

Meeting Date
August 18, 2015



AGENDA	
Section	CONSENT
Item No.	<i>II.B.3</i>

**AGENDA REPORT  
BREVARD COUNTY BOARD OF COUNTY COMMISSIONERS**

SUBJECT:	APPROVAL, RE: AGREEMENT WITH BREVARD COMMUNITY PARTNERSHIP, INC. (FISCAL IMPACT: \$129,250 GRANT FUNDS)
DEPT/OFFICE:	COMMUNITY SERVICES GROUP / HOUSING AND HUMAN SERVICES DEPARTMENT

Requested Action:

It is requested that the Board of County Commissioners (BOCC) authorize the Chairman to execute an agreement with Brevard Community Partnership, Inc. for the rehabilitation of two (2) single family homes located in the cities of Cocoa and Titusville, Florida for the development of affordable rental housing, and further authorize the Chair or designee to execute modifications and amendments to the agreement, upon approval by the County Attorney and Risk Management.

Summary Explanation & Background:

The Affordable Housing Council voted to recommend that the BOCC fund Brevard Community Partnership, Inc. (in response to a Request for Proposal to provide rehabilitation/reconstruction, acquisition, and new construction) with HOME Investment Partnerships (HOME) funds in the amount of \$129,250.

This project is for the rehabilitation of two (2) single family homes to provide affordable rental housing for low income families for a minimum of twenty (20) years. The Housing and Human Services Department (HHS) utilizes the annual Department of Housing and Urban Development (HUD) rent limits to determine the maximum amount that can be charged to families. The 2015 rents limits identify that \$805 is the maximum that can be charged for a three bedroom unit. This amount changes each year, and HHS will notify Brevard Community Partnership, Inc. of the changes and then monitor them annually to ensure compliance of rent limits as well as a myriad of other mandatory items (e.g., income eligibility, property maintenance, fiscal capacity).

Brevard Community Partnership, Inc. is a local construction company that has been in business for 5 years and has been certified as a Community Housing Development Organization (CHDO) by HHS for 4 years. Brevard Community Partnership, Inc. has previously renovated and rehabilitated homes for HHS, and is currently managing several rental properties through the State Housing Initiatives Partnership (SHIP) and HOME Investment Partnerships programs.

Fiscal Impact: FY 14/15 – There is no impact to the General Fund. Grant funds from will be obligated and budgeted in Business Area 1472, Cost Center, 303052.

**FY 15/16 – There is no impact to the General Fund. Grant funds obligated in FY14-15 will continue to be expended from Business Area 1472, Cost Center 303052. FY 15-16 Grant Funds will not be utilized for this project.**

Name: Juanita Davis, Assistant Department Director  
Phone: (321) 633-2076

Clerk to the Board Instructions: Please have the Chair sign three Agreements, and then return to Housing and Human Services for further execution.

Exhibits Attached: Three (3) original Agreements

Contract /Agreement (If attached):	Reviewed by County Attorney	Yes	<input checked="" type="checkbox"/>	No	<input type="checkbox"/>	PR	<input type="checkbox"/>
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County Manager	Assistant County Manager	Department Director / Extension
Stockton Whitten	Venetta Valdengo	Ian Golden, Director (X52007)



Tammy Etheridge, Clerk to the Board, 400 South Street • P.O. Box 999, Titusville, Florida 32781-0999

Telephone: (321) 637-2001  
Fax: (321) 264-6972

August 19, 2015

MEMORANDUM

TO: Ian Golden, Housing and Human Services Director Attn: Juanita Davis

RE: Item II.B.3., Agreement with Brevard Community Partnership, Inc. for Development for Rehabilitation of Two (2) Single-Family Homes Located in the Cities of Cocoa and Titusville

The Board of County Commissioners, in regular session on August 18, 2015, executed Agreement with Brevard Community Partnership, Inc. for the rehabilitation of two (2) single-family homes located in the Cities of Cocoa and Titusville, for the development of affordable rental housing; and authorized the Chairman or designee to execute modifications and amendments to the Agreement, upon approval of the County Attorney and Risk Management. Enclosed are three executed Agreements.

**Upon execution by Brevard Community Partnership, Inc., please return a fully-executed Agreement to this office for inclusion in the official minutes.**

Your continued cooperation is greatly appreciated.

Sincerely yours,

BOARD OF COUNTY COMMISSIONERS  
SCOTT ELLIS, CLERK

Tammy Etheridge, Deputy Clerk

Encls. (3)

cc: Contracts Administration  
Finance  
Budget

**HOME AGREEMENT  
AGREEMENT BETWEEN  
BREVARD COUNTY BOARD OF COUNTY COMMISSIONERS  
AND  
BREVARD COMMUNITY PARTNERSHIP, INC.  
FOR  
THE REHABILITATION OF  
AFFORDABLE RENTAL HOUSING**

**THIS AGREEMENT**, entered into this 18 day of Aug, **2015** by and between the **Board of County Commissioners of Brevard County, Florida**, a political subdivision of the State of Florida (hereinafter referred to as the County), and **Brevard Community Partnership, Inc.** (hereinafter referred to as the Developer/Owner).

**WHEREAS**, The United States Department of Housing and Urban Development has allocated HOME Investments Partnership Program (HOME) funds to Brevard County to fund housing programs that meet local needs and priorities; and

**WHEREAS**, the County in accordance with the HOME Program Regulations 24 CFR Part 92, allocates HOME funds for projects that result in the creation of affordable housing for low income households; and

**WHEREAS**, the Brevard County Affordable Housing Council has recommended and the County desires to award a non-interest bearing forgivable HOME loan in an amount up to **One Hundred Twenty Nine Thousand Two Hundred Fifty Dollars (\$129,250)** to the Developer/Owner for the rehabilitation of affordable rental housing; and

**WHEREAS**, the Developer agrees that the project will be carried out in accordance with HOME project requirements and the terms of this Agreement and those set forth in the submitted Application dated **January 02, 2015**.

**NOW THEREFORE**, in consideration of the mutual covenants and obligations contained, including the attachments, and subject to the terms and conditions hereinafter stated, the parties mutually understand and agree as follows:

**SECTION I: DEFINITIONS**

**Affordability:** refers to the requirements of the HOME Program that relate to the cost of housing at initial occupancy through established timeframes, as prescribed in the HOME regulations. Affordability requirements vary depending on the nature of the HOME-assisted activity, such as homeownership or rental housing.

**Area Median Income (AMI):** the median family income adjusted for family size as published by the United States Department of Housing and Urban Development annually.

**Annual Income:** projected annual income established in compliance with HOME regulations, specifically established at 24 CFR Part 5.609.

**Community Housing Development Organization (CHDO):** a private, non-profit organization that meets a series of qualifications prescribed in the HOME regulation 24 CFR Part 92.2. A participating jurisdiction must award at least fifteen percent (15%) of its annual HOME allocation to CHDOs. CHDOs may own, develop, or sponsor HOME-financed housing.

**Fair Housing:** requirements for non-discrimination based on race, color, sex, disability, religion, familial status or national origin in accordance with Federal Regulations 24 CFR 100-146 and State Law FS 760.

**Hard Costs:** costs associated with the construction of a project.

**HOME-Assisted Units:** units within a HOME project for which rent, occupancy, and/or long-term affordability restrictions apply. The number of units designated as HOME-assisted affects the maximum HOME subsidies that may be provided to a project.

**HOME Funds:** all appropriations for the HOME Program, plus all repayments and interest or other applicable return on investment of these funds.

**HOME Investments Partnership Program (HOME):** Title II of the Cranston-Gonzalez National Affordable Housing act that created a formula-based allocation program intended to support state and local affordable housing programs. The goal of the program is to increase the supply of affordable rental and ownership housing through acquisition, construction, reconstruction, and moderate or substantial rehabilitation activities.

**HUD:** United States Department of Housing and Urban Development.

**Low-Income:** individual whose gross annual income does not exceed eighty percent (80%) of the AMI (adjusted for family size).

**Project:** one or more buildings on a single site or multiple sites that are under common ownership, management, and financing to be assisted with HOME funds as a single undertaking.

**Project Completion:** the stage at which all necessary title transfer requirements and construction work have been performed: the project complies with all HOME funds requirements; the final draw-down has been disbursed for the project; and the project completion information has been entered in the Integrated Disbursement and Information System (IDIS), established by HUD.

**Soft costs:** administrative and holding costs associated with a project.

**Very Low-Income:** individual whose gross annual income does not exceed fifty percent (50%) of the AMI adjusted for family size.

**Work:** all the professional, technical, and construction services to be rendered or provided by the Developer.

**SECTION II: USE OF HOME FUNDS**

- A. Project Description: The Owner/Developer, Inc. will renovate two homes located at 154 Park Lane Titusville, FL 32935 and 703 Aurora St. Cocoa, FL 32922, and lease the homes to persons between 50% and 80% AMI with the initial occupancy for persons at or below 60% AMI. Brevard Community Partnership, Inc. will provide all tenant selection, income verification, property management and all local, state and federal program compliance. Brevard Community Partnership, Inc. will work in partnership with all state and local aid organizations in order to identify potential tenants from the local population.
- B. Developer/Owner expressly agrees to complete all work required by this Agreement in accordance with the proposed schedule set forth. The Developer/Owner shall, upon completion of the project, and until the expiration of this Agreement, take all steps necessary to manage, maintain and operate the property in accordance with all applicable federal, state and local laws, statutes, regulations and ordinances.

MILESTONE	COMPLETION DATE
Project Start	1 day from contract signing.
Planning and Zoning permitting	15 days from contract signing.
Construction time to substantial completion	44 days from contract signing.
Final completion	75 days from contract signing.
*Project Completion Date/Initial Occupancy	100 days from contract signing.

\*The project must be occupied within 18 months of project completion or the Developer/Owner must repay the funds for vacant units. If the units remain vacant six months following completion the Developer/Owner must identify and develop an enhanced marketing plan (at the developer's expense) and report this information to the County, in accordance with CFR 92.252.

- C. **Construction/Rehabilitation Management:** the Developer/Owner understands that rehabilitation cannot begin until a work-write up is completed by Developer/Owner and reviewed/approved by County; and
  - 1. **Construction and Rehabilitation Standards:** housing that is constructed or rehabilitated with HOME funds shall meet all local codes and ordinances at the time of project completion in accordance with CFR 92.251, Property Standards; and
  - 2. **Contracts and Sub-Contracts:** the Developer/Owner shall be fully responsible to the County for the acts and omissions of persons directly employed by them to work on this Project. Nothing contained in this Agreement shall create any contractual relationship between the Developer/Owner and any of the Developer's/Owner's subcontractors and the County; and
  - 3. **Licenses and Permits:** the Developer/Owner shall be responsible for obtaining and processing throughout the term of this Agreement all licenses and permits applicable to its operations under

federal, state and local laws and shall comply with all fire, health and other applicable regulatory codes; and

4. **Section 3 and Vicinity Hiring Requirements:** the Developer/Owner shall be required to comply with Section 3 and Vicinity Hiring requirements to ensure that employment and other economic opportunities shall, to the greatest extent feasible, be directed to low-and very low-income persons; and
5. **Procurement Standards:** the Developer/Owner shall be required to comply with the County's Procurement Policy when bidding work to Subcontractors. The Developer/Owner understands that construction shall not begin until the Developer/Owner's three bid packet has been reviewed and approved by the County.

### **SECTION III: TIMING AND DURATION OF AGREEMENT**

The term of this Agreement between the County and the Developer/Owner shall begin on the date of execution by both parties and shall continue for 20 years and 100 days unless extended in accordance with the provisions of this Agreement.

### **SECTION IV: PROPOSED BUDGET**

The Developer/Owner agrees and understands that the total amount to be paid by the County under this Agreement shall not exceed the awarded HOME funds, in an amount up to **One Hundred Twenty Nine Thousand Two Hundred Fifty Dollars (\$129,250)**.

A proposed budget has been submitted by Developer/Owner as part of the Developer's/Owner's proposal. The Developer/Owner understands that the Developer/Owner shall submit a final budget, based upon the work write up report prepared by the developer/owner and approved by the County if applicable, and as it relates to construction/rehabilitation, soft costs, development fees, and other allowable costs/activities prior to any fund usage or disbursement. Said budget shall identify all sources and uses of funds, and allocated HOME and non-HOME funds to activities or line items.

- A. **Eligible Use of Funds:** funds may be used solely for the purpose of rehabilitation of the property that has been approved by the County.
- B. **Ineligible Uses of Funds:** funds may not be used for supportive services. Costs, expenses, and items which would be disallowed as supportive services shall include, but not be limited to, back taxes, security or utility deposits, maintenance costs, code enforcement fines and/or liens, homeowner association fees, or condominium fees.

The County shall not pay, or reimburse, the Developer/Owner for any interest charges, late payment charges, or litigation expenses, such as, but not limited to, attorney fees and legal costs the Developer/Owner may incur for the Developer's/Owner's failure to pay any subcontractors and/or supplier in a timely manner as provided for by contract or statute.

BUDGETED ITEM	AMOUNT BUDGETED	SOURCE
Architect Design/Supervision	\$4,000	Brevard County (HOME-CHDO)
Rehabilitation	\$108,000	Brevard County (HOME-CHDO)
Asbestos/Mold/Lead Base Paint	\$1,600	Brevard County (HOME-CHDO)
Impact Fees	\$500	Brevard County (HOME-CHDO)
Utility Connection	\$250	Brevard County (HOME-CHDO)
Building Permits	\$1,000	Brevard County (HOME-CHDO)
Marketing	\$400	Brevard County (HOME-CHDO)
Overhead	\$2,300	Brevard County (HOME-CHDO)
Developer's Fee	\$11,200	Brevard County (HOME-CHDO)
Total	\$129,250	Brevard County (HOME-CHDO)

- C. Upon receipt of the approved work write up, the Developer/Owner will submit a final budget to the County for review and approval within two (2) weeks.
- D. **Change Order Process and Requirements:** the Developer/Owner understands that any changes in the scope of work shall be based upon an Agreement between the County and the Developer/Owner. The Developer/Owner shall submit a written request for a change order to the County as needed. The change order shall state the requested changes to the scope of work and the change in cost for the requested change order. The County will review the request and approve if applicable. The County will prepare a written change order that will include the approved changes and the revised dollar amount of the change.

