender in accordance with the notice provisions in Section 14. Lender may return any payment or partial payment if the payment or partial payments are insufficient to bring the Loan current. Lender may accept any payment or partial payment insufficient to bring the Loan current, without waiver of any rights hereunder or prejudice to its rights to refuse such payment or partial payments in the future, but Lender is not obligated to apply such payments at the time such payments are accepted. If each Periodic Payment is applied as of its scheduled due date, then Lender need not pay interest on unapplied funds. Lender may hold such unapplied funds until Borrower makes payment to bring the Loan current. If Borrower does not do so within a reasonable period of time, Lender shall either apply such funds or return them to Borrower. If not applied earlier, such funds will be applied to the outstanding principal balance under the Note immediately prior to foreclosure. No offset or claim which Borrower might have now or in the future against Lender shall relieve Borrower from making payments due under the Note and this Security Instrument or performing the covenants and agreements secured by this Security Instrument.

**2. Application of Payments or Proceeds.** Except as otherwise described in this Section 2, all payments accepted and applied by Lender shall be applied in the following order of priority:

First, to the Mortgage Insurance premiums to be paid by Lender to the Secretary or the monthly charge by the Secretary instead of the monthly mortgage insurance premiums;

Second, to any taxes, special assessments, leasehold payments or ground rents, and fire, flood and other hazard insurance premiums, as required;

Third, to interest due under the Note;

Fourth, to amortization of the principal of the Note; and, Fifth, to late charges due under the Note.

Any application of payments, insurance proceeds, or Miscellaneous Proceeds to principal due under the Note shall not extend or postpone the due date, or change the amount of the Periodic Payments.

**3. Funds for Escrow Items.** Borrower shall pay to Lender on the day Periodic Payments are due under the Note, until the Note is paid in full, a sum (the "Funds") to provide for payment of amounts due for: (a) taxes and assessments and other items which can attain priority over this Security Instrument as a lien or encumbrance on the Property; (b) leasehold payments or ground rents on the Property, if any; (c) premiums for any and all insurance required by Lender under Section 5; and (d) Mortgage Insurance premiums to be paid by Lender to the Secretary or the monthly charge by the Secretary instead of the monthly Mortgage Insurance premiums. These items are called "Escrow Items." At origination or at any time during the term of the Loan, Lender may require that Community Association Dues, Fees, and Assessments, if any, be escrowed by Borrower, and such dues, fees and assessments shall be an Escrow Item. Borrower shall promptly furnish to Lender all notices of amounts to be paid under this Section. Borrower shall pay Lender the Funds for Escrow Items unless Lender waives Borrower's obligation to pay the Funds for any or all Escrow Items. Lender may waive Borrower's obligation to pay to Lender Funds for any or all Escrow Items at any time. Any such waiver may only be in writing. In the event of such waiver, Borrower shall pay directly, when and where payable, the amounts due for any Escrow Items for which payment of Funds has been waived by Lender and, if Lender requires, shall furnish to Lender receipts evidencing such payment within such time period as Lender may require. Borrower's obligation to make such payments and to provide receipts shall for all purposes be

Borrower Initials: CT

deemed to be a covenant and agreement contained in this Security Instrument, as the phrase "covenant and agreement" is used in Section 9. If Borrower is obligated to pay Escrow Items directly, pursuant to a waiver, and Borrower fails to pay the amount due for an Escrow Item, Lender may exercise its rights under Section 9 and pay such amount and Borrower shall then be obligated under Section 9 to repay to Lender any such amount. Lender may revoke the waiver as to any or all Escrow Items at any time by a notice given in accordance with Section 14 and, upon such revocation, Borrower shall pay to Lender all Funds, and in such amounts, that are then required under this Section 3.

Lender may, at any time, collect and hold Funds in an amount (a) sufficient to permit Lender to apply the Funds at the time specified under RESPA, and (b) not to exceed the maximum amount a lender can require under RESPA. Lender shall estimate the amount of Funds due on the basis of current data and reasonable estimates of expenditures of future Escrow Items or otherwise in accordance with Applicable Law.

The Funds shall be held in an institution whose deposits are insured by a federal agency, instrumentality, or entity (including Lender, if Lender is an institution whose deposits are so insured) or in any Federal Home Loan Bank. Lender shall apply the Funds to pay the Escrow Items no later than the time specified under RESPA. Lender shall not charge Borrower for holding and applying the Funds, annually analyzing the escrow account, or verifying the Escrow Items, unless Lender pays Borrower interest on the Funds and Applicable Law permits Lender to make such a charge. Unless an agreement is made in writing or Applicable Law requires interest to be paid on the Funds, Lender shall not be required to pay Borrower any interest or earnings on the Funds. Borrower and Lender can agree in writing, however, that interest shall be paid on the Funds. Lender shall give to Borrower, without charge, an annual accounting of the Funds as required by RESPA.

If there is a surplus of Funds held in escrow, as defined under RESPA, Lender shall account to Borrower for the excess funds in accordance with RESPA. If there is a shortage of Funds held in escrow, as defined under RESPA, Lender shall notify Borrower as required by RESPA, and Borrower shall pay to Lender the amount necessary to make up the shortage in accordance with RESPA, but in no more than 12 monthly payments. If there is a deficiency of Funds held in escrow, as defined under RESPA, Lender shall notify Borrower as required by RESPA, and Borrower shall pay to Lender the amount necessary to make up the deficiency in accordance with RESPA, but in no more than 12 monthly payments.

Upon payment in full of all sums secured by this Security Instrument, Lender shall promptly refund to Borrower any Funds held by Lender.

