



November 19, 2021

TO: Mayor Jerry L. Demings  
–AND–  
Board of County Commissioners

FROM: Jon V. Weiss, P.E., Director  
Community, Environmental and Development  
Services Department

CONTACT PERSON: Mitchell Glasser, Manager  
Housing and Community Development Division  
407-836-5190

SUBJECT: December 14, 2021 – Consent Item  
Multi-Family Affordable Housing Developer's Agreement

During the State of Florida 2020 Tax Credit Application Cycle, Orange County committed to provide a Local Government Contribution in the amount of \$75,000 to Madison Landing II, LLC. The Local Government Contribution was used to secure tax credits that will provide an equity contribution to the project by partially subsidizing impact fees and infrastructure fees associated with the affordable units. The proposed development will be located at 5800 South Rio Grande Avenue and will consist of 96 units, which will be rented to individuals that are 55 years or older. The units will be rented to low income households whose incomes do not exceed 60 percent of the area median income, and shall remain affordable for a period of 15 years.

Florida Housing Finance Corporation selected the Madison Landing II development for tax credit funding on May 7, 2021. The developer has met all of the conditions and requirements of the Impact Fee Subsidy program and is eligible for the Local Government Contribution. The local funds are currently budgeted under the State Housing Initiative Partnership (SHIP) program.

The agreement has been reviewed by the County Attorney's Office as to form.

**ACTION REQUESTED:** Approval and execution of Multi-Family Affordable Housing Developer's Agreement for Impact Fee Subsidy by and between Orange County, Florida and Madison Landing II, LLC, providing a local government contribution in the amount of \$75,000 of State Housing Initiative Partnership funds. District 6

JVW:MG

Attachments

Return to:  
Orange County Housing and Community Development Div.  
525 E. South Street  
Orlando, FL 32801-2891

APPROVED BY ORANGE  
COUNTY BOARD OF COUNTY  
COMMISSIONERS

BCC Mtg. Date: Dec. 14, 2021

## **MULTI-FAMILY AFFORDABLE HOUSING DEVELOPER'S AGREEMENT FOR IMPACT FEE SUBSIDY**

THIS AGREEMENT is entered into by and between ORANGE COUNTY, FLORIDA, a charter county and political subdivision of the State of Florida (hereinafter referred to as "the County"), and Madison Landing II, LLC, a Florida Limited Liability Company (hereinafter referred to as "the Applicant").

### **RECITALS**

**WHEREAS**, The Applicant owns and intends to develop a senior citizen multi-family rental affordable housing project to be known as Madison Landing II, (hereinafter referred to as "the Project"), on that certain tract of real property, as described in Exhibit "A", attached hereto and incorporated herein by reference (the "Property"); and

**WHEREAS**, the County executed a Local Government Verification of Contribution – Grant Form as support for the Project for Florida Housing Finance Corporation's RFA 2020-202; and

**WHEREAS**, the County finds that creating affordable housing opportunities for low and extremely low income residents of Orange County, Florida to be a valid public purpose under the laws of Florida; and

**WHEREAS**, the County adopted Resolution 2018-M-33 for the implementation and administration of the Local Housing Assistance Plan under Florida's State Housing Initiatives Partnership (SHIP) Program; and

**WHEREAS**, the Board of County Commissioners supports the utilization of SHIP funds for rental activities for the purpose of providing affordable rental units for lower income Orange County residents.

**NOW, THEREFORE**, in consideration of the mutual covenants and conditions contained herein, the parties agree as follows:

Section 1. Recitals. The above recitals are true and correct and are incorporated herein as a material part of this Agreement.

Section 2. Definitions. In construing this Agreement the following words, phrases and terms shall have the following meanings, unless the context requires otherwise:

A. *Affordable* shall be defined as a rental development in which a minimum forty percent (40%) of the units must be rented to a household whose annual income does not exceed sixty percent (60%) of the area median income.

B. *Orlando Metropolitan Statistical Area ("MSA")* shall include the areas of Orange, Lake, Seminole, and Osceola counties.

### Section 3. Scope of Project.

A. The Project shall consist of ninety-six (96) units in total. Of the total units, ten percent (10%) of the units shall be set aside and rented only to those households with one member age fifty-five (55) years or older whose household income does not exceed thirty-three percent (33%) of the MSA median income. Of the total units, ninety percent (90%) of the units shall be set aside and rented only to those households with one member age fifty-five (55) years or older whose income does not exceed sixty percent (60%) of the MSA median income, subject to any exceptions/exemptions allowed by the Housing for Older Persons Act of 1995.