#### SECTION V: AFFORDABILITY REQUIREMENTS

The project shall meet the affordability requirements in 24 CFR 92.252 and the applicable property standards in 24 CFR 92.251 throughout the affordability period (**Attachment H**). The affordability of the project shall be for twenty (20) years, for persons between 50% and 80% AMI. The Developer/Owner shall sign a twenty (20) year Mortgage Deed and Security Agreement and Mortgage Note, made a part hereof by references as **Attachments A** and **B** and a Land Use Restriction Agreement, made a part hereof by reference as **Attachment C**.

Developer/Owner will be required to repay the loan if the housing fails to meet the affordability requirements for the entire specified time period. The County shall follow the Recapture Guidelines set forth in the Consolidated Plan (available for review upon request) for the repayment of HOME funds.

#### SECTION VI: INCOME, RENT AND OCCUPANCY REQUIREMENTS

The Developer/Owner shall make income determinations. On an annual basis, the County shall provide guidance on using HOME income and rent limits. In addition, the County will provide the Developer/Owner with current income and rent limits and other applicable HOME requirements annually. The

Developer/Owner shall abide by the current Income and Rent Limits as applicable (**Attachment D**). The Developer/Owner shall immediately implement the new limits upon receipt of those limits from the County and shall continue for the remaining twenty (20) years of affordability.

**A. Income:** The HOME program has income targeting requirements. The HOME project shall meet all requirements in accordance with 24 CFR 92.203. Each family shall meet the established annual income requirements published by HUD to participate as a beneficiary of this HOME-funded project.

- **Income Limits:** The HOME Program requires every HOME-assisted unit be occupied by a low or very low income household, in accordance with 24 CFR 92.216. HUD determines AMI on an annual basis, based on geographic area and family size.
- **Income Targeting:** Income targeting requirements are imposed on the project at initial occupancy and during the remaining period of affordability. Income targeting is defined as the number of low and very low income tenants that shall occupy the HOME-assisted units. Income targeting requirements at initial occupancy may differ from those required during the period of affordability.
  - **Income Targeting at Initial Occupancy:** The initial households assisted shall be households whose incomes are at or below sixty percent (60%) AMI per 24 CFR 92.216(a).
  - **Income Targeting During the Affordability Period:** After the initial occupancy the County requires that all units be occupied by persons whose income is between fifty percent (50%) and eighty percent (80%) AMI for the duration of the affordability period.
- The Developer/Owner shall collect and maintain project beneficiary information pertaining to household size, income levels and household characteristics used to determine low income benefits. Income documentation shall be in an acceptable format consistent with HOME requirements.
- At the County's sole discretion, a HOME-assisted unit with over income tenants will continue to qualify as affordable housing despite a temporary noncompliance caused by increases in the incomes of existing tenants. The Developer/Owner shall take actions satisfactory to the County to ensure that all vacancies are filled in accordance with 24 CFR 92.252(i) until the noncompliance issue is corrected.

**B. Rent:**

- **Applicable Rent Limits:** Rent limits are to be set in accordance with 24 CFR 92.252. For all units, the rent shall be no more than thirty percent (30%) of the actual tenant's gross household income not to exceed the HUD HOME low rent limits.
- **Utility Allowances and Fees:** If the tenants are responsible for all utility payments and applicable fees, utility allowances and fees shall be deducted from rent.
- **Initial Rent Schedule:** The initial rent schedule will be based on the units in the project, identified by the unit number and/or bedroom size as identified in 24 CFR 92.252(c) and 92.504(c)(3).

- **Adjusting Rents:** The Developer/Owner may adjust the rents, in accordance with the annual published rent limits, with approval from the County. Any rent adjustments are subject to the tenant's lease Agreement. All tenant leases shall specify that the tenants receive at least thirty (30) days written notice prior to implementing a rent increase. The Developer/Owner shall not raise rents above the HOME rent limits.

## SECTION VII: PROJECT REQUIREMENTS

A. Tenants of HOME-assisted units shall be protected by a written lease, occupancy Agreement or comparable legal document. The Developer/Owner shall adhere to the following lease requirements:

1. Lease length: The lease shall be executed for a minimum of one (1) year, unless the Developer/Owner and the tenant mutually agree to a shorter period. If the tenant has agreed to a different lease term, the term may not be for a period less than thirty (30) days and the Agreement should be noted in writing and maintained in the tenant's file.
2. Termination of tenancy: The written Agreement shall state that the Developer/Owner cannot terminate the tenancy or refuse to renew the lease of a tenant of rental housing assisted with HOME funds, except for allowable reasons: serious or repeated violations of the terms and conditions of the lease; violating Federal, state or local law; completion of tenancy for transitional housing projects; or other just causes. The lease shall also let tenants know that they will be served a written notice at least thirty (30) days before the termination of tenancy, specifying the grounds for the termination or refusal to renew the lease.
3. Tenant leases shall comply with applicable state and local tenant-landlord laws.

B. The Lease may not contain the following provisions, in accordance with 24 CFR 92.253:

1. Agreement to be sued. Agreement by the tenant to be sued, to admit guilt, or to a judgment in favor of the owner in a lawsuit brought in connection with the lease;
2. Treatment of property. Agreement by the tenant that the Developer/Owner may take, hold, or sell personal property of household members without notice to the tenant and a court decision on the rights of the parties. This prohibition, however, does not apply to an Agreement by the tenant concerning disposition of personal property remaining in the housing unit after the tenant has vacated the unit. The Developer/Owner may dispose of this personal property in accordance with state law;
3. Excusing developer/owner from responsibility. Agreement by the tenant not to hold the Developer/Owner or the owner's agents legally responsible for any action or failure to act, whether intentional or negligent;
4. Waiver of notice. Agreement of the tenant that the Developer/Owner may institute a lawsuit without notice to the tenant;

5. Waiver of legal proceedings. Agreement by the tenant that the Developer/Owner may evict the tenant or household members without instituting a civil court proceeding in which the tenant has the opportunity to present a defense, or before a court decision on the rights of the parties;
6. Waiver of a jury trial. Agreement by the tenant to waive any right to a trial by jury;
7. Waiver of right to appeal court decision. Agreement by the tenant to waive the tenant's right to appeal, or to otherwise challenge in court, a court decision in connection with the lease; and
8. Tenant chargeable with cost of legal actions regardless of outcome.

C. Developer/Owner understands that property standards apply throughout the affordability period.

### **SECTION VIII: PROPERTY STANDARDS**

A. Housing that is constructed or rehabilitated with HOME funds shall meet all local codes and ordinances at the time of project completion. The Developer/Owner agrees to abide by applicable property standards in accordance with 24 CFR 92. 251 and local land use and zoning requirements.

B. For projects involving housing units that were built prior to 1978, Developer/Owner shall comply with the Lead-based Paint Standards as outline in 24 CFR Part 35:

- 24 CFR Subpart A requires the distribution of the HUD/EPA/CSPC pamphlet "Protect Your Family from Lead in Your Home" and the provision of a Lead hazard Form to renters and purchasers of all properties built before 1978.
- 24 CFR Subpart B refers to the following definitions, including but not limited to:
  1. Abatement: any set of measures designed to permanently eliminate lead-based paint or lead-based paint hazards.
  2. Certified: licensed or certified to perform such activities as risk assessment, lead-based paint inspection, or abatement supervision, either by a State or Indian tribe with a lead-based paint certification program authorized by the Environmental Protection Agency (EPA), or by the EPA, in accordance with 40 CFR part 745, subparts L or Q.
  3. Clearance examination: an activity conducted following lead-based paint hazard reduction activities to determine that the hazard reduction activities are complete and that no soil-lead hazards or settled dust-lead hazards, as defined in this part, exist in the dwelling unit or worksite. The clearance process includes a visual assessment and collection and analysis of environmental samples. Dust-lead standards for clearance are found at §35.1320.
  4. Containment: physical measures taken to ensure that dust and debris created or released during lead-based paint hazard reduction are not spread, blown or tracked from inside to outside of the worksite.
  5. Deteriorated paint: any interior or exterior paint or other coating that is peeling, chipping, chalking or cracking, or any paint or coating located on an interior or exterior surface or fixture that is otherwise damaged or separated from the substrate.
  6. Dust-lead hazard: surface dust that contains a dust-lead loading (area concentration of lead) equal to or exceeding the levels promulgated by the EPA at 40 CFR 745.65 or, if such levels

- are not in effect, the standards for dust-lead hazards in §35.1320.
7. Encapsulation: application of a covering or coating that acts as a barrier between the lead-based paint and the environment and that relies for its durability on adhesion between the encapsulant and the painted surface, and on the integrity of the existing bonds between paint layers and between the paint and the substrate.
  8. Enclosure: use of rigid, durable construction materials that are mechanically fastened to the substrate in order to act as a barrier between lead-based paint and the environment. Enclosure may be used as a method of abatement if it is designed to be permanent.
  9. Environmental intervention blood lead level: confirmed concentration of lead in whole blood equal to or greater than 20 µg/dL (micrograms of lead per deciliter) for a single test or 15–19 µg/dL in two tests taken at least 3 months apart.
  10. g: gram, mg means milligram (thousandth of a gram), and µg means microgram (millionth of a gram).
  11. HEPA vacuum: a vacuum cleaner device with an included high-efficiency particulate air (HEPA) filter through which the contaminated air flows, operated in accordance with the instructions of its manufacturer. A HEPA filter is one that captures at least 99.97 percent of airborne particles of at least 0.3 micrometers in diameter.
  12. Interim controls: set of measures designed to reduce temporarily human exposure or likely exposure to lead-based paint hazards. Interim controls include, but are not limited to, repairs, painting, temporary containment, specialized cleaning, clearance, ongoing lead-based paint maintenance activities, and the establishment and operation of management and resident education programs.
  13. Lead-based paint: paint or other surface coatings that contain lead equal to or exceeding 1.0 milligram per square centimeter or 0.5 percent by weight or 5,000 parts per million (ppm) by weight.
  14. Lead-based paint hazard: any condition that causes exposure to lead from dust-lead hazards, soil-lead hazards, or lead-based paint that is deteriorated or present in chewable surfaces, friction surfaces, or impact surfaces, and that would result in adverse human health effects.
  15. Paint stabilization: repairing any physical defect in the substrate of a painted surface that is causing paint deterioration, removing loose paint and other material from the surface to be treated, and applying a new protective coating or paint.
  16. Paint testing: the process of determining, by a certified lead-based paint inspector or risk assessor, the presence or the absence of lead-based paint on deteriorated paint surfaces or painted surfaces to be disturbed or replaced.
  17. Soil-lead hazard: soil on residential property that contains lead equal to or exceeding levels promulgated by the EPA at 40 CFR 745.65 or, if such levels are not in effect, the standards for soil-lead hazards in §35.1320.
  18. Standard treatments: a series of hazard reduction measures designed to reduce all lead-based paint hazards in a dwelling unit without the benefit of a risk assessment or other evaluation.
  19. Substrate: the material directly beneath the painted surface out of which the components are constructed, including wood, drywall, plaster, concrete, brick or metal.
  20. Wet sanding or wet scraping: a process of removing loose paint in which the painted surface to be sanded or scraped is kept wet to minimize the dispersal of paint chips and airborne dust.

- 24 CFR Subpart J establishes procedures to eliminate as far as practicable lead-based paint hazards in a residential property that receives federal rehabilitation assistance under a program administered by HUD. Rehabilitation assistance does not include project-based rental assistance, rehabilitation mortgage insurance or assistance to public housing.
- 24 CFR Subpart K establishes procedures to eliminate as far as practicable lead-based paint hazards in a residential property that receives Federal assistance under certain HUD programs for acquisition, leasing, support services, or operation. Acquisition, leasing, support services, and operation do not include mortgage insurance, sale of federally-owned housing, project-based or tenant-based rental assistance, rehabilitation assistance, or assistance to public housing. For requirements pertaining to those activities or types of assistance, see the applicable subpart of this part.
- 24 Subpart R provides standards and methods for evaluation and hazard reduction activities for lead-based paint.

## SECTION IX: COMPLIANCE MONITORING

Monitoring will include compliance with all contractual requirements, including, but not limited to reporting, record retention and project development. In addition, the project is subject to ongoing HOME compliance requirements for twenty (20) years from the date of initial occupancy. During this compliance period, the Developer/Owner shall assure continued compliance with HOME requirements. Compliance for rental units shall include maintaining property standards, occupancy, and rent limits compliance.

**A. Project Development:** The County shall monitor the Developer/Owner for the following items prior to initial occupancy of the units (from the Developer's Property Management Handbook).

- Affirmative Marketing Policy and Procedures as required by 24 CFR 92.351 (**Attachment H**)
- Tenant Selection Policies and Procedures (to include over-income tenants)
- Application form
- Income Verification and Certification Forms
- Lease Agreement including Prohibited Clauses Identified in 24 CFR 92.253(b) (**Attachment H**)
- HOME Income Limits as stated in 24 CFR 92.203, as may be revised from time to time. (**Attachment D**)
- HOME Rent Limits, as may be revised from time to time. (**Attachment D**)

**B. Construction/Rehabilitation Management:** The County reserves the right to inspect the units at any time during the construction period.

### C. On-going Monitoring for the Term of Affordability:

- Affordability of the units
- Rent limits
- Tenants eligibility
- Physical inspection of the units
- Financial review

### SECTION X: ENFORCEMENT PROVISIONS

Timely completion of the work specified in this Agreement is an integral and essential part of performance. The expenditure of HOME funds is subject to federal deadlines and could result in the loss of federal funds. By the acceptance and execution of this Agreement, the Developer/Owner shall complete the project as expeditiously as possible and the Developer/Owner shall make every effort to ensure that the project will proceed and not be delayed. Failure to meet these deadlines may result in the cancellation of this contract and the revocation of HOME funds.

All HOME funds are subject to repayment in the event the project does not meet the project requirements.

The Developer/Owner understands that, upon the completion of the project, any HOME funds reserved; but not expended under this Agreement shall remain with the County.

Funds shall remain as a deferred interest free loan for a period of twenty (20) years after the initial occupancy. The loan may be forgiven or extended at the sole discretion of the County. Sale of the property to another party may occur only with the approval from the County, and the purchaser shall assume all obligations of the Developer/Owner under this Agreement, the Mortgage Note, Mortgage Deed and Security Agreement, the Land Use Restriction Agreement, and deed covenants. Provisions in those documents will provide for the deletion of the requirements only in the event of a third-party foreclosure or deed in lieu of foreclosure.

