

ORDINANCE NO. 168, SERIES 2019

**AN ORDINANCE APPROVING A FORGIVABLE LOAN PURSUANT TO LOUISVILLE METRO CODE OF ORDINANCES §39.131, TO REBOUND, INC. FOR THE RENOVATION AND IMPROVEMENT OF A DUPLEX LOCATED AT 403/405 DR. W.J. HODGE STREET.**

**SPONSORED BY: COUNCILMEMBERS BARBARA SEXTON SMITH AND BILL HOLLANDER**

**WHEREAS**, Louisville/Jefferson County Metro Government (“Metro”), through Develop Louisville’s Office of Housing, has received from the United States Department of Housing and Urban Development a HOME Investment Partnerships Program Grant (“HOME Program”);

**WHEREAS**, Metro desires to make a forgivable HOME Program loan to REBOUND, Inc. (“REBOUND”) in the amount of \$193,877.60 to renovate and improve two affordable housing units in the form of a duplex for purchase and lease in accordance with the HOME Program regulations;

**WHEREAS**, the proposed forgivable HOME Program loan exceeds the \$150,000.00 amount contained in Louisville Metro Code of Ordinances (“LMCO”) §39.131, which may be forgiven without Council approval;


**WHEREAS**, the Council has determined that making the forgivable loan to REBOUND is in furtherance of the HOME Program and the public purposes of Metro.

**NOW, THEREFORE, BE IT ORDAINED BY THE LEGISLATIVE COUNCIL OF THE LOUISVILLE/JEFFERSON COUNTY METRO GOVERNMENT (“COUNCIL”) AS FOLLOWS:**

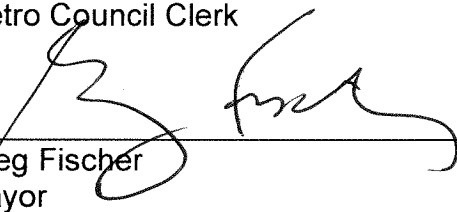
**SECTION I:** The HOME Program loan to REBOUND in the form of a \$193,877.60 forgivable loan is hereby approved by Council in accordance with LMCO §39.131 for the purposes described in the Homebuyer Development Agreement attached hereto.

**SECTION II:** The Mayor and other officials and employees of Metro who are delegated the authority to act for the Mayor are authorized and directed to execute any and all necessary loan documents, agreements, certifications, affidavits, releases, cancellations, satisfactions, modifications, and other documents and to do and perform all necessary or convenient actions to carry out the purposes authorized by this Ordinance.

**SECTION III.** This Ordinance shall take effect upon its passage and approval.

  
\_\_\_\_\_  
H. Stephen Ott  
Metro Council Clerk

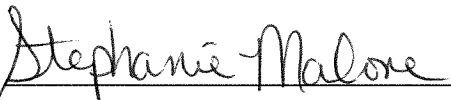
  
\_\_\_\_\_  
David James  
President of the Council

  
\_\_\_\_\_  
Greg Fischer  
Mayor

11/14/19  
\_\_\_\_\_  
Approval Date

**APPROVED AS TO FORM AND LEGALITY:**

Michael J. O'Connell  
Jefferson County Attorney

By:   
\_\_\_\_\_

**LOUISVILLE METRO COUNCIL  
READ AND PASSED  
November 7, 2019**

**HOME INVESTMENT PARTNERSHIPS PROGRAM (“HOME”)  
HOMEBUYER DEVELOPMENT AGREEMENT**

**THIS AGREEMENT** (“Agreement”) is entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2019 between **LOUISVILLE/JEFFERSON COUNTY METRO GOVERNMENT** (hereinafter “Metro Government”), acting through Develop Louisville, Office of Housing and Community Development, having a mailing address of 444 S. Fifth Street, Suite 500, Louisville, Kentucky 40202, and **OWNER and BORROWER – REBOUND, INC.**, a Kentucky Non-Profit Corporation, whose mailing address is 1535 W. Broadway, Louisville, Kentucky 40203, (which is referred to herein as “DEVELOPER”).

**WITNESSETH:**

**WHEREAS**, Metro Government is the recipient of Home Investment Partnerships Program funds from the U.S. Department of Housing and Urban Development (HUD); and

**WHEREAS**, there exist within the geographical boundaries of the Louisville/Jefferson County Metro Government areas, undeveloped or substandard properties; and

**WHEREAS**, DEVELOPER intends to acquire/construct/rehabilitate **Two (2)** affordable housing HOME units, in the form of a Duplex within Louisville/Jefferson County (known as the “Adopt A Block Program”);

**WHEREAS**, Metro Government wishes to provide financial assistance in the form of HOME Funds to DEVELOPER, so as to increase the number of affordable housing units available for low and moderate income persons; and

**WHEREAS**, Metro Government intends to use Set-aside for Community Housing Development Organizations (“CHDO”) Reserve funds to provide project-specific assistance to a recognized CHDO in accordance with 24 CFR 92.300.

**NOW, THEREFORE**, in consideration of Metro Government’s agreement to provide funds in the total amount of **\$193,877.60** for HOME Development Gap Subsidy, HOME Development Construction Loan, and Homebuyer Subsidy-inclusive of closing costs, as further defined as (the “HOME Funds”) from its HOME PROGRAM for property located at **403/405 Dr. W. J. Hodge Street**, Louisville, KY 40203, subject to the following terms and conditions, the Parties hereto agree and covenant as follows:

**PART I  
TERMS AND CONDITIONS**

**I. DEFINITIONS.** The following terms if used in this Agreement shall have the following meanings:

**Actual Development Costs** means, with respect to the Property, and as set forth in the Site Specific Cost Estimate, the sum of all hard and soft costs directly attributable to the development of such Property plus the acquisition cost of the Property plus the cost of holding and carrying such Property plus Development Fee.

**Affordability Period** shall have the meaning set forth in Part II., Article II. herein.

**Affordability Period Covenant** shall have the meaning set forth in Part I, Article VI, Section 2. of this Agreement.

**Appraisal** means an appraisal which meets the criteria specified in the Uniform Relocation Assistance and Real Property Acquisition Policies Act ("URA"), as further defined in 49 CFR 24.103.

**Consolidated Plan** means the five-year plan prepared by Metro Government in accordance with 24 CFR Part 91, which describes overall housing needs, resources, priorities and proposed activities to be undertaken with respect to programs funded by the United States Department of Housing and Urban Development (HUD). The Consolidated Plan includes one-year Action Plans which are submitted annually to HUD.

**Community Housing Development Organization (CHDO)** means a private non-profit organization as defined in 24 CFR 92.2 and certified by Metro Government as meeting the regulatory requirements set forth in the federal rules and regulations of the HOME Program in accordance with 24 CFR Part 92.300. et seq.

**Development Fee** means the fee earned by DEVELOPER in carrying out development activities for all three phases of the Project as set out in Part I, Articles V and VI, herein.

**Development Subsidy** means the Actual Development Costs per Property minus the sales price to the Homebuyer.

**Direct Homebuyer Subsidy** or HOME Loan in the amount of up to \$30,000 per unit, will be deducted from the sales proceeds and applied to the homebuyer DPA and capped at 20% of sales price, , per homebuyer per home, which means a loan (i) is made by Metro Government to the Homebuyer for the Property (ii) will be secured by the Direct Homebuyer Subsidy Note and Mortgage (iii) will be forgivable at the expiration of the Affordability Period unless the Affordability Period Covenant is violated, in which case Metro Government shall be entitled to enforce the Homebuyer Subsidy Note and Mortgage and recapture the HOME Funds in accordance with 24 CFR

92.254(a)(5)(ii). In the event that there are HOME funds remaining on an individual project, excluding any contingency, then those funds may be paid directly to the homebuyer DPA and not deducted from the sales proceeds. This will be determined on a case by case basis.

**Direct Homebuyer Subsidy Note and Mortgage** means a promissory note and mortgage from the Homebuyer in favor of Metro Government for the Direct Homebuyer Subsidy.

**Eligible Project Delivery Costs** means costs for the activities specified in this Agreement for which HOME Funds are budgeted as specified in Exhibit A of this Agreement, provided that such costs are incurred in connection with any activity which is eligible under the HUD HOME regulations.

**Environmental Clearance** means written clearance from Metro Government in compliance with 24 CFR Part 58 and related federal environmental authorities found at 24 CFR Part 58.5 including Section 106 of the National Historic Preservation Act of 1966 as amended (16 U.S.C. Section 470 et seq.) and the performance of any conditions contained therein, for activities involving acquisition, demolition, rehabilitation or construction or housing. Metro Government will require proof of environmental clearance prior to commitment of HOME Funds for specific sites.

**Expiration Date** shall have the meaning set forth in Part I, Article VI., Section 1. of this Agreement.

**Homebuyer** means a potential buyer or tenant of a property who is low to moderate income and has a certificate from a HUD approved counseling agency.

**Homebuyer Appraisal** means the fair market value of a completed home located on a Property, as determined by a qualified appraiser authorized to do business in the Commonwealth of Kentucky.

**Homebuyer Closing** means the date on which the DEVELOPER executes and delivers to the Homebuyer a deed transferring title to a specific Property which is a part of the Project together the Direct Homebuyer Subsidy Note and Mortgage.

**Leasing Period** shall mean the time between initial occupancy and the sale of each unit during which the occupant is a rent-paying tenant and the DEVELOPER is the Owner/Manager.

**Loan Documents** shall mean, collectively, this Agreement, and the Direct Homebuyer Subsidy Note and Mortgage. All of the foregoing documents shall be prepared by Metro Government at its sole cost and expense and not by DEVELOPER or any Homebuyer.

**Low Income Persons** means persons whose household income is at or below 80% of the area's median income, adjusted for household size.

Median income levels are determined annually by HUD, and shown for each household size in Attachment 4, which is attached hereto and incorporated herein by reference.

**Net Development Cost** for a Property means the Total Development Cost for a Property minus DEVELOPER Fee and carrying and holding costs for a Property.

**Newly Constructed Property** means a Property where DEVELOPER is constructing a new residential home on the Property.

**One-Year Action Plan** means an annual plan prepared by Metro Government as part of the five-year Consolidated Plan in accordance with 24 CFR Part 91, which describes overall housing needs, resources, priorities, and proposed activities to be undertaken with respect to programs funded by HUD.

**Project Completion** shall mean completion of construction or rehabilitation of an individual property no more than 18 months from construction commencement.

**Project Closeout** shall occur at the time all units are sold to an eligible buyer; or at the point where, in the absence of an owner occupant, the unit converts to a HOME assisted rental unit. It shall also mean the completion of all the following activities in connection with the Project, including but not limited to, making final payments of HOME Funds hereunder, disposing of program assets (including the return of all unused materials, equipment, unspent Down Payment Assistance, and accounts receivable to Metro Government), and determining the custodianship of records. Notwithstanding the foregoing, the terms of this Agreement shall remain in effect during any period that DEVELOPER is engaging in performing development activities required under this Agreement for the Project.

**Project Closing** means the date on which the Homebuyer Development Agreement and other project documents are executed and delivered by the DEVELOPER to Metro Government.

**Project CHDO Proceeds** (i) any income earned by the DEVELOPER, from the disposition of real or personal property acquired in whole or in part with HOME Funds (such as the sale of a Property by the DEVELOPER to a Homebuyer); (ii) any other revenues defined as program income in 24 CFR Part 92, Subpart G. Any Project CHDO Proceeds must be used for HOME-eligible or other affordable housing activities. Project CHDO Proceeds shall be used for current or future construction financing of houses, acquisition of future houses, homebuyer down payment, closing costs, and developer fees. The DEVELOPER must make requests to use proceeds in writing to Metro Government. Metro Government will respond in kind. If no response is given to the CHDO within 30 days, then the CHDO may move forward with the use of the proceeds per the request.

**Property** shall mean the residential home or vacant lot of land purchased by DEVELOPER - from a Seller with HOME Funds and which is a part of the Project; and

**Qualified Tenant** shall mean low to moderate income person(s) entering into a Rental Agreement with the DEVELOPER for the Property.

**Rehabilitated Property** means a Property where the DEVELOPER is rehabilitating an existing residential structure located on a Property.

**Retainage** has the meaning set forth in Part II. Article I. A. 3. Herein.

**Seller** shall mean the party from which that the DEVELOPER purchases a Property.

**Site Specific Cost Estimate** shall have the meaning set forth in Part I., Article II. of this Agreement.

**Site Specific Plans and Specifications** means those certain detailed drawings and itemizations of work to be performed and materials to be used in the redevelopment of the each individual Property.

**Total Development Cost** means, as set forth in the Site Specific Cost Estimate, the sum of (i) the acquisition costs for a specific Property; (ii) all other hard and soft costs directly attributable to the development of such Property; (iii) the cost of holding and carrying such Property, less the Development Fee attributable to that Property.

**II. PURPOSE AND TERM OF HOMEBUYER DEVELOPMENT AGREEMENT.** The specific purpose of this Agreement, which, together with the relevant Project Area is further described in Attachment 1, is to acquire the Property located at **403/405 Dr. W. J. Hodge Street, Louisville, KY 40203** - and redevelop the same with HOME Funds into a Duplex home for Purchase by a prospective Homebuyer. The Project will be developed in three phases. Phase 1 will consist of the acquisition of the Property and, upon such acquisition, preparation of site-specific cost estimates by DEVELOPER for the Property (each a "Site Specific Cost Estimate"). Phase 2 will consist of redevelopment, (meaning rehabilitation) by DEVELOPER of the Property. Phase 3 will consist of the eventual sale of the Property by the DEVELOPER for home ownership to a Homebuyer who shall use one unit as his/her primary residence and shall rent the remaining unit to a qualified low to moderate income tenant..

This Agreement shall be effective and unless otherwise earlier cancelled as provided herein, shall remain in effect until the earlier of either ninety (90) days following Metro Government's complete and full disbursement of HOME Funds to DEVELOPER, as described in Attachment 2, or the Property title is transferred to a subsequent Homebuyer for use as affordable housing in accordance with 24 C.F.R. part 92. However, should the units not be sold within 9 months of the certificate of occupancy, the units will comprise a HOME rental project subject to HOME rental rules.

**III. APPLICANT/BENEFICIARY ELIGIBILITY.** In the case of this Agreement, the potential Homebuyer must be low to moderate income, at the time the Homebuyer Agreement is signed. The tenant renting the second unit must be low to moderate

**income at initial occupancy.** The program meets the HUD national objectives by benefiting low- and very-low income persons on a direct basis as defined in Attachment 4. This Project complies with homebuyer regulations for the eligible costs of HOME Funds as per 24 CFR Part 92.206.

**IV. BUDGET.** Upon the acquisition of the Property, DEVELOPER shall cause the preparation of a Site Specific Cost Estimate for the Property, which shall be submitted to Metro Government. The Site Specific Cost Estimate for the Property shall constitute the "Project Budget".

**V. RESPONSIBILITIES OF DEVELOPER.** DEVELOPER shall perform the following services in connection with the Project:

1. **Preparation of Site Specific Plans and Specifications.** DEVELOPER shall cause appropriate Site Specific Plans and Specifications to be prepared for the Property. DEVELOPER shall submit the Site Specific Plans and Specifications to Metro Government for its review prior to applying for permits and approvals necessary to commence redevelopment on the Property. The Site Specific Plans and Specifications shall be consistent with good architectural practice, appropriate urban design principles, and Metro Government's Rehabilitation Standards for Residential Structures attached hereto as Attachment 6. The Site Specific Plans and Specifications for the Property shall include at least six of the energy efficient mechanisms listed on Attachment 7 to this Agreement. Metro Government shall review the Site Specific Plans and Specifications and provide any concerns regarding the Site Specific Project Plans and Specifications to DEVELOPER within fifteen (15) days after receipt thereof. Provided, however, DEVELOPER shall not have to wait to receive Metro Government's comments to the Site Specific Plans and Specifications prior to applying for necessary permits and approval for the Property. DEVELOPER shall proceed expeditiously, after the acquisition of the Property to obtain all permits and approvals required for redevelopment of the Property. The redevelopment of the Property shall comply with all federal, state and local codes, ordinances, statutes and regulations, including, but not limited to, zoning and the Code and Accessibility Requirements contained in Attachment 6 of this Agreement; nothing notwithstanding, herein.

Metro Government, acting through its agencies or departments as appropriate, agrees to review all plans, agreements and other submittals required by this Agreement in a reasonably prompt manner.

2. **Project Redevelopment.** DEVELOPER shall redevelop the Property in accordance with the Site Specific Cost Estimate for the Property, the Site Specific Plans and Specifications for the Property and the Rehabilitation Standards of Metro Government, and the terms of this Agreement. DEVELOPER shall notify Metro Government in the event that there is an increase or decrease of twenty-five percent (25%) in the aggregate Project Budget. No (i) Material Change to the Site Specific Plans and Specifications for the Property or (ii) change to the Project Schedule shall be made by DEVELOPER without the prior written approval of Metro Government, which approval shall not be unreasonably withheld. As used herein, a "Material Change" to the Site



Specific Plans and Specifications for the Property shall mean a change (a) which causes a greater than 20% increase or decrease in the aggregate square footage of the residential structure located or to be located on the Property; (b) in the number of bedrooms for the residence; or (c) in the number of bathrooms for the residence or (d) any exterior change or modification to any improvements located on the Property that was previously subject to a Section 106 Review pursuant to the National Historic Preservation Act, as amended.

In the event there is a change in the Site Specific Cost Estimate, DEVELOPER shall notify Metro Government of such change so that Metro Government can update its records for the Project. Notwithstanding the foregoing, DEVELOPER shall be responsible for paying any cost for the Project that exceeds the aggregate Project Budget and is not otherwise covered with HOME Funds.

**3. Submissions.** DEVELOPER shall submit to Metro Government:

- a) An itemized list of any property and equipment purchased with HOME Funds provided under this Agreement.
- b) A quarterly report shall be submitted that should include expenditures, construction progress, and sales and homebuyer information. Other information shall include:

A quarterly report to evaluate and compare DEVELOPER's actual activities to its goals and benchmarks required under this Agreement which shall contain a description of significant problems, if any, and proposed changes to remedy those problems. Failure to submit the reports on a timely basis shall result in suspension of payments under this Agreement until all reports have been received by Metro Government.

- c) A copy of the resolution passed by DEVELOPER's board of directors authorizing DEVELOPER to enter into this Agreement with Metro Government.

**4. Additional Obligations.** DEVELOPER shall use its best efforts to obtain all equipment and materials for use in the performance of its services under this Agreement at the lowest reasonable cost, and to purchase such equipment and materials by means of a system of competitive bidding when appropriate. DEVELOPER shall cooperate with all monitoring and evaluation activities conducted directly or through contract by Metro Government relative to activities described herein and bound by this Agreement, including but not limited to providing full access to the project site and providing programmatic and fiscal records to Metro Government or to other persons as may be designated from time to time by Metro Government. DEVELOPER shall adopt and use generally accepted accounting principles in its operations.

5. **Loan and Lease Terms.**

A. **Sale of Property to DEVELOPER:** Subject to the terms and conditions of this Agreement, all HOME Funds disbursed to DEVELOPER shall be in the form a site-specific loan for the Property. The Metro loan shall not bear interest and shall be forgiven upon the sale of the Property at the Homebuyer Closing, (provided an event of default has not occurred. Upon the sale of the Property, any proceeds of sale received by DEVELOPER at the Homebuyer Closing that exceeds the amount of (i) the Development Fee still due and payable for the Property; and/or (ii) allowable expenses on the Property, shall be treated as Project CHDO Proceeds and shall be retained by the DEVELOPER.

Should a Homebuyer not complete the purchase of the Property within the required timeframe, the Property shall convert to Rental Property and the Loan shall not be forgiven or released until the end of the Period of Affordability (15 Years).

B. **Sale of Property to Homebuyer.** Upon Project Completion of the Property (or the termination or expiration of any Homebuyer Agreement as set forth in Section 5.C. below) and prior to any applicable Sale Expiration Date (as such term is defined in Part I. Article VI. 1 herein), the Property may be sold by DEVELOPER to a Homebuyer if a Homebuyer is available to purchase the Property. Upon such purchase of the Property by a Homebuyer, there will be a HOME Agreement and separate Security Documents executed with the Homebuyer specifying Recapture terms and conditions, what happens in a foreclosure scenario, terms and conditions for rental of the rental unit and ongoing compliance requirements. In addition, any portion of the loan for the Property which constitutes Development Subsidy, HOME Construction/Development Loan or Homebuyer Down Payment Assistance shall also be forgiven at the time of the Homebuyer Closing.

6. **Interim Financing.** If DEVELOPER obtains a construction loan from a lender (a "Redevelopment Lender") which requires a first mortgage to secure said loan, any fees and interest incurred by DEVELOPER in connection with any such Interim Financing shall be deemed an Eligible Project Delivery Cost and DEVELOPER may include such costs in a Request for a Draw of HOME Funds which request will be honored by Metro Government.

7. **DEVELOPER Fee.** In consideration of the services provided by DEVELOPER pursuant to the terms of this Agreement, DEVELOPER shall be paid a Development Fee for acquiring, rehabilitating, and marketing the Property into a Duplex for sale to a Homebuyer who shall use one unit as his/her primary residence and rent the second unit to a qualified low to moderate income individual/family. The Development Fee for the Property shall be equal to fifteen percent (15%) of the Net Development Costs for the Rehabilitated Property

The Development Fee for the Property shall be earned and paid based on the actual expenditures incurred as of the milestones listed below, less retainage (Project and/or Compliance) with the exception of the final payment made for the specific-site. If

the DEVELOPER desires an alternative arrangement for the payment of earned development fees, it must submit a written request outlining the alternative payment method for Metro's consideration and approval.

- a. Upon the Acquisition of the Property;
- b. Upon the completion of the improvements located on the Property which shall be satisfied by either (i) the issuance of an unqualified certificate of occupancy for the Property or (ii) Metro Government's final inspection of the completed improvements located on the Property ("Construction Completion");
- c. Upon executing the Lease Purchase Agreement with the tenant; and
- d. Upon the sale of the property to a qualified Homebuyer or initial occupancy upon conversion to permanent rental housing.

<b>DEVELOPER Fee Payment Milestones</b>	
Upon Acquisition of the Property	Draw submitted for Acquisition Costs + 33.33% of DEVELOPER Fee ("DF")
Upon C/O-Final Inspection Construction Completion	Draw submitted for construction costs + 33.33% of DF – 10% of Project Retainage ("PR"). NOTE: It is possible to do more than one Draw during the construction phase, but the DEVELOPER should only request the second DF installment after CO or Final Inspection
Upon the Sale of the Property to a Qualified Homebuyer	Draw submitted for Release of PR + 33.33% of DF - \$1000 Compliance Retainage ("CR")
Upon Initial Occupancy upon Conversion to Permanent Rental Housing	Draw submitted for \$1000 CR

**VI. MARKETING AND SALE OF THE PROPERTY.**

**1. Marketing of the Property.** DEVELOPER covenants and agrees to diligently market the Property for sale to a Homebuyer. The DEVELOPER shall be diligent to market the unit for a Homebuyer who can purchase the Property immediately; If no buyer is identified within 9 months of certificate of occupancy, the Property will become a HOME Assisted Rental subject to HOME Rental rules. DEVELOPER shall provide Metro Government with a copy of its Affirmative Fair Housing Marketing Plan.

**2. Sale of the Property.** DEVELOPER shall sell the Property to a Homebuyer who agrees to use one unit as his/her primary residence and to rent one unit to a qualified low to moderate income individual/family. The Property sold by the DEVELOPER to a Homebuyer will be subject to a provision in the Direct Homebuyer Subsidy Mortgage (the

"Affordability Period Covenant") restricting the use of the Property to the Homebuyer's principal residence for the Affordability Period, commencing on the date of acquisition of the Property by the Homebuyer and restricting rental of the second unit to a qualified low to moderate income individual/family at initial occupancy. If Down Payment Assistance or Closing Costs are provided to the Homebuyer, the length of the Affordability Period is based on the amount of the Direct Homebuyer Subsidy. If Resale Provision is required (no direct subsidy), then the Affordability Period is based on the total HOME funds spent on that unit. The Affordability Period will be much longer without a direct subsidy. Prior to, or concurrently with, the Homebuyer Closing, DEVELOPER shall certify to Metro Government the household income for the Homebuyer and the tenant to assure that the Homebuyer and tenant meet the income Eligibility Requirements set forth in Part I., Article III. and Part II., Article II. herein. Metro Government shall also, concurrently with Homebuyer Closing, prepare the Direct Homebuyer Subsidy for the Homebuyer to execute and deliver at the Homebuyer Closing.

Metro Government commits to the Property HOME funds available for Homebuyer Subsidy to the Homebuyer of the Property, in the following amount of up to \$30,000, (including closing costs), but not to exceed 20% of sale price. Metro Government further agrees to subordinate any Direct Homebuyer Subsidy Note and Mortgage to the holder of any first mortgage on the Property which first mortgage was obtained to allow the Homebuyer to purchase the Property.

VII. **MERGER.** This Agreement consists of Part I, Terms and Conditions and any Attachments and any documents incorporated by reference; and Part II, HOME Requirements. This Agreement, including any Attachments and incorporated documents, constitutes the entire agreement between Metro Government and DEVELOPER with respect to this subject matter.

VIII. **INDEMNIFICATION.** For purposes of this Section only, the following terms shall have the meanings listed:

1. **Claims** mean all claims, damages, liability, losses, costs or expenses, including reasonable attorney fees incurred by Metro Government in the enforcement of this indemnity obligation.
2. **DEVELOPER's Agents** means the DEVELOPER's, officers, employees, subconsultants, subcontractors, successors, assigns, invitees and other agents.
3. **Metro Government** means Metro Government and its agents, officials, officers and employees.

DEVELOPER shall indemnify, defend and hold harmless Metro Government, its elected and appointed officials, employees, agents, and successors in interest from all claims, damages, losses and expenses including attorney's fees, arising out of or resulting directly or indirectly from DEVELOPER's performance or breach of this Agreement, provided that such claim, damage, loss, or expense is not caused by the gross negligence

or willful misconduct of Metro Government or its elected and appointed officials and employees acting within the scope of their employment. This indemnification and hold harmless clause shall in no way be limited by any financial responsibility or insurance requirements and shall survive the termination of this Agreement.

**IX. INSURANCE.** DEVELOPER shall procure and maintain in effect throughout the duration of this Agreement insurance coverage not less than the types and amounts specified in this section and as more fully set forth on Attachment 9. It shall require similar insurance of all its General Contractors or Builders.

The policies listed above may not be cancelled until after 30 days written notice of cancellation to Metro Government, ten days in the event of nonpayment of premium. The Commercial Liability Insurance specified above shall provide that Metro Government and its agencies, officials, officers and employees, while acting within the scope of their employment, will be named as additional insureds for the services performed under this Agreement. DEVELOPER shall provide Metro Government a certificate of insurance showing all required endorsements and additional insureds.