### Section 4. Payment of Law Enforcement, Fire/Rescue, Road, and Parks/Recreation Impact Fees

A. The Applicant shall make payment of all law enforcement, fire/rescue, road, parks/recreation impact fees, and sewer and water connection fees upon submittal of their building permit application.

B. The County has designated SHIP funds to partially offset project impact fees and necessary infrastructure fees paid by the Applicant. Such funds shall not exceed Seventy-Five Thousand Dollars (\$75,000) and shall be disbursed to the Applicant in accordance with applicable federal, state and county laws, rules and regulations. The Applicant shall request, in writing, reimbursement for the payment of impact fees and infrastructure fees paid. Requests for reimbursement shall be supported by source documentation, e.g. Building Department Impact Fee receipts/invoices for all fees paid. The County, through its Housing and Community Development Division, shall review all source documentation and remit payment to Applicant for all authorized expenditures.

### Section 5. Exemption of Payment of School Impact Fees – Senior Housing.

A. Section 23-161(6) Chapter 23, Article V, Orange County Code, provides for exemption of payment of School Impact Fees for senior housing that prohibits permanent residence by persons under the age of eighteen (18). Such prohibition shall be formalized by recorded deed restriction, recorded declaration of covenants and restrictions, or recorded plat restrictions and shall qualify as one of the three (3) types of communities designed for older persons in the Housing for Older Person Act, 42 U.S.C. § 3607(b) in order to receive the exemption from payment of school impact fees.

#### Section 6. Restrictive Covenant.

A. The Applicant acknowledges that this Agreement creates a restrictive covenant and that such covenant shall run with the Property.

B. The Applicant, its successors, and assigns shall utilize the Property for the rental of ninety-six (96) multi-family housing units. Such units will be rented to individuals and families whose income does not exceed those identified in Section 3.A of this Agreement. Rent levels shall be in accordance with Section 42 of the Internal Revenue Code of 1986, as amended, and Section 8 of this Agreement, for a period of fifteen (15) years from the date of issuance of the first certificate of occupancy for the Project. Provided further, however, that Applicant's construction loan lender, permanent loan lender or any subsequent mortgagee shall, at its option, have the right to foreclose on the Property with this restrictive covenant in place or, in the alternative, to pay to the County, the principal amount of Seventy Five Thousand Dollars (\$75,000) in order to obtain from the County a release of the restrictive covenant provisions as set forth herein. Applicant's construction loan lender, permanent loan lender or any subsequent mortgagee shall pay for the cost of recording any such release and any other expenses incident thereto.

#### Section 7. Income Verification.

A. The Applicant shall verify the household income of the occupants of the set-aside affordable units prior to the initial occupancy of such units. Income verifications shall be performed for such units on an annual basis thereafter.

B. The Applicant shall maintain complete and accurate records of the income for each of the qualifying occupants and the rents charged for the set-aside units. All records shall be maintained in accordance with Chapter 67-37, Florida Administrative Code, or the HUD income limits, whichever is more restrictive. The Applicant shall permit any duly authorized representative of Orange County to inspect the books and records upon reasonable notice.

C. The Applicant shall furnish to the County's Housing and Community Development Division a copy of the Annual Owner's Certificate of Housing Credit Program Compliance Form AOC-1, Program Report Summary Form PR-1 and Recap of Tenant Income Certification Form AR-1 submitted to the Florida Housing Finance Corporation. Copies shall be submitted on annual basis subsequent to the issuance of the first certificate of occupancy for the Project.

#### Section 8. Rents, Lease Provisions and Administration.

A. The Applicant agrees that the initial gross rents charged for the set-aside affordable units shall comply with the gross rent restrictions established by the Florida Housing Finance Corporation, or the HUD income limits, whichever is more restrictive, and shall not exceed thirty percent (30%) of the imputed income limitation applicable to each set-aside affordable unit adjusted for family size and number of bedrooms in accordance with Section 42(g)(2)(c) of the Internal Revenue Code of 1986, as amended.

For purposes of this Agreement, gross rent shall include a utility allowance in accordance with Section 42(g)(2)(B) (ii) of the Internal Revenue Code of 1986, as amended.

B. The Applicant may, for good cause, refuse to rent the housing units to individuals or families who otherwise meet the income and eligibility guidelines set forth herein. Good cause may include, but shall not be limited to, the failure of the applicant to comply with the terms and conditions of past rental agreements.

C. For purposes of complying with the requirements of this Agreement, if the income of an individual or family renting a set-aside affordable unit initially meets the applicable income limitation at the commencement of occupancy of the unit, the income of such individual or family shall be treated as continuing to not exceed the applicable income limits so long as the rent charged for such set-aside affordable unit remains in accordance with the gross rent restrictions established by the Florida Housing Finance Corporation and Section 8 of this Agreement. The preceding sentence shall cease to apply to any individual or family whose income, as of the most recent determination, exceeds one hundred- forty percent (140%) of the applicable income limit, if after such determination, but before the next income determination, any set-aside affordable unit of comparable or smaller size in the building is occupied by a new resident whose income exceeds the applicable income limit for very low or low income tenants as defined in Orange County Administrative Regulation No. 4.08, or the HUD Regulations, whichever is more restrictive.

D. Applicant shall not be deemed to have breached this Agreement if, in verifying the household income of the occupants of the set-aside affordable units, Applicant (i) has relied in good faith upon information supplied to Applicant by the occupant; (ii) has no reason to believe such information is false; and (iii) shall have complied with all requirements of this Agreement with respect to verification of household income.

E. Notwithstanding anything contained herein to the contrary, in the event that the requirements set forth in this Section 8 shall in any manner conflict with the provisions of Section 42 of the Internal Revenue Code of 1986, as may be amended from time to time, the provisions of the Internal Revenue Code shall control.

Section 9. Enforcement. If the Applicant breaches any provision set forth in this Agreement, other than the affordability levels contained in Section 6 and the rental requirements contained in Section 8, the Applicant shall cure the breach within thirty (30) days of receiving notice of such breach. In the event that the Applicant is unable to cure the breach within the allotted thirty (30) days, the Applicant shall request an extension of time not to exceed ninety (90) days. Any such request for extension shall be made in writing and shall be submitted to the County within the first thirty (30) day time period. In such instances where the Applicant is unable to correct the breach within the allotted thirty (30) day time period, the Applicant shall commence such correction(s) within the ninety (90) days, and thereafter diligently pursue the same to completion within such period. In the event that the Applicant fails to comply with the requirements of this Section, the

Applicant shall pay to the County the principal amount of Seventy Five Thousand Dollars (\$75,000).

Section 10. Disqualified Units. If the Applicant rents any of the set-aside affordable units to individuals or families whose income is not in accordance with the affordability level provided for in Section 6 of this Agreement or rents any such unit above the applicable rental rate required herein, the Applicant shall be deemed to be in default of this Agreement resulting in the disqualification of the set-aside units. Upon the disqualification of any set-aside affordable unit(s), Applicant shall pay to the County the principal amount equal to the pro-rata total sum of discounts of impact fees received by the Applicant for such unit(s).

Section 11. Foreclosure.

A. If Applicant's construction loan lender, permanent loan lender or any subsequent mortgagee (other than HUD) forecloses on the Property, such lender or subsequent mortgagee shall, at its option, have the right to foreclose with the restrictive covenant contained in Section 6 in place or, in the alternative, pay to the County the principal amount of Seventy Five Thousand Dollars (\$75,000) in order to obtain from the County a release of the restrictive covenant provision contained herein.

B. Applicant's construction loan lender, permanent loan lender or any subsequent first mortgagee (other than HUD), shall pay for the cost of recording any such Release and any other expenses incident thereto. All other rights, duties, and obligations in this Agreement shall be subordinate to the provisions of the first mortgage.

Section 12. Sale or Transfer of the Project or any Building. The Applicant shall not sell, exchange, assign, convey, transfer or otherwise dispose of the Property, the Project or any building in the Project without prior written notice to the County.

Section 13. Nondiscrimination. The Applicant shall not discriminate in the performance of this Agreement in regard to race, color, creed, age, national origin, sex, sexual orientation, religion, ancestry, physical handicap or marital status.

Section 14. Waiver of Breach. Waiver of breach of one covenant or condition of this Agreement is not a waiver of breach of other covenants and conditions of this Agreement, or of a subsequent breach of the waived covenants or conditions.

Section 15. Applicable Law. This Agreement and the provisions contained herein shall be construed, controlled and interpreted according to the laws of the State of Florida.

Section 16. Notices. Any notices required or allowed hereunder shall be in writing and given by certified mail, return receipt requested, or in person with proof of delivery, to the addresses below, or such other address as either party shall have specified by written notice to the other party delivered in accordance herewith:

APPLICANT: Madison Landing II, LLC  
558 W. New England Avenue, Suite 230  
Winter Park, FL 32789  
Attn: Patrick E. Law, Manager

COUNTY: Orange County  
Housing and Community Development Division  
701 East South Street  
Orlando, FL 32801  
Attn: Manager

PERMANENT  
LOAN LENDER: Well Fargo Community Lending and Investment  
350 East Las Olas Blvd., 19<sup>th</sup> Floor  
Ft. Lauderdale, FL 33301  
Attn: Michael J. Marra, Vice President

COPY: County Administrator  
Orange County Administration  
201 S. Rosalind Ave, 5<sup>th</sup> floor  
Orlando, Florida 32802

Section 17. Incorporation of County Policies. This Agreement shall be read in conjunction with and be subject to all County regulations, policies, resolutions and ordinances.

Section 18. Termination, Additional Remedies. The County shall, in its sole discretion, have the right to terminate all approvals and acceptances granted by this Agreement in the event Applicant fails to comply with any of the terms and conditions of this Agreement. All approvals granted by the Agreement are conditioned upon the payment of the applicable impact fees at the appropriate time. In addition to any other remedies contained herein, in the event of a breach of a covenant or a condition of this Agreement, the County may avail itself of any remedy available at law or equity.

Section 19. Disclaimer of Third Party Beneficiaries. This Agreement is solely for the benefit of the County and the Applicant and no right or cause of action shall accrue to or for the benefit of any third party.

Section 20. Assignment. The County shall have the right to assign or transfer this Agreement in whole or in part to any properly authorized commission, authority, or other public agency empowered by law to serve the unincorporated area of Orange County. The Applicant shall not assign, sell, bargain, convey or transfer its interest in this Agreement without the prior written consent of the County.

Section 21. Recordation of the Agreement. The parties hereto agree that an executed original of this Agreement shall be recorded, at Applicant's expense, in the

Public Records of Orange County, Florida. The obligations imposed in this Agreement shall be deemed a restrictive covenant which shall run with Applicant's property and shall be binding upon Applicant's successors and assigns. The County or any successor agency or entity will, from time to time and upon the request of the Applicant, execute and deliver estoppel letters affirming the status of this Agreement.

Section 22. Severability. If any sentence, phrase, paragraph, provision, or portion of this Agreement is found invalid or unenforceable by a court of competent jurisdiction, such portion shall be considered an independent provisions and the finding shall have no effect on the validity or the balance of this Agreement.

Section 23. Entire Agreement and Modification. This instrument constitutes the entire agreement between the parties and supersedes all previous discussions, understandings and agreements relating to the matters set forth herein. Any changes to this Agreement shall be made in writing and approved and executed by the authorized representatives of the respective parties.

Section 24. No Partnership or Agency. Nothing in this Agreement is intended to, or shall be construed in any manner, as creating or establishing the relations of master/servant, principal/agent, employer/employee or joint venture partnership between the parties.

Section 25. Land Use Approvals. This Agreement shall not be construed as granting, assuring, or in any way indicating any future grant of any land use, zoning, subdivision density, development approvals, permissions or rights with respect to Applicant's property.

Section 26. Effective Date; Term. This Agreement shall become effective upon the date of full execution by the authorized representatives of both the Applicant and the County, and shall terminate fifteen (15) years from the date of issuance of the first certificate of occupancy for the Project.

Section 27. Investor Member Notice and Cure. Prior to exercising any remedies under this Agreement, the County shall provide the Applicant's investor member, Wells Fargo Affordable Housing Community Development Corporation, a North Carolina corporation (the "Investor Member"), notice of any breach under this Agreement at the following address:

Wells Fargo Affordable Housing Community Development Corporation  
MAC D1086-239  
550 South Tryon Street, 23rd Floor  
Charlotte, NC 28202-4200  
Attention: Director of Asset Management

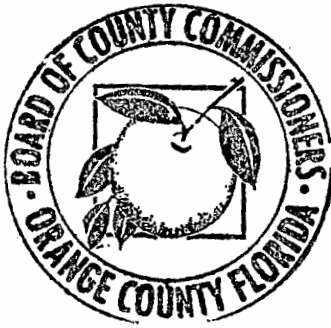
The Investor Member shall have the right, but not the obligation, to cure any default of the Applicant under this Agreement on the same terms as provided for the Applicant in Section 9 hereof.



IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the dates set forth below.

**ORANGE COUNTY, FLORIDA**

By: Orange County Board of County Commissioners



BY: *Jerry L. Demings*  
for Jerry L. Demings  
Orange County Mayor

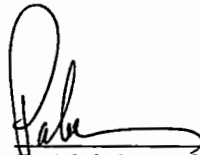
Date: December 14, 2021

ATTEST: Phil Diamond, CPA, County Comptroller  
As Clerk of the Board of County Commissioners

BY: *Katie Smith*  
Deputy Clerk

Madison Landing II, LLC, a Florida  
Limited Liability Company

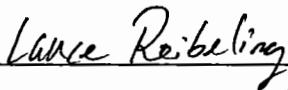
BY:



Patrick Law, Manager

WITNESS:

BY:

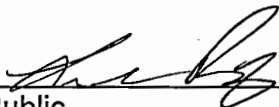


TITLE: Development Associate

STATE OF Florida )  
COUNTY OF Orange )

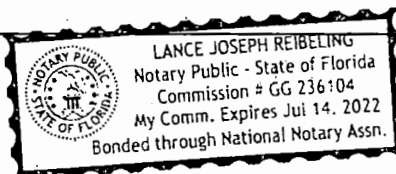
The foregoing instrument was acknowledged before me this 22 day of November, 2021 by Patrick E. Law, Manager of Madison Landing II, LLC. He is personally known to me and did / did not take an oath.

WITNESS my hand and official seal in the County and State last aforesaid this 22 day of November, 2021.

  
\_\_\_\_\_  
Notary Public

My Commission Expires:

Printed Name: \_\_\_\_\_



## EXHIBIT A

### LEGAL DESCRIPTION

A PORTION OF LOTS 40, 57, & 58, PLAN OF BLOCK "ONE" PROSPER COLONY, ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK D, PAGE 109, OF THE PUBLIC RECORDS OF ORANGE COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT THE NORTHEAST CORNER OF LOT 57, ALSO BEING THE SOUTHEAST CORNER OF LOT 40, OF SAID PLAN OF BLOCK "ONE" PROSPER COLONY, THENCE RUN SOUTH 89°17'47" WEST, 10.00 FEET, TO A POINT ON THE WEST RIGHT OF WAY OF SOUTH RIO GRANDE AVENUE, ALSO BEING THE POINT OF BEGINNING.

THENCE RUN SOUTH 00°13'04" EAST, ALONG THE WEST RIGHT OF WAY LINE OF SAID SOUTH RIO GRANDE AVENUE, 218.31 FEET; THENCE DEPARTING SAID WEST RIGHT-OF-WAY LINE OF SAID SOUTH RIO GRANDE AVENUE, RUN SOUTH 89°17'47" WEST, 435.00 FEET; THENCE RUN NORTH 00°13'04" WEST, PARALLEL WITH THE WEST RIGHT-OF-WAY LINE OF SAID SOUTH RIO GRANDE AVENUE, 87.16 FEET; THENCE RUN THE FOLLOWING (7) COURSES TO A POINT ON THE WEST RIGHT-OF-WAY LINE OF SOUTH RIO GRANDE AVENUE: NORTH 89°46'56" EAST, 144.99 FEET; NORTH 00°13'04" WEST, 173.00 FEET; NORTH 89°46'56" EAST, 70.00 FEET; SOUTH 00°13'04" EAST, 33.00 FEET; NORTH 89°46'56" EAST, 115.00 FEET; NORTH 00°13'04" WEST, 33.00 FEET; NORTH 89°46'56" EAST, 105.00 FEET; THENCE RUN SOUTH 00°13'04" EAST, ALONG SAID WEST RIGHT-OF-WAY LINE, 38.15 FEET, TO THE POINT OF BEGINNING.

CONTAINING 83,486 SQ. FT. OR 1.92 ACRES ±.