A default shall be the occurrence of any of the following events, and upon that occurrence the County may, at the County's discretion, declare all sums secured by the Developer/Owner to be immediately due and payable.

- Nonperformance by the Developer/Owner of any covenant, Agreement, term or condition of the Mortgage, or of the Note, or of any other Agreement made by the Developer/Owner with the County in connection with such indebtedness, after the Developer/Owner has been given due notice, as described hereafter, by the County of such nonperformance;
- Failure of the Developer/Owner to perform any covenant, Agreement, term or condition in any instrument creating a lien upon the mortgaged property, or any part thereof, which shall have priority over the lien of the Mortgage;

- The County's discovery of the Developer/Owner's failure in any application of the Developer/Owner to the County to disclose any fact deemed by the County to be material, or the making therein, or in any of the Agreements entered into by the Developer/Owner with the County (including, but not limited to, the Note and Mortgage) of any misrepresentation by, on behalf of, or for the benefit of the Developer/Owner.

Upon the occurrence of a default, the County shall notify the Developer/Owner of such default in writing, specifying:

- The breach; and
- The action required to cure such breach; and
- A date not less than thirty (30) days from the date the Notice is hand delivered or mailed to the Developer/Owner by which such breach must be cured.

If the default is not cured on or before the date specified in the Notice, the County, at the County's option, may declare all of the sums secured by the Mortgage to be immediately due and payable without further demand.

The County shall give prior written notice of acceleration or default under the subordinate lien to any superior Mortgage Holders.

All sums repaid under the terms of this Agreement shall be paid to Brevard County Board of County Commissioners in care of Housing and Human Services Department.

## **SECTION XI: COMMUNITY HOUSING DEVELOPMENT ORGANIZATION (CHDO)**

The Developer/Owner understands that the Developer/Owner is and shall remain in Community Housing Development Organization (CHDO) status for the term of this Agreement in accordance with 24 CFR 92.300 – 301, as applicable. Developer/Owner shall provide information as may be requested by the County to document continued compliance, including but not limited to an annual Board roster and certification of continued compliance.

## **SECTION XII: ADMINISTRATIVE REQUIREMENTS**

### **A. Record Keeping**

The Developer/Owner shall be responsible for maintaining a project file and tenant files, with documentation relevant to this project such as, but not limited to, proposal, Agreement, financial expenditures, reports, tenant income, and correspondence. All records shall be presented and maintained in sufficient detail as required to ensure a proper audit.

### **B. Record Retention**

The Developer/Owner shall retain sufficient records demonstrating compliance with the terms of this Agreement for a period of five (5) years after the expiration date of the Agreement. If any audit findings have not been resolved at the end of the five (5) year period, the records shall be retained until resolution of

the audit findings. State auditors and any persons duly authorized by the County shall have full access to, and shall have the right to examine any of said materials upon request.

General records for all rental housing units shall be maintained for five (5) years after expiration or termination of the contract period. Records regarding tenant income, rent and inspection information shall be maintained for the most recent five (5) years, until five (5) years after the affordability period ends.

### C. Public Records

1. For purposes of this section, the term:
  - a. "Contractor" means an individual, partnership, corporation, or business entity that enters into a contract for services with a public agency and is acting on behalf of the public agency as provided under s. 119.011(2).
  - b. "Public agency" means a state, county, district, authority, or municipal officer, or department, division, board, bureau, commission, or other separate unit of government created or established by law.
2. In addition to other contract requirements provided by law, each public agency contract for services must include a provision that requires the contractor to comply with public records laws, specifically to:
  - a. Keep and maintain public records that ordinarily and necessarily would be required by the public agency in order to perform the service.
  - b. Provide the public with access to public records on the same terms and conditions that the public agency would provide the records and at a cost that does not exceed the cost provided in this chapter or as otherwise provided by law.
  - c. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law.
  - d. Meet all requirements for retaining public records and transfer, at no cost, to the public agency all public records in possession of the contractor upon termination of the contract and destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All records stored electronically must be provided to the public agency in a format that is compatible with the information technology systems of the public agency.
3. If a Developer/Owner does not comply with a public records request, the public agency shall enforce the contract provisions in accordance with the contract.

### D. Reporting

The Developer/Owner shall submit a Monthly Progress Report, attached hereto and made a part of by reference **Attachment E** and a Demographics Report to the County at the time of initial occupancy, attached hereto and made a part of by reference **Attachment F**.

The County retains the right to change the reporting requirements or data elements with notice to the Developer/Owner without an amendment to this Agreement.

### SECTION XIII: REQUEST FOR DISBURSEMENT OF FUNDS/PAYMENT PROCEDURES

The Developer/Owner shall submit a **Housing and Human Services Department Request for Reimbursement Invoice Form/Supplemental Sheet**, attached hereto and made a part hereof by reference as **Attachment G**, according to the following conditions:

- A. The Developer/Owner shall submit and the County shall approve a draw schedule prior to any payments being submitted by the Developer/Owner.
- B. The Developer/Owner shall only request disbursement of HOME funds when the funds are needed to pay eligible costs as per the draw schedule. Eligible costs incurred by the Developer/Owner shall be based on the construction draw schedule, as completed by the Developer/Owner.
- C. Upon request for payment of funds by the Developer/Owner, the County shall perform an inspection of construction work prior to payment approval.
- D. Brevard County will withhold and retain ten percent (10%) of each draw request for the rehabilitation costs associated with the project. After the initial payment, **Release of Liens for previous payments and copies of cancelled checks to contractors and sub-contractors** shall be required before additional draw requests will be approved. The final payment of the retainage withheld shall be made upon issuance of a Certificate of Completion or Certificate of Occupancy from the local building department and final approval by the County. Full release of liens, final inspection from the County, and proof of warranty from the General Contractor shall be provided by the Developer/Owner before the final payment is processed.
- E. Upon receipt of supporting documentation, rehabilitation payments will be mailed directly to the Developer/Owner, payable to the Developer/Owner.

Failure to submit the required documentation will result in payment delays. The County shall pay the Developer within **forty-five (45) working** days from receipt of approved payment request.

Failure to request a payment/disbursement within a twelve (12) month period, regardless if previous requests for disbursement have been made will result in the Developer/Owner providing a written narrative with the reason(s) to the County. Failure to provide a written narrative may result in the cancellation of the project.

### SECTION XIV: PROVISIONS RELATED TO OTHER FEDERAL REQUIREMENTS

Developer/Owner shall comply with the anti-lobbying certification:

- 1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a

Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative Agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative Agreement.

2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative Agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

## **SECTION XV: GENERAL CONDITIONS**

### **A. Indemnification**

The Developer agrees it will indemnify and hold harmless the County from any and all liability, claims, damages, expenses, including attorney's fees costs, proceeding and causes of action arising out of or connected with the use, occupation, management, construction or control of the premises or property.

The Developer agrees it will at its own expense, defend any and all claims, actions and judgements that may be entered against the County in an such action or proceeding. Such payment on behalf of the County shall be in addition to any and all other legal remedies available to the County and shall not be considered to be the County's exclusive remedy.

It is agreed by the parties hereto that specific consideration has been received by the Developer under this agreement for this hold harmless/indemnification provision.

The Developer shall also include in any contract for work upon or involving the premises that the Contractor shall indemnify and hold harmless the Developer and the County, their officers and employees, from liabilities, damages, losses and costs, including but not limited to attorney's fees, to the extent caused by the negligence, recklessness, or intentional wrongful misconduct of the Contractor and persons employed or utilized by the Contractor in the performance of the construction contract.

### **B. Amendments/Modifications to Contract**

This Agreement, together with any attachments, task assignments and schedules constitute the entire Agreement between the County and the Developer/Owner and supersedes all prior written or oral Agreements or understandings. This Agreement and any attachments, task assignments and schedules may only be amended, supplemented or cancelled by a written instrument duly executed by the parties hereto. The Director of Housing and Human Services shall have authority to execute modifications up to \$24,999. For any modifications that exceeds \$24,999, the Chairperson of the Board of County Commissioners or County Manager shall have the authority to execute the modification.

### C. Insurance

The Developer agrees to provide and maintain at all times during the term of this agreement without costs or expense to the County certain policies of insurance as described below. In addition, the Developer will be responsible for either providing coverage for their Contractors, or for ensuring that their Contractors carry the required insurance coverage. The Developer and/or the Developer's Contractors shall at their own expense, keep in force and at all times maintain, during construction and then during the term of this Agreement, the (applicable) insurance as listed below:

1. **General Liability Insurance:** General Liability with combined single limits of not less than One Million Dollars \$1,000,000.00 for Bodily Injury and Property Damage per occurrence.
2. **Directors and Officers Insurance:** Directors and Officers coverage with minimum limits of One Million Dollars \$1,000,000.00.
3. **Automobile Liability Insurance:** Automobile Liability coverage shall be in the minimum of One Million Dollars \$1,000,000.00 combined single limits for Bodily Injury and Property Damage per accident.
4. **Workers' Compensation Coverage:** Full and complete Workers' Compensation Coverage, as required by the State of Florida law shall be provided.
5. **Builders Risk Insurance:** Loss limits shall be equal to the value of the construction project.
6. **Property Insurance:** Coverage providing all risk insurance including windstorm protection, in an amount equal to the replacement cost of the structure.
7. **Professional Liability Insurance:** In the event that the Agreement involves professional or consulting services, in addition to the aforementioned insurance requirements, the vendor shall also be protected by a Professional Liability Insurance Policy with limits of not less than One Million dollars 1,000,000.00.
8. **Pollution Liability: (Contractors Pollution Liability) – Developer/Owner and/or Developer/Owner's Contractor shall maintain Pollution Liability Insurance providing coverage for bodily injury, property damage and environmental damage resulting from pollution and related cleanup costs incurred, arising out of the work or service to be performed under this agreement. Limits of not less than \$1,000,000 per Occurrence shall be provided.**
9. **Insurance Certificates:** The Developer shall provide the County with Certificate(s) of Insurance on the policies of insurance and renewals thereof in a form(s) acceptable to the County. Said Liability Policies shall provide that the County be named as an additional insured. The County shall be notified in writing of any reduction, cancellation, or substantial change of policy or policies, at least thirty (30) days prior to the effective date of said action. Responsible companies who are acceptable to the County and licensed and authorized under the laws of the State of Florida shall issue all insurance policies. The Developer shall ensure that the insurance of its contracted agents is adequate and sufficient to cover the activities performed under this agreement and that the

insurance requirements upon all Developers conform to and comply with all applicable local, state and/or federal requirements.

**D. Attorney's Fees**

In the event of any legal action to enforce the terms of this Agreement, each party shall bear its own attorney's fees and costs.

**E. Governing Law**

This Agreement shall be governed, interpreted and construed according to the laws of the State of Florida.

**F. Compliance with Statutes**

It shall be the Developer's/Owner's responsibility to comply with all federal, state and local laws including, but not limited to, those **HOME Requirements** made a part hereof by reference as **Attachment H** and all applicable Brevard County Ordinances.

**G. Venue**

Venue for any legal action by any party to this Agreement to interpret, construe or enforce this Agreement shall be in a court of competent jurisdiction in and for Brevard County, Florida, and any trial shall be non-jury.

**H. Assignments**

The Developer/Owner shall not assign any portion of the Agreement without written permission of the County.

**I. Termination**

Upon the occurrence of nonperformance, the County shall send or hand deliver the Notice to the Developer specifying:

- a. The breach;
- b. The action required to cure such breach; and
- c. A date not less than thirty (30) days from the date the Notice is hand delivered or mailed to the Borrower by which such breach must be cured.

If the nonperformance is not cured on or before the date specified in the Notice, the County, at the County's option, may declare all of the sums secured by the Mortgage to be immediately due and payable without further demand. The County shall give prior written notice of nonperformance.

All sums repaid under the terms of this Agreement shall be paid to Brevard County Board of County Commissioners in care of Housing and Human Services Department.

The County is only responsible for payment for work completed prior to the effective date of termination. The County may also terminate this agreement at any time based upon availability of funds as determined by evaluation of the departmental expenditure goals, compliance with these contract term, and regulatory compliance by the Director of Housing and Human Services.

If applicable If Contractor is providing services for another Entity, in accordance with the Use of HOME funds and project description outlined in section II 1, Contractor and Entity shall have a separate contract or

agreement outlining the terms and conditions of the services the Contractor will be providing. In the event the contract between Contractor and Entity is terminated, cancelled, or otherwise because unenforceable, this contract shall be immediately terminated. The County shall send the Contractor a Notice of Termination effective the same date as the termination date of the contract between Contractor and Entity. Contractor shall receive payment for all work performed up to the date of the termination of the contract between Contractor and the County.

#### **J. Independent Contractor**

The Developer/Owner shall perform under the terms of this Agreement as an independent contractor and nothing contained herein shall be construed to be inconsistent with this relationship or status. Nothing in the Agreement shall be interpreted or construed to constitute the Developer/Owner or any of its agents or employees to be the agent, employee or representative of the County.

#### **K. Right to Audit**

In the performance of this Agreement, the Developer/Owner shall keep books, records, and accounts of all activities, related to the Agreement, in compliance with generally accepted accounting procedures. Books, records and accounts related to the performance of this Agreement shall be open to inspection by an authorized representative of the County and shall be retained by the Developer/Owner for the entire term of this Agreement in accordance with Section XII. B. Record Retention. All records, books and accounts related to the performance of this Agreement shall be subject to the applicable provisions of the Florida Public Records Act, Chapter 119, Florida Statutes. No reports, data, programs or other materials produced, in whole or in part for the benefit and use of the County, under this Agreement, shall be subject to copyright by Developer/Owner in the United States or any other country.

#### **L. Audits**

If the Developer/Owner is a local government or a non-profit organization as defined in OMB Circular A-133, as revised, and in the event that the Developer/Owner expends \$750,000 or more in federal awards in a fiscal year, the Developer/Owner shall have a single or program-specific audit conducted in accordance with the Single Audit Act Amendments of 1996, and OMB Circular A-133, as revised. In determining the federal awards expended in its fiscal year, the Developer/Owner shall consider all sources of Federal awards, including federal resources received from the County. The determination of amounts of Federal awards expended should be in accordance with the guidelines established by OMB Circular A-133, as revised. An audit of the Developer/Owner conducted by an independent certified public accountant (CPA) licensed under Chapter 473, Florida Statutes, in accordance with the provisions of OMB Circular A-133, as revised, will meet the requirements of this paragraph. If the Developer/Owner expends less than \$750,000 in federal awards in its fiscal year, an audit conducted in accordance with the provisions of OMB Circular A-133, as revised, is not required. In the event that the Developer/Owner expends less than \$750,000 in federal awards in its fiscal year and elects to have an audit conducted in accordance with the provisions of OMB Circular A-133, as revised, the cost of the audit shall be paid from non-federal resources (such as the cost of such audit shall be paid from the Developer's/Owner's resources obtained from other than federal entities).