Regardless of any approval by Metro Government, it is the responsibility of DEVELOPER to maintain the required insurance coverage in force at all times; its failure to do so will not relieve it of any contractual obligation or responsibility. In the event of DEVELOPER's failure to maintain the required insurance, Metro Government may order it to immediately stop work, and upon a ten day notice and a reasonable opportunity to cure, may pursue its remedies for breach of this Agreement as provided for herein and by law.

**X. ATTACHMENTS TO PART I.** The following documents are Attachments to this Agreement and incorporated herein by reference:

- ATTACHMENT 1 Scope of Services, Performance Standards and Benchmarks
- ATTACHMENT 2 Homebuyer Project Summary
- ATTACHMENT 3 Final Underwriting Summary
- ATTACHMENT 4 Income Guidelines and Maximum Non-Profit HOME Mortgage Limits
- ATTACHMENT 5 Additional Federal Requirements, Terms and Conditions
- ATTACHMENT 6 Rehabilitation Standards For Residential Structures
- ATTACHMENT 7 Energy Star and Green Building Features
- ATTACHMENT 8 DEVELOPER Draw Request Form
- ATTACHMENT 9 Insurance Requirements
- ATTACHMENT 10 Community Housing Development Organization Certification

**XI. INCORPORATION OF FEDERAL/STATE LAWS AND REGULATIONS.** DEVELOPER shall administer and use HOME Funds provided hereunder in conformance with all federal/state laws and regulations applicable to the use of those HOME Funds, including but not limited to those laws and regulations which may be set forth in Part II,

HOME Requirements and Attachments 1 through 10 to this Agreement. The federal/state laws and regulations applicable to the use of HOME Funds provided under this Agreement are incorporated and made a part of this Agreement by reference. DEVELOPER agrees that it is its responsibility to obtain and familiarize itself with those laws and regulations. All laws and regulations incorporated into this Agreement shall include the subsequent amendments.

**XII. MISCELLANEOUS PROVISIONS.** The following conditions and provisions shall be applicable throughout the term of the Loan:

**Binding Effect.** This Agreement shall be binding upon the Parties, their heirs, personal representatives, successors and assigns.

**Waiver.** Advance of proceeds hereunder shall not constitute a waiver of any of the conditions of Metro Government's obligations to make further advance nor, in the event DEVELOPER is unable to satisfy any such condition, shall any such waiver have the effect of precluding Metro Government from thereafter declaring such inability to be an Event of Default as herein provided.

**Notices.** All notices hereunder shall be in writing delivered or mailed by registered or certified mail, return receipt requested, as follows:

METRO GOVERNMENT:

Jeff O'Brien, Director  
Develop Louisville  
Louisville/Jefferson County Metro Government  
444 S. Fifth Street, Suite 500  
Louisville, Kentucky 40202

Jefferson County Attorney  
531 Court Place, Suite 900  
Louisville, Kentucky 40202

DEVELOPER:

Kevin Dunlap, Executive Director  
REBOUND, Inc.  
1535 W. Broadway  
Louisville, Kentucky 40203

**Amendments to be in Writing.** This Agreement or any provision hereof may be changed, waived, discharged or terminated only by an instrument in writing signed by the Parties hereto.

**Severability.** If any provision of this Agreement or any Loan document shall be determined to be invalid, void or unenforceable, said determination shall not affect the validity or enforceability of any other valid provision of this Agreement or Loan Document.

**Choice of Law.** This Agreement, and the related writings and the respective rights and obligations of the parties hereto shall be construed in accordance with and governed by the laws of the Commonwealth of Kentucky.

**Jurisdiction.** Borrower hereby consents to the jurisdiction of the State and Federal courts in the Commonwealth of Kentucky for all disputes relating to the construction, interpretation, enforcement and performance of this Agreement, and the other Loan Documents, hereby waiving all defenses based on jurisdiction, venue, or convenience of forum.

**Survival of Covenants, Agreements, Warranties and Representations.** All covenants, agreements, warranties and representations made by DEVELOPER herein shall survive the making of each advance hereunder and the execution and delivery of this Agreement, and all of the other project documents, and shall be deemed to be continuing covenants, agreements, representations and warranties at all times while any portion of HOME funds for the Project remain unpaid.

**Interpretation.** No course of dealing in respect of, nor any omission or delay in the exercise of any right, power, remedy or privilege by Metro Government shall operate as a waiver thereof, nor shall any right, power, remedy or privilege of Metro Government be exclusive of any other right, power, remedy or privilege referred to herein or in any related document or now or hereafter available at law, in equity, in bankruptcy, by statute or otherwise. Each such right, power, remedy or privilege may be exercised by Metro Government, either independently or concurrently with others and as often and in such order as Metro Government may deem expedient. No waiver or consent granted by Metro Government or DEVELOPER, as applicable, in respect to this Agreement or any document or related writing shall be binding upon Metro Government or DEVELOPER, as applicable, unless specifically agreed to in writing by a duly authorized officer of Metro Government or the duly authorized officer or agent of DEVELOPER, as applicable, which writing shall be strictly construed. The parties hereto hereby agree that this Agreement and the other documents shall be so interpreted to give effect and validity to all the provisions hereof to the fullest extent permitted by law.

**Assignment.** DEVELOPER may not assign any of its rights or obligations under this Agreement to any other party without the prior written consent of Metro Government.

**Time of Essence.** Time shall be of the essence in the performance of all Metro Government's and DEVELOPER's obligations under this Agreement and the other documents and the instruments related hereto or thereto.

**No Third Party Beneficiaries.** All conditions of the obligations of Metro Government to make advances hereunder are imposed solely and exclusively for the benefit of Metro

Government and its assigns and DEVELOPER, and no other person shall have standing to require satisfaction of such conditions in accordance with their terms or be entitled to assume that Metro Government will not refuse to make advances in the absence of strict compliance with any or all thereof and no other person shall, under any circumstances, be deemed to be a beneficiary of such conditions, any or all of which may be freely waived in whole or in part by Metro Government at any time if in its sole discretion it deems it advisable to do so.



**PART II  
HOME REQUIREMENTS**

**I. DISBURSEMENT OF HOME FUNDS.**

**A. Disbursement of HOME Funds.** The HOME Funds evidenced by the loan for the Property shall be disbursed in Draws (a "Draw") as follows:

1. The first Draw for the Property shall be at the Acquisition Closing in an amount necessary to allow DEVELOPER to purchase the Property as the Property becomes available for purchase by the DEVELOPER. Draws for the acquisition of the Property shall require the following: (i) submission by the DEVELOPER to Metro Government of an executed purchase agreement for the Property between Seller and DEVELOPER; (ii) satisfactory evidence that all contingencies contained in such purchase agreement have been satisfied; (iii) submission by DEVELOPER to Metro Government of the items required to be delivered to Metro Government pursuant to Part II., Article I., Section B. below; and (iv) an IRS Form W-9.

2. The remainder of the HOME Funds for Phase 2 of the Project will be disbursed monthly, on a reimbursement basis, as rehabilitation of the Property progresses upon submission to Metro Government of (i) a DEVELOPER Draw Request Form (Attachment 8) (ii) if requested by Metro Government, satisfactory lien waivers from DEVELOPER'S general contractor for the rehabilitation of the Property (a "Builder"); (iii) if requested by Metro Government a notice of title continuation or an update to the Title Policy (as hereinafter defined) for the Property theretofore delivered, indicating that since the last preceding Draw, there has been no change in the state of title and no exceptions with respect to the Property not theretofore approved by Metro Government (provided, however, Metro Government shall not require any such title update more often than every other month during the rehabilitation of the Property); and (iv) such additional documents, data or information with respect to the Property, or in support of any request for Draw as Metro Government reasonably shall require.

3. Metro Government shall be under no obligation to make any Draw, unless as of the date of the Draw [i] all of the covenants, representations and warranties made in this Agreement or any of the other Loan Documents shall be true, correct and complete; [ii] there shall be no continuing Event of Default under this Agreement or any of the other Loan Documents; and [iii] no state of facts shall exist which, with or without notice and/or lapse of time, could constitute an Event of Default under this Agreement. Ten percent (10%) of each requested Draw for the Property, shall be withheld by Metro Government as project-related Retainage. In addition to project Retainage, one-thousand dollars will be held as compliance-related Retainage to ensure receipt of all final reports of all HOME funds for the Property and direct beneficiary information. Compliance Retainage, for the

Property, will be released at final payment of all HOME funds for the Property, after Metro Government has determined that all work and services on the Property has been performed in a good and workmanlike manner, based on its inspection of the Property; and that Metro Government has received all required documentation from DEVELOPER with respect to the Property, including an unqualified Certificate of Occupancy for the Property which has been issued to the DEVELOPER by the appropriate governmental authority (except for Rehabilitated Properties for which a Certificate of Occupancy is not required); and the Property is in compliance with all other federal and regulatory requirements.

4. Metro Government shall only be obligated to disburse HOME Funds for Eligible Project Delivery Costs. Metro Government shall fund all Draw Requests within thirty (30) days of receipt of such request for Draw by DEVELOPER.

**B. Conditions Precedent To Acquisition Closing.** The DEVELOPER acknowledges that Metro Government shall not be required to disburse any HOME Funds for acquisition of the Property unless the following conditions are satisfied:

1. **Insurance.** DEVELOPER shall have provided such proof of insurance as required by Part I., Article IX, herein, for the Property.
2. **Loan Documents.** DEVELOPER shall have executed and delivered the Loan Documents applicable to the Property.
3. **Title Insurance.** DEVELOPER shall have furnished Metro Government a Mortgagee's Title Insurance Policy (the "Title Policy") for the Property issued by a title insurance company acceptable to Metro Government in Metro Government's sole discretion, showing only those exceptions to title which are acceptable to Metro Government.
4. **Proper Zoning.** Satisfactory evidence that the Property is properly zoned for residential use.
5. **Representations.** The representations and warranties of DEVELOPER set forth herein shall be true and correct as of the Acquisition Closing.
6. **Vacation.** All previous tenants, if any, have vacated the Property in accordance with the Uniform Relocation Act.

7. **Acquisition.** All sellers shall receive a Voluntary Acquisition Notice from the DEVELOPER in accordance with the Uniform Relocation Act, with a copy in file for Metro Government.

C. **Conditions Precedent To Redevelopment.** The DEVELOPER acknowledges that Metro Government shall not be required to disburse HOME Funds for redevelopment of the Property unless the following conditions are satisfied:

1. A Building Permit, if required by law, for the Property has been issued for the intended use;
2. Evidence of the Property's compliance, if applicable, with all federal, state and local laws, statutes and regulations relating to the rehabilitation of the improvements to serve disabled individuals, including, without limitations the American's With Disabilities Act of 1990, 42 U.S.C. 12101 et. seq.; and the Kentucky Civil Rights Act, KRS 344.010 et. seq.; and all regulations promulgated pursuant thereto;
3. The Site Specific Plans and Specifications for the Property shall be completed and submitted to Metro Government as provided in this Agreement;
4. DEVELOPER has provided Metro Government with a copy of the construction contract with the Builder, when applicable, for the rehabilitation or construction work for the Property; and the Builder's Certificates of Insurance in form and substance acceptable to Metro Government evidencing coverage for the Builder and the Property as required by Part I., Article IX.; and
5. DEVELOPER shall have provided such proof of insurance for the Property as required by Part I., Article IX. herein.

## II. AFFORDABILITY.

DEVELOPER shall comply with all income determinations and affordability requirements of the HOME program as set forth in HUD Regulations 24 CFR 92.203 and 92.254, as applicable. DEVELOPER shall determine the household's income eligibility for the Homebuyer by determining the Homebuyer's household income in accordance with the methodologies allowed in 24 CFR 92.203. Metro Government uses the Part Five Definition of income for rental projects. On HOME Down Payment Assistance, Homebuyer and Lease-Purchase projects Metro Government uses the IRS Form 1040 definition of income. DEVELOPER is not required to re-examine the family's income at the time the HOME assistance is provided.

**Purchase Price.** The maximum purchase price or after rehab value of the Property shall not exceed the mortgage limits under Section 203(b) of the National Housing Act, as described in 24 CFR 92.254(a)(2)(iii).

**Affordability Period Commencement and Requirements.** The Property shall be acquired and/or occupied by a Homebuyer and the Property shall be the Homebuyer's principal residence during the Affordability Period specified in the table below. The initial Affordability Period commences upon execution of the Homebuyer Agreement at initial occupancy, of the Property. The affordability requirements to be applicable to the Owner/DEVELOPER shall be imposed as part of the Project Closing documents, including but not limited to deed restrictions, covenants running with the land or other mechanism approved by HUD. If Metro Government's affordability restrictions are subordinate to non-Metro deed restrictions, the affordability restrictions imposed on the DEVELOPER may terminate upon foreclosure of the Property or transfer of the Property in lieu of foreclosure. The affordability requirements apply without regard to the term of any loan or mortgage or the transfer of ownership of the Property. The affordability requirements to be imposed on the Homebuyer after purchase of the Property shall be included in the Direct Homebuyer Subsidy Mortgage.

**Affordability Period.** For the number of years defined by HOME Agreement regulations (hereinafter referred to as the "Affordability Period") the following restrictions shall apply:

1. The DEVELOPER agrees to restrict the use of one unit as principle residence of the homebuyer.
2. In the event the Property does not continue to be the principal residence of the Homebuyer for the duration of the Affordability Period, Metro Government shall recapture all or a portion of the HOME assistance provided to the Homebuyer by foreclosure of the Direct Homebuyer Subsidy Mortgage. This recapture provision shall be incorporated into the Homebuyer Agreement.
3. Should the DEVELOPER sell, and transfer ownership of the Property assisted with HOME Funds to a Purchaser who does not meet the income eligibility requirements of the HOME Program, DEVELOPER shall reimburse Metro Government in the amount of HOME Funds disbursed on the Property by Metro Government.
4. Unit #2 must be rented to a low to moderate income household at the time of initial occupancy. This provision shall be incorporated into the Restriction and Covenant.

#### **Affordability Periods**

The length of the Affordability Period shall depend on the amount of the HOME investment in the Property and the nature of the activity funded. When a Homebuyer purchases the Property, the Affordability Period is based on the amount of HOME funds used as Direct Subsidy to the Homebuyer. If the Property is not sold within 9 months of Certificate of Occupancy, the Affordability Period shall be based on the

amount of HOME funds used to subsidize the DEVELOPER's construction of the Property. In either example the Affordability Period begins Upon: (i) the sale of the Property; or (ii) the execution of the Lease-Purchase Agreement. The table below provides the Affordability Periods.

<u>HOME Investment Per Unit</u>	<u>Length of the Affordability Period</u>
<u>Less than \$15,000</u>	<u>5 years</u>
<u>\$15,000 - \$40,000</u>	<u>10 years</u>
<u>More than \$40,000</u>	<u>15 years</u>
<u>New construction of <i>rental</i> housing</u>	<u>20 years</u>
<u>Refinancing of <i>rental</i> housing</u>	<u>15 years</u>

### III. HOME PROJECT REQUIREMENTS.

DEVELOPER shall comply with all HOME project requirements in subpart F of 24 C.F.R. Part 92. Maximum per-unit subsidy amount and layering will comply with CPD Notice 15-003: Interim Policy on Maximum Per-Unit Subsidy Limits for the HOME Program as It may be amended or modified.

### IV. PROPERTY STANDARDS.

DEVELOPER agrees that all housing constructed or rehabilitated on the Property with HOME Funds shall meet all applicable state and local construction and building codes, rehabilitation standards and zoning ordinances at the time of Project Completion.

### V. OTHER PROGRAM REQUIREMENTS.

**Affirmative Marketing of Vacant Units.** In addition to the requirements set forth in Part I., Article VI., Section 1 herein, DEVELOPER will affirmatively market the Property available for purchase in a manner to attract Homebuyers without regard to race, color, national origin, sex, religion, familial status or disability. DEVELOPER agrees, in soliciting Homebuyers, to do the following:

- Use of Equal Housing Opportunity logo in all advertising;
- Display a Fair Housing poster in the rental and sales office;
- Where appropriate, advertise, use media, including minority outlets, likely to reach persons least likely to apply for Lease-Purchase of the Property;
- Maintain files of affirmative marketing activities for five years and provide access thereto to Metro Government;
- Verify all information concerning the potential Homebuyer, or family members, which may be obtained from any source.

**Affirmative Action.** DEVELOPER covenants and agrees that it will market the Property in accordance with Metro Government's requirements and procedures concerning Affirmative Marketing as set out in Metro Government's Consolidated Plan located at [https://louisvilleky.gov/sites/default/files/housing\\_community\\_development/con\\_plan\\_for\\_web\\_housing.pdf](https://louisvilleky.gov/sites/default/files/housing_community_development/con_plan_for_web_housing.pdf) including all regulations relating such plan, and any additions or amendments thereto. DEVELOPER shall not discriminate against any employee or applicant for employment because of race, color, religion, ancestry or national origin, sex, disability, age, sexual orientation, or gender identity.

**Displacement, Relocation and Acquisition.** If applicable, DEVELOPER agrees to provide relocation assistance for displaced persons at the levels described in and in accordance with the requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, (URA) (42 U.S.C. 4601 to 4655) 49 C.F.R. Part 24 and 24 C.F.R. Part 42.

## **VI. RECORDS AND REPORTS.**

DEVELOPER shall maintain such records and accounts, including: program records; project records; financial records; program administration records; equal opportunity and fair housing records; affirmative marketing and MBE/WBE records; records demonstrating compliance with the income determination requirements of 92.203; record keeping requirements of 92.508; the environmental review requirements of 92.352 and 24 C.F.R. Part 58; records demonstrating compliance with the requirements of 92.353 regarding displacement, relocation and real property acquisitions; records demonstrating compliance with the labor requirements of 92.354; records demonstrating compliance with the lead-based paint requirements of 92.355; records supporting exceptions to the conflict of interest prohibition pursuant to 92.356; debarment and suspension certifications required by 24 CFR Parts 24 and 91; and any other records as are deemed necessary by Metro Government to assure a proper accounting and monitoring of all HOME Funds. In the event Metro Government determines that such records are not being adequately maintained by CHDO, Metro Government may cancel this Agreement in accordance with Part II, Article 7.

With respect to all matters covered by this Agreement, records will be made available for examination, audit, inspection or copying purposes at any time during normal business hours with 24 hour notice, and as often as Metro Government, HUD, representatives of the Comptroller General of the United States or other federal agencies may reasonably require. DEVELOPER will permit same to be examined and excerpts or transcriptions made or duplicated from such records, and audits made of all contracts, invoices, materials, records of personnel and of employment and other data relating to all matters covered by this Agreement. Metro Government's right of inspection and audit shall obtain likewise with reference to any audits made by any other agency, whether local, State or Federal.

DEVELOPER shall retain all records and supporting documentation applicable to this Agreement for the most recent five year period, except as provided below:

(a) Records shall be retained for five years after the home-ownership sale closing date, except for documents imposing recapture/resale restrictions which must be retained for five years after the Affordability Period terminates.

(b) Written agreements must be retained for five years after the Lease-Purchase Agreement terminates.

(c) Records covering displacements and acquisition must be retained for five years after the date by which all persons displaced from the Property and all persons whose property is acquired for the Project have received the final payment to which they are entitled in accordance with 92.353.

(d) If any litigation, claim, negotiation, audit, monitoring, inspection or other action has been started before the expiration of the required record retention period, records must be retained until completion of the action and resolution of all issues which arise from it, or until the end of the required period, whichever is later.

## **VII. ENFORCEMENT OF AGREEMENT.**

### **A. Default; Remedies.**

The following shall constitute "Events of Default" hereunder:

1. If the DEVELOPER fails to comply with or breaches any of the terms, covenants, and conditions contained in this Agreement or in the Loan Documents executed pursuant to this Agreement;
2. If any representations or warranties made under this Agreement, or any of the Loan Documents, or in any certificate or statement furnished or made to Metro Government by DEVELOPER pursuant hereto or in connection herewith, or with the loan on the Property, shall prove to be untrue or inaccurate in any material respect as of the date on which such representation or warranty is made by DEVELOPER;
3. If Metro Government or its representatives are not permitted at all reasonable times to enter the Property and improvements located thereon to inspect the work;
4. If any Material Change in the Site Specific Plans and Specifications is made by the DEVELOPER without the prior written consent of Metro Government, which consent shall not be unreasonably withheld, conditioned or delayed;
5. If DEVELOPER or a Builder does not proceed continuously with the rehabilitation of the Property or rehabilitation thereof is otherwise discontinued for a period of 30 days or more, or if DEVELOPER refuses

or fails to proceed with the rehabilitation of the Property with such diligence as will insure its acquisition, redevelopment, and sale of the Property by the dates set forth in the Project Schedule;

6. If DEVELOPER shall fail to obtain or comply with the terms and conditions of any permit or approval required by any appropriate governmental agency for the redevelopment of the Property;
7. If DEVELOPER shall sell or transfer its interest in the Property or the Project, or any portion thereof or any beneficial interest in the Property Project to other than a (i) Homebuyer; or (ii) Qualified Tenant without the express written consent of Metro Government;
8. If DEVELOPER shall materially default on any senior or junior liens against the Property continuing beyond any applicable notice and cure period contained in the documents evidencing such liens which allows the other mortgage holder to commence foreclosure proceedings against the Property; and
9. If the DEVELOPER is adjudged a bankrupt, files a petition in bankruptcy or has a petition in bankruptcy filed against it, or makes an assignment for the benefit of its creditors and such petition is not dismissed within 90 days of filing.

If DEVELOPER materially breaches or defaults on its obligations under this Agreement or any of the documents incorporated herein, Metro Government shall give written notice (with a copy of said notice being given to any Redevelopment Lender) that remedial action must be taken within thirty (30) calendar days of the date of such written notice. DEVELOPER shall correct such breach or default within thirty (30) days after its receipt of such written notice. If the default is not reasonably curable within such thirty (30) day period, then DEVELOPER may continue to cure the default or breach so long as Metro Government is reasonably satisfied that sufficient progress is being made toward a cure. If such action is not taken, Metro Government may terminate the Agreement by giving written notice to DEVELOPER at least ten (10) days prior to the effective date of termination of Metro Government's obligations under this Agreement. In the event of a termination of this Agreement, DEVELOPER'S ability to draw HOME Funds hereunder shall have been terminated as of the date of the notice of termination and DEVELOPER shall have no right, title or interest in or to any Metro Government or HOME Funds remaining to be disbursed under this Agreement.

In the event of any such termination, Metro Government shall be relieved of any executory obligations hereunder and shall be entitled to any remedy and damages available to it at law or in equity, including, but not limited to, the acceleration of the due date. Moreover, Metro Government, without further notice and without waiving any right or remedy available to it by law or under any other document or otherwise, may terminate its obligation to disburse any additional HOME Funds; and, if permissible under law, enter



the Property, and perform any work and take steps necessary to complete the improvements located on the Property in accordance with the Site Specific Plans and Specifications for the Property as Metro Government shall deem reasonably necessary or desirable to complete the same in its sole but reasonable discretion. All sums expended upon the occurrence of an Event of Default shall be deemed paid to DEVELOPER. For this purpose, upon the occurrence of an Event of Default and the subsequent termination of this Agreement by Metro Government, DEVELOPER hereby appoints Metro Government its true and lawful attorney-in-fact with full power of substitution to take possession of the Property and to complete and/or continue rehabilitation of the structure located on the Property or any portion thereof, and hereby empowers Metro Government to use any funds of DEVELOPER'S held by Metro Government and any HOME Funds which may remain undisbursed hereunder to complete construction of the improvements located on the Property and to equip same and to pay the indirect costs incurred in connection therewith; to employ such contractors, subcontractors, agents, architects and inspectors as are required for said purposes and watchmen to protect the Property from injury; to pay, settle and compromise all incurred bills and claims in connection with the development, construction and/or equipping of the improvements located on the Property; to prosecute and defend all actions and proceedings in connection with the construction of the improvements located on the Property to execute all applications and certificates in the name of DEVELOPER as may be required by any governmental authority or by any contract or agreement regarding the rehabilitation and/or operation of the Property and may, as DEVELOPER'S attorney-in-fact, endorse in DEVELOPER'S name any check, draft, or other remittance received by DEVELOPER and/or Metro Government and may apply any proceeds thereof to the construction of the improvements located on the Property. This power of attorney is a power coupled with an interest and shall be irrevocable until sale of the Property to a qualified homebuyer. Furthermore, upon the occurrence of an Event of Default and the subsequent termination of this Agreement by Metro Government, in its reasonable discretion, on its and/or DEVELOPER'S behalf, may take such actions upon, and require such performance under any bonds furnished to DEVELOPER and/or Metro Government pursuant hereto or in connection with the Property and may make such settlements or compromises with the surety or sureties on such bonds as Metro Government, in its reasonable discretion, may deem necessary or desirable without the need for any consent from DEVELOPER, and without liability on the part of Metro Government and without waiving or otherwise affecting any of Metro Government's remedies against DEVELOPER. The rights and remedies of Metro Government shall be deemed to be cumulative and any election of any right or remedy shall not be deemed to be an election of that right or remedy to the exclusion of any other right or remedy. The rights and remedies available to Metro Government in the event of a suspension or termination of this Agreement shall survive such suspension or termination.

**B. Default by Metro Government.** If Metro Government materially breaches or defaults on its obligations under this Agreement or any of the documents incorporated herein, DEVELOPER may give written notice that remedial action must be taken within thirty (30) calendar days. Metro Government shall correct such breach or default within thirty (30) days after Metro Government's receipt of such written notice. However, if the

default is not reasonably curable within the thirty (30) day period, Metro Government may continue to cure the default or breach so long as DEVELOPER is satisfied that sufficient progress is being made toward a cure. If such action is not taken, DEVELOPER may terminate the Agreement by giving written notice to Metro Government at least ten (10) days prior to the effective date of termination. In the event of any such termination, DEVELOPER shall be relieved of any executory obligations hereunder and shall be entitled to any remedy and damages available to it at law or in equity.

Notices required herein shall be considered received by the DEVELOPER and Metro Government if delivered in person with written proof thereof, or when deposited in the U.S. Mail, in a prepaid wrapper marked Certified, Return Receipt Requested.

**Witness the Agreement of the Parties hereto.**

**LOUISVILLE/JEFFERSON COUNTY METRO GOVERNMENT  
DEVELOP LOUISVILLE**

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Jeff O'Brien  
Director

**DEVELOPER:  
REBOUND, INC.**

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Kevin Dunlap  
Executive Director

**Approved as to Form:**

Michael J. O'Connell  
Jefferson County Attorney

\_\_\_\_\_  
Stephanie Malone  
Assistant Jefferson County Attorney  
531 Court Place, Suite 900  
Louisville, Kentucky 40202  
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