



Interoffice Memorandum

December 27, 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: January 9, 2024 – Consent Item
Multi-Family Affordable Housing Developer's Agreement

During the State of Florida 2021 State Apartment Incentive Loan Program (SAIL) Application Cycle, Orange County committed to provide a Local Government Contribution in the amount of \$75,000 to SP East LLC. The Local Government Contribution was used to secure SAIL funding that will provide an equity contribution to the project by partially subsidizing construction costs associated with the affordable units. The proposed development will be located at 6041 Whispering Woods Loop and will consist of 192 units, which will be rented to low income households whose average household 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 Whispering Oaks development for SAIL funding on December 10, 2021. The developer has met all of the conditions and requirements and is eligible for the Local Government Contribution. The local funds are currently budgeted under the State Housing Initiative Partnership (SHIP) Program.

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

ACTION REQUESTED: Approval and execution of Multi-Family Affordable Housing Developer's Agreement between Orange County, Florida and SP East LLC regarding the State Housing Initiatives Partnership Program (Whispering Oaks) providing a local government contribution in the amount of \$75,000 of SHIP funds. District 6

AS:MG
Attachments

BCC Mtg. Date: January 9, 2024

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

MULTI-FAMILY AFFORDABLE HOUSING DEVELOPER'S AGREEMENT
between
ORANGE COUNTY, FLORIDA
and
SP EAST LLC
regarding the
STATE HOUSING INITIATIVES PARTNERSHIP PROGRAM
(WHISPERING OAKS)

THIS MULTI-FAMILY AFFORDABLE HOUSING DEVELOPER'S AGREEMENT ("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 SP EAST LLC, a Florida limited liability company, (hereinafter the "Developer").

RECITALS

WHEREAS, The Developer owns and intends to develop a multi-family rental affordable housing project to be known as **Whispering Oaks**, (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 during the 2022 Universal Tax Credit Cycle; 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 the State of Florida; and

WHEREAS, the County adopted Resolution 2021-M-28 for the implementation and administration of the Local Housing Assistance Plan under Florida's State Housing Initiatives Partnership ("**SHIP**") Program; and

WHEREAS, the County's 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, Florida 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 of 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 or income averaging pursuant to the Low Income Housing Tax Credit program whereby the average income of all units is not to exceed 60% area median income.
- B. *Affordable Units* shall be defined as those rental units described in Section 3 hereof.
- C. *Orlando Metropolitan Statistical Area ("MSA")* shall include the counties of Orange, Lake, Seminole, and Osceola in the State of Florida, as well as the municipalities within their respective jurisdictions.

Section 3. Scope of Project.

The Project shall consist of one hundred and ninety-two (192) multi-family units. Specifically, twenty-nine (29) units shall be set aside and rented only to those households whose household income does not exceed thirty percent (30%) of the MSA median income, nineteen (19) units shall be set aside and rented only to those households whose household income does not exceed fifty percent (50%) of the MSA median income and seventy-eight (78) units shall be set aside and rented only to those households whose income does not exceed sixty percent (60%) of the MSA median income, twenty-six (26) units shall be set aside and rented only to those households whose income does not exceed seventy percent (70%) of the MSA median income, and forty (40) units shall be set aside and rented only to those households whose income does not exceed eighty percent (80%) of the MSA median income.

Section 4. Payment of Eligible Costs

A. The County has designated SHIP funds to partially offset construction costs paid by the Developer. Such funds shall not exceed **Seventy-Five Thousand Dollars (\$75,000)** and shall be disbursed to the Developer in accordance with applicable federal, state and county laws, rules, and regulations. The Developer shall request, in writing, reimbursement for the construction costs incurred and paid. Requests for reimbursement shall be supported by source documentation, e.g. receipts/invoices for all costs paid. The County, through its Housing and Community Development Division, shall review all source documentation and remit payment to Developer for all authorized expenditures.

Section 5. Restrictive Covenant.

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

B. The Developer, its successors and assigns shall utilize the Property for the rental of one hundred ninety-two (192) multi-family housing units. Specifically, twenty-nine (29) units shall be set aside and rented only to households whose household income does not exceed thirty percent (30%) of the MSA median income, nineteen (19) units shall be set aside and rented only to those households whose household income does not exceed fifty percent (50%) of the MSA median income, seventy-eight (78) units shall be set aside and rented only to those households whose income does not exceed sixty percent (60%) of the MSA median income, twenty-six (26) units shall be set aside and rented only to those households whose income does not exceed seventy percent (70%) of the MSA median income, and forty (40) units shall be set aside and rented only to those households whose income does not exceed eighty percent (80%) of the MSA median income, provided, however, the imputed incomes of the units may be changed throughout the Affordability Period to the extent permitted by FHFC, as long as after such change the average of the imputed incomes for the units remains at or below 60% of AMI. Rent levels of the 192 units shall be in accordance with Section 7 of this Agreement, for a period of fifteen (15) years from the date of issuance of the first certificate of occupancy for the Project Affordability Period. Provided further, however, that Developer's construction loan lender, permanent loan lender, or any subsequent mortgage shall, at its option, have the right to foreclose on the Property with this restrictive covenant in place or, in the alternative, to pay 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. Developer's construction loan lender, permanent loan lender or other senior lender shall pay for the cost of recording any such release and any other expenses incident thereto.

Section 6. Income Verification.

A. The Developer shall verify the household income of the occupants of the 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 Developer shall maintain complete and accurate records of the income for each of the qualifying occupants and the rents charged for the Affordable Units. All records shall be maintained in accordance with Chapter 67-37, Florida Administrative Code. The Developer shall permit any duly authorized representative of the County to inspect the books and records upon reasonable notice.

C. The Developer shall furnish to the County's Housing and Community Development Division an Annual Report demonstrating all Affordable Units are in compliance with this Agreement. Similar reports required by Florida Housing Finance Corporation may be used to satisfy this requirement. Copies shall be submitted on annual basis subsequent to the issuance of the first certificate of occupancy for the Project.

Section 7. Rents, Lease Provisions and Administration.

A. The Developer agrees that the initial gross rents charged for the Affordable Units shall comply with the gross rent restrictions established by the Florida Housing Finance Corporation or the HUD rent limits, whichever is more restrictive, adjusted for family size and number of bedrooms.

B. The Developer may, for good cause, refuse to rent the Affordable 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 an 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 Affordable Unit remains in accordance with the gross rent restrictions established by the Florida Housing Finance Corporation and Section 7 of this Agreement. The preceding sentence shall not 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.

D. Developer shall not be deemed to have breached this Agreement if in verifying the household income of the occupants of the Affordable Units, Developer (i) has relied in good faith upon information supplied to Developer 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. The Developer or its management company shall obtain a certification of income for each 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 Florida Housing Finance Corporation. 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.

F. The Developer 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 Developer shall comply with the applicable provisions of the Human Rights Ordinance, Chapter 22 of the Orange County Code, including, but not limited to, the Fair Housing provisions contained in Article IV, thereof, all as may be amended from time to time. The Developer shall abide by the following:

1. The Developer 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.

2. The Developer 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.

3. The Developer shall maintain records of its affirmative marketing efforts and keep them available for review by the County's Housing and Community Development Division staff.

4. The Developer 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.

G. The Developer shall not evict or terminate the tenancy of any tenant of any unit within the Project other than for good cause and shall not increase the gross rent with respect to any Affordable Unit in excess of the amount allowed herein.

H. Upon receipt of the first certificate of occupancy, the Developer shall provide notice to the County that they have received their certificate of occupancy.

Section 8. Default; Remedies.

A. If the Developer breaches any provision set forth in this Agreement, other than the affordability levels contained in Section 5 and the rental requirements contained in Section 7, the Developer shall cure the breach within thirty (30) days of receiving notice of such breach. In the event that the Developer is unable to cure the breach within the allotted thirty (30) days, the Developer 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) days' time period. In such instances where the Developer is unable to correct the breach within the allotted thirty (30) day time period, the Developer 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 Developer fails to comply with the requirements of this Section, the Developer shall pay to the County the principal amount of Seventy-Five Thousand Dollars (\$75,000). Upon full repayment by the Developer to the County of the total sum, this Agreement shall become null and void and shall automatically terminate.

B. If the Developer rents Affordable Units to individuals or families whose income is not in accordance with the affordability level provided for in Section 5 of this Agreement or rents any such unit above the applicable rental rate required in Section 7.A. such that the Project no longer qualifies as a qualified low-income housing project under Section 42 of the Internal Revenue code, the Developer shall be deemed to be in default of this Agreement resulting in the disqualification of the Affordable Units. Upon the disqualification of any Affordable Unit(s) by Orange County, Developer shall pay to the County the principal amount of Seventy-Five Thousand Dollars (\$75,000). Upon full

repayment by the Developer to the County of the total sum, this Agreement shall become null and void and shall automatically terminate.

C. Notwithstanding the foregoing, the construction loan lender, permanent loan lender or the other senior lender shall have the right, but not the obligation, to cure any default and the parties hereto agree that any cure of any default made or tendered by the construction loan lender, permanent loan lender or other senior lender shall be deemed to be a cure by the Developer and shall be accepted or rejected as if made or tendered by the Developer.

D. In addition to any other remedies contained herein, in the event of a breach of any material term of this Agreement, the County may avail itself of any remedy available at law or equity.

Section 9. Foreclosure.

A. If Developer's construction loan lender, permanent loan lender or any other senior lender (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 5 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. Developer's construction loan lender, permanent loan lender or any other senior lender (other than HUD), shall pay for the cost of recording any such release and any other expenses incident thereto. To the extent required by law, the rights, duties, and obligations in this Agreement shall be subordinate to the provisions of the first mortgage.

Section 10. Sale or Transfer of the Project or any Building. The Developer 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. The restrictions set forth in this Section 10 shall not be applicable to any transfer pursuant to or in lieu of a foreclosure or any exercise of remedies pursuant to the provisions of the first mortgage.

Section 11. Nondiscrimination. The Developer 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 12. 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 13. Applicable Law. 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.

Section 14. Notices. Any notices required or allowed 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.

DEVELOPER: SP East LLC
5403 West Gray Street
Tampa, FL 33609
Attn: J. David Page, Vice President

COUNTY: Orange County
Housing and Community Development Division
Attn: Manager
525 East South Street
Orlando, FL 32801
Attn: Manager
PRIOR TO CONVERSION, NOTICES FOR CONSTRUCTION
LOAN LENDER WILL BE ADDRESSED TO:

Fifth Third Commercial Funding, Inc.
National Tax Credit Lending
38 Fountain Square Plaza, MD 1090AG
Cincinnati, OH 45263
Attention: Steven Quasny, Vice President
E-mail: steven.quasny@53.com

FROM AND AFTER CONVERSION, NOTICES FOR PERMANENT
LOAN LENDER WILL BE ADDRESSED TO:

Capital One, National Association
2 Bethesda Metro Center, 10th Floor
Bethesda, MD 20814
Attention: Servicing Department

Florida Housing: Florida Housing Finance Corporation
227 North Bronough Street, Suite 5000
Tallahassee, Florida 32301-1329
Attention: Executive Director

with a copy to: Latham, Luna, Eden & Beaudine, LLP
201 South Orange Ave., Suite 1400
Orlando, Florida 32801
Attention: Jan Albanese Carpenter, Esq.

Fiscal Agent: The Bank of New York Mellon Trust Company, N.A.
4655 Salisbury Road, Suite 300
Jacksonville, Florida 32256
Attention: Caroline Cowart

with a copy to: Akerman, LLP
50 North Laura Street, Suite 3100
Jacksonville, Florida 32202
Attention: Timothy J. Bramwell, Esq.

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

RJ MT SP East L.L.C.
c/o Raymond James Affordable Housing Investments, Inc.
880 Carillon Parkway
St. Petersburg, Florida 33716
Email Address: Steve.Kropf@RaymondJames.com
Attention: Steven J. Kropf, President

Nathan A. Bernard, Esq.
Nixon Peabody LLP
Exchange Place
53 State Street
Boston, Massachusetts 02109
Facsimile No.: 866-947-1881
Email: nbernard@nixonpeabody.com

Section 15. Incorporation of County Policies. This Agreement shall be read in conjunction with and be subject to all applicable County regulations, policies, resolutions and ordinances; such County regulations, policies, resolutions, and ordinances are incorporated herein by reference.

Section 16. Termination, of Approvals. The County shall, in its sole discretion, have the right to terminate all approvals and acceptances granted by this Agreement in the event Developer fails to comply with any of the terms and conditions of this Agreement. All approvals granted by this Agreement are conditioned upon the continued compliance with the terms of this Agreement as well as the payment of applicable costs equity.

Section 17. Disclaimer of Third-Party Beneficiaries. This Agreement is solely for the benefit of the County and the Developer and no right or cause of action shall accrue to or for the benefit of any third party.

Section 18. 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, Florida. The Developer shall not assign, sell, bargain, convey or transfer its interest in this Agreement without the prior written consent of the County.

Section 19. Recordation of the Agreement. The parties hereto agree that an executed original of this Agreement shall be recorded, at Developer'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 the Property and shall be binding upon Developer's successors and assigns. The County or any successor agency or entity will, from time to time and upon the request of the Developer, execute and deliver estoppel letters affirming the status of this Agreement.

Section 20. 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 provision and the finding shall have no effect on the validity or the balance of this Agreement.

Section 21. 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 22. 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 principal/agent, employer/employee or joint venture partnership between the parties.

Section 23. 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, or density approvals, development approvals, permissions or rights with respect to the Property.

Section 24. Effective Date; Term. This Agreement shall become effective upon the date of full execution by the authorized representatives of the Developer and the

County, and, except as otherwise set forth in Section 8 hereof, shall terminate fifteen (15) years from the date of issuance of the first certificate of occupancy for the Project.

Section 25. Headings. 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.

Section 26. Counterpart Signatures. This Agreement may be executed in one or more counterparts, all of which shall constitute, collectively, one and the same instrument.

***(REMAINDER OF PAGE INTENTIONALLY BLANK
SIGNATURE PAGES TO FOLLOW)***

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: January 9, 2024

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

BY: *Jennifer Horn-Kline*
Deputy Clerk

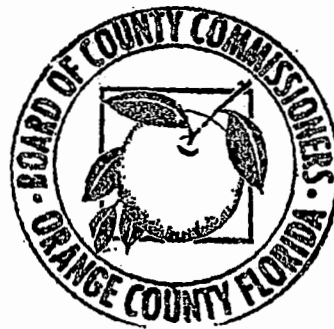


EXHIBIT A

LEGAL DESCRIPTION
OF THE PROPERTY

Parcel Identification Number: 13-22-28-0000-00-045

BEGINNING AT THE SOUTHWEST CORNER OF LAND CONVEYED BY SPECIAL WARRANTY DEED TO ALTA WESTGATE, LLC, A GEORGIA LIMITED LIABILITY COMPANY IN OFFICIAL RECORDS BOOK 8171, PAGE 1962, OF THE PUBLIC RECORDS OF ORANGE COUNTY, FLORIDA, SAID POINT BEING ON THE EASTERLY RIGHT OF WAY LINE OF HIAWASSEE ROAD; THENCE RUN S 00°07'30" E ALONG SAID RIGHT OF WAY LINE, 231.41 FEET; THENCE DEPARTING SAID RIGHT OF WAY LINE, RUN N 88°51'31" E ALONG THE SOUTH LINE OF THE N 1/4 OF THE NW 1/4, OF THE SW 1/4 OF SECTION 13-22-28, 1279.44 FEET; THENCE RUN N 00°01'57" W, ALONG THE EAST LINE OF SAID NW 1/4, 334.68 FEET TO THE SE CORNER OF LOT 52, WILLIS R. MUNGER'S SUBDIVISION, AS RECORDED IN PLAT BOOK 3, PAGE 23, PUBLIC RECORDS OF ORANGE COUNTY, FLORIDA; THENCE RUN N 00°08'30" W, 20.70 FEET TO SAID LANDS DESCRIBED IN OFFICIAL RECORDS BOOK 8171, PAGE 1962; THENCE RUN THE FOLLOWING SEVEN (7) COURSES AND DISTANCES ALONG THE SOUTH LINE OF SAID LANDS: N 86°26'36" W, 278.60 FEET; THENCE N 67°26'09" W 265.00 FEET; THENCE S 89°33'51" W, 132.83 FEET; THENCE S 00°00'00" W, 91.38 FEET; THENCE S 89°33'51" W, 154.22 FEET; THENCE S 00°00'58" E, 164.08 FEET; THENCE S 88°42'29" W, 468.92 FEET TO THE POINT OF BEGINNING.