In accordance with OMB Circular A-133, if applicable, the Developer/Owner shall submit to the County a copy of the audit and all related responses within one hundred twenty (120) days after termination of this Agreement. If unable to meet the audit deadline, the Developer/Owner shall submit a written request for an extension approval by the Director to the following address:

Housing and Human Services Department  
Ian Golden, Director  
2725 Judge Fran Jamieson Way, Building B  
Viera, FL 32940

**M. Unauthorized Alien Workers**

The County will not intentionally award publicly-funded contracts to any Developer/Owner who knowingly employs unauthorized alien workers, constituting a violation of the employment provisions contained in 8 U.S.C. Section 1324a(e)(Section 274A(e) of the Immigration and Nationality Act (INA"). The County shall consider a Developer's/Owner's intentional employment of unauthorized aliens as grounds for immediate termination of this Agreement.

**N. Federal Tax ID Number**

The Developer/Owner shall provide to the County the Developer's/Owner's Federal Tax ID Number or, if the Developer/Owner is a sole proprietor, a Social Security Number.

**O. County Conflict of Interest**

The Developer/Owner shall not engage the services of any person or persons now employed by the County, including any department, agency board or commission thereof, to provide services relating to this contract without written consent from the County. The Developer/Owner shall not accept gratuities, favors or anything of monetary value from contractors, potential contractors or parties to sub-Agreements. The Developer/Owner shall not award a contract or subcontract under this Agreement to any company who the Developer/Owner has a financial or any other interest in, including but not limited to employing an employee, an employee of the Developer/Owner or any member of an employee's, agents, or officer's immediate family of the Developer/Owner employee, including officers, employees, agents, consultants or elected or appointed officials. The Developer/Owner and/or any of the aforementioned entities may not occupy a unit unless approved by the County.

**P. Public Entity Crimes**

A person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid on a contract to provide any goods or services to a public entity, may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids on leases of real property to a public entity, may not be awarded or perform work as a Developer/Owner, supplier, subcontractor, or consultant under a contract with a public entity, and may not transact business with any public entity in excess of the threshold amount provided in s.287.017 for CATEGORY TWO for a period of thirty-six (36) months from the date of being placed on the convicted vendor list.

**Q. Information Release/Grantor Recognition**

News releases, publicity releases, or advertisements relating to this Agreement or the tasks or projects associated with the project, shall be submitted in writing to the County and be approved in advance of any release or publication. Releases shall identify the funding entity as well as the funding source.

**R. Debarment and Suspension**

The County will not intentionally award contracts to any agency or its Developers/Owner and/or subcontractors that:

1. Have been debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal, State or local Department or agency;
2. Have, within a three (3) year period preceding this proposal, been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
3. Are presently indicted or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (2) above; and
4. Have, within a three (3) year period preceding this application/proposal, had one or more public transactions (Federal, State, or local) terminated for cause or default.

#### **SECTION XVI: CONSTRUCTION OF AGREEMENT**

The parties hereby acknowledge that they fully reviewed this Agreement and its attachments and have had an opportunity to consult with legal counsel of their choice, and that this Agreement shall not be construed against any party as if they were the drafter of this Agreement.

#### **SECTION XVII: NOTICES**

All notices required or permitted by this Agreement shall be in writing and shall be deemed delivered upon hand delivery, or three (3) days following deposit in the United States Postal System, postage prepaid, return receipt requested, addressed to the parties at the following addresses:

**FOR THE COUNTY:**


Housing and Human Services Department  
Ian Golden, Director  
2725 Judge Fran Jamieson Way, Building B  
Viera, FL 32940

**FOR THE DEVELOPER/OWNER:**

Brevard Community Partnership, Inc.  
Sean Marks, President and CEO  
401 Ocean Ave.  
Suite 200-A  
Melbourne Beach, FL 32951

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals on the day and year first above written.

**REVIEWED FOR LEGAL FORM AND CONTENT:**

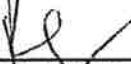
By:   
Becky Behl-Hill, Assistant County Attorney

Date: 7/15/15

**ATTEST:**

  
Scott Ellis, Clerk

**BOARD OF COUNTY COMMISSIONERS OF  
BREVARD COUNTY, FLORIDA**

By:   
Robin Fisher, Chair

Date: 08-18-2015

As approved by Board on: 08-18-2015

**WITNESS:**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name and Title, Typed or Printed

**CONTRACTOR**

By: \_\_\_\_\_  
Sean Marks, President and CEO

Date: \_\_\_\_\_

Sean Marks, President and CEO  
Name & Title, Typed or Printed

Brevard Community Partnership, Inc.  
Name of Company

401 Ocean Ave Suite 200-A  
Mailing Address

Melbourne Beach, Florida 32951  
City, State, Zip Code

321-676-8922  
Area Code/Telephone Number

ATTACHMENT A

MORTGAGE DEED AND SECURITY AGREEMENT 20 YEAR TERM

Brevard County Board of County Commissioners

**THIS MORTGAGE DEED AND SECURITY AGREEMENT** (Mortgage) made, executed and given this \_\_\_ day of \_\_\_\_\_, 2015 by Brevard Community Partnership, Inc. (individually and collectively, Mortgagor) with its principal place of business located at 401 Ocean Ave Suite 200-A Melbourne Beach, FL 32951, to and in favor of the Brevard County Board of County Commissioners, a political subdivision of the State of Florida, with its principal place of business located at 2725 Judge Fran Jamieson Way, Viera, Florida, (herein designated as the Mortgagee) for funding assisted with Brevard County HOME funds for rental units for persons whose income is between fifty percent (50%) and eighty percent (80%) of the Area Median Income.

**WITNESSETH**, that for diverse good and valuable consideration of the aggregate sum named in the promissory note (Note), which reference includes renewals thereof, hereinafter described, the Mortgagor does grant, bargain, sell, alien, remise, release, convey and confirm unto thee Mortgagee, in fee simple, all that certain tract of land, together with all improvements therein or thereon or as hereinafter described below, of which the Mortgagor is now or hereafter seized and possessed, located in Brevard County, State of Florida, as described at:

\*\*\*\*\*

**TOGETHER** with all and singular the structures, improvements and appurtenances thereunto which are now or hereafter placed upon said Property and the fixtures, machinery, equipment, and articles of personal property attached thereto or used in connection therewith, and all rents, issues, proceeds and profits accruing and to accrue from the Property and any deposits, fees and prepayments made to regulatory agencies for the benefit of the Property and any permits or reserved capacities or utility service obtained in consideration therefore, and all of the rights, title and interest of the Mortgagor of, in and to the lands lying in the bed of any street, road, avenue, alley or right-of-way in front of or adjoining the Property and to the strips and gores of land adjacent to or adjoining the Property or incidental thereto and in and to any and all water rights, easements and all of the estate and rights of the Mortgagor in and to the Property, all of which are included within the foregoing description and the addendum hereof, and all gas, steam, electric, water and other heating, cooking, refrigerating, lighting, plumbing, ventilating, irrigating, and power systems, machines, appliances, fixtures and appurtenances, which are now or hereafter pertain to or be used with, in or on the Property, even though they may be detached or detachable, with every privilege, right, title, interest and estate, dower and right of dower, reversion and easement thereunto belonging or in anywise appertaining.

**TO HAVE AND TO HOLD** the same, together with all and singular the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining and the reversion and reversions, remainder and remainders, rents, issues and profits thereof and also in the estate, right, title, interest, property, possession, claim and demand whatsoever, as well in law as in equity, of the Mortgagor in and to the same and every part and parcel thereof unto the Mortgagee in fee simple.

The Mortgagor, and Mortgagor's heirs, legal representatives, successors and assigns, hereby covenants with Mortgagee that Mortgagor is indefeasibly seized of the Property in fee simple; that the

Mortgagor has full power and lawful right to convey the same in fee simple as aforesaid; that it shall be lawful for Mortgagee, at all times peaceably and quietly, to enter upon, hold, occupy and enjoy the Property and every part thereof; that said

Property is free from all encumbrances, except as stated herein; that Mortgagor and Mortgagor's heirs, legal representatives, successors and assigns, will make such further assurances to perfect the fee simple title to the Property in Mortgagee as may reasonably be required; and that Mortgagor does hereby fully warrant the title to the Property and every part thereof and shall defend the same against the claim of all persons whomsoever.

**PROVIDED ALWAYS** that, if Mortgagor shall pay unto the Mortgagee the indebtedness stated in the Note, a copy or copies of which is/are attached hereto and made a part hereof by reference, and shall duly, promptly and fully perform, discharge, execute, effect, complete and comply with and abide by each and every of the stipulations, Agreements, conditions and covenants of the Note and this Mortgage, then this Mortgage and the estate hereby created shall cease and be null and void; otherwise, the Mortgagee may, at the Mortgagee's option, declare the entire balance of the indebtedness secured hereby due and payable. The principal sum together with interest thereon at the rate of zero percent (0%) annum, shall become due at the completion of the **entire term of this Agreement** period, except that the entire principal shall be forgiven at the completion of the entire term of this Agreement in accordance with the term of the 30 year mortgage note.

**AND MORTGAGOR DOES HEREBY COVENANT TO AND AGREE WITH MORTGAGEE AS FOLLOWS:**

1. To pay all and singular the principal and interest and other sums of money payable by virtue of the Note and Mortgage, or either, promptly on the days respectively the same severally come due. To perform, comply with and abide by each and every of the stipulations, Agreements, conditions and covenants set forth in the Note and this Mortgage. The principal sum together with interest thereon at the rate of zero percent (0%) annum, shall be forgiven at the completion of the **entire term of this Agreement** period.

2. To pay all and singular the taxes, assessments, levies, liabilities, obligations and encumbrances of every nature on the Property each and every when due and payable, according to law, before they become delinquent; and, if the same shall not be promptly paid, the Mortgagee, at any time, either before or after delinquency, may pay the same without waiving or affecting its option to foreclose or any right hereunder, and every payment so made shall bear interest from the date thereof at the highest legal rate permitted by the laws of the State of Florida, payable monthly, until repaid, and each such payment, together with said interest thereon, shall be secured by the lien of this Mortgage.

3. To keep the buildings and all equipment and personal property now or hereafter on the Property covered by this Mortgage insured in a sum equal to at least the balance of the Note and equal to an amount sufficient to comply with any co-insurance requirements covering the same under the laws of the State of Florida and the insurance contract, covering loss from both fire and extended coverage, making the loss under said policies, each and every, payable to Mortgagee as its interest may appear and naming Mortgagee as additional insured; and the policy or policies shall be held by Mortgagee and in the event any sum of money becomes payable under such policy or policies, the Mortgagee shall have the

option to receive and apply the same on account of indebtedness hereby secured or may permit Mortgagor to receive and use it or any part thereof for other purposes, without thereby waiving or impairing any equity, lien or right under and by virtue of this Mortgage. Mortgagee may place and pay for such insurance, or any part thereof, without waiving or affecting its option to foreclose or any right hereunder, and each and every payment so made shall bear interest from date thereof at the highest legal rate permitted by the laws of the State of Florida, payable monthly, until repaid, and each such payment, together with said interest thereon, shall be secured by the lien of this Mortgage.

4. To permit, commit or suffer no waste, impairment or deterioration of the Property, or any part thereof, and, upon the failure of the Mortgagor to keep the buildings or other improvements on the Property in good condition and repair, Mortgagee may demand the immediate repair of said buildings or other improvements or an increase in the amount of security or the immediate repayment of the debt hereby secured, and the failure of the Mortgagor to comply with said demand of the Mortgagee, for a period of thirty (30) days, shall constitute a breach of the Mortgage and, at the option of Mortgagee, immediately mature the entire amount of principal and interest hereby secured, and Mortgagee immediately and without notice may institute proceedings to foreclose this Mortgage and may apply for and have appointed a receiver, as hereinafter provided.

5. The Mortgagee may make or cause to be made reasonable entries upon and inspections of the Property; provided that the Mortgagee shall give the Mortgagor reasonable notice prior to any such inspection with reasonable cause related to the Mortgagee's interest in the Property.

6. To deliver to Mortgagee, on or before March 15 of each year, tax receipts evidencing the payment of all lawfully imposed taxes for the preceding calendar year, to deliver to Mortgagee receipts evidencing the payment of all liens for public improvements within forty-five (45) days after the same shall become due and payable; and to pay or discharge within ten (10) days after due date any and all government levies that may be made on the Property, on this Mortgage or Note, or in any other way resulting from the indebtedness secured by this Mortgage; and, if this condition be not complied with and performed, Mortgagee may, without waiving or affecting its option to foreclose, pay such sum or sums which shall become part of the debt secured by this Mortgage and which shall bear interest, payable monthly until repaid, at the highest legal rate permitted by the laws of the State of Florida.

7. The Mortgagor shall indemnify and hold the Mortgagee harmless from and against all costs, expenses, liabilities, suits, claims and demand of every kind or nature by or on behalf of any person whomsoever arising out of any accident, injury or damage which may happen in, on or about the property, and for any matter or thing growing out of the condition, occupation, maintenance, modification or use of the property.

8. That, in the event of a breach by Mortgagor of any covenant contained in this Mortgage or in the Note or, Land Use Restriction Agreement, or if applicable, in an Acquisition & Preservation Loan Agreement or Construction Loan Agreement between Mortgagor and Mortgagee and covering the Property, or any part thereof, the terms of such Agreement being incorporated herein by reference, Mortgagee is entitled to receive all rents, issues, proceeds and profits accruing and to accrue from the Property pursuant to Florida Statutes 697.07 (2011) and, upon Mortgagor's receipt of a written demand made by Mortgagee, all future payments shall be paid directly to Mortgagee. If a receiver is appointed by a court having jurisdiction hereof, pursuant to Paragraph 8 or other provisions of this Mortgage, the order appointing such

a receiver may direct that said rents, issues, proceeds, profits shall be paid to the receiver after the date of appointment. Nothing in this paragraph shall require the appointment of a receiver or excuse Mortgagor from failing to make payments directly to Mortgagee upon receipt of written demand therefore.

9. That Mortgagee is entitled to the appointment of a receiver even if the market value of the Property exceeds the amount of balance owed on the Note and additional charges due under this Mortgage and the Note.

10. If proceedings under any bankruptcy or insolvency law are commenced by or against Mortgagor or if a general assignment for the benefit of creditors is made by Mortgagor, whether under state or federal law, or a trustee or receiver of all or a substantial part of Mortgagor's property, whether or not covered by the lien of the Mortgage, is appointed, then, at Mortgagee's option and if permitted by law, the whole of the unpaid principal sum and accrued interest remaining unpaid on the Note shall become immediately due and payable.

11. That, if a guarantor of the payment and performance of the covenants, conditions and Agreements of this Mortgage and the Note shall die or if a petition shall be filed for any relief under the provisions of the federal Bankruptcy Act or any state insolvency statute by or against a guarantor or if a guarantor shall make a general assignment for the benefit of creditors or if a receiver shall be appointed for substantially all of the property of the guarantor, then, and in any of the foregoing events, the Note shall become immediately due and payable at the option of the Mortgagee.

12. That, if all or any part of the Property or an interest therein is sold or transferred by Mortgagor, whether voluntary or involuntary, without Mortgagee's prior written consent, excluding (a) the creation of a lien or encumbrance subordinate to this Mortgage, (b) the creation of a purchase money security interest for household appliances, (c) a transfer by devise, descent or by operation of law upon the death of a joint tenant or (d) the grant of any leasehold interest of three (3) years or less not containing an option to purchase, Mortgagee may, at its option, declare all the sums secured by this Mortgage to be immediately due and payable. Mortgagee shall have waived such option to accelerate if, prior to the sale or transfer for which such waiver of option is requested, the Mortgagee and the person or entity to whom the Property is to be sold or transferred reach Agreement in writing that the credit of such third party is satisfactory to Mortgagee and that the interest payable on the Note shall be at such rate as Mortgagee shall request. If Mortgagee exercises such option to accelerate, Mortgagee shall mail Mortgagor notice of acceleration and such notice shall provide a period of not less than thirty (30) days from the date the notice is mailed within which Mortgagor shall pay the sums declared due. If Mortgagor fails to pay such sums prior to the expiration of such period, Mortgagee may, without further notice demand on Mortgagor, invoke any remedies permitted by this Mortgage and the Note.

13. If the Property or any part thereof shall be condemned and taken for public use under the power of eminent domain, Mortgagee shall have the right to require that all damages awarded for the taking of or damages to said Property shall be paid to Mortgagee up to the aggregate amount then unpaid on the Note and credited to the payment or payments last payable thereon.

14. That time is of the essence of this Mortgage and of the Note and no waiver of any obligation hereunder or in the Note shall at any time thereafter be held to be a waiver of the terms hereof or of the Note or other instruments secured hereby.

15. To comply with all the terms, provisions and conditions of any superior mortgage or lien encumbering the Property, including, but not limited to, those applicable to the payment of the principal and interest due under said superior mortgage or lien or *deed restrictions*. If Mortgagor fails to comply with each and every one of the terms, provisions and conditions of said encumbrance, the failure to comply or default on Mortgagor's part shall constitute a default under this Mortgage and the Note shall entitle Mortgagee, at its option, to exercise any and all of its rights and remedies hereunder. If foreclosure proceedings of any superior or inferior mortgage or any senior or junior lien of any kind should be instituted, Mortgagee may, at Mortgagee's option, immediately or thereafter, declare this Mortgage and the entire indebtedness secured hereby due and payable.

16. To the extent of the indebtedness of the Mortgagor to Mortgagee described herein, or secured hereby, Mortgagee is hereby subrogated to the lien or liens and to the rights of the Developers and holders of each and every mortgage, lien or other encumbrance on the Property which is or has been paid or satisfied, in whole or in part, out of the proceeds of the Note and the respective liens of said mortgages, liens, Deed Restrictions attached to this Mortgage Agreement or other encumbrances, shall be, and the same are hereby, preserved and shall pass to and be held by the Mortgagee herein as a security for the indebtedness to Mortgagee herein described or hereby secured to the same extent that it would have been passed to and held by Mortgagee, had it been duly and regularly assigned, transferred, set over and delivered unto Mortgagee by separate assignment, notwithstanding the fact that the same may be satisfied and canceled of record.

17. To pay all and singular the costs, charges and expenses, including reasonable attorney's fees and costs of abstracts of title, incurred or paid at any time by Mortgagee because or in the event of the failure on the part of the Mortgagor to duly, promptly and fully perform, discharge, execute, effect, complete, comply with and abide by each and every the stipulations, Agreements, conditions and covenants of the Note and this Mortgage, any or either, and said costs, charges and expenses, each and every, shall be immediately due and payable whether or not there be notice, demand, attempt to collect or suit pending; then the full amount of each and every such payment shall bear interest from the date thereof until paid at the highest legal rate permitted by the laws of the State of Florida; and all said costs, charges and expenses so incurred or paid, together with such interest, shall be secured by the lien of this Mortgage. Reference herein to "reasonable attorney's fees" shall include attorney fee incurred by the Mortgagee for appellate and bankruptcy proceedings incident to any action brought hereunder or upon the Note.

18. That, if any word, clause, term, phrase or paragraph used in the Note or this Mortgage should be held to be unenforceable by any court of competent jurisdiction, the same shall not affect, alter or otherwise impair the meaning of any other word, clause, term, phrase or paragraph in the Note and Mortgage, and the same shall stand in full force and effect and shall be obligatory upon the parties hereto and the assignees, heirs and legal representatives of the parties hereto.

19. That, except for any notice required under applicable law to be given in another manner, any notice to Mortgagee provided for or given pursuant to this Mortgage shall be given by mailing such notice, postage prepaid, by United States registered or certified mail, return receipt requested, to Mortgagee's address as stated herein or in the Note secured hereby or to such other address as Mortgagee may designate, in writing, by notice to Mortgagor from time to time.

20. That all remedies provided in this Mortgage or in the Note, other instrument secured hereby or incorporated by reference herein, are distinct and cumulative to any other right or remedy under this Mortgage or such other instrument or afforded by law or equity and may be exercised concurrently, independently or successively. The Note shall become due at the option of Mortgagee if any representation or warranty made or given by Mortgagor or otherwise made in writing in connection with the transaction evidence by this Mortgage shall prove to have been false or incorrect in any material respect as of date hereof and such defect (if curable) shall not have been cured within seven (7) days from the date of the mailing of notice thereof to the Mortgagor.

21. That, notwithstanding anything to the contrary contained in this Mortgage or in the Note or in any other instruments securing the Note, Mortgagee may, at Mortgagee's option, declare the entire indebtedness secured hereby, together with all interest thereon and all advances made by the Mortgagee hereunder, immediately due and payable in the event of the breach by Mortgagor of any covenant contained in this Mortgage or in the Note or, if applicable, in the Acquisition & Preservation Loan Agreement or a Construction Loan Agreement referred to in Paragraph 7. In the event of any conflict between the terms of this Mortgage and the terms of said loan Agreement, the terms of the loan Agreement shall prevail.

22. To collaterally assign, coincident herewith or hereafter, to Mortgagee, any lease or leases of all or of any portions of the Property. If such assignment is made and accepted by Mortgagee, Mortgagor shall perform promptly each and every covenant and Agreement of any such lease that is to be kept or performed by the Mortgagor in Mortgagor's capacity as lessor and any violation on Mortgagor's part of any covenant or Agreement in any such lease or in the assignment of said lease that is to be kept or performed by Mortgagor, or any violation on Mortgagor's part of any Agreement by Mortgagor set out in such Assignment of Lease, shall constitute a breach of this Mortgage and thereupon Mortgagee may, at its option, without notice, declare the Note immediately due and payable. Mortgagor will advise Mortgagee promptly of the execution hereafter of any lease of all or any part of the Property and shall, upon Mortgagee's request, submit to Mortgagee for examination and approval any such lease. If Mortgagee so requests, Mortgagor shall specifically collaterally assign such lease to Mortgagee (in form acceptable to Mortgagee) and it is agreed that the provisions of this Mortgage with regard to Mortgagor's obligations and Mortgagee's rights with respect to leases and collateral assignment of the same shall apply to all such additional leases and assignments thereof. Mortgagee may, at its option, perform any covenant or provision of any such lease for and on behalf of the Mortgagor and at the Mortgagor's expense and any amount advanced for this purpose shall bear interest at the same rate as for other advances and shall be secured by this Mortgage and shall be payable upon demand. The security interest created by the following paragraph of this Mortgage is specifically intended to cover and include all leases of the Property, together with all amendments and supplements thereto, between Mortgagor as lessor and any tenants named therein as lessees including all extended terms and all extensions and renewals of the terms thereof, as well as any amendments to or replacements of said leases, together with all the right, title and interest of Mortgagor as lessor hereunder, including, without and any tenants named therein as lessees, including all extended terms of all extensions and limiting the generality of the foregoing, the present and continuing right to make claim for, collect, receive and receipt for any and all of the rents, income, revenue, issues, profits and moneys payable as damages or in lieu of the rent, and moneys payable as the purchase price of the Property, or any part thereof, or of awards of claims for money and other sums of money payable or receivable hereunder, howsoever payable; and to bring actions and proceedings hereunder or for the enforcement thereof; and to do any and all things which Mortgagor or any lessor is or may be

entitled to do under the lease, provided that the assignment made by this paragraph and the collateral assignment of lease, if any, entered into simultaneously herewith or subsequent hereto shall not impair or diminish any obligations of Mortgagor under the lease nor shall any obligations be imposed upon the Mortgagee, except at Mortgagee's option, to perform any duties or obligations imposed by the terms of the lease upon the Mortgagor as lessor in said lease. Nothing herein contained, including the acceptance of a Collateral Assignment of Lease by Mortgagee, shall subordinate the lien of this Mortgage to such lease unless such subordination is specifically provided for herein or by separate written instrument executed by Mortgagee.

23. That, in addition to all other right, title and interest of Mortgagor granted, mortgaged, conveyed, pledged and assigned herein, or in instruments collateral hereto, Mortgagee shall have, and there is hereby created in favor of Mortgagee, a security interest in all equipment and fixtures now or hereafter attached to or used in connection with the Property, as well as any other property of Mortgagor as may be useful and necessary for operation of the Property, including, but not limited to, electrical, plumbing, heating and cooling systems, it being the intention of the parties hereto that, so far as may be permitted by law, all property of the character hereinabove described, which is now owned or is hereafter acquired by Mortgagor and is affixed, attached, or annexed to or used in connection with the Property, shall be and remain or become and constitute a portion of the Property and be subject to the lien of the security interest created by this Mortgage, together with all rents, income, revenues, issues and profits thereof and present and continuing right in the Mortgagee to make claim for, collect, receive and receipt for the same. Mortgagor will not remove, attempt to remove or permit to be removed any part of the Property, which includes items described in the security instrument referenced in Paragraph 22, without first and prior to removal thereof, having received permission in writing for such removal from Mortgagee. Mortgagor will immediately execute such Financing Statements and renewals thereof as may be periodically requested by Mortgagee. If Mortgagor fails or refuses to comply with such request, Mortgagee is irrevocably authorized to execute such documents as Mortgagee's attorney-in-fact.

24. To not use, nor knowingly permit the use of, the Property or any part thereof for any unlawful purpose or for the commission of a nuisance.

25. That neither the provisions of this Mortgage, nor of the Note, shall have the effect of or be construed as requiring or permitting the Mortgagor to pay interest in excess of the highest rate per annum allowed by the laws of the State of Florida on any item or items of indebtedness referred to in the Note or this Mortgage and, if any such excess interest be charged or paid, written notification thereof shall be given by Mortgagor to Mortgagee and such excess interest, together with interest thereon at the legal rate, shall, at Mortgagor's option, either be credited to the unpaid principal indebtedness secured hereby or reimbursed to the Mortgagor.

26. That any part of the security herein described and covered by the lien of this Mortgage may be released with or without consideration and without regard to the amount of consideration furnished without in anywise altering, varying or diminishing the force, effect or lien of this Mortgage or any renewal or extension of it, and the same shall continue as a lien on all Property not expressly released until all sums, with interest and charges hereby secured, be fully paid.

27. That the terms "hazardous waste", "hazardous substance", "disposal", "release", and "threatened release", as used in this Mortgage, shall have the same meanings as set forth in the

Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. Section 9601, et. Seq., ("CERCLA"), the Superfund Amendments and Reauthorization Act of 1986, Pub. L. No. 99-499 ("SARA") the Hazardous Materials Transportation Act. 49 U.S.C. Section 6901, et. Seq., or other applicable state or federal laws, rules, or regulations adopted pursuant to any of the foregoing. Mortgagor represents and warrants to Mortgagee that: (a) during the period of Mortgagor's ownership of the Property, there has been no use, generation, manufacture, storage, treatment, disposal, release or threatened release of any hazardous waste or substance by any person on, under, or about the Property; and (b) Mortgagor has no knowledge of, or reason to believe that there has been, except as previously disclosed to and acknowledged by Mortgagee in writing, (i) any use, generation, manufacture, storage, treatment, disposal, release or threatened release of any hazardous waste or substance by any prior Developers or occupants of the Property or (ii) any actual or threatened litigation or claims of any kind by any person relating to such matters; and (c) except as previously disclosed to and acknowledged by Mortgagee in writing, (i) neither Mortgagor, nor any tenant, Developer, agent or other authorized present or future user of the Property, shall use, generate, manufacture, store, treat, dispose of or release any hazardous waste or substance on, under or about the Property and (ii) any activity on the Property shall be conducted in compliance with all applicable federal, state and local laws, regulations and ordinances, including, without limitation, those laws, regulations and ordinances described above. Mortgagor authorizes Mortgagee and Mortgagee's agents to enter upon the Property to make such inspections and tests as Mortgagee may deem appropriate to determine compliance by Mortgagor and the Property with the provisions hereof. Any inspections or tests made by Mortgagee shall be for Mortgagee's purposes and benefit only and shall not be construed to create any responsibility or liability on the part of Mortgagee to Mortgagor or to any other person or entity, governmental or otherwise. The representations and warranties continued herein are based on Mortgagor's due diligence in investigating the Property for hazardous waste. Mortgagor (a) releases and waives any present or future claims against Mortgagee for indemnity or contribution if Mortgagor becomes liable for cleanup or other costs under such laws, and (b) agrees to indemnify and hold harmless Mortgagee against any and all claims, losses, liabilities, damages, penalties and expenses which Mortgagee may directly or indirectly sustain or suffer resulting from a breach of this provision or as a consequence of any use, generation, manufacture, storage, disposal, release or threatened release occurring prior or subsequent to Mortgagor's ownership or interest in the Property, whether or not the same was or should have been known to Mortgagor. The provisions of this paragraph, including the obligation to indemnify, shall survive the payment of the Note and the satisfaction and reconveyance of the lien of this Mortgage and shall not be affected by Mortgagee's acquisition of any interest in the Property, whether by foreclosure or otherwise.

28. To maintain the Property, at Mortgagor's sole expense, and make such repairs and renovations as may, during the term of this Mortgage, be required for compliance with The Americans with Disabilities Act, 42. U.S.C. 12101, et. Seq. and amendments thereto (ADA). Any notice or warning of violation or noncompliance of or with the provisions of ADA received by Mortgagor shall be sent in accordance with Paragraph 18 to Mortgagee within ten (10) days after receipt thereof and Mortgagor shall have a period of thirty (30) days thereafter (unless a shorter term is imposed by the notice or warning) within which to furnish to Mortgagee a written plan and time schedule for correcting the deficiency in accordance with the requirements of ADA.

29. This Mortgage shall, at the option of the Mortgagee, secure, in addition to the debt evidenced by the Note, any other liability or liabilities owned by the Mortgagor to the Mortgagee, whether direct or indirect, secured or unsecured, contingent or fixed, now due or to become due, or which may

hereafter be contracted by virtue of any advances, disbursements, payments, charges or costs made or incurred by the Mortgagee under the terms of this Mortgage or any other instrument including, but not by way of limitation, promissory notes, guaranties, financing statements, security Agreements, endorsements and overdrafts, though the aggregate outstanding amount at any time may exceed the amount originally secured hereby. Mortgagee shall be entitled to receive and retain the full amount of the debt evidenced by the Note and the other liabilities herein described in any action for foreclosure, redemption by the Mortgagor, accounting for the proceeds of a foreclosure sale, accounting for insurance proceeds or condemnation award.

30. To waive and renounce to the extent permitted by law any and all homestead and exemption rights Mortgagor may now or hereafter have as against the payment of the obligation evidences or secured hereby, or any portion thereof, or any other obligation or damage that may accrue to Mortgagee's benefit under the terms of the Note and this Mortgage.

31. To pay to Mortgagee a transfer fee each time the legal or beneficial title to the Property is conveyed or assigned. The amount of such fee will be a specified amount or a percent of the principal balance remaining unpaid on the Note at the time of conveyance or assignment, except that such transfer fee shall not exceed one percent (1%) of the then principal balance or three hundred dollars (\$300.00), whichever is greater. The collection of a transfer fee shall not be construed as authorizing the assumption of this Mortgage other than as provided hereinabove.

32. That Mortgagee shall not be responsible or liable to anyone other than the Mortgagor for Mortgagee's disbursement of or failure to disburse the funds or any part thereof evidenced by the Note, and no third party, including any creditor or subrogate of the Mortgagor, shall have any claim or right against the Mortgagee under this Mortgage or the Note for Mortgagee's administration of disbursement, nor shall the Mortgagee be liable for the manner in which any disbursements under this Mortgage or the Note may be applied or misapplied by the Mortgagor.

33. In this Mortgage and the Note, the singular shall include the plural and the masculine shall include the feminine and neuter. Whenever the term Mortgagor is used herein, it shall include corporate and individual mortgagors, their heirs, personal representatives, trustees in dissolution, assigns and successors in interest in title to the Property.

34. This Mortgage, the Note and other instruments incidental hereto or referenced herein shall be construed according to the laws of the State of Florida, and the venue for any litigation brought on account of or incidental to this Mortgage shall be Brevard County, Florida, except that any foreclosure of this Mortgage will be filed in the county wherein the Property is located.

35. Mortgagee and Mortgagor hereby knowingly, voluntarily, and intentionally waive the right either may have to a trial by jury in respect to any litigation based hereon, or arising out of, under or in connection with this Mortgage and any Agreement contemplated to be executed in conjunction herewith, or any course of conduct, course of dealing, statements (whether verbal or written) or action of either party. This provision is a material inducement for Mortgagee entering into this transaction with Mortgagor.

36. Upon fulfillment of the requirements of this Mortgage, Note and Deed Restriction, the Mortgagee shall record a Satisfaction of Mortgage with the Clerk of the Court, Brevard County, Florida.

*IN WITNESS WHEREOF*, the Mortgagor has signed and sealed this Mortgage, the day and year first above written.

\_\_\_\_\_  
Sean Marks, President and CEO,  
Brevard Community Partnership, Inc.

Date: \_\_\_\_\_

STATE OF FLORIDA  
COUNTY OF BREVARD

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2015,  
by \_\_\_\_\_, who is  personally known to me or has produced   
\_\_\_\_\_ as identification and who did take an oath.

**NOTARY SEAL**

\_\_\_\_\_  
Notary Public – State of Florida

Commission Expires:  
\_\_\_\_\_

## ATTACHMENT B

### 20 YEAR MORTGAGE NOTE Brevard County Board of County Commissioners Brevard County, Florida

\$129,250

\_\_\_\_\_, 2015

**For Value Received**, the undersigned promises to pay to the order of Brevard County Board of County Commissioners, 2725 Judge Fran Jamieson Way, Building B, Suite 106, Viera, Florida, the principal sum of One Hundred Twenty Nine Thousand Two Hundred Fifty Dollars (\$129,250) together with interest thereon at the rate of zero percent (0%) per annum, shall be forgiven at the completion of the (20) years. The Mortgage note shall become due within Twenty (20) years if all or any part of the Property or any interest in it is sold, transferred, gifted or otherwise conveyed, whether by voluntary act, involuntarily, by operation of law or otherwise, or if the Mortgagor is divested of title by judicial sale, levy or other proceeding, or if foreclosure action is instituted against the Property, or if the Mortgage is satisfied or refinanced, or if the Property is not utilized for affordable housing for persons with low income as defined by the HUD guidelines federal, state and local regulations. **The Lender reserves the first right of refusal for the purchase at the current market value minus awards** or to have all sums secured by this Mortgage become payable upon demand. Upon fulfillment of the terms of this Mortgage, at the end of thirty (30) years from the date of this note, this note shall be extinguished in full.

**THIS NOTE** is secured by a Mortgage dated the \_\_\_\_ day of 2015 herewith and is to be construed and enforced according to the laws of the State of Florida; upon violation of the terms of the Mortgage and this note, the whole sum of the principal Failure to exercise this option by Brevard County shall not constitute a waiver of the right to exercise the same in the event of subsequent default.

A default shall be the occurrence of any of the following events, and upon that occurrence the Lender may, at the Lender's option, declare all sums secured by the Mortgage to be immediately due and payable.

- a. Nonperformance by the Borrower of any covenant, Agreement, term or condition of the Mortgage, or of the Note, or of any other Agreement made by the Borrower with the Lender in connection with such indebtedness, after the Borrower has been given due notice, as described hereafter, by the Lender of such nonperformance;
- b. Failure of the Borrower to perform any covenant, Agreement, term or condition in any instrument creating a lien upon the mortgaged property, or any part thereof, which shall have priority over the lien of the Mortgage;
- c. The Lender's discovery of the Borrower's failure in any application of the Borrower to the Lender to disclose any fact deemed by the Lender to be material, or the making therein, or in any of the Agreements entered into by the Borrower with the Lender (including, but not limited to, the Note and Mortgage) of any misrepresentation by, on behalf of, or for the benefit of the Borrower; and
- d. If property does not remain the principal residence of the Borrower, or if all or any part of the property or an interest therein is rented, leased, sold or transferred by the Borrower.

**OPTION OF LENDER UPON THE EVENT OF A DEFAULT:** Upon the occurrence of a default, the Lender shall send or hand deliver the Notice to the Borrower as is provided in Section XVII hereof, specifying:

- a. The breach;
- b. The action required to cure such breach; and
- c. A date not less than thirty (30) days from the date the Notice is hand delivered or mailed to the Borrower by which such breach must be cured.

If the default is not cured on or before the date specified in the Notice, the Lender, at the Lender's option, may declare all of the sums secured by the Mortgage to be immediately due and payable without further demand.

The Lender shall give prior written notice of acceleration or default under the subordinate lien to the Mortgage Holder.

All sums repaid under the terms of this Agreement shall be paid to Brevard County Board of County Commissioners in care of Housing and Human Services Department.

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**Sean Marks, President and CEO  
Brevard Community Partnership, Inc.**

**Date:** \_\_\_\_\_

**ATTACHMENT C**

**LAND USE RESTRICTION AGREEMENT**

This LAND USE RESTRICTION AGREEMENT (hereinafter called the Agreement) is made and entered into as of this \_\_\_\_ day of \_\_\_\_\_, 2015 between **Brevard Community Partnership, Inc.** (hereinafter called the Developer/Owner) and Brevard County Board of County Commissioners, a political subdivision of the State of Florida (hereinafter called the County) for property to be located at:

XXXXXXX

**PREAMBLE**

*WHEREAS*, the County has agreed under certain conditions to issue a deferred payment loan using HOME funds to provide financing for preservation of affordable rental housing for families who have an income between fifty (50%) and eighty percent (80%) of Area Median Income with the initial occupancy reserved for persons who have an income at or below sixty percent (60%) of Area Median Income located at the address to be occupied by eligible persons as described in Section II (Definition) of the project Agreement signed on \_\_\_\_\_; and

*WHEREAS*, in addition to any other requirements the County may impose incident to its mortgage, the Developer/Owner has agreed that the unit shall be leased, rented or made available on a continuous basis for rental to low-income, and very low income persons as described in Section 1 of the Agreement signed on \_\_\_\_\_;

*WHEREAS*, should the Developer/Owner at any time disband their corporation, said property shall be transferred to another nonprofit approved by Brevard County.

*NOW, THEREFORE*, in consideration of the mutual covenants set forth herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the County and the Developer/Owner do hereby contract and agree as follows:

**AGREEMENT**

**ARTICLE 1.            RENTAL HOUSING RESTRICTIONS**

**1.1      Occupancy**

The housing unit must be set-aside for persons who upon initial occupancy of the unit must have a annual gross incomes below sixty percent (60%) AMI for the Melbourne-Titusville-Palm Bay Metropolitan Statistical Areas with the understanding thereafter the unit are reserved for persons whose income is between fifty percent (50%) and eighty (80%) AMI for Melbourne-Titusville-Palm Bay Metropolitan Statistical Areas.

### **1.2 Income/Eligibility**

The Developer/Owner shall verify and document the income of all tenants following HOME regulations. The annual income of tenants renting HOME-assisted units must be recertified each year. In accordance with the Florida Housing Finance Corporation's (FHFC) compliance guidelines, an increase in a tenant's income of up to one hundred forty percent (140%) of the applicable limit will not result in disqualification. However, the rent will be adjusted based on the new income. At an annual or interim recertification, if a tenant of a HOME-assisted unit realizes an increase in income that exceeds one hundred forty percent (140%) of the applicable limit, the tenant may no longer be counted toward satisfaction of the extremely low-income requirement. Each subsequent unit in the Project that becomes vacant shall be rented to an income-eligible tenant until the Project is again in compliance.

### **1.3 HOME Affordability**

All housing units are subject to affordability limits established for HOME-assisted rental units on an annual basis.

### **1.4 Long-term Affordability**

The HOME-assisted unit shall be affordable for the duration of the Agreement. If offered for sale prior to the end of the affordability period, the Project shall be subject to the right of first refusal for purchase at the current market value minus grant award by County to an approved eligible nonprofit organizations that would provide continued occupancy by extremely low-income tenants. The County shall have sixty percent (60) days from the date of notification of intent to sell by the Developer/Owner to identify an eligible nonprofit.

### **1.5 Housing Standards**

The Rental Unit assisted with HOME funds shall be in compliance with local code requirements for the duration of the affordability period. The Developer/Owner shall cooperate with the County by allowing on-site inspection of HOME assisted units for compliance with state law and local code requirements

## **ARTICLE II. CONSIDERATION**

The County has authorized and issued a deferred payment loan to the Developer/Owner as an inducement to the Developer/Owner to operate the units in the Project for the benefit of persons whose income is between (50%) and (80%) of Annual Median Income for the Palm Bay-Melbourne-Titusville, FL Metropolitan Statistical Area (MSA) for a period of twenty (20) years following completion of the Project. In consideration of the issuance of the loan by the County for the foregoing purposes, the County and Developer/Owner have entered into this Agreement.

## **ARTICLE III. RELIANCE**

In performing its duties hereunder, the County may rely upon statements and certifications of the Developer/Owner, believed to be genuine and to have been executed by the proper person or persons, and upon audits of the books and records of the Developer/Owner pertaining to occupancy of the Project. The Developer/Owner may rely upon certification of very low and low-income households reasonably believed to be genuine and to have been executed by the proper person or persons.

#### **ARTICLE IV. TERM**

This Agreement shall become effective upon its execution and shall remain in full force and effect for a period of twenty (20) years after initial occupancy.

#### **ARTICLE V. INSURANCE**

The Developer/Owner shall insure the property for the full replacement cost for the duration of the Land Use Restriction Agreement. Any such policy must be issued by a company acceptable to the County, include the County as an additional insured and provide for at least thirty (30) day's notice prior to execution. The County shall receive written notice at least thirty (30) days to any change in insurance coverage.

#### **ARTICLE VI. CHANGE IN INSURANCE COVERAGE**

Subject to the superior rights of the holder of any first mortgage, in the event that the Project is damaged or destroyed, the Developer/Owner shall deposit with the County any insurance proceeds and shall promptly commence to rebuild, replace, repair or restore the Project in such manner as is consistent with the Mortgage Note and Agreement. The County shall make any such insurance proceeds available to provide funds for such restoration work. In the event the Developer/Owner fails to commence or to complete the rebuilding, repair, replacement or restoration of the Project after notice from the County, the County shall have the right, in addition to any other remedies granted in the Mortgage Note and Agreement or at law or in equity, to repair, restore, rebuild or replace the Project so as to prevent the occurrence of a default hereunder.

#### **ARTICLE VII. SALE, TRANSFER OR REFINANCING OF THE PROJECT**

The loan for the Project hereunder as to both principal and interest shall be assumable upon project sale, transfer or refinancing if the proposed Developer/Owner of the Project is an eligible nonprofit organization (approved by the County) and agrees to maintain all set asides and other requirements of the HOME Loan Documents for the period originally specified.

In the event the above-stated conditions are not met, the loan for the Project hereunder as to both principal and interest shall be due in full upon the sale, transfer or refinancing of the Project.

Notwithstanding, payment of principal and interest in full, these restrictions shall remain in full force and effect for the term of this Agreement.

#### **ARTICLE VIII. ENFORCEMENT**

Upon the occurrence of a default, the County shall notify the Developer/Owner of such default, specifying:

- A. The breach; and
- B. The action required to cure such breach; and
- C. A date not less than thirty (30) days from the date the Notice is hand delivered or mailed to the Borrower by which such breach must be cured.

If the default is not cured on or before the date specified in the Notice, the County, at the County's option, may declare all of the sums secured by the Mortgage to be immediately due and payable without further demand.

The County shall give prior written notice of acceleration or default under the subordinate lien to the Mortgage Holder.

All sums repaid under the terms of this Agreement shall be paid to Brevard County Board of County Commissioners in care of Housing and Human Services Department.

**ARTICLE IX. RECORDING AND FILING**

Upon execution and delivery by the parties hereto, the County shall cause this Agreement and all amendments and supplements hereto to be recorded and filed in the official public records of Brevard County.

**ARTICLE X. COVENANTS TO RUN WITH THE LAND**

This Agreement and the covenants contained herein shall run with the land and shall bind, and the benefits shall inure to, respectively, the Developer/Owner and the County and their respective successors and assigns during the Term of this Agreement.

**ARTICLE XI. GOVERNING LAW**

This Agreement shall be governed by and construed in accordance with the laws of the State of Florida, with respect to both substantive rights and with respect to procedures and remedies. Venue for any legal action by any party to this Agreement to interpret, construe or enforce this Agreement shall be in a court of competent jurisdiction in and for Brevard County, Florida, and any trial shall be non-jury.

**ARTICLE XII. ATTORNEY'S FEES AND COSTS**

In the event of any legal action to enforce the terms of this Agreement, each party shall bear its own attorney's fees and costs.

**ARTICLE XIII. NOTICE AND EFFECT**

Any notice required to be given hereunder shall be given by personal delivery, by registered mail or by registered expedited service at the addresses specified below or at such other addresses as may be specified in writing by the parties hereto, and any such notice shall be deemed received on the date of delivery if by personal delivery or expedited delivery service, or upon actual receipt if sent by registered mail.

**FOR THE COUNTY**

Housing and Human Services Department  
Ian Golden, Director  
2725 Judge Fran Jamieson Way  
Building B  
Viera, Florida 32940

**FOR THE DEVELOPER/OWNER**

Brevard Community Partnership, Inc.  
Sean Marks, President and CEO  
401 Ocean Ave  
Suite 200-A  
Melbourne Beach, FL.

I, the undersigned, have read and fully agree to abide by the Land Use Restriction Agreement as referenced above.

Brevard Community Partnership, Inc.

\_\_\_\_\_  
**Sean Marks, President and CEO**

\_\_\_\_\_  
**Date**

**STATE OF FLORIDA  
COUNTY OF BREVARD**

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2015,  
by \_\_\_\_\_, who is  personally known to me  
or has produced  \_\_\_\_\_ as identification and who did take an oath.

**NOTARY SEAL**

\_\_\_\_\_  
**Notary Public – State of Florida  
My Commission Expires: \_\_\_\_\_**

**ATTACHMENT D  
2015 INCOME AND RENT LIMITS**

**Income Limits for Palm Bay-Melbourne-Titusville, FL MSA**

<b>HOUSEHOLD</b>	<b>30% of AMI</b>	<b>Very Low Income</b>	<b>60% of AMI</b>	<b>Low Income</b>
1 person	\$13,000	\$21,700	\$26,040	\$34,650
2 persons	\$14,850	\$24,800	\$29,760	\$39,600
3 persons	\$16,700	\$27,900	\$33,480	\$44,550
4 persons	\$18,550	\$30,950	\$37,140	\$49,500
5 persons	\$20,050	\$33,450	\$40,140	\$53,500
6 persons	\$21,550	\$35,950	\$43,140	\$57,450
7 persons	\$23,050	\$38,400	\$46,080	\$61,400
8 persons	\$24,500	\$40,900	\$49,080	\$65,350

**Rent Limits for Palm Bay-Melbourne-Titusville, FL MSA**

<b>Efficiency</b>	<b>1 BR</b>	<b>2 BR</b>	<b>3 BR</b>	<b>4 BR</b>	<b>5 BR</b>	<b>6 BR</b>
\$542	\$581	\$697	\$805	\$898	\$991	\$1083



ATTACHMENT F  
SHIP/HOME DEMOGRAPHIC AND TRACKING SHEET

Applicant's/Organization's Name (Head of Household): \_\_\_\_\_

Address: \_\_\_\_\_

Type of assistance:     Acquisition - Rental  
                                  Rehabilitation - Rental

\_\_\_\_\_ Maximum per unit award amount (\$ \_\_\_\_\_ Construction + \$5000 Soft Costs)  
(total project costs cannot exceed maximum **this includes soft costs**)

\_\_\_\_\_ Date funds encumbered

\_\_\_\_\_ Applicants income level (ELI, VL, L, or MOD)

Yes \_\_\_\_\_ No \_\_\_\_\_ Unincorporated area (Is the unit in County, Unincorporated area?)

\_\_\_\_\_ Age of head of household    \_\_\_\_\_ Number of persons in household    # of Bed Rooms \_\_\_\_\_

Race: \_\_\_ White \_\_\_ Black \_\_\_ Hispanic \_\_\_ Asian \_\_\_ American Indian \_\_\_ Other (Specify)

Special Needs: Yes \_\_\_ No \_\_\_  
                                 If yes, \_\_\_ elderly \_\_\_ disabled \_\_\_ farm worker \_\_\_ developmental disability)

Monthly Rent Amount \$ \_\_\_\_\_ (Client's monthly rental rate)

\_\_\_\_\_ Market or Original rent rate  
\_\_\_\_\_ SHIP/HOME loan amount  
\_\_\_\_\_ SHIP/HOME grant amount  
\_\_\_\_\_ Amount of public funds in this project or unit  
\_\_\_\_\_ Amount of private funds in this project or unit

Yes \_\_\_\_\_ No \_\_\_\_\_ Rental activity  
Yes \_\_\_\_\_ No \_\_\_\_\_ Construction activity

Completed by: \_\_\_\_\_ Date \_\_\_\_\_ Entered by: \_\_\_\_\_ Date \_\_\_\_\_

\*\*\*\*\*Close Out\*\*\*\*\*

Total Project Cost \$ \_\_\_\_\_ (\$ \_\_\_\_\_ Total Construction + \$ \_\_\_\_\_ Total Soft Costs)

\_\_\_\_\_ Final Completion Date (date funds are fully expended and unit is occupied)

Close Out: Completed by \_\_\_\_\_ Date \_\_\_\_\_ Entered by \_\_\_\_\_ Date \_\_\_\_\_

Reviewed by \_\_\_\_\_ Date \_\_\_\_\_

ATTACHMENT G  
HOUSING AND HUMAN SERVICES DEPARTMENT  
REQUEST FOR REIMBURSEMENT OF FUNDS /SUPPLEMENTAL SHEET

REVIEWED BY: CONTRACT/PROJECT MONITOR: _____	
FINANCIAL APPROVAL: _____	
BUSINESS AREA: 1472 COST CENTER: 303052 G.L. ACCOUNT: 5460000	
VENDOR #30264 P.O.#: _____ DOC.#: _____	
AMOUNT: \$ _____	
APPROVED FOR PAYMENT BY: _____	
AUTHORIZED SIGNATURE	DATE
FUNDING SOURCE:	HOME-CHDO
NAME OF ORGANIZATION:	BREVARD COMMUNITY PARTNERSHIP, INC
CONTACT PERSON:	SEAN MARKS, PRESIDENT/CEO
PROGRAM ADDRESS:	401 OCEAN AVE SUITE 200-A MELBOURNE BEACH, FL
MAILING ADDRESS: <i>(if different from program address)</i>	
E-MAIL ADDRESS:	
TELEPHONE NUMBER:	321-676-8922
REQUEST DATE:	
REQUEST NUMBER:	#
FINAL PAYMENT REQUEST:	Yes/No
FUNDS ARE HEREBY REQUESTED FOR THE FOLLOWING:	
Rehabilitation for Park Lane	\$
Rehabilitation for Aurora St	\$
▪ TOTAL AMOUNT TO BE PAID	\$
AUTHORIZED SIGNATURE:	

#	Date of Request	Amount Expended	Amount Retained	Amount Requested	Amount Expended YTD	Percentage expanded (% Spent YTD)	Balance
							\$129,250



Developer /Owner Name: North Brevard Charities

Draw Request #

A	B	C	D	E	F	G	H	I
ITEM NO.	DESCRIPTION OF WORK	QUOTE AMOUNT	WORK COMPLETED FROM PREVIOUS REQUEST (D + E)	THIS REQUEST	TOTAL COMPLETED TO DATE (D + E)	% (F / C)	BALANCE TO FINISH (C - F)	RETAINAGE 10%
<b>Draw #4</b>			\$0.00		\$0.00	0.00%	\$0.00	\$0.00
			\$0.00		\$0.00	0.00%	\$0.00	\$0.00
			\$0.00		\$0.00	0.00%	\$0.00	\$0.00
			\$0.00		\$0.00	0.00%	\$0.00	\$0.00
			\$0.00		\$0.00	0.00%	\$0.00	\$0.00
			\$0.00		\$0.00	0.00%	\$0.00	\$0.00
			\$0.00		\$0.00	0.00%	\$0.00	\$0.00
			\$0.00		\$0.00	0.00%	\$0.00	\$0.00
<b>Draw #5</b>			\$0.00		\$0.00	0.00%	\$0.00	\$0.00
			\$0.00		\$0.00	0.00%	\$0.00	\$0.00
			\$0.00		\$0.00	0.00%	\$0.00	\$0.00
			\$0.00		\$0.00	0.00%	\$0.00	\$0.00
			\$0.00		\$0.00	0.00%	\$0.00	\$0.00
			\$0.00		\$0.00	0.00%	\$0.00	\$0.00
			\$0.00		\$0.00	0.00%	\$0.00	\$0.00
			\$0.00		\$0.00	0.00%	\$0.00	\$0.00
			\$0.00		\$0.00	0.00%	\$0.00	\$0.00
			\$0.00		\$0.00	0.00%	\$0.00	\$0.00
			\$0.00		\$0.00	0.00%	\$0.00	\$0.00
<b>Draw #6</b>	10% retainage			\$0.00	\$0.00		\$0.00	
	SUB TOTALS PAGE 2		\$0.00	\$0.00	\$0.00		\$0.00	\$0.00
	TOTALS		\$0.00	\$0.00	\$0.00	0.00%	\$0.00	\$0.00

## ATTACHMENT H

### HOME REQUIREMENTS

- **24 CFR PART 87 ANTI-LOBBYING:** No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendments, or modification of any Federal contract, grant, loan, or cooperative agreement.

If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

- **24 CFR 92.203 INCOME DETERMINATIONS:** The HOME program has income targeting requirements for the HOME program and the HOME projects. Each family must meet the established annual income requirements to participate as a beneficiary in any HOME program or HOME funded project.
  - For families who are tenants in HOME-assisted housing and not receiving HOME tenant-based rental assistance, the participating jurisdiction must initially determine annual income using the method in paragraph (a)(1)(i) of this section. For subsequent income determinations during the period of affordability, the participating jurisdiction may use any one of the following methods in accordance with § 92.252(h):
    1. Examine the source documents evidencing annual income (e.g., wage statement, interest statement, unemployment compensation statement) for the family.
    2. Obtain from the family a written statement of the amount of the family's annual income and family size, along with a certification that the information is complete and accurate. The certification must state that the family will provide source documents upon request.
    3. Obtain a written statement from the administrator of a government program under which the family receives benefits and which examines each year the annual income of the family. The statement must indicate the tenant's family size and state the amount of the family's annual income; or alternatively, the statement must indicate the current dollar limit for very low- or low-income families for the family size of the tenant and state that the tenant's annual income does not exceed this limit.

- For all other families, the participating jurisdiction must determine annual income by examining the source documents evidencing annual income (e.g., wage statement, interest statement, unemployment compensation statement) for the family.
  - When determining whether a family is income eligible, the participating jurisdiction must use one of the following three definitions of “annual income”:
    1. Annual income” as defined at 24 CFR 5.609 (except when determining the income of a homeowner for an owner-occupied rehabilitation project, the value of the homeowner's principal residence may be excluded from the calculation of Net Family Assets); or
    2. Annual Income as reported under the Census long-form for the most recent available decennial Census. This definition includes:
      - Wages, salaries, tips, commissions, etc.;
      - Self-employment income from owned non-farm business, including proprietorships and partnerships;
      - Farm self-employment income;
      - Interest, dividends, net rental income, or income from estates or trusts;
      - Social Security or railroad retirement;
      - Supplemental Security Income, Aid to Families with Dependent Children, or other public assistance or public welfare programs;
      - Retirement, survivor, or disability pensions; and
      - Any other sources of income received regularly, including Veterans' (VA) payments, unemployment compensation; and alimony; or
    3. Adjusted gross income as defined for purposes of reporting under Internal Revenue Service (IRS) Form 1040 series for individual Federal annual income tax purposes.
- **24 CFR 92.216 INCOME TARGETING: TENANT BASED RENTAL ASSISTANT AND RENTAL ASSISTANCE:**
    - Each participating jurisdiction must invest HOME funds made available during a fiscal year so that, with respect to tenant-based rental assistance and rental units:
      - (a) Not less than 90 percent of:
        - (1) The families receiving such rental assistance are families whose annual incomes do not exceed 60 percent of the median family income for the area, as determined and made available by HUD with adjustments for smaller and larger families (except that HUD may establish income ceilings higher or lower than 60 percent of the median for the area on the basis of HUD's findings that such variations are necessary because of prevailing levels of construction cost or fair market rent, or unusually high or low family income) at the time of occupancy or at the time funds are invested, whichever is later; or
        - (2) The dwelling units assisted with such funds are occupied by families having such incomes; and

(b) The remainder of:

(1) The families receiving such rental assistance are households that qualify as low-income families (other than families described in paragraph (a)(1) of this section) at the time of occupancy or at the time funds are invested, whichever is later; or

(2) The dwelling units assisted with such funds are occupied by such households.

- **24 CFR 92.251 PROPERTY STANDARDS:**

- Housing that is constructed or rehabilitated with HOME funds must meet all applicable local codes, rehabilitation standards, ordinances, and zoning ordinance at the time of project completion. The housing must meet accessibility requirements at 24 CFR part 8, which implements Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and covered multifamily dwellings, as defined at 24 CFR 100.201, must also meet the design and construction requirements at 24 CFR 100.205, which implement the Fair Housing Act (42 U.S.C. 3601-3619).
- An owner of rental housing assisted with HOME funds must maintain the housing in compliance with all applicable State and local housing quality standards and code requirements and if there are no such standards or code requirements, the housing must meet the housing quality standards in 24 CFR 982.401.

- **24 CFR 92.252 QUALIFICATION AS AFFORDABLE HOUSING, RENTAL HOUSING:** The HOME-assisted units in a rental housing project must be occupied only by households that are eligible as low-income families and must meet the following requirements to qualify as affordable housing. The affordability requirements also apply to the HOME-assisted non-owner-occupied units in single-family housing purchased with HOME funds in accordance with § 92.254.

a. *Rent limitation.* HUD provides the following maximum HOME rent limits. The maximum HOME rents are the lesser of:

1. The fair market rent for existing housing for comparable units in the area as established by HUD under 24 CFR 888.111; or
2. A rent that does not exceed 30 percent of the adjusted income of a family whose annual income equals 65 percent of the median income for the area, as determined by HUD, with adjustments for number of bedrooms in the unit. The HOME rent limits provided by HUD will include average occupancy per unit and adjusted income assumptions.

b. *Additional Rent limitations.* In rental projects with five or more HOME-assisted rental units, twenty (20) percent of the HOME-assisted units must be occupied by very low- income families and meet one of following rent requirements:

1. The rent does not exceed 30 percent of the annual income of a family whose income equals 50 percent of the median income for the area, as determined by HUD, with adjustments for smaller and larger families. HUD provides the HOME rent limits which include average occupancy per unit and adjusted income assumptions. However, if the

rent determined under this paragraph is higher than the applicable rent under (a) of this section, then the maximum rent for units under this paragraph is that calculated under paragraph (a).

2. The rent does not exceed 30 percent of the family's adjusted income. If the unit receives Federal or State project-based rental subsidy and the very low-income family pays as a contribution toward rent not more than 30 percent of the family's adjusted income, then the maximum rent (i.e., tenant contribution plus project-based rental subsidy) is the rent allowable under the Federal or State project-based rental subsidy program.
- c. *Initial rent schedule and utility allowances.* The participating jurisdiction must establish maximum monthly allowances for utilities and services (excluding telephone). The participating jurisdiction must review and approve rents proposed by the owner for units subject to the maximum rent limitations in paragraphs (a) or (b) of this section. For all units subject to the maximum rent limitations in paragraphs (a) or (b) of this section for which the tenant is paying utilities and services, the participating jurisdiction must ensure that the rents do not exceed the maximum rent minus the monthly allowances for utilities and services.
- d. *Nondiscrimination against rental assistance subsidy holders.* The owner cannot refuse to lease HOME-assisted units to a certificate or voucher holder under 24 CFR part 982— Section 8 Tenant-Based Assistance: Unified Rule for Tenant-Based Assistance under the Section 8 Rental Certificate Program and the Section 8 Rental Voucher Program or to the holder of a comparable document evidencing participation in a HOME tenant-based rental assistance program because of the status of the prospective tenant as a holder of such certificate, voucher, or comparable HOME tenant-based assistance document.
- e. *Periods of Affordability.* The HOME-assisted units must meet the affordability requirements for not less than the applicable period specified in the Application, beginning after project completion. The affordability requirements apply without regard to the term of any loan or mortgage or the transfer of ownership. They must be imposed by deed restrictions, covenants running with the land, or other mechanisms approved by HUD, except that the affordability restrictions may terminate upon foreclosure or transfer in lieu of foreclosure. The County jurisdiction may use purchase options, rights of first refusal or other preemptive rights to purchase the housing before foreclosure or deed in lieu of foreclosure to preserve affordability. The affordability restrictions shall be revived according to the original terms if, during the original affordability period, the owner of record before the foreclosure, or deed in lieu of foreclosure, or any entity that includes the former owner or those with whom the former owner has or had family or business ties, obtains an ownership interest in the project or property.

*Subsequent rents during the affordability period.*

1. The maximum HOME rent limits are recalculated on a periodic basis after HUD determines fair market rents and median incomes. HUD then provides the new maximum HOME rent limits to participating jurisdictions. Regardless of changes in fair market rents and in median income over time, the HOME rents for a project are not required to be lower than the HOME rent limits for the project in effect at the time of project commitment.

2. The participating jurisdiction must provide project owners with information on updated HOME rent limits so that rents may be adjusted (not to exceed the maximum HOME rent limits in paragraph (f)(1) of this section) in accordance with the written agreement between the participating jurisdiction and the owner. Owners must annually provide the participating jurisdiction with information on rents and occupancy of HOME-assisted units to demonstrate compliance with this section.
3. Any increase in rents for HOME-assisted units is subject to the provisions of outstanding leases, and in any event, the owner must provide tenants of those units not less than 30 days prior written notice before implementing any increase in rents.

*g. Adjustment of HOME rent limits for a particular project.*

1. Changes in fair market rents and in median income over time should be sufficient to maintain the financial viability of a project within the HOME rent limits in this section.
2. HUD may adjust the HOME rent limits for a project, only if HUD finds that an adjustment is necessary to support the continued financial viability of the project and only by an amount that HUD determines is necessary to maintain continued financial viability of the project. HUD expects that this authority will be used sparingly.

*h. Tenant income.* The income of each tenant must be determined initially in accordance with § 92.203(a)(1)(i). In addition, each year during the period of affordability the project owner must re-examine each tenant's annual income in accordance with one of the options in § 92.203 selected by the participating jurisdiction. An owner of a multifamily project with an affordability period of 10 years or more who re-examines tenant's annual income through a statement and certification in accordance with § 92.203(a)(1)(ii), must examine the income of each tenant, in accordance with § 92.203(a)(1)(i), every sixth year of the affordability period. Otherwise, an owner who accepts the tenant's statement and certification in accordance with § 92.203(a)(1)(ii) is not required to examine the income of tenants in multifamily or single-family projects unless there is evidence that the tenant's written statement failed to completely and accurately state information about the family's size or income.

*i. Over-income tenants.*

1. HOME-assisted units continue to qualify as affordable housing despite a temporary noncompliance caused by increases in the incomes of existing tenants if actions satisfactory to HUD are being taken to ensure that all vacancies are filled in accordance with this section until the noncompliance is corrected.
2. Tenants who no longer qualify as low-income families must pay as rent the lesser of the amount payable by the tenant under State or local law or 30 percent of the family's adjusted income, except that tenants of HOME-assisted units that have been allocated low-income housing tax credits by a housing credit agency pursuant to section 42 of the Internal Revenue Code of 1986 (26 U.S.C. 42) must pay rent governed by section 42. In addition, in projects in which the HOME units are designated as floating pursuant to paragraph (j), tenants who no longer qualify as low-income are not required to pay as rent

an amount that exceeds the market rent for comparable, unassisted units in the neighborhood.

#### j24 CFR 92.253 TENANT AND PARTICIPANT PROTECTIONS

- a. Lease. The lease between a tenant and an owner of rental housing assisted with HOME funds must be for not less than one year, unless by mutual agreement between the tenant and the owner.
  - b. Prohibited lease terms. The lease may not contain any of the following provisions:
    1. Agreement to be sued. Agreement by the tenant to be sued, to admit guilt, or to a judgment in favor of the owner in a lawsuit brought in connection with the lease;
    2. Treatment of property. Agreement by the tenant that the owner may take, hold, or sell personal property of household members without notice to the tenant and a court decision on the rights of the parties. This prohibition, however, does not apply to an agreement by the tenant concerning disposition of personal property remaining in the housing unit after the tenant has moved out of the unit. The owner may dispose of this personal property in accordance with State law;
    3. Excusing owner from responsibility. Agreement by the tenant not to hold the owner or the owner's agents legally responsible for any action or failure to act, whether intentional or negligent;
    4. Waiver of notice. Agreement of the tenant that the owner may institute a lawsuit without notice to the tenant;
    5. Waiver of legal proceedings. Agreement by the tenant that the owner may evict the tenant or household members without instituting a civil court proceeding in which the tenant has the opportunity to present a defense, or before a court decision on the rights of the parties;
    6. Waiver of a jury trial. Agreement by the tenant to waive any right to a trial by jury;
    7. Waiver of right to appeal court decision. Agreement by the tenant to waive the tenant's right to appeal, or to otherwise challenge in court, a court decision in connection with the lease; and
    8. Tenant chargeable with cost of legal actions regardless of outcome.
- **24 CFR 92.350 OTHER FEDERAL REQUIREMENTS AND NON DISCRIMINATION:** Non-discrimination based on the protected classes as defined by the federal government.
  - **24 CFR 92.351 AFFIRMATIVE MARKETING; MINORITY OUTREACH:** Affirmative marketing procedures must include affirmative marketing steps that consist of actions to provide information and otherwise attract eligible person in the housing market as to the available housing without regard to race, color, national origin, sex, religion, familial status or disability.
  - **24 CFR 92.354 LABOR**
    - a. General.
      1. Every contract for the construction (rehabilitation or new construction) of housing that includes 12 or more units assisted with HOME funds must contain a provision requiring the payment of not less than the wages prevailing in the locality, as predetermined by the Secretary of Labor pursuant to the Davis-Bacon Act (40 U.S.C. 276a-276a-5), to all laborers and mechanics employed in the development of any part of the housing. Such

contracts must also be subject to the overtime provisions, as applicable, of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-332).

2. The contract for construction must contain these wage provisions if HOME funds are used for any project costs in § 92.206, including construction or no construction costs, of housing with 12 or more HOME-assisted units. When HOME funds are only used to assist homebuyers to acquire single-family housing, and not for any other project costs, the wage provisions apply to the construction of the housing if there is a written agreement with the owner or developer of the housing that HOME funds will be used to assist homebuyers to buy the housing and the construction contract covers 12 or more housing units to be purchased with HOME assistance. The wage provisions apply to any construction contract that includes a total of 12 or more HOME-assisted units, whether one or more than one project is covered by the construction contract. Once they are determined to be applicable, the wage provisions must be contained in the construction contract so as to cover all laborers and mechanics employed in the development of the entire project, including portions other than the assisted units. Arranging multiple construction contracts within a single project for the purpose of avoiding the wage provisions is not permitted.
  3. Participating jurisdictions, contractors, subcontractors, and other participants must comply with regulations issued under these acts and with other Federal laws and regulations pertaining to labor standards and HUD Handbook 1344.1 (Federal Labor Standards Compliance in Housing and Community Development Programs), as applicable. Participating jurisdictions must require certification as to compliance with the provisions of this section before making any payment under such contract.
- b. Volunteers. The prevailing wage provisions of paragraph (a) of this section do not apply to an individual who receives no compensation or is paid expenses, reasonable benefits, or a nominal fee to perform the services for which the individual volunteered and who is not otherwise employed at any time in the construction work. See 24 CFR part 70.
  - c. Sweat equity. The prevailing wage provisions of paragraph (a) of this section do not apply to members of an eligible family, who provide labor in exchange for acquisition of a property for homeownership or provide labor in lieu of, or as a supplement to, rent payment.
- **24 CFR 92.355 LEAD BASED PAINT:** Housing assisted with HOME funds is subject to the Lead-Based Paint Poisoning Prevention Act, the Lead-Based Paint Hazard Reduction Act of 1992, and implementing regulations.
  - **24 CFR 92.356 CONFLICT OF INTEREST:** In the procurement of property and services by participating jurisdictions, State recipients, and sub recipients, the conflict of interest provisions in 24 CFR 85.36 and 24 CFR 84.42, respectively, apply. In all cases not governed by 24 CFR 85.36 and 24 CFR 84.42, the provisions of this section apply. (b) *Conflicts prohibited.* No persons described in paragraph (c) of this section who exercise or have exercised any functions or responsibilities with respect to activities assisted with HOME funds or who are in a position to participate in a decision making process or gain inside information with regard to these activities, may obtain a financial interest or benefit from a HOME-assisted activity, or have an interest in any

contract, subcontract or agreement with respect thereto, or the proceeds hereunder, either for themselves or those with whom they have family or business ties, during their tenure or for one year thereafter.

*Persons covered.* The conflict of interest provisions of paragraph (b) of this section apply to any person who is an employee, agent, consultant, officer, or elected official or appointed official of the participating jurisdiction, State recipient, or sub recipient which are receiving HOME funds. (d)

*Exceptions: Threshold requirements.* Upon the written request of the participating jurisdiction, HUD may grant an exception to the provisions of paragraph (b) of this section on a case-by-case basis when it determines that the exception will serve to further the purposes of the HOME Investment Partnerships Program and the effective and efficient administration of the participating jurisdiction's program or project. An exception may be considered only after the participating jurisdiction has provided the following: (1) A disclosure of the nature of the conflict, accompanied by an assurance that there has been public disclosure of the conflict and a description of how the public disclosure was made; and (2) An opinion of the participating jurisdiction's or State recipient's attorney that the interest for which the exception is sought would not violate State or local law.

(e) *Factors to be considered for exceptions.* In determining whether to grant a requested exception after the participating jurisdiction has satisfactorily met the requirements of paragraph (d) of this section, HUD will consider the cumulative effect of the following factors, where applicable: (1) Whether the exception would provide a significant cost benefit or an essential degree of expertise to the program or project which would otherwise not be available; (2) Whether the person affected is a member of a group or class of low-income persons intended to be the beneficiaries of the assisted activity, and the exception will permit such person to receive generally the same interests or benefits as are being made available or provided to the group or class; (3) Whether the affected person has withdrawn from his or her functions or responsibilities, or the decision making process with respect to the specific assisted activity in question; (4) Whether the interest or benefit was present before the affected person was in a position as described in paragraph (c) of this section; (5) Whether undue hardship will result either to the participating jurisdiction or the person affