



Interoffice Memorandum

November 3, 2023

TO: Mayor Jerry L. Demings
-AND-
County Commissioners

FROM: Andres Salcedo, P.E., Acting Director
Planning, Environmental and
Development Services Department

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

SUBJECT: November 28, 2023 – Consent Item
Multi-Family Affordable Housing Developer’s Agreement
regarding the Affordable Housing Trust Fund Program and
American Rescue Funds

On June 17, 2021, Orange County issued a Request For Proposals Y21-1046-RM for Multi-Family Affordable Housing (“RFP Y21”) with the source of funding from the Affordable Housing Trust Fund Program. On September 14, 2021, the Board approved the ranking and selection of four firms under RFP Y21. This selection included BDG Barnett Villas, LP (the “Owner”) which intends to develop a new 156-unit affordable rental housing project to be known as Barnett Villas.

The County approved funding for the Project requested under RFP Y21, in the amount of \$5,000,000, in the form of a project loan and provided authorization to the Procurement Division to execute developer agreements and negotiate the terms of the loans within the proposed budget. Following this approval, the federal inflation rate increased at an unprecedented pace causing an increase in construction costs outside of the Owner’s control. As a result, the project demonstrated a construction funding gap of \$4,300,000.

The County recognized the need to maintain the viability of the Project and believed it was beneficial to deliver these much needed affordable housing units in a timely manner. Therefore, the Board approved setting aside \$2,500,000 in American Rescue Plan (“ARP”) funds to be accompanied by \$1,800,000 from the Affordable Housing Trust Fund Program to close the funding gap of \$4,300,000. The Board is utilizing available Affordable Housing Trust Fund Program and ARP funds for this Project, totaling \$9,300,000. The Multi-Family Affordable Housing Developer’s Agreement provides the terms and conditions of the loan.

Orange County will utilize the services of Neighborhood Lending Partners of Florida, Inc., a Florida not-for-profit corporation and certified community development financial institution, to facilitate the making of the project loan to the Owner, including permanent loan closing and loan servicing.

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

ACTION REQUESTED: Approval and execution of Multi-Family Affordable Housing Developer's Agreement by and among Orange County, Florida, and BDG Barnett Villas, LP, and Decro Beta Corporation, and Neighborhood Lending Partners of Florida, Inc., regarding the Affordable Housing Trust Fund Program and American Rescue Plan Funds Y21-1046A – BDG Barnett Villas, LP providing a total amount of \$9,300,000 of available Affordable Housing Trust Fund and American Rescue Plan Funds. District 6.

AS:MG
Attachments

BCC Mtg. Date: November 28, 2023

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

**MULTI-FAMILY AFFORDABLE HOUSING DEVELOPER'S AGREEMENT
BY AND AMONG
ORANGE COUNTY, FLORIDA, AND
BDG BARNETT VILLAS, LP, AND
DECRO BETA CORPORATION, AND
NEIGHBORHOOD LENDING PARTNERS OF FLORIDA, INC.,
REGARDING THE
AFFORDABLE HOUSING TRUST FUND PROGRAM AND
AMERICAN RESCUE PLAN FUNDS**

Y21-1046A - BDG Barnett Villas, LP

THIS AGREEMENT, Y21-1046A ("Agreement"), is entered into by and between ORANGE COUNTY, FLORIDA, a charter county and political subdivision of the State of Florida, (the "County") and BDG Barnett Villas, LP, a Florida Limited Partnership Company (the "Owner") and Neighborhood Lending Partners of Florida, Inc., a Florida not-for-profit corporation and certified community development financial institution ("NLP") and Decro Beta Corporation, a California not-for-profit corporation qualified to do business in Florida (the "Nonprofit Sponsor"). The County, Owner, Nonprofit Sponsor and NLP may hereinafter be referred to as the "Parties."

RECITALS

WHEREAS, the Owner owns that certain real property, more specifically described in **Exhibit "A"**, attached hereto and incorporated herein by reference (the "Property") and intends to develop a new 156 unit affordable rental housing project to be known as Barnett Villas (the "Project"); and

WHEREAS, on March 24, 2020, the Orange County Board of County Commissioners (the "Board") adopted Ordinance No. 2020-09 establishing the Affordable Housing Trust Fund Program known as the "Affordable Housing Trust Fund" or the "Trust Fund" for the propose of providing the financial resources and the leverage necessary to create and preserve affordable housing units in Orange County; and

WHEREAS, on September 22, 2020, the Board adopted the Affordable Housing Trust Fund Plan that outlines the eligible uses of the Trust Fund, including a strategy to provide gap financing to developers of affordable housing when additional funds are needed to secure the production or acquisition of affordable housing; and

WHEREAS, on June 17, 2021, Orange County issued Request For Proposals Y21-1046-RM (“RFP Y21”) for Multi-Family Affordable Housing with the source of funding from the Trust Fund Program; and

WHEREAS, on September 14, 2021, the Board approved the ranking and selection of four firms under RFP Y21; and

WHEREAS, the County approved funding for the Project in the amount requested by the Owner under RFP Y21, Five Million Dollars (\$5,000,000) in the form of a loan (the “\$5 Million Project Loan”); and

WHEREAS, the federal inflation rate has increased in recent months at an unprecedented pace, causing an increase in construction costs outside of the Owner’s control; and

WHEREAS, the Project has demonstrated a construction funding gap of \$4,300,000 due to inflationary cost increases; and

WHEREAS, the County has the desire to maintain the viability of the Project and believes it is beneficial to deliver these much-needed affordable housing units in a timely manner; and

WHEREAS, the County has set aside American Rescue Plan (“ARP”) funds for affordable housing gap financing; and

WHEREAS, the Board desires to close the gap by adding funds from ARP and Housing Trust Fund; and

WHEREAS, to help finance the Project, the Board now desires to allocate and grant \$2,500,000 of the County’s American Rescue Plan dollars and an additional \$1,800,000 from the Trust Fund to close the funding gap of \$4,300,000 (the “Gap Loan”); and

WHEREAS, to avoid adverse impacts to the financing of the Project, the Gap Loan shall be advanced to the Nonprofit Sponsor as a grant pursuant to a separate agreement between NLP and the Nonprofit Sponsor, and the Nonprofit Sponsor shall lend the proceeds of the Gap Loan to the Owner pursuant to the terms set forth herein; and

WHEREAS, the Board is permitted and desires to utilize available Affordable Housing Trust Fund Program and American Rescue Plan funds for the funding for the Project; and

WHEREAS, the County desires to utilize the services of NLP to provide mortgage loan services, to facilitate the making of low-interest and/or deferred loan or loans to the Owner including permanent loan closing and loan servicing; and

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

ARTICLE I

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

ARTICLE II

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

- 2.1 “Affordable” means that monthly rents do not exceed thirty percent (30%) of that amount which represents the percentage of the median adjusted gross annual income for the household.
- 2.2 “Very Low Income Person or Household” shall mean a person or household whose income does not exceed fifty percent (50%) of the Orlando Metropolitan Statistical Area (“MSA”) Median Income published annually by the United States Department of Housing and Urban Development (“HUD”) and distributed by FHFC, adjusted for family size.
- 2.3 “Low Income Person or Household” shall mean a person or household whose income does not exceed eighty percent (80%) of the Orlando MSA published annually by HUD and distributed by FHFC, adjusted for family size.
- 2.4 “Affordability Period” shall mean, with respect to each residential building, no less than a thirty (30) year affordability period commencing upon Project Completion (defined below).
- 2.5 “Project Completion” or “Completion Date” means that all necessary title transfer requirements and construction work on the Project have been performed and a certificate of completion and/or Certificate of Occupancy has been issued by the County for the Project.
- 2.6 *Orlando Metropolitan Statistical Area (“MSA”)* shall include the areas of Orange, Lake, Seminole, and Osceola Counties.
- 2.7 “First Mortgagee” means U.S. Bank Trust Company, National Association, as trustee, its successors and/or assigns.
- 2.8 “FHFC” means the Florida Housing Finance Corporation, a public corporation and a public body corporate and politic duly created and existing under the laws of the State of Florida.
- 2.9 “Nonprofit-County Loan Documents” shall mean this Agreement and any

other agreement or document reasonably required by the County (including but not limited to a collateral assignment of the Nonprofit-Owner Loan Documents) to evidence and secure the GAP Loan and the obligations of the Nonprofit Sponsor to the County as described herein.

- 2.10 “Nonprofit-Owner Loan Documents” shall mean, with respect to the GAP Loan, a note and mortgage from the Owner to the Nonprofit Sponsor to evidence and secure the GAP Loan made by the Nonprofit Sponsor to the Owner.
- 2.11 “Project Loan”, “Project Loan Funds”, or “Subordinate Loan” shall mean the \$5 Million Project Loan together with the GAP Loan, except where otherwise stated.
- 2.12 “Subordinate Loan Documents” or “Loan Documents” shall mean all documents evidencing and securing the \$5 Million Project Loan and the Gap Loan as reasonably required by the County, and shall include, without limitation, the Nonprofit-County Loan Documents and Nonprofit-Owner Loan Documents.

ARTICLE III

Section 3. Scope of Project

- 3.1 The Owner shall utilize Project Loan funds along with other financing source(s) to construct, at a minimum, 156 (one-hundred and fifty-six) affordable multifamily housing units at the rental project known as Barnett Villas on the Property. Of the total 156 units, 39 units shall be rented to households earning up to 50% AMI, 78 units shall be rented to households earning up to 60% AMI, and 39 units shall be rented to households earning up to 70% AMI; provided, however, the Owner may alter the foregoing unit mix with the County’s prior consent and approval (not to be unreasonably withheld, conditioned or delayed), so long as the average income of the Project’s residential tenants is no greater than 60% AMI.
- 3.2 The rent restrictions established for the Project shall comply with the affordable rental guidelines for this income and household size in accordance with the gross rent restrictions established by FHFC.
- 3.3 The Owner will ensure that the Project incorporates the required green building features detailed under RFP Y21 and included in Exhibit H.
- 3.4 The Owner will ensure that the Project achieves Gold level certification under Florida Green Building Coalition’s designation program within one year after the issuance of a Certificate of Occupancy.

- 3.5 The Owner will ensure that the Project implements the required Lower Barrier unit tenant screening criteria for the set aside units as detailed in Exhibit I and provide the County with an annual monitoring materials as described in Exhibit J.
- 3.6 The Owner will endeavor to ensure that all of its agents, subcontractors, representatives, or any other individual or entity which it utilizes for the Project will fully comply with all of the terms and conditions, to the extent applicable to each, as set forth herein.
- 3.7 The Owner shall be solely responsible for the means, methods, techniques, sequences, safety programs, procedures and permitting necessary to legally, properly and fully complete the work associated with the Project.
- 3.8 The Owner, at its sole expense, shall comply with all laws, ordinances, judicial decisions, orders, regulations and guidelines of federal, state, county, and municipal governments (collectively "Laws") applicable to the Project in effect at the time of execution of this Agreement and as may become applicable thereafter during the term of the note, mortgage and restrictive covenant resulting from the Project Loan. Nothing herein shall be deemed to waive Owner's right to contest any Laws applicable to the Owner or Project, so long as such contest is brought in good faith.
- 3.9 Pursuant to the terms of that certain Program Administration Agreement between the County and NLP approved by the Board on September 26, 2021 as it may be amended or extended from time to time ("Program Administration Agreement"), NLP shall provide all the services and loan documentation including recording the loan documents necessary to facilitate and accomplish the loan closings for the Project Loan to include: Construction loan closing, permanent loan closing, disbursement of the Project Loan proceeds, and loan servicing. The Project Loan will be evidenced by a subordinate promissory note and secured by a subordinate mortgage lien against the Property executed and delivered by Owner to NLP. Such mortgage and promissory note shall be subordinate in all respects to the Owner's first mortgage financing for the acquisition and construction of the Project and to all permanent loan(s). NLP shall consent to and execute a subordination and standstill agreement ("Subordination Agreement") with the First Mortgagee. The County and NLP's subordinate promissory note and subordinate mortgage shall comply with the provisions and requirements of such Subordination Agreement.
- 3.10 The Owner, at its sole cost and expense, shall supply NLP with all documentation (including, but not limited to, mortgagee title insurance commitments, surveys, physical needs assessments, engineering reports, environmental assessments ("Phase 1" reports), plans and specifications and legal opinions, required to close on the Project Loan.

- 3.11 The Owner shall pay NLP all fees and charges incurred in closing the Project Loan and the GAP Loan, including the 1% origination fee for the Project Loan, and all reasonable and customary fees and charges incurred in the disbursement of the loan proceeds. NLP shall remit to the County the Owner's payment due under the Subordinate Loan Documents pursuant to the terms and conditions of the Program Administration Agreement.

ARTICLE IV

Section 4. Payment and Loan Terms

- 4.1 This Agreement constitutes a commitment to make the Project Loan to Owner subject to the terms and conditions hereof.
- 4.2 The County has designated a total of Nine Million, Three Hundred Thousand Dollars (\$9,300,000) towards the costs of the Project from the Affordable Housing Trust Fund and ARP for the construction activities to be performed by Owner. The term of the \$5 Million Project Loan shall consist of an interest-only 30-month construction period (subject to one 6 month extension for a total of 36 months) (the "Construction Loan Period") and a permanent loan term of 30 years that commences on the same day the senior loan converts to its permanent period (the "Permanent Loan Period"). Loan payments shall be made in arrears. The County shall grant a \$4.3 Million Gap Loan to the Nonprofit Sponsor as a forgivable loan with a 33-year term (a 3-year construction period and a 30-year permanent loan term), which Gap Loan shall be evidenced and secured by such documents and agreements as reasonably required by the County. The GAP Loan shall be made on a nonrecourse basis to the Nonprofit Sponsor. The GAP Loan shall be forgiven at the end of the 30-year permanent loan period provided no event of default occurs and continues under the Loan Documents beyond any applicable notice and cure period. The Nonprofit Sponsor agrees, at Owner's cost, to execute and deliver such documents reasonably required by NLP and/or the County to effect the intent of this paragraph.
- 4.2.1 The Nonprofit Sponsor shall relend the GAP Loan to the Owner on the following terms: a 55 year total loan term at 0% interest and payable annually in arrears solely from the Owner's distributable cash-flow and distributable capital proceeds (but in no event more than 75% of such proceeds) at the times and manner as set forth in the Owner's limited partnership agreement, as may be amended. At maturity, the outstanding balance of the GAP Loan made by Nonprofit Sponsor to the Owner shall be due and payable in full. There shall be no prepayment penalty or prepayment lock-out on the GAP Loan made by the Nonprofit Sponsor to the Owner. The GAP Loan from the Nonprofit Sponsor to the Owner shall be on a nonrecourse basis unless the Owner's tax credit investor limited partner otherwise requires. The Nonprofit Sponsor hereby appoints NLP

to service the GAP Loan and to administer the same on the same basis as the \$ 5 Million Project Loan. The Nonprofit Sponsor hereby authorizes and directs the County to advance the proceeds of GAP Loan to NLP for disbursement as provided in this Agreement. The Nonprofit Sponsor agrees, at Owner's cost, to execute and deliver such documents reasonably required by NLP and/or the County to effect the intent of this paragraph. The GAP Loan shall be fully subordinate on both a lien and payment basis to the \$5 Million Project Loan, the senior loan, and all loans made by FHFC to the Owner, and the Nonprofit Sponsor agrees to execute and deliver any subordination agreement(s) required to accomplish the subordination of the GAP Loan.

4.3 The County shall transfer Project Loan funds allocated herein to NLP. NLP will make the Project Loan of such County funds to the Owner and will disburse proceeds of such loan in one or more advances subject to the terms and conditions set forth herein and in the applicable Subordinate Loan Documents. The Project Loan shall be evidenced by Subordinate Loan Documents.

4.4 The \$5 Million Project Loan amounts advanced to the Owner from the Account (defined below in Section 4.7):

(i) shall bear an interest rate of one-half of one percent (0.50%) compounded annually;

(ii) during the Construction Loan Period, interest-only payments shall be required until conversion;

(iii) during the Permanent Loan Period: (a) interest-only payments shall be required for the first 5 years, thereafter principal and interest payments shall be due and payable based on a 35-year amortization schedule, with a balloon payment due at maturity; (b) all required payments of principal and interest shall be determined and made in a manner that is consistent with the repayment of FHFC SAIL Loans under F.A.C. 67—48.010 which allows payment of up to 20% of total developer fees each year, except that "Development Cash Flow" as used therein shall instead mean "Cash Flow" as defined below ; and (c) payments on the Loan shall not exceed 75% of then-available Cash Flow; and

(iv) shall have a maturity date that is 30 years after the commencement of the Permanent Loan Period. To the extent any payments of principal and interest are not paid prior to the maturity date, all outstanding amounts of principal and interest shall be due and payable on the maturity date. To the extent there is insufficient Cash Flow in any year for Owner to pay all or any portion of the loan payment(s), the amount of the loan payments made shall be deferred (and not capitalized) until the date when there is sufficient Cash Flow available to make such deferred

payment. For purposes hereof, "Cash Flow" shall mean the excess of the Project's Cash Receipts over the Project's Operating Expenses for the same time period. "Cash Receipts" shall mean all rental revenue, laundry income, parking revenue, amounts released to Owner without restrictions from escrow accounts, and other incidental revenues on a cash basis, and rental subsidies on an accrual basis, received by Owner from normal operations of the Project but specifically excluding proceeds from insurance (other than business or rental interruption insurance actually paid to Owner), loans, proceeds of any capital transaction, or capital contributions. "Operating Expenses" shall mean and refer to all ordinary and necessary operating expenses (including those reasonable replacement and maintenance reserves or accruals required by generally accepted accounting principles) as well as necessary capital improvements and those other reasonable reserves and reasonable accruals that are required to operate, maintain, repair and keep the Project in a neat, safe, and orderly condition, as well as the payment of all principal and interest payments made on all mortgage loans secured by the Project senior in priority, the payment of any outstanding Project costs, and the payment of any other customary fees or expenses associated with a low income housing tax credit project.

- 4.5 Notwithstanding anything in Section 4.4 of this Article IV to the contrary, Owner shall pay NLP an annual servicing fee in the amount of \$20,800 per year, which shall be due and payable on or before April 1 of the following year. The annual servicing fee shall be pro-rated to the extent the time period covered is less than a calendar year. Upon repayment of the \$5 Million Project Loan, NLP may terminate its servicing obligations with respect to the GAP Loan by sending the Nonprofit Sponsor no less than 5 business days prior written notice of such termination.
- 4.6 After closing for Project Loan funds, NLP shall submit a written request to the County for such funds in the amount of Nine Million, Three Hundred Thousand Dollars (\$9,300,000). The written funding request to the County from NLP shall be submitted together with the following documents relating to the Project Loan:
1. Executed promissory note from Owner to NLP ("Subordinate Note");
 2. Executed subordinate mortgage against the Property in favor of NLP ("Subordinate Mortgage");
 3. Executed Multi-Family Affordable Housing Developer's Agreement between Owner, Nonprofit Sponsor, NLP and Orange County;
 4. Title Insurance Commitment; and
 5. The Nonprofit-Owner Loan Documents.

- 4.7 Once funds from the Project Loan are drawn, NLP shall immediately deposit the Project Loan funds into an interest bearing escrow account with a bank selected by NLP (including any sub-accounts or separate accounts for the GAP Loan as NLP may require, the "Account"). All interest earned in the Account shall be retained in the account and paid to the County after the Project is completed.
- 4.8 Each Project Loan advance from NLP to Owner shall be deemed to be an advance under the applicable note(s) and shall be made pursuant to a draw schedule pursuant to approved by NLP, the Owner, and the servicer for the senior loan, which draw schedule will provide, to the greatest extent possible, for Loan proceeds to be advanced to Owner on a pro-rata basis with the proceeds of the senior loan. After no less than 10 business days prior written notice to the Owner, NLP may apply any amounts in the Account thereunder toward satisfaction of any unpaid, past due amounts required to be paid by the Owner or Nonprofit Sponsor under the terms of this Agreement, and amounts so applied shall be part of the Project Loan and shall be secured by the lien of the Subordinate Mortgage(s) and any collateral assignment(s) of the Nonprofit-Owner Loan Documents given by the Nonprofit Sponsor to the County, and all disbursements from any "contingency" categories shall be made at NLP's discretion after approval by the County pursuant to the terms of the Subordinate Loan Documents. Such approval and discretion shall not be unreasonably withheld, conditioned or delayed.
- 4.9 Upon request from NLP, the Owner shall submit those documents requested by NLP including the invoices and reports on the actual work completed on the Project. AIA documents may be used to support other documents for application and certificate of payment. The final advance under the Project Loan will be made after NLP and the County have made an on-site inspection. Owner shall supply partial and final lien releases from all materialmen, contractors and sub-contractors, as may be required by the County and/or NLP in their sole but reasonable discretion.
- 4.10 If the Owner fails to request disbursement of any Project Loan funds for a period of twenty (20) months after construction on the Project commences subject to unavoidable delays, the County may, subject to the terms and conditions of the Subordination Agreement, at its option and upon fifteen (15) days written notice to Owner, recoup part or all of any remaining Project Loan funds. Funds that are recouped by the County shall no longer be available for advance hereunder to the Owner.
- 4.11 The Owner shall provide NLP and Orange County a copy of the recorded Extended Low-Income Housing Agreement ("ELIHA") executed between FHFC and the Owner within 30 days after the recording of the same.

ARTICLE V

Section 5. Project Construction

- 5.1 The Owner shall obtain all necessary governmental permits and approvals, as needed, and shall cause construction of the Project to begin no later than **sixty (60) days** after the date of closing of the Project Loan and only after the recording of the Notice of Commencement, and shall cause such construction to be prosecuted with diligence and dispatch so that the construction of the Project is completed in substantial accordance with the final plans, in form and content acceptable to the County, free and clear of all liens or claims for materials, labor, services, or other items furnished in the construction of the Project (excluding liens or claims transferred to a bond or insured over in accordance with the Project Loan documents), and in full compliance with all building, zoning and all other applicable local, state and federal laws, ordinances and regulations for multi-family housing, and a final certification by the qualified construction inspector that the Project have been completed in substantial accordance with the Final Plans. The Owner shall provide NLP evidence of Projection Completion.
- 5.2 After reasonable notice to Owner, Nonprofit Sponsor, NLP, and the County, and any other agent or representative of the County shall have the right to enter the Project during normal business hours, for the purpose of inspecting the Project. The Owner shall cause the General Contractor to cooperate with the County and their agents and representatives in the exercise of their rights and performance of their duties hereunder.

ARTICLE VI

Section 6. Insurance Requirements

- 6.1 The Owner agrees to maintain on a primary basis and at its sole expense the following types of insurance coverage with limits and on forms (including endorsements) as described herein. These requirements, as well as the County's review or acceptance of insurance maintained by Owner, are not intended to, and shall not in any manner limit or qualify the liabilities or obligations assumed by Owner under this contract.
- 6.2 The Owner shall require and ensure that each of its contractors and consultants providing services hereunder (if any) procures and maintains until the completion of their respective services, insurance of the types and to the limits specified herein. The Owner shall make commercially reasonable efforts to cause the General Contractor to require subcontractors to maintain the insurance required hereunder applicable to subcontractors.

- 6.3 Insurance carriers providing coverage required herein must be permitted to conduct business in the State of Florida and must possess a current A.M. Best's Financial Strength Rating of A- Class VI or better.
- 6.4 Required Coverage as stated in this Agreement and the Loan Documents:
- A) Workers' Compensation - Owner shall maintain coverage for its employees with statutory workers' compensation limits, and no less than \$100,000 each incident of bodily injury or disease for Employers' Liability. Said coverage shall include a waiver of subrogation in favor of the County if available. Elective exemptions as defined in Florida Statute 440 will be considered on a case-by-case basis. Any agency/vendor using an employee leasing company shall complete the Leased Employee Affidavit (Exhibit B).
 - B) Commercial General Liability - Owner shall maintain coverage issued on the most recent version of the ISO form as filed for use in Florida or its equivalent, with a limit of liability of not less than \$1,000,000 per occurrence. Owner further agrees coverage shall not contain any endorsement(s) excluding or limiting Product/Completed Operations, Contractual Liability covering an "Insured Contract", or Separation of Insureds. The General Aggregate limit shall either apply separately to this contract or shall be at least twice the required occurrence limit.
 - C) Business Automobile Liability - Owner shall maintain coverage for all owned; non-owned and hired vehicles issued on the recent version of the ISO form as filed for use in Florida or its equivalent, with limits of not less than \$500,000 per accident. In the event Owner does not own automobiles the Owner shall maintain coverage for hired and non-owned auto liability, which may be satisfied by way of endorsement to the Commercial General Liability policy or separate Business Auto Liability policy.
 - D) Professional Liability (if applicable) Owner shall require architecture and engineering companies providing professional services to maintain professional liability (errors and omissions) coverage with limits of not less than \$1,000,000 per occurrence.
- 6.5 When a self-insured retention or deductible exceeds \$100,000, the County reserves the right to request a copy of Owner's most recent annual report or audited financial statement. For policies written on a "Claims-Made" basis the Owner agrees to maintain a retroactive date prior to or equal to the effective date of this contract. In the event the policy is canceled, non-renewed, switched to occurrence form, or any other event which results in a gap in insurance coverage that could adversely affect the County, the County may require the Owner to purchase in the event of a claims made form a Supplemental Extended Reporting Period (SERP) during the term

of this Agreement with a minimum reporting period of not less than two years. Purchase of the SERP shall not relieve the Owner of the obligation to provide replacement coverage.

- 6.6 By entering into this contract, Owner agrees to provide a waiver of subrogation or waiver of transfer of rights of recovery, in favor of the County for the workers' compensation and general liability policies as required herein. When required by the insurer or should a policy condition not permit the Owner to enter into a pre-loss Agreement to waive subrogation without an endorsement, then Owner agrees to notify the insurer and request the policy be endorsed with a Waiver of Subrogation or a Waiver of Transfer of Rights of Recovery Against Others endorsement.
- 6.7 Owner agrees that the County should be declared as an Additional Insured with a CG 2010 Additional Insured, or its equivalent to all commercial general liability policies called for in this Agreement. The additional insured shall be listed in the name of Orange County Board of County Commissioners.
- 6.8 Any request for an exception to these insurance requirements must be submitted in writing to the County for approval, which County may decline to approve in the County's sole discretion.
- 6.9 Prior to execution and commencement of any operations/services provided under this contract the Owner shall provide the County and NLP with current certificates of insurance evidencing all required coverage. In addition to the certificate(s) of insurance, the Owner shall also provide a Blanket Additional Insured Endorsement (Exhibit C) or Specific Additional Insured Endorsement (Exhibit D) and a Waiver of Subrogation (Exhibit E) or Waiver of Transfer of Rights of Recovery (Exhibit F) endorsements for each policy as required above. The certificates shall clearly indicate that the Owner has obtained insurance of the type, amount and classification as required for strict compliance with this insurance section. No cancellation of the insurance shall be effective without thirty (30) days prior written notice to the County. Certificates shall specifically reference the respective contract number. The certificate holder shall read:

Orange County Board of County Commissioners
Housing and Community Development Division
525 E. South Street
Orlando, Florida 32801

6.10. Indemnification

If there are any claims for damages attributable to the negligence, errors or omissions of Owner, their contractors, subcontractors, agents or employees arising in any manner from the Project and this Agreement, Owner shall

defend, indemnify and hold harmless the County from any and all losses, costs, liability, damages and expenses arising out of such claims or litigation asserted as a result hereof. However, Owner shall not be (i) responsible for acts or omissions of the County, its agents or employees which result in bodily injury to persons or property, and (ii) personally liable for principal and interest payments on the Project Loan during its permanent phase, when the Project Loan is nonrecourse to the Owner.

ARTICLE VII

Section 7. Fair Housing

- 7.1 The Owner shall not discriminate against any person or family on the grounds of race, color, national origin, religion, familial status, sex, sexual orientation or disability. The Owner shall comply with Human Rights Ordinance Chapter 22 of the Orange County Code.
- 7.2 The Owner shall comply with Affirmative Marketing and Minority Outreach as set forth in Human Rights Ordinance Chapter 22, Article IV Fair Housing of the Orange County Code. The Owner shall abide by the following:
- A. The Owner shall provide rental information and attract eligible persons in the housing market area without regard to race, color, national origin, religion, sex, sexual orientation or disability and
 - B. The Owner shall employ the Equal Housing Opportunity slogan, logo or statement in all solicitations for tenants and posters with the fair housing logo will be prominently displayed at the Project.
- 7.3 The Owner shall maintain records of its affirmative marketing efforts and keep them available for review by the County's Housing and Community Development Division staff.
- 7.4 The Owner shall assess the success of its affirmative action efforts and when applicable, undertake all necessary corrective actions as mandated by the County, when affirmative marketing requirements are not met.

ARTICLE VIII

Section 8. RENTAL HOUSING RESTRICTIONS

- 8.1 The Project shall consist of a minimum of one-hundred and fifty-six (156) units in total. During the affordability period, 39 units shall be rented to very low-income households earning up to 50% AMI, 78 units shall be rented to low-income households earning up to 60% AMI, and 39 units shall be rented

to households earning up to 70% AMI. Notwithstanding the foregoing, any household that initially qualified under any of the foregoing income limits shall be deemed to satisfy the applicable income limitation if such household's income subsequently increases and the requirements of section 8.5 are followed.

8.2 The Owner shall verify the household income of the prospective tenants for eligibility in all units prior to the initial occupancy, thereafter, income verification shall be performed on an annual basis.

8.3 The Owner's management company shall obtain a certification of income and age for each of prospective tenant prior to admission to the Project. Source documentation for each adult household member shall be obtained to support income claims. The form of Certification shall be as required by the FHFC.

Should the annual income recertification of such households result in non-compliance with income occupancy requirements, the next available unit must be rented to a qualifying household in order to ensure continuing compliance of the Project.

8.4 Every unit will be subject to the rent restrictions established for the Project. Rents shall comply with the federal rent guidelines released by HUD annually and provided for in (Exhibit G) for 2023 income rent limits.

8.5 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 FHFC. 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 Project is occupied by a new resident whose income exceeds the applicable income limit for very low or low income tenants as defined in this Agreement.

8.6 All of the units in a residential building of the Project shall be affordable for no less than a minimum period of twenty (20) years from the date the last certificate of occupancy is issued with respect to all seven residential buildings.

8.7 All rental units shall be in compliance with Housing Quality Standards and property standards as outlined under 24 CFR 92.251, Accessibility

Standards under 24 CFR 92.251(a)(2) and local code requirements for the duration of the affordability period.

The Owner shall cooperate with the County by allowing on-site inspections of Trust Fund units for compliance with Housing Quality Standards and local code requirements on an as needed basis.

Notwithstanding the foregoing, Owner may establish compliance with the requirements of this Article by providing to the County the annual compliance monitoring reports prepared by the Florida Housing Finance Corporation's compliance monitor in addition to monitoring reports on the lower barrier units.

ARTICLE IX

Section 9. Records and Reports

- 9.1 During the construction of the Project, the Owner shall provide to the County and NLP, a quarterly status construction report concerning the progress made on the Project. The information provided should be a narrative summary of progress, including but not limited to, the percentage of the Project completion, selection of contractors, expenditures and such other information as required under this Agreement and as may be deemed appropriate by the County. Such report shall be due the twentieth day of each month.
- 9.2 The Owner shall cooperate with the County and NLP in the implementation and maintenance of an evaluation system to monitor the Project. Such cooperation shall include, but not be limited to, periodic submission of tenant data reports, affirmative marketing efforts, and annual tenant income re-certifications and other obligations in this Agreement.
- 9.3 The Owner 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 Owner shall permit any duly authorized representative of Orange County to inspect the books and records upon reasonable notice.
- 9.4 The Owner shall furnish to the County's Housing and Community Development Division and NLP a copy of the Annual Owner's Certificate of Housing Credit Program Compliance Form AOC-1, Program Report Summary Form PR-1, Recap of Tenant Income Certification Form AR-1 submitted to the FHFC, and monitoring report on lower barrier units (Exhibit J). Copies shall be submitted on annual basis subsequent to the issuance of the first certificate of occupancy for the Project.

- 9.5 Notwithstanding anything contained in this Agreement or in the Subordinate Loan Documents to the contrary, in the event that the requirements set forth in this Article IX shall in any manner conflict with the Low Income Housing Credit requirements of Section 42 of the Internal Revenue Code of 1986, as they may be amended from time to time, such provisions of the Internal Revenue Code shall control.

ARTICLE X

Section 10. Monitoring

- 10.1 The Owner shall cooperate with the County's Housing and Community Development Division and NLP, or any of its agents in carrying out its monitoring responsibilities, which may, in the sole discretion of the County, include on-site inspections. Further, the Owner shall regularly monitor its performance under this Agreement to ensure that time schedules are being met during the construction period and other performance goals are being achieved during the affordability period. The Owner shall notify Orange County when the Project's Certificate of Occupancy is issued as part of the Project's monitoring.

ARTICLE XI

Section 11. Compliance with Applicable Laws and Other Conditions

- 11.1 The Owner shall comply with the Architectural Barriers Act of 1968 (42 U.S.C. §§ 4151-4157), the Uniform Federal Accessibility Standards, the Americans with Disabilities Act of 1990 (42 U.S.C. §12131), and all state and local laws requiring physical and program accessibility to people with disabilities. Any contracts entered into by the Owner shall include a provision for compliance with all such regulations. The Owner shall keep records demonstrating compliance with these regulations.
- 11.2 The Owner shall provide a drug-free workplace. The Owner shall comply with the Drug-Free Workplace Act of 1988.
- 11.3 By executing this Agreement, the Owner hereby certifies that it is not on the "Convicted Vendor List" maintained by the Department of Management Services pursuant to Section 287.133(3)(d), Florida Statutes, and that it shall not contract or subcontract with any entity that appears on such list for the performance of any work or services pursuant to this Agreement. The Owner understands that should this certification be falsified, that the County reserves the right to: (1) terminate this Agreement; and (2) pursue any of the County's available legal rights and remedies.

- 11.4 If the completed rental Project is not occupied by eligible tenants within six months following the date of Project completion, the County will request that the Owner submit marketing information, and if appropriate a marketing plan. The County will require the Owner to repay Project Loan funds invested in any housing unit that has not been rented at least once to eligible tenants within eighteen (18) months after the date of Project completion.

ARTICLE XII

Section 12. Additional Owner Covenants

- 12.1 The Owner shall comply promptly with all federal, state and local laws, ordinances and regulations relating to the construction, use, and leasing of the Project, and shall obtain and keep in good standing all necessary licenses, permits and approvals required or desirable for construction and use of the Project.
- 12.2 The Owner will not knowingly engage in any activity or enter into any relationship which will give rise to any loan or brokerage commission with regard to the Loan, and the Owner hereby agrees to indemnify NLP and the County from the claims of brokers arising by reason of the execution hereof or the consummation of the transactions contemplated hereby.
- 12.3 The Owner will upon reasonable demand of NLP or County, correct any structural defect in the Project or any material and substantial departure from the final construction plan documents not approved by NLP and the County, or perform any material condition to NLP or the County's obligations hereunder not satisfied or no longer satisfied. The advance of any proceeds of the Loan shall not constitute a waiver of NLP's or County's right to require compliance with this covenant with respect to any such defects or material and substantial departures from the final construction plan documents not theretofore discovered by, or called to the attention of NLP, County and the inspector, or with respect to the Owner's failure to satisfy or continue to satisfy any condition under this Agreement, whether or not NLP required performance thereof. However, if any defects cited by or not approved by NLP or County remain unresolved for more than 60 days, then NLP may withhold future payment to the Owner under this Agreement or the Loan Documents until the defect is resolved or cured to the reasonable satisfaction of NLP and County.
- 12.4 The Owner shall establish and maintain a reasonable accounting system in accordance with Generally Accepted Accounting Principles, which enables ready identification of its contractors and of Owner's cost of goods and use of funds. Such accounting system shall also include adequate records and documents to justify all prices for all items invoiced as well as all charges, expenses and costs incurred in providing the goods for at least five (5) years

after completion of the Project. Owner shall ensure in its contract with its general contractor that NLP and the County or its designee shall have access to such books, records, contracts, subcontract(s), financial operations, and documents of the general contractor as required to comply with this section for the purpose of inspection or audit upon reasonable notice during normal business hours at the general contractor's place of business.

- 12.5 The Owner shall cooperate with NLP in obtaining for NLP and the County the benefits of any insurance or other proceeds lawfully or equitably payable to it in connection with the transaction contemplated hereby and the collection of any indebtedness or obligation of the Owner to NLP incurred hereunder (including the payment by the Owner of the expense of an independent appraisal on behalf of NLP in case of a fire or other casualty affecting the Development). The prosecution, settlement and use of insurance claims/proceeds shall be governed by the respective terms of the first mortgage and loan documents.
- 12.6 The Owner will do all acts and execute all documents for the better and more effective carrying out of the intent and purposes of this Agreement, as NLP and Orange County shall reasonably require from time to time, and will do such other acts reasonably necessary or desirable to preserve and protect the collateral at any time securing or intending to secure the Project Loan, Note, as NLP or Orange County may reasonably require.
- 12.7 The Owner will utilize the proceeds of the Project Loan solely for the Construction Costs for the Project (as such term is defined in the Owner's fully executed Subordinate Loan Documents) pursuant to the terms of such documents.
- 12.8 The Owner shall not assign this Agreement or any interest therein, and any such assignment shall be void and of no effect.
- 12.9 The Owner shall not incur new or additional liabilities that would constitute liens against the Property or the Project, other than as expressly provided for herein and in the senior loan documents and except for liabilities incurred in the ordinary course of business unless otherwise approved by the County. No violation of this section 12.9 shall be deemed to exist with respect to any liens or encumbrances bonded off or insured over in accordance with the requirements of the Subordinate Loan Documents.
- 12.10 If for any reason the entire amount of the Loan is not used to fund the Construction Costs or toward permanent financing of the Development, the principal amount of the Loan shall be reduced by the amount of the unused funds, which shall be retained by Orange County, and the principal sum of the Note shall be adjusted accordingly.
- 12.11 Neither NLP nor the County shall be liable to materialmen, contractors,

subcontractors, sub-subcontractors, laborers, suppliers or others for goods or services delivered by them in or upon the Property or employed in the construction of the Project, or for any debts or claims accruing to any of said parties against the Owner or against the Property, and it is distinctly understood and agreed that there is no contractual relationship, either express or implied, between either NLP or the County, and any material men, contractors, sub-contractors, sub-subcontractors, craftsmen, laborers or any person supplying any work, labor or material. The Owner is not, and shall not be, the agent of either NLP or the County for any purpose, nor shall any of them be the agent of Owner for any purpose, except, as to both, as may be specifically set forth herein. Nothing in this Agreement, or any Subordinate Loan Document shall be construed to make the Owner and NLP and the County partners, or joint or co-venturers, and the relationship of the Owner with respect to NLP and the County shall at all times be that of debtor and creditor.

ARTICLE XIII

Section 13. Default

13.1 Upon the occurrence of any of the following events and subject to any applicable cure periods (an "Event of Default") all obligations on the part of NLP and Orange County to make any advances under the Subordinate Loan Documents shall, if NLP elects, terminate, and NLP may, subject to the terms and conditions of the Subordination Agreement, at its option exercise any of its remedies set forth herein, and in the Subordinate Loan Documents but NLP may make any advances or parts of advances after the happening of any Events of Default without thereby waiving the right to exercise such remedies without becoming liable to make any further advance. Upon the occurrence of any Event of Default under the Subordinate Loan Documents, NLP will, subject to the terms and conditions of the Subordination Agreement, demand and consider a cure provided within the applicable cure period by the Owner, as applicable. Upon the occurrence and continuance of Event of Default, Nonprofit Sponsor agrees to assign, without recourse, all of its right, title and interests in and to the Nonprofit-Owner Loan Documents directly to the County and/or NLP as NLP may request upon written notice to the Nonprofit Sponsor.

13.1.1 Prior to Project completion, if the Owner fails or is unable to, satisfy or keep satisfied any condition within Owner's control to an Advance under this Agreement for a period in excess of thirty (30) days.

13.1.2 If for any cause whatsoever other than Unavoidable Delays (as hereinafter defined) the construction of the Project is at any time discontinued for more than sixty (60) consecutive business days, or not carried on with diligence and dispatch, in the reasonable judgment of NLP,

or if the Project, in the reasonable judgment of NLP, are not being constructed or have not been completed in a good and workmanlike manner in substantial accordance with the Final Plans, this Agreement and all laws, rules, regulations and requirements of all governmental authorities having or claiming jurisdiction, now existing or hereafter enacted, adopted or promulgated, or if the certificate of occupancy for the Development or other certificates of compliance with zoning ordinances and building regulations have not been issued within thirty (30) days after the Completion Date, as the same may be extended. "Unavoidable Delays" is defined as delays due to strikes, blackouts, acts of God, failure or inability to secure materials or labor by reason of priority or similar regulation or order of any governmental authority, enemy action, civil disturbance, fire, inclement weather which results in a local declaration of emergency under state law, or any other act beyond the reasonable control of the Owner, (excluding, however, the inability or failure of the Owner to obtain any financing which may be necessary to carry out its obligations under this Agreement), provided, however, within thirty (30) days after the termination of the occurrence which caused any such delay, the Owner shall have given written notice to NLP of the cause of the delay and the period of time during which it existed, and the period of Unavoidable Delay shall be such period of time during which the particular delay existed or such longer period of time as NLP, in its reasonable discretion, may determine.

13.1.3 If any warranty or material representation made by the Owner in this Agreement or pursuant to the terms of the Loan Documents shall at any time be found to be false or misleading in any material respect, or if the Owner shall fail to keep, observe or perform any of the terms, covenants, representations or warranties contained in this Agreement, the Note, the Mortgage, the first mortgage, or any other Loan Document (provided, that with respect to nonmonetary Events of Default, NLP shall give written notice to the Owner, who shall have thirty (30) days to cure which time may be reasonably extended by NLP and that with respect to monetary Events of Default, the Owner shall have a fifteen (15) day grace period), or is unable or unwilling to meet its obligations there under.

13.1.4 If any building permit or other governmental permit, license or approval required in connection with the Development is not maintained in full force and effect, expires or is cancelled and not reinstated or renewed within thirty (30) days of such cancellation or expiration, and such permit, license or approval is necessary for the stage of construction then ongoing, or for the operation of the Development once complete.

13.2 If Owner has failed to comply with its obligations under the Subordinate Loan Documents or the senior loan documents, NLP shall give written notice to Owner, who shall have ten (10) days, or such additional period of time approved in writing by NLP to provide any additional information

requested by NLP and thirty (30) days to cure such insecurity, if a cure is deemed necessary by NLP.

- 13.3 If an Event of Default occurs (other than a payment default) and the Owner is diligently attempting to cure the same but such cure cannot be made within the initial cure period, and if the County's collateral or lien securing the Project Loan will not be adversely and materially impaired as determined by County in its reasonable discretion, the Owner shall have an additional sixty (60) days beyond any initial cure period to cure such Event of Default or default.
- 13.4 The County agrees to provide written notice of any default or Event of Default under this Agreement to the First Mortgagee and the Owner's limited partners who have delivered written notice to the County requesting to be notified of any Event of Default or default under this Agreement. The Owner's limited partner(s) shall be permitted, but not obligated, to cure any such Event of Default or default on behalf of the Owner within the time periods set forth in this Article XIII.

ARTICLE XIV

Section 14. Default Remedies of NLP and the County

- 14.1 Subject to the terms of the Subordination Agreement, upon the happening of an Event of Default, unless cured, NLP and/or the County may, at their option, upon written notice to the Owner, exercise any one or more of the following options:
1. Terminate this Agreement.
 2. Commence an appropriate legal or equitable action to enforce the Owner's performance under this Agreement.
 3. Accelerate the payment of the Subordinate Note and the Subordinate Loan Documents and any other sums secured by the Subordinate Mortgage, and commence appropriate legal and equitable action to foreclose the Subordinate Mortgage and collect all such amounts due by Owner under the Subordinate Loan Documents.
 4. Exercise all rights under the agreements with the general contractor, the architect and the engineer for the Project, or employ others to complete the construction, and thereafter lease or let the Project; and take such action as may be reasonable to preserve and protect the Project and construction site any construction materials stored thereon.
 5. Exercise any other rights or remedies that NLP or the County may have

under the Subordinate Mortgage or any other Subordinate Loan Document or executed in connection with the Project Loan or which may be available under applicable law.

6. Exercise any other options allowed by law for NLP or the County to protect their interests.
- 14.2 No right, power or remedy of NLP or the County as provided in this Agreement is intended to be exclusive of any other right, power, or remedy of NLP or the County, but each and every such right, power and remedy shall be cumulative and concurrent and in addition to any other right, power or remedy available to NLP and the County now or hereafter existing at law or in equity and may be pursued separately, successively or concurrently at the sole discretion of NLP and/or the County. The failure of NLP or the County to exercise any such right, power or remedy, shall in no event, be construed as a waiver or release of any right, power or remedy thereof.
- 14.3 The Owner 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.

ARTICLE XV

Section 15. General Terms

The following shall be applicable throughout the period of this Agreement or thereafter as provided herein:

- 15.1 All conditions imposed on the Owner hereunder are imposed solely and exclusively for the benefit of NLP and/or the County and its successors and assigns, and no other person shall have standing to require satisfaction of such conditions or be entitled to assume that NLP will 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 this Agreement or the Subordinate Loan Documents, any provisions of which may be freely waived in whole or in part by NLP or the County at any time if, in their sole discretion, if they deem it desirable to do so.

In particular, NLP and the County make no representations and assume no duties or obligations as to third parties concerning the quality of the construction by the Owner of the Project or the absence there from of defects. All inspections and other services rendered by or on behalf of NLP or the County shall be rendered solely for the protection and benefit of NLP or the County. Neither the Owner nor other third persons shall be entitled to claim any loss or damage against NLP or the County or against its agents or employees for failure to properly discharge their duties.

- 15.2 Nothing contained in this Agreement, or the Subordinate Loan Documents, shall impose upon NLP or the County any obligation to oversee the proper use or application of any disbursements and advances of funds made pursuant to the Loan.
- 15.3 The Owner shall indemnify NLP and the County, its directors, officers, members, officials, employees and agents, from any liability, claims or losses resulting from the disbursement of the proceeds of the Project Loan to the Owner or the general contractor for the Project or from the condition of the Project, whether related to the quality of construction or otherwise, and whether arising during or after the term of the Project Loan excluding misconduct, bad faith or negligence of NLP or the County. This provision shall survive the repayment of the Project Loan and shall continue in full force and effect so long as the possibility of such liability, claims, or losses exists.
- 15.4 The headings of the sections, paragraphs and subdivisions of this Agreement are for the convenience of reference only, and shall not limit or otherwise affect any of the terms hereof.
- 15.5 If performance of any provision hereof or any transaction related hereto is limited by law, then the obligation to be performed shall be reduced accordingly; and if any clause or provision herein contained operates or would prospectively operate to invalidate this Agreement in part, then the invalid part of said clause or provision only shall be held for naught, as though not contained herein, and the remainder of this Agreement shall remain operative and in full force and effect.
- 15.6 The laws of the State of Florida shall govern the interpretation and enforcement of this Agreement. Any and all legal action necessary to enforce the provisions of this Agreement will be held in Orange County, Florida. Venue for any litigation involving this Agreement shall be the Circuit Court in and for Orange County, Florida.
- 15.7 Whenever the singular or plural number, masculine or feminine or neutral gender is used herein, it shall equally include the others and shall apply jointly and severally.
- 15.8 If NLP or the County shall waive any provisions of this Agreement or the Subordinate Loan Documents, or shall fail to enforce any of the conditions or provisions of this Agreement, such waiver shall not be deemed to be a continuing waiver and shall never be construed as such; and NLP or the County shall thereafter have the right to insist upon the enforcement of such conditions or provisions. Furthermore, no provision of this Agreement shall be amended, waived, modified, discharged or terminated, except by instrument in writing signed by the parties hereto.

- 15.9 All notices and other communications to be made or permitted to be made hereunder shall be in writing and shall be delivered to the addresses shown below or to such other addresses that the parties may provide to one another in accordance herewith. Such notices and other communications shall be given by any of the following means: (a) personal service; (b) national express air courier, provided such courier maintains written verification of actual delivery; (c) facsimile, or (d) U.S. Mail, Certified, Return Receipt Any notice or other communication given by the means described in subsection (a) or (b) above shall be deemed effective upon the date of receipt or the date of refusal to accept delivery by the party to whom such notice or other communication has been sent. Any notice or other communication given by the means described in subsection (c) above shall be deemed effective the date on which the facsimile transmission occurs or if such date is not a business day on the business day immediately following the date on which the facsimile transmission occurs. Any party may change said address by giving the other parties hereto Notice of such change of address in accordance with the foregoing provisions.

As to Orange County: Housing and Community Development Division
525 East South Street
Orlando, Florida 32801
Attn: Manager

As to Orange County
Copy to: Orange County Administrator
201 S. Rosalind Avenue
Orlando, Florida 32801

As to Owner: BDG Barnett Villas, LP
501 N. Magnolia Ave
Orlando, FL 32801
Attn: Project Contact

Mr. Lou Vogt
501 N. Magnolia Ave
Orlando FL 32801

Mr. Scott Zimmerman
501 N. Magnolia Ave
Orlando FL 32801

As to Owner Copy to: Zimmerman, Kiser & Sutcliffe, P.A.
315 East Robinson Street
Suite 600
Orlando FL 32801
Attn: John P. Grygiel, Esq.

As to Owner copies to: Enterprise Neighborhood Impact Fund III, LLC
c/o Enterprise Community Asset Management,
Inc.
70 Corporate Center
11000 Broken Land Parkway, Suite 700
Columbia, Maryland 21044
Tel: (410) 964-0552; Fax: (410) 772-2630
Attention: Asset Management

With a copy to:
Email: legalstaff@enterprisecommunity.com
Attention: Chief Legal Officer

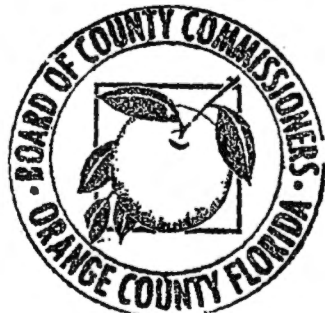
As to Owner copies to: Kenneth S. Gross, Esq.
Gallagher Evelius & Jones LLP
218 North Charles Street, Suite 400
Baltimore, Maryland 21201

As to NLP: Neighborhood Lending Partners of
Florida, Inc.
3615 West Spruce Street
Tampa, FL 33607

- 15.10 This Agreement shall inure to the benefit of and be binding on the parties hereto and their heirs, legal representatives, successors and assigns; but nothing herein shall authorize the assignment hereof by the Owner.
- 15.11 This Agreement may be executed in one or more counterparts, all of which shall constitute collectively but one and the same instrument.
- 15.12 Notwithstanding any other provision herein, all rights, title, interests, covenants and agreements herein are subject to the rights, title, interests, covenants and agreements with or in favor of the First Mortgagee under the senior loan documents.
- 15.13 Any and all references to "days" shall mean "business days", meaning that NLP is open for business during regular business hours.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized officials on the dates set forth below.

ORANGE COUNTY, FLORIDA
By: Board of County Commissioners



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

DATE: November 28, 2023

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

By: *Janice Ann-Lewis*
Deputy Clerk

Date: November 28, 2023

[REMAINING SIGNATURE ON THE FOLLOWING PAGE]

BY: BDG Barnett Villas, LP.,
a Florida Limited Partnership Company

BY: _____
Scott Zimmerman, Manager

DATE: 11/04/2023

NOTARY:

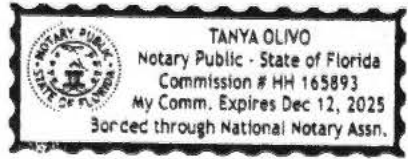
STATE OF: Florida)
COUNTY OF: Orange)

The foregoing instrument was acknowledged before me by means of physical presence or online notarization on this 4 day of November, 2023, by Scott Zimmerman, Manager of BDG Barnett Villas, LP, a Florida Limited Partnership company, on behalf of the company who is:

- Personally Known
- Produced Identification. ID Type: _____

Tanya Olivo
Signature Notary Public

Print, Type/Stamp Name of Notary



[REMAINING SIGNATURE ON THE FOLLOWING PAGE]

BY: NEIGHBORHOOD LENDING PARTNERS
OF FLORIDA, INC.,
A Florida Not-for-Profit Corporation

BY: Debra S. Reyes
Debra Reyes, CEO/President

DATE: 11/8/2023

NOTARY:

STATE OF: Washington
COUNTY OF: District of Columbia

The foregoing instrument was acknowledged before me by means of physical presence or online notarization on this 8 day of November, 2023, by Debra Reyes, CEO/President of Neighborhood Lending Partners of Florida, Inc.

Personally Known
 Produced Identification. ID Type: [REDACTED]

Patricia A. Lewis
Signature Notary Public
Print, Type/Stamp Name of Notary



BY: [DECRO BETA CORPORATION]

By: *T. M. Handel*
Name: *Ted M. Handel*
Title: *CEO*

NOTARY:

STATE OF: _____)
COUNTY OF: _____)

The foregoing instrument was acknowledged before me by means of ___ physical presence or ___ online notarization on this ____ day of _____, 2023, by, _____

- Personally Known
- Produced Identification. ID Type: _____

Signature Notary Public
Print, Type/Stamp Name of Notary

CALIFORNIA ACKNOWLEDGMENT

CIVIL CODE § 1189

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California

County of Los Angeles }

On 11.07.2023 before me, Corina Ostoia - Notary Public
Date Here Insert Name and Title of the Officer

personally appeared Ted M. Handel
Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____
Signature of Notary Public

Place Notary Seal and/or Stamp Above

OPTIONAL

Completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

Description of Attached Document

Title or Type of Document: _____

Document Date: _____ Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____

Corporate Officer – Title(s): _____

Partner – Limited General

Individual Attorney in Fact

Trustee Guardian or Conservator

Other: _____

Signer is Representing: _____

Signer's Name: _____

Corporate Officer – Title(s): _____

Partner – Limited General

Individual Attorney in Fact

Trustee Guardian or Conservator

Other: _____

Signer is Representing: _____

EXHIBIT A

LEGAL DESCRIPTION

The land referred to herein below is situated in the County of ORANGE, State of Florida, and described as follows:

Property Address: 4820 La Grange Ave, Orlando FL; 4849 W. Colonial Drive, Orlando FL; 4815 La Grange Ave, Orlando FL; 817 Swiss Lane, Orlando FL

Legal Description:

A portion of the Southeast 1/4 of the Southeast 1/4 of Section 19, Township 22 South, Range 29 East, Orange County, Florida, being more particularly described as follows:

A portion of the Southeast 1/4 of the Southeast 1/4 of Section 19, Township 22 South, Range 29 East, Orange County, Florida, being more particularly described as follows: Commence at the Southeast corner of Section 19, Township 22 South, Range 29 East, Orange County, Florida; thence South 89°51'50" West, a distance of 250.00 feet along the South line of the Southeast 1/4 of the Southeast 1/4 of said Section 19; thence North 00°27'19" West, a distance of 83.37 feet to the North right of way line of State Road 50 per Florida State Road Department Right of Way Map Job #7505-(105) 601 and the POINT OF BEGINNING; thence South 89°51'50" West, a distance of 84.39 feet along said North right of way line; thence departing said North right of way line the following eight (8) courses and distances run North 44°32'41" East, a distance of 14.06 feet; thence North 00°27'19" West, a distance of 29.42 feet to a point of curvature of a curve concave Westerly, having a radius of 75.00 feet and a central angle of 20°33'07"; thence Northerly along the arc of said curve a distance of 26.90 feet to a point of tangency; thence North 21°00'26" West, a distance of 36.61 feet to a point of curvature of a curve concave Easterly, having a radius of 225.00 feet and a central angle of 20°33'07"; thence Northerly along the arc of said curve a distance of 80.71 feet to a point of tangency; thence North 00°27'19" West, a distance of 62.66 feet; thence North 89°52'10" East, a distance of 3.61 feet; thence North 00°27'19" West, a distance of 145.00 feet to the South Right of Way by Maintenance line of La Grange Avenue, according to the plat thereof as recorded in Plat Book 7, Page 96, in the Public Records of Orange County, Florida; thence North 89°52'10" East, a distance of 1.13 feet along said South Right of Way by Maintenance line; thence departing said Right of Way by Maintenance line run North 00°27'19" West, a distance of 186.00 feet to the North line of the Southeast 1/4 of the Southeast 1/4 of said Section 19; thence South 89°52'10" West, a distance of 308.45 feet along said North line to the Northwest corner of the Southeast 1/4 of the Southeast 1/4 of said Section 19; thence North 00°26'37" West, a distance of 242.31 feet the West line of the Northeast 1/4 of the Southeast 1/4 of said Section 19; thence departing said West the following two (2) courses and distance run North 89°51'37" East, a distance of 2.97 feet; thence North 00°18'43" West, a distance of 413.58 feet to the North line of the Northeast 1/4 of the Southeast 1/4 of said Section 19; thence North 89°52'31" East, a distance of 656.05 feet along the said North line to the Northeast corner of the Northeast 1/4 of the Southeast 1/4 of said Section 19; thence South 00°27'19" East, a distance of 612.28 feet along the East line of the Northeast 1/4 of the Southeast 1/4 of said Section; thence departing said East line the following three (3) courses and distance run South 89°52'10" West, a distance of 250.00 feet; thence South 00°27'19" East, a distance of 43.56 feet; thence continue South 00°27'19" East, a distance of 186.00 feet to the aforesaid South Right of Way by Maintenance line; thence departing said South Right of Way by Maintenance line run South 00°27'19" East, a distance of 386.49 feet to the POINT OF BEGINNING. Containing 10.95 acres, more or less.

EXHIBIT B

LEASED EMPLOYEE AFFIDAVIT

I affirm that an employee leasing company provides my workers' compensation coverage. I further understand that my contract with the employee leasing company limits my workers' compensation coverage to enrolled worksite employees only. My leasing arrangement does not cover un-enrolled worksite employees, independent contractors, uninsured subcontractors or casual labor exposure.

I hereby certify that 100 percent of my workers are covered as worksite employees with the employee leasing company. I certify that I do not hire any casual or uninsured labor outside the employee leasing arrangement. I agree to notify the County in the event that I have any workers not covered by the employee leasing workers' compensation policy. In the event that I have any workers not subject to the employee leasing arrangement, I agree to obtain a separate workers' compensation policy to cover these workers. I further agree to provide the County with a certificate of insurance providing proof of workers' compensation coverage prior to these workers entering any County jobsite.

I further agree to notify the County terminates with the employee leasing company and I understand that I am required to furnish proof of replacement workers' compensation coverage prior to the termination of the employee leasing arrangement.

I certify that I have workers' compensation coverage for through the employee leasing arrangement specified below:

Name of Employee Leasing Company: _____

Workers' Compensation Carrier: _____

AM. Best Rating of Carrier: _____

Inception Date of Leasing Arrangement: _____

I further agree to notify the County in the event that I contract with employee-leasing companies. I recognize that I have an obligation to supply an updated workers' compensation certificate to the County that documents the change of carrier.

Name of Contractor: _____

Signature of Owner/Officer _____

Title: _____

Date: _____

Revised 10/1/08

EXHIBIT C

BLANKET ADDITIONAL INSURED ENDORSEMENT

COMMERCIAL GENERAL LIABILITY
CC 20 26 07 04

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**ADDITIONAL INSURED - DESIGNATED
PERSON OR ORGANIZATION**

This endorsement modifies Insurance provided under The following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART
SCHEDULE

Name Of Additional Insured Person(s) Or Organization(s)
STUDENTS IN TRAINING WHILE PREFORMING DUTIES AS INSTRUCTED BY THE NAMED INSURED;
ANY ENTITY YOU ARE REQUIRED IN A WRITTEN CONTRACT (HEREINAFTER CALLED ADDITIONAL INSURED) TO NAME AS AN INSURED IS AN INSURED BUT ONLY WITH RESPECT TO LIABILITY ARISING OUT OF YOUR PREMISES OR OPERATIONS;
information required to complete this Schedule, if not shown above, will be shown in the Declarations

Section II - Who Is An insured is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising Injury" caused, in whole or in part, by your acts or omissions or the acts or omissions of those acting on your behalf:

- A. In the performance of your ongoing operations; or
- B. In connection with your premises owned by you or rented by you.

EXHIBIT D

SPECIFIC ADDITIONAL INSURED ENDORSEMENT

POLICY NUMBER:

COMMERCIAL GENERAL LIABILITY

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**ADDITIONAL INSURED - DESIGNATED
PERSON OR ORGANIZATION**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

Name Of Additional Insured Person(s) Or Organization(s)
ORANGE COUNTY 201 S ROSALIND AVE ORLANDO, FL 32801
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.

Section II - Who Is An Insured is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by your acts or omissions or the acts or omissions of those acting on your behalf:

- A. In the performance of your ongoing operations; or
- B. In connection with your premises owned by or rented to you.

EXHIBIT E

WAIVER OF SUBROGATION

WORKERS COMPENSATION AND EMPLOYERS LIABILITY INSURANCE POLICY **WC 00 03 13**

2nd Reprint

Effective April 1, 1984

Advisory

WAIVER OF OUR RIGHT TO RECOVER FROM OTHERS ENDORSEMENT

We have the right to recover our payments from anyone liable for an injury covered by this policy. We will not enforce our right against the person or organization named in the Schedule. (This Agreement applies only to the extent that you perform work under a written contract that requires you to obtain this Agreement from us.)

This Agreement shall not operate directly or indirectly to benefit anyone not named in the Schedule.

Schedule

© 1983 National Council on Compensation Insurance, Inc.

© NCCI Holdings, Inc.

EXHIBIT F

WAIVER OF RIGHTS OF RECOVERY

POLICY NUMBER:

COMMERCIAL GENERAL LIABILITY
CG 24 04 10 93

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**WAIVER OF TRANSFER OF RIGHTS OF RECOVERY
AGAINST OTHERS TO US**

This endorsement modifies insurance provided under the following:
COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

Name of Person or Organization:

(If no entry appears above, information required to complete this endorsement will be shown in the Declarations as applicable to this endorsement.)

The TRANSFER OF RIGHTS OF RECOVERY AGAINST OTHERS TO US Condition (Section IV - COMMERCIAL GENERAL LIABILITY CONDITIONS) is amended by the addition of the following:

We waive any right of recovery we may have against the person or organization shown in the Schedule above because of payments we make for injury or damage arising out of your ongoing operations or "your work" done under a contract with that person or organization and included in the "products-completed operations hazard". This waiver applies only to the person or organization shown in the Schedule above.

EXHIBIT G
RENT LIMITS

The schedule below is to be used in establishing maximum unit rents. These figures represent **MAXIMUM** gross rents, which must include an allowance for utilities. The schedule also provides an example for calculating net rents at 60 percent AMI and the set aside unit rents at 50 percent, 60 percent, 70 percent and 80 percent net rent.

Example: Orlando 2023 MSA
50, 60, 70% and 80% Percent AMI Rent Limit

# of Bedroom(s)	Rent (\$)			
	50% AMI	60% AMI	70% AMI	80% AMI
1	823	988	1,153	
2	988	1,186	1,384	
3	1,141	1,370	1,598	
4	1,273	1,528	1,783	

The rent limit is the maximum rent that can be charged for the rental unit. The Rent Schedule is published annually by the U.S. Department of Housing and Urban Development. The rent limits may change annually based on changes to the Area's Median Income.

EXHIBIT H

GREEN BUILDING REQUIREMENTS

The following Green Building Features shall be included in the construction of the Project:

1. Landscaping
 - Install tree protection and signage around all trees to remain during and after construction.
 - Install an approved Florida Friendly drought tolerant landscape design.
 - Ensure that all plants and trees are planted at least 24 inches from the structure.
 - Limit turf grass to 50% of softscape area. Ensure the turf species is drought tolerant and requires minimal watering.
 - Plant a minimum of one canopy tree to the south of the structure.
2. Durability-Outdoor
 - Install electrical entrance cables underground.
 - Install gutters, deflectors, and splash blocks as needed to adequately move water away from the structure.
 - Soil shall be graded to slope away from the structure.
3. Durability – Indoor
 - No carpet within bathrooms, kitchens, or within 4 ft. of entranceways.
 - Windows shall be double glazed insulated, ENERGY STAR rated, or low-e.
4. Indoor Air Quality
 - Use low VOC interior products such as paint and coating, adhesives and sealants, finishing products, and fabrics. See SCAQMD for allowable VOC Content.
 - Contaminate controls: provide daily clean-up of all projects (broom clean); protect all absorptive materials stored on-site; seal all duct work and ventilation during the entire project; provide walk off mats at entryways during the entire construction process; provide contaminate walk off design into concrete entrances.
5. HVAC
 - Air-Source Heat Pumps – Energy Star certified:
 - ≥ 8.5 HSPF/ ≥ 15 SEER/ ≥ 12.5 EER for split systems
 - ≥ 8.2 HSPF ≥ 15 SEER/ ≥ 12 EER for single package equipment including gas/electric package units
 - Central Air Conditioners – Energy Star certified:
 - ≥ 8.5 HSPF/ ≥ 15 SEER/ ≥ 12.5 EER for split systems.
 - ≥ 8.2 HSPF ≥ 15 SEER/ ≥ 12 EER for single package equipment including gas/electric package units.

NOTE: Window air conditioners and portable air conditioners are not allowed. Package Terminal Air Conditioners (PTACs) / Package Terminal Heat Pumps (PTHPs) are allowed in studio and 1 bedroom units.
6. Water
 - Use EPA WaterSense® labeled fixtures, faucets, and showerheads with the following specifications:

- Toilets: 1.28 gallons/flush or less.
 - Urinals: 0.5 gallons/flush.
 - Lavatory Faucets: 1.5 gallons/minute or less at 60 psi flow rate.
 - Showerheads: 2.0 gallons/minute or less at 80 psi flow rate.
7. Lighting
- All interior/exterior light fixtures shall have industry standard LED lighting.
8. Energy Efficiency
- ENERGY STAR rated refrigerator, dishwasher, ventilation fans in all bathrooms and kitchens.
 - Water heater minimum efficiency specifications: Up to 55 gallons = 0.95 EF or 0.92 UEF.

EXHIBIT I

Tenant Selection Criteria Requirements for Lower Barrier Units

The following criteria will provide standards and procedures for the property manager, AGPM, LLC, in evaluating all prospective residents for the Project's Very Low Income Units (VLI), which will be up to 50 percent of Median income set-aside units.

The Project's VLI set-aside is 25 percent of the 156 total units, or 39 units set aside at 50 percent of Median Income at or below 50 percent of AMI (VLI).

Included in each evaluation will be a review of the income, credit, criminal and rental histories of the prospective resident to determine their ability to lease rental housing, while at the same time taking into consideration the viability of the property and the safety of the entire resident community.

VLI Units - 50% Income Set-Aside Resident Approval Criteria and Move-In Accommodations:

- 1) All Applications for VLI Units will be reviewed on a case-by-case basis in addition to any third-party information checks;
- 2) The Application Fee will be waived to help reduce an initial barrier to move-in costs;
- 3) Security or other deposit required can be paid monthly in installments over 120 days with at least 25% paid at move in;
- 4) One eviction in the past 24 months will be reviewed and will not be a reason for a decline if the eviction was based solely on financial obligations and did not include other lease violations or behavior that could be considered a threat to the health, safety and welfare of the community;
- 5) Income qualification will be based on the VLI unit rent;
- 6) Negative credit and payment history will be not be a reason for a decline. However, all previous rental and/or housing history will be reviewed and may be a reason for a decline; and,
- 7) Criminal history and background decline will exclude two minor and non-violent criminal convictions in the last 24 months.

All applicants 18 or older will be processed in the standard resident selection approval criteria, including background and rental housing history, with the above exceptions provided.

The following criteria and strategies provide standards and procedures for AGPM, LLC, in evaluating prospective residents for residency in the **Project's remaining units**, with the exceptions listed above for the VLI set-aside units.

Included in each evaluation will be a review of the income, credit, criminal and rental histories of the prospective tenant to determine their ability to lease rental housing, while at the same time taking into consideration the viability of the property and the safety of

the entire resident community. The below will be exceptions to normal approval and qualifying criteria:

- 1) One eviction in the past 24 months will be reviewed and will not be a reason for a decline if the eviction was based solely on financial obligations and did not include other lease violations or behavior that could be considered a threat to the health, safety and welfare of the community;
- 2) Income qualification will be based on the Low Income unit rent;
- 3) Criminal history and background decline will exclude two minor and nonviolent criminal convictions in the last 24 months;
- 4) Initial lease-up application fee of \$10/applicant;
- 5) Security or other deposit may be paid in two installments over 120 days with at least 50% paid at move-in;
- 6) Medical collections and student loans will be excluded from credit scoring.

EXHIBIT J

LOWER BARRIER MONITORING REPORT

In compliance with the annual monitoring as required in Article X, the Owner shall furnish to the County's Housing and Community Development Division the records and reports as required in Article IX and a copy of the Project's Recap of Tenant Income Certification Form AR-1 with VLI and Low Barrier Units clearly identified.

Additionally, as part of the monitoring of the Project's Lower Barrier Units, the Owner shall retain all rejected tenant applications and provide the county access to review them on an annual basis. The County may request a random sample of such records to determine that the Owner is complying with the Tenant Selection Criteria Requirements for Lower Barrier Units provided in Exhibit I. In order to protect the applicant's privacy, the Owner may redact personal information such as social security numbers or financially sensitive information from the applicant files prior to the County's monitoring.