**4. Charges; Liens.** Borrower shall pay all taxes, assessments, charges, fines, and impositions attributable to the Property which can attain priority over this Security Instrument, leasehold payments or ground rents on the Property, if any, and Community Association Dues, Fees, and Assessments, if any. To the extent that these items are Escrow Items, Borrower shall pay them in the manner provided in Section 3.

Borrower shall promptly discharge any lien which has priority over this Security Instrument unless Borrower: (a) agrees in writing to the payment of the obligation secured by the lien in a manner acceptable to Lender, but only so long as Borrower is performing such agreement; (b) contests the lien in good faith by, or defends against enforcement of the lien in, legal proceedings which in Lender's opinion operate to prevent the enforcement of the lien while those proceedings are pending, but only until such proceedings are concluded; or (c) secures from the holder of the lien an agreement satisfactory to Lender subordinating the lien to this Security Instrument. If Lender determines that any part of the Property is subject to a lien which can attain priority over this Security Instrument, Lender may give Borrower a notice identifying the lien. Within 10 days of the date on which that notice is given, Borrower shall satisfy the lien or take one or more of the actions set forth above in this Section 4.

**5. Property Insurance.** Borrower shall keep the improvements now existing or hereafter erected on the Property insured against loss by fire, hazards included within the term "extended coverage," and any other hazards including, but not limited to, earthquakes and floods, for which Lender requires insurance. This insurance shall be maintained in the amounts (including deductible levels) and for the periods that Lender requires. What Lender requires pursuant to the preceding sentences can change during the term of the Loan. The insurance carrier providing the insurance shall be chosen by Borrower subject to Lender's right to disapprove Borrower's choice, which right shall not be exercised unreasonably. Lender may require Borrower to pay, in connection with this Loan, either: (a) a

Borrower Initials: ET

one-time charge for flood zone determination, certification and tracking services; or (b) a one-time charge for flood zone determination and certification services and subsequent charges each time remappings or similar changes occur which reasonably might affect such determination or certification. Borrower shall also be responsible for the payment of any fees imposed by the Federal Emergency Management Agency in connection with the review of any flood zone determination resulting from an objection by Borrower.

If Borrower fails to maintain any of the coverages described above, Lender may obtain insurance coverage, at Lender's option and Borrower's expense. Lender is under no obligation to purchase any particular type or amount of coverage. Therefore, such coverage shall cover Lender, but might or might not protect Borrower, Borrower's equity in the Property, or the contents of the Property, against any risk, hazard or liability and might provide greater or lesser coverage than was previously in effect. Borrower acknowledges that the cost of the insurance coverage so obtained might significantly exceed the cost of insurance that Borrower could have obtained. Any amounts disbursed by Lender under this Section 5 shall become additional debt of Borrower secured by this Security Instrument. These amounts shall bear interest at the Note rate from the date of disbursement and shall be payable, with such interest, upon notice from Lender to Borrower requesting payment.

All insurance policies required by Lender and renewals of such policies shall be subject to Lender's right to disapprove such policies, shall include a standard mortgage clause, and shall name Lender as mortgagee and/or as additional loss payee. Lender shall have the right to hold the policies and renewal certificates. If Lender requires, Borrower shall promptly give to Lender all receipts of paid premiums and renewal notices. If Borrower obtains any form of insurance coverage, not otherwise required by Lender, for damage to, or destruction of, the Property, such policy shall include a standard mortgage clause and shall name Lender as mortgagee and/or as an additional loss payee.

In the event of loss, Borrower shall give prompt notice to the insurance carrier and Lender. Lender may make proof of loss if not made promptly by Borrower. Unless Lender and Borrower otherwise agree in writing, any insurance proceeds, whether or not the underlying insurance was required by Lender, shall be applied to restoration or repair of the Property, if the restoration or repair is economically feasible and Lender's security is not lessened. During such repair and restoration period, Lender shall have the right to hold such insurance proceeds until Lender has had an opportunity to inspect such Property to ensure the work has been completed to Lender's satisfaction, provided that such inspection shall be undertaken promptly. Lender may disburse proceeds for the repairs and restoration in a single payment or in a series of progress payments as the work is completed. Unless an agreement is made in writing or Applicable Law requires interest to be paid on such insurance proceeds, Lender shall not be required to pay Borrower any interest or earnings on such proceeds. Fees for public adjusters, or other third parties, retained by Borrower shall not be paid out of the insurance proceeds and shall be the sole obligation of Borrower. If the restoration or repair is not economically feasible or Lender's security would be lessened, the insurance proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with the excess, if any, paid to Borrower. Such insurance proceeds shall be applied in the order provided for in Section 2.

If Borrower abandons the Property, Lender may file, negotiate and settle any available insurance claim and related matters. If Borrower does not respond within 30 days to a notice from Lender that the insurance carrier has offered to settle a claim, then Lender may negotiate and settle the claim. The 30-day period will begin when the notice is given. In either event, or if Lender acquires the Property under Section 22 or otherwise, Borrower hereby assigns to Lender (a) Borrower's rights to any insurance proceeds in an amount not to exceed the amounts unpaid under the Note or this Security Instrument, and (b) any other of Borrower's rights (other than the right to any refund of unearned premiums paid by Borrower) under all insurance policies covering the Property, insofar as such rights are applicable to the coverage of the Property. Lender may use the insurance proceeds either to repair or restore the Property or to pay amounts unpaid under the Note or this Security Instrument, whether or not then due.

**6. Occupancy.** Borrower shall occupy, establish, and use the Property as Borrower's principal residence within 60 days after the execution of this Security Instrument and shall continue to occupy the Property as Borrower's principal residence for at least one year after the date of occupancy, unless Lender determines that this requirement

Borrower Initials: ET

shall cause undue hardship for the Borrower or unless extenuating circumstances exist which are beyond Borrower's control.

**7. Preservation, Maintenance and Protection of the Property; Inspections.** Borrower shall not destroy, damage or impair the Property, allow the Property to deteriorate or commit waste on the Property. Borrower shall maintain the Property in order to prevent the Property from deteriorating or decreasing in value due to its condition. Unless it is determined pursuant to Section 5 that repair or restoration is not economically feasible, Borrower shall promptly repair the Property if damaged to avoid further deterioration or damage. If insurance or condemnation proceeds are paid in connection with damage to the Property, Borrower shall be responsible for repairing or restoring the Property only if Lender has released proceeds for such purposes. Lender may disburse proceeds for the repairs and restoration in a single payment or in a series of progress payments as the work is completed. If the insurance or condemnation proceeds are not sufficient to repair or restore the Property, Borrower is not relieved of Borrower's obligation for the completion of such repair or restoration.

If condemnation proceeds are paid in connection with the taking of the property, Lender shall apply such proceeds to the reduction of the indebtedness under the Note and this Security Instrument, first to any delinquent amounts, and then to payment of principal. Any application of the proceeds to the principal shall not extend or postpone the due date of the monthly payments or change the amount of such payments.

Lender or its agent may make reasonable entries upon and inspections of the Property. If it has reasonable cause, Lender may inspect the interior of the improvements on the Property. Lender shall give Borrower notice at the time of or prior to such an interior inspection specifying such reasonable cause.

**8. Borrower's Loan Application.** Borrower shall be in default if, during the Loan application process, Borrower or any persons or entities acting at the direction of Borrower or with Borrower's knowledge or consent gave materially false, misleading, or inaccurate information or statements to Lender (or failed to provide Lender with material information) in connection with the Loan. Material representations include, but are not limited to, representations concerning Borrower's occupancy of the Property as Borrower's principal residence.

**9. Protection of Lender's Interest in the Property and Rights Under this Security Instrument.** If (a) Borrower fails to perform the covenants and agreements contained in this Security Instrument, (b) there is a legal proceeding that might significantly affect Lender's interest in the Property and/or rights under this Security Instrument (such as a proceeding in bankruptcy, probate, for condemnation or forfeiture, for enforcement of a lien which may attain priority over this Security Instrument or to enforce laws or regulations), or (c) Borrower has abandoned the Property, then Lender may do and pay for whatever is reasonable or appropriate to protect Lender's interest in the Property and rights under this Security Instrument, including protecting and/or assessing the value of the Property, and securing and/or repairing the Property. Lender's actions can include, but are not limited to: (a) paying any sums secured by a lien which has priority over this Security Instrument; (b) appearing in court; and (c) paying reasonable attorneys' fees to protect its interest in the Property and/or rights under this Security Instrument, including its secured position in a bankruptcy proceeding. Securing the Property includes, but is not limited to, entering the Property to make repairs, change locks, replace or board up doors and windows, drain water from pipes, eliminate building or other code violations or dangerous conditions, and have utilities turned on or off. Although Lender may take action under this Section 9, Lender does not have to do so and is not under any duty or obligation to do so. It is agreed that Lender incurs no liability for not taking any or all actions authorized under this Section 9.

Any amounts disbursed by Lender under this Section 9 shall become additional debt of Borrower secured by this Security Instrument. These amounts shall bear interest at the Note rate from the date of disbursement and shall be payable, with such interest, upon notice from Lender to Borrower requesting payment.

If this Security Instrument is on a leasehold, Borrower shall comply with all the provisions of the lease. If Borrower acquires fee title to the Property, the leasehold and the fee title shall not merge unless Lender agrees to the merger in writing.

**10. Assignment of Miscellaneous Proceeds; Forfeiture.** All Miscellaneous Proceeds are hereby assigned to and shall be paid to Lender.

Borrower Initials: ET

If the Property is damaged, such Miscellaneous Proceeds shall be applied to restoration or repair of the Property, if the restoration or repair is economically feasible and Lender's security is not lessened. During such repair and restoration period, Lender shall have the right to hold such Miscellaneous Proceeds until Lender has had an opportunity to inspect such Property to ensure the work has been completed to Lender's satisfaction, provided that such inspection shall be undertaken promptly. Lender may pay for the repairs and restoration in a single disbursement or in a series of progress payments as the work is completed. Unless an agreement is made in writing or Applicable Law requires interest to be paid on such Miscellaneous Proceeds, Lender shall not be required to pay Borrower any interest or earnings on such Miscellaneous Proceeds. If the restoration or repair is not economically feasible or Lender's security would be lessened, the Miscellaneous Proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with the excess, if any, paid to Borrower. Such Miscellaneous Proceeds shall be applied in the order provided for in Section 2.

In the event of a total taking, destruction, or loss in value of the Property, the Miscellaneous Proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with the excess, if any, paid to Borrower.

In the event of a partial taking, destruction, or loss in value of the Property in which the fair market value of the Property immediately before the partial taking, destruction, or loss in value is equal to or greater than the amount of the sums secured by this Security Instrument immediately before the partial taking, destruction, or loss in value, unless Borrower and Lender otherwise agree in writing, the sums secured by this Security Instrument shall be reduced by the amount of the Miscellaneous Proceeds multiplied by the following fraction: (a) the total amount of the sums secured immediately before the partial taking, destruction, or loss in value divided by (b) the fair market value of the Property immediately before the partial taking, destruction, or loss in value. Any balance shall be paid to Borrower.

In the event of a partial taking, destruction, or loss in value of the Property in which the fair market value of the Property immediately before the partial taking, destruction, or loss in value is less than the amount of the sums secured immediately before the partial taking, destruction, or loss in value, unless Borrower and Lender otherwise agree in writing, the Miscellaneous Proceeds shall be applied to the sums secured by this Security Instrument whether or not the sums are then due.

If the Property is abandoned by Borrower, or if, after notice by Lender to Borrower that the Opposing Party (as defined in the next sentence) offers to make an award to settle a claim for damages, Borrower fails to respond to Lender within 30 days after the date the notice is given, Lender is authorized to collect and apply the Miscellaneous Proceeds either to restoration or repair of the Property or to the sums secured by this Security Instrument, whether or not then due. "Opposing Party" means the third party that owes Borrower Miscellaneous Proceeds or the party against whom Borrower has a right of action in regard to Miscellaneous Proceeds.

Borrower shall be in default if any action or proceeding, whether civil or criminal, is begun that, in Lender's judgment, could result in forfeiture of the Property or other material impairment of Lender's interest in the Property or rights under this Security Instrument. Borrower can cure such a default and, if acceleration has occurred, reinstate as provided in Section 18, by causing the action or proceeding to be dismissed with a ruling that, in Lender's judgment, precludes forfeiture of the Property or other material impairment of Lender's interest in the Property or rights under this Security Instrument. The proceeds of any award or claim for damages that are attributable to the impairment of Lender's interest in the Property are hereby assigned and shall be paid to Lender.

All Miscellaneous Proceeds that are not applied to restoration or repair of the Property shall be applied in the order provided for in Section 2.

**11. Borrower Not Released; Forbearance By Lender Not a Waiver.** Extension of the time for payment or modification of amortization of the sums secured by this Security Instrument granted by Lender to Borrower or any Successor in Interest of Borrower shall not operate to release the liability of Borrower or any Successors in Interest of Borrower. Lender shall not be required to commence proceedings against any Successor in Interest of Borrower or to refuse to extend time for payment or otherwise modify amortization of the sums secured by this Security Instrument by reason of any demand made by the original Borrower or any Successors in Interest of Borrower. Any forbearance by Lender in exercising any right or remedy including, without limitation, Lender's acceptance of

Borrower Initials: LS

payments from third persons, entities or Successors in Interest of Borrower or in amounts less than the amount then due, shall not be a waiver of or preclude the exercise of any right or remedy.

**12. Joint and Several Liability; Co-signers; Successors and Assigns Bound.** Borrower covenants and agrees that Borrower's obligations and liability shall be joint and several. However, any Borrower who co-signs this Security Instrument but does not execute the Note (a "co-signer"): (a) is co-signing this Security Instrument only to mortgage, grant and convey the co-signer's interest in the Property under the terms of this Security Instrument; (b) is not personally obligated to pay the sums secured by this Security Instrument; and (c) agrees that Lender and any other Borrower can agree to extend, modify, forbear or make any accommodations with regard to the terms of this Security Instrument or the Note without the co-signer's consent.

Subject to the provisions of Section 17, any Successor in Interest of Borrower who assumes Borrower's obligations under this Security Instrument in writing, and is approved by Lender, shall obtain all of Borrower's rights and benefits under this Security Instrument. Borrower shall not be released from Borrower's obligations and liability under this Security Instrument unless Lender agrees to such release in writing. The covenants and agreements of this Security Instrument shall bind (except as provided in Section 19) and benefit the successors and assigns of Lender.

**13. Loan Charges.** Lender may charge Borrower fees for services performed in connection with Borrower's default, for the purpose of protecting Lender's interest in the Property and rights under this Security Instrument, including, but not limited to, attorneys' fees, property inspection and valuation fees. Lender may collect fees and charges authorized by the Secretary. Lender may not charge fees that are expressly prohibited by this Security Instrument, or by Applicable Law.

If the Loan is subject to a law which sets maximum loan charges, and that law is finally interpreted so that the interest or other loan charges collected or to be collected in connection with the Loan exceed the permitted limits, then: (a) any such loan charge shall be reduced by the amount necessary to reduce the charge to the permitted limit; and (b) any sums already collected from Borrower which exceeded permitted limits will be refunded to Borrower. Lender may choose to make this refund by reducing the principal owed under the Note or by making a direct payment to Borrower. If a refund reduces principal, the reduction will be treated as a partial prepayment with no changes in the due date or in the monthly payment amount unless the Note holder agrees in writing to those changes. Borrower's acceptance of any such refund made by direct payment to Borrower will constitute a waiver of any right of action Borrower might have arising out of such overcharge.

**14. Notices.** All notices given by Borrower or Lender in connection with this Security Instrument must be in writing. Any notice to Borrower in connection with this Security Instrument shall be deemed to have been given to Borrower when mailed by first class mail or when actually delivered to Borrower's notice address if sent by other means. Notice to any one Borrower shall constitute notice to all Borrowers unless Applicable Law expressly requires otherwise. The notice address shall be the Property Address unless Borrower has designated a substitute notice address by notice to Lender. Borrower shall promptly notify Lender of Borrower's change of address. If Lender specifies a procedure for reporting Borrower's change of address, then Borrower shall only report a change of address through that specified procedure. There may be only one designated notice address under this Security Instrument at any one time. Any notice to Lender shall be given by delivering it or by mailing it by first class mail to Lender's address stated herein unless Lender has designated another address by notice to Borrower. Any notice in connection with this Security Instrument shall not be deemed to have been given to Lender until actually received by Lender. If any notice required by this Security Instrument is also required under Applicable Law, the Applicable Law requirement will satisfy the corresponding requirement under this Security Instrument.

**15. Governing Law; Severability; Rules of Construction.** This Security Instrument shall be governed by federal law and the law of the jurisdiction in which the Property is located.

All rights and obligations contained in this Security Instrument are subject to any requirements and limitations of Applicable Law. Applicable Law might explicitly or implicitly allow the parties to agree by contract or it might be silent, but such silence shall not be construed as a prohibition against agreement by contract. In the event that any provision or clause of this Security Instrument or the Note conflicts with Applicable Law, such conflict shall not affect other provisions of this Security Instrument or the Note which can be given effect without the conflicting provision.

Borrower Initials: ET

As used in this Security Instrument: (a) words of the masculine gender shall mean and include corresponding neuter words or words of the feminine gender; (b) words in the singular shall mean and include the plural and vice versa; and (c) the word "may" gives sole discretion without any obligation to take any action.

**16. Borrower's Copy.** Borrower shall be given one copy of the Note and of this Security Instrument.

**17. Transfer of the Property or a Beneficial Interest in Borrower.** As used in this Section 17, "Interest in the Property" means any legal or beneficial interest in the Property, including, but not limited to, those beneficial interests transferred in a bond for deed, contract for deed, installment sales contract or escrow agreement, the intent of which is the transfer of title by Borrower at a future date to a purchaser.

If all or any part of the Property or any Interest in the Property is sold or transferred (or if Borrower is not a natural person and a beneficial interest in Borrower is sold or transferred) without Lender's prior written consent, Lender may require immediate payment in full of all sums secured by this Security Instrument. However, this option shall not be exercised by Lender if such exercise is prohibited by Applicable Law.

If Lender exercises this option, Lender shall give Borrower notice of acceleration. The notice shall provide a period of not less than 30 days from the date the notice is given in accordance with Section 14 within which Borrower must pay all sums secured by this Security Instrument. If Borrower fails to pay these sums prior to the expiration of this period, Lender may invoke any remedies permitted by this Security Instrument without further notice or demand on Borrower.

**18. Borrower's Right to Reinstate After Acceleration.** If Borrower meets certain conditions, Borrower shall have the right to reinstatement of a mortgage. Those conditions are that Borrower: (a) pays Lender all sums which then would be due under this Security Instrument and the Note as if no acceleration had occurred; (b) cures any default of any other covenants or agreements; (c) pays all expenses incurred in enforcing this Security Instrument, including, but not limited to, reasonable attorneys' fees, property inspection and valuation fees, and other fees incurred for the purpose of protecting Lender's interest in the Property and rights under this Security Instrument; and (d) takes such action as Lender may reasonably require to assure that Lender's interest in the Property and rights under this Security Instrument, and Borrower's obligation to pay the sums secured by this Security Instrument, shall continue unchanged. However, Lender is not required to reinstate if: (i) Lender has accepted reinstatement after the commencement of foreclosure proceedings within two years immediately preceding the commencement of a current foreclosure proceedings; (ii) reinstatement will preclude foreclosure on different grounds in the future, or (iii) reinstatement will adversely affect the priority of the lien created by this Security Instrument. Lender may require that Borrower pay such reinstatement sums and expenses in one or more of the following forms, as selected by Lender: (a) cash; (b) money order; (c) certified check, bank check, treasurer's check or cashier's check, provided any such check is drawn upon an institution whose deposits are insured by a federal agency, instrumentality or entity; or (d) Electronic Funds Transfer. Upon reinstatement by Borrower, this Security Instrument and obligations secured hereby shall remain fully effective as if no acceleration had occurred. However, this right to reinstate shall not apply in the case of acceleration under Section 17.

**19. Sale of Note; Change of Loan Servicer; Notice of Grievance.** The Note or a partial interest in the Note (together with this Security Instrument) can be sold one or more times without prior notice to Borrower. A sale might result in a change in the entity (known as the "Loan Servicer") that collects Periodic Payments due under the Note and this Security Instrument and performs other mortgage loan servicing obligations under the Note, this Security Instrument, and Applicable Law. There also might be one or more changes of the Loan Servicer unrelated to a sale of the Note. If there is a change of the Loan Servicer, Borrower will be given written notice of the change which will state the name and address of the new Loan Servicer, the address to which payments should be made and any other information RESPA requires in connection with a notice of transfer of servicing. If the Note is sold and thereafter the Loan is serviced by a Loan Servicer other than the purchaser of the Note, the mortgage loan servicing obligations to Borrower will remain with the Loan Servicer or be transferred to a successor Loan Servicer and are not assumed by the Note purchaser unless otherwise provided by the Note purchaser.

**20. Borrower Not Third-Party Beneficiary to Contract of Insurance.** Mortgage Insurance reimburses Lender (or any entity that purchases the Note) for certain losses it may incur if Borrower does not repay the Loan as agreed.

Borrower Initials: CT

Borrower acknowledges and agrees that the Borrower is not a third party beneficiary to the contract of insurance between the Secretary and Lender, nor is Borrower entitled to enforce any agreement between Lender and the Secretary, unless explicitly authorized to do so by Applicable Law.

**21. Hazardous Substances.** As used in this Section 21: (a) "Hazardous Substances" are those substances defined as toxic or hazardous substances, pollutants, or wastes by Environmental Law and the following substances: gasoline, kerosene, other flammable or toxic petroleum products, toxic pesticides and herbicides, volatile solvents, materials containing asbestos or formaldehyde, and radioactive materials; (b) "Environmental Law" means federal laws and laws of the jurisdiction where the Property is located that relate to health, safety or environmental protection; (c) "Environmental Cleanup" includes any response action, remedial action, or removal action, as defined in Environmental Law; and (d) an "Environmental Condition" means a condition that can cause, contribute to, or otherwise trigger an Environmental Cleanup.

Borrower shall not cause or permit the presence, use, disposal, storage, or release of any Hazardous Substances, or threaten to release any Hazardous Substances, on or in the Property. Borrower shall not do, nor allow anyone else to do, anything affecting the Property (a) that is in violation of any Environmental Law, (b) which creates an Environmental Condition, or (c) which, due to the presence, use, or release of a Hazardous Substance, creates a condition that adversely affects the value of the Property. The preceding two sentences shall not apply to the presence, use, or storage on the Property of small quantities of Hazardous Substances that are generally recognized to be appropriate to normal residential uses and to maintenance of the Property (including, but not limited to, hazardous substances in consumer products).

Borrower shall promptly give Lender written notice of (a) any investigation, claim, demand, lawsuit or other action by any governmental or regulatory agency or private party involving the Property and any Hazardous Substance or Environmental Law of which Borrower has actual knowledge, (b) any Environmental Condition, including but not limited to, any spilling, leaking, discharge, release or threat of release of any Hazardous Substance, and (c) any condition caused by the presence, use or release of a Hazardous Substance which adversely affects the value of the Property. If Borrower learns, or is notified by any governmental or regulatory authority, or any private party, that any removal or other remediation of any Hazardous Substance affecting the Property is necessary, Borrower shall promptly take all necessary remedial actions in accordance with Environmental Law. Nothing herein shall create any obligation on Lender for an Environmental Cleanup.

**NON-UNIFORM COVENANTS.** Borrower and Lender further covenant and agree as follows:

**22. Acceleration; Remedies.** Lender shall give notice to Borrower prior to acceleration following Borrower's breach of any covenant or agreement in this Security Instrument (but not prior to acceleration under Section 18 unless Applicable Law provides otherwise). The notice shall specify: (a) the default; (b) the action required to cure the default; (c) a date, not less than 30 days from the date the notice is given to Borrower, by which the default must be cured; and (d) that failure to cure the default on or before the date specified in the notice may result in acceleration of the sums secured by this Security Instrument, foreclosure by judicial proceeding and sale of the Property. The notice shall further inform Borrower of the right to reinstate after acceleration and the right to assert in the foreclosure proceeding the non-existence of a default or any other defense of Borrower to acceleration and foreclosure. If the default is not cured on or before the date specified in the notice, Lender at its option may require immediate payment in full of all sums secured by this Security Instrument without further demand and may foreclose this Security Instrument by judicial proceeding. Lender shall be entitled to collect all expenses incurred in pursuing the remedies provided in this Section 22, including, but not limited to, reasonable attorneys' fees and costs of title evidence.

**23. Release.** Upon payment of all sums secured by this Security Instrument, Lender shall release this Security Instrument. Borrower shall pay any recordation costs. Lender may charge Borrower a fee for releasing this Security Instrument, but only if the fee is paid to a third party for services rendered and the charging of the fee is permitted under Applicable Law.

Borrower Initials: ET

**24. Waiver of Homestead.** Borrower waives all right of homestead exemption in the Property.

**25. Taxes and Assessments on Mortgage Insurance Premiums.** If mortgage insurance premiums are required to be paid by Borrower pursuant to Section 20, then in addition to such premiums, Borrower shall pay all taxes and assessments thereon for so long as Borrower is required by Lender to pay the premiums. All taxes and assessments on premiums due and payable by Borrower shall be considered an Escrow Item and shall be paid by Borrower to Lender in the manner provided for Escrow Items in Section 3.

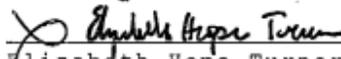
**26. Protective Advances.** This Security Instrument secures not only the initial advance under the Note, but also all Protective Advances. "Protective Advances" mean any advances to maintain and protect the Property and/or protect Lender's rights in the Property made by Lender or by any successors or assigns of Lender, including, without limitation, any sums, with interest, advanced under Sections 5, 9, or 13 hereof: (a) to pay any Escrow Items; (b) to pay any sums secured by a lien or encumbrance on the Property without which payment the secured position of Lender, including the priority of this Security Instrument, or any successor or assign of Lender might be jeopardized; (c) to secure, repair, maintain, protect or preserve the Property, or Lender's interest in the Property and rights under this Security Instrument; or (d) to pay any and all expenses incident to the collection of the indebtedness secured by this Security Instrument and the foreclosure thereof by judicial proceedings, or otherwise, pursuant to Applicable Law, whether the Property is still owned by the Borrower or is owned by a Successor in Interest of Borrower.

To the extent that any Protective Advances are deemed to be "future advances" or "additional indebtedness" within the meaning of KRS 382.520, this Security Instrument secures such future advances or additional indebtedness, provided that the total indebtedness at any one time outstanding shall not exceed 150% of the original principal amount of the Note, with interest thereon, and whether or not evidenced by notes, accounts or obligations of any kind whatsoever. It shall be a default under this Security Instrument if Borrower requests a release, in the manner provided by KRS 382.520, of any portion of the lien securing any of the additional indebtedness secured by this Security Instrument pursuant to KRS 382.520 prior to the date that all of the obligations secured by this Security Instrument have been paid and discharged and the Note and this Security Instrument have been terminated, and Borrower hereby waives any and all right to request such a release to the maximum extent permitted by Applicable Law.

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Borrower Initials: ET

BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this Security Instrument and in any Rider executed by Borrower and recorded with it.

 \_\_\_\_\_ (Seal)  
Elizabeth Hope Turner -Borrower

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Witness

\_\_\_\_\_[Space Below This Line For Acknowledgment]\_\_\_\_\_

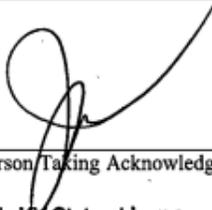
State of KENTUCKY

County of Jefferson

The foregoing instrument was acknowledged before me this May 26, 2021  
(date)

by Elizabeth Hope Turner, unmarried

\_\_\_\_\_  
(name of person acknowledged)

  
(Signature of Person Taking Acknowledgment)

**Notary Public KY State at Large**



(Seal)

John D. Borders (Full Name)  
Notary Public, ID No. 586590  
State at Large, Kentucky  
My Commission Expires on Sept. 11, 2021  
(Serial Number, if any)

My commission expires: 9/11/2021

This Instrument Prepared By:

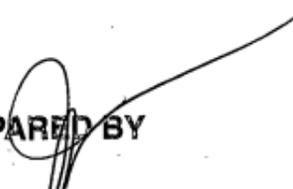
\_\_\_\_\_  
Signature of preparer

Loan Originator: Vinet Herovic, NMLSR ID 442823  
Loan Originator Organization: Wilson & Muir Bank & Trust Company, NMLSR ID 403246

KENTUCKY FHA MORTGAGE - MERS  
KYMTGZ2.FHA 02/13/20

DocMagic 

**PREPARED BY**

  
\_\_\_\_\_  
**BORDERS & BORDERS, ATTORNEYS**  
920 DUPONT RD.  
LOUISVILLE KY, 40207  
(502)894-9200

**EXHIBIT "A"**  
**Property Description**

**Property Address: 953 South 7th Street, Louisville, KY 40203**

BEGINNING at a point on the East side of Seventh Street 194.8 feet Northwardly from the Northeast corner of Seventh and Kentucky Street; running thence Northwardly along the East line of Seventh Street 25 feet, and extending back Eastwardly of the same width throughout, between lines parallel with Kentucky Street, 200 feet to a 20 feet alley.

Being the same property conveyed to the Mortgagor by deed dated May 26, 2021 and of record in Deed Book 12031, Page 324 in the office of the Clerk of Jefferson, Kentucky.

Loan Number: 1097264  
Case Number: 201-6938210-703

**1-4 FAMILY RIDER  
(Assignment of Rents)**

THIS 1-4 FAMILY RIDER is made this 26th day of MAY, 2021, and is incorporated into and shall be deemed to amend and supplement the Mortgage, Deed of Trust, or Security Deed (the "Security Instrument") of the same date given by the undersigned (the "Borrower") to secure Borrower's Note to WILSON & MUIR BANK & TRUST COMPANY, A KENTUCKY CORPORATION (the "Lender") of the same date and covering the Property described in the Security Instrument and located at:

953 S 7th St, LOUISVILLE, KENTUCKY 40203-3301  
[Property Address]

**1-4 FAMILY COVENANTS.** In addition to the covenants and agreements made in the Security Instrument, Borrower and Lender further covenant and agree as follows:

**A. ADDITIONAL PROPERTY SUBJECT TO THE SECURITY INSTRUMENT.** In addition to the Property described in Security Instrument, the following items now or hereafter attached to the Property to the extent they are fixtures are added to the Property description, and shall also constitute the Property covered by the Security Instrument: building materials, appliances and goods of every nature whatsoever now or hereafter located in, on, or used, or intended to be used in connection with the Property, including, but not limited to, those for the purposes of supplying or distributing heating, cooling, electricity, gas, water, air and light, fire prevention and extinguishing apparatus, security and access control apparatus, plumbing, bath tubs, water heaters, water closets, sinks, ranges, stoves, refrigerators, dishwashers, disposals, washers, dryers, awnings, storm windows, storm doors, screens, blinds, shades, curtains and curtain rods, attached mirrors, cabinets, paneling and attached floor coverings, all of which, including replacements and additions thereto, shall be deemed to be and remain a part of the Property covered by the Security Instrument. All of the foregoing together with the Property described in the Security Instrument (or the leasehold estate if the Security Instrument is on a leasehold) are referred to in this 1-4 Family Rider and the Security Instrument as the "Property."

**B. USE OF PROPERTY; COMPLIANCE WITH LAW.** Borrower shall not seek, agree to or make a change in the use of the Property or its zoning classification, unless Lender has agreed in writing to the change. Borrower shall comply with all laws, ordinances, regulations and requirements of any governmental body applicable to the Property.

**C. SUBORDINATE LIENS.** Except as permitted by federal law, Borrower shall not allow any lien inferior to the Security Instrument to be perfected against the Property without Lender's prior written permission.

**D. RENT LOSS INSURANCE.** Borrower shall maintain insurance against rent loss in addition to the other hazards for which insurance is required by Section 5.

Borrower Initials:    PET   



**E. "BORROWER'S RIGHT TO REINSTATE" DELETED.**Section 19 is deleted.

**F. BORROWER'S OCCUPANCY.** Unless Lender and Borrower otherwise agree in writing, Section 6 concerning Borrower's occupancy of the Property is deleted.

**G. ASSIGNMENT OF LEASES.** Upon Lender's request after default, Borrower shall assign to Lender all leases of the Property and all security deposits made in connection with leases of the Property. Upon the assignment, Lender shall have the right to modify, extend or terminate the existing leases and to execute new leases, in Lender's sole discretion. As used in this paragraph G, the word "lease" shall mean "sublease" if the Security Instrument is on a leasehold.

**H. ASSIGNMENT OF RENTS; APPOINTMENT OF RECEIVER; LENDER IN POSSESSION.** Borrower absolutely and unconditionally assigns and transfers to Lender all the rents and revenues ("Rents") of the Property, regardless of to whom the Rents of the Property are payable. Borrower authorizes Lender or Lender's agents to collect the Rents, and agrees that each tenant of the Property shall pay the Rents to Lender or Lender's agents. However, Borrower shall receive the Rents until (i) Lender has given Borrower notice of default pursuant to Section 22 of the Security Instrument and (ii) Lender has given notice to the tenant(s) that the Rents are to be paid to Lender or Lender's agent. This assignment of Rents constitutes an absolute assignment and not an assignment for additional security only.

If Lender gives notice of default to Borrower: (i) all Rents received by Borrower shall be held by Borrower as trustee for the benefit of Lender only, to be applied to the sums secured by the Security Instrument; (ii) Lender shall be entitled to collect and receive all of the Rents of the Property; (iii) Borrower agrees that each tenant of the Property shall pay all Rents due and unpaid to Lender or Lender's agents upon Lender's written demand to the tenant; (iv) unless applicable law provides otherwise, all Rents collected by Lender or Lender's agents shall be applied first to the costs of taking control of and managing the Property and collecting the Rents, including, but not limited to, attorney's fees, receiver's fees, premiums on receiver's bonds, repair and maintenance costs, insurance premiums, taxes, assessments and other charges on the Property, and then to the sums secured by the Security Instrument; (v) Lender, Lender's agents or any judicially appointed receiver shall be liable to account for only those Rents actually received; and (vi) Lender shall be entitled to have a receiver appointed to take possession of and manage the Property and collect the Rents and profits derived from the Property without any showing as to the inadequacy of the Property as security.

If the Rents of the Property are not sufficient to cover the costs of taking control of and managing the Property and of collecting the Rents any funds expended by Lender for such purposes shall become indebtedness of Borrower to Lender secured by the Security Instrument pursuant to Section 9.

Borrower represents and warrants that Borrower has not executed any prior assignment of the Rents and has not performed, and will not perform, any act that would prevent Lender from exercising its rights under this paragraph.

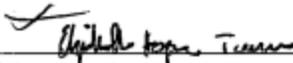
Lender, or Lender's agents or a judicially appointed receiver, shall not be required to enter upon, take control of or maintain the Property before or after giving notice of default to Borrower. However, Lender, or Lender's agents or a judicially appointed receiver, may do so at any time when a default occurs. Any application of Rents shall not cure or waive any default

Borrower Initials: JE

or invalidate any other right or remedy of Lender. This assignment of Rents of the Property shall terminate when all the sums secured by the Security Instrument are paid in full.

**I. CROSS-DEFAULT PROVISION.** Borrower's default or breach under any note or agreement in which Lender has an interest shall be a breach under the Security Instrument and Lender may invoke any of the remedies permitted by the Security Instrument.

BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this 1-4 Family Rider.

  
\_\_\_\_\_(Seal)  
Elizabeth Hope Turner -Borrower

# EXHIBIT 4

## Page 2 of the Application for 22-CUP-0317

### Contact Information:

**Owner:**  Check if primary contact      **Applicant:**  Check if primary contact

Name: Elizabeth Turner      Name: Elizabeth Turner  
Company: \_\_\_\_\_      Company: \_\_\_\_\_  
Address: 953 s 7th St      Address: 953 s 7th St  
City: Louisville      State: ky      Zip: 40203      City: Louisville      State: ky      Zip: 40203  
Primary Phone: 5023866725      Primary Phone: 5023866725  
Alternate Phone: \_\_\_\_\_      Alternate Phone: \_\_\_\_\_  
Email: Ehturn03@gmail.com      Email: Ehturn03@gmail.com

**Owner Signature (required):** \_\_\_\_\_

**Attorney:**  Check if primary contact      **Plan prepared by:**  Check if primary contact

Name: \_\_\_\_\_      Name: \_\_\_\_\_  
Company: \_\_\_\_\_      Company: \_\_\_\_\_  
Address: \_\_\_\_\_      Address: \_\_\_\_\_  
City: \_\_\_\_\_      State: \_\_\_\_\_      Zip: \_\_\_\_\_      City: \_\_\_\_\_      State: \_\_\_\_\_      Zip: \_\_\_\_\_  
Primary Phone: \_\_\_\_\_      Primary Phone: \_\_\_\_\_  
Alternate Phone: \_\_\_\_\_      Alternate Phone: \_\_\_\_\_  
Email: \_\_\_\_\_      Email: \_\_\_\_\_

**RECEIVED**  
OCT 17 2022  
PLANNING & DESIGN  
SERVICES

**Certification Statement:** A certification statement must be submitted with any application in which the owner(s) of the subject property is (are) a limited liability company, corporation, partnership, association, trustee, etc., or if someone other than the owner(s) of record sign(s) the application.

I, \_\_\_\_\_, in my capacity as \_\_\_\_\_, hereby  
*representative/authorized agent/other*

certify that Elizabeth Turner is (are) the owner(s) of the property which  
*name of LLC / corporation / partnership / association / etc.*

is the subject of this application and that I am authorized to sign this application on behalf of the owner(s).

Signature: Elizabeth Turner      Date: 10/26/22

I understand that knowingly providing false information on this application may result in any action taken hereon being declared null and void. I further understand that pursuant to KRS 523.010, et seq, knowingly making a material false statement, or otherwise providing false information with the intent to mislead a public servant in the performance of his/her duty is punishable as a Class B misdemeanor.

22-CUP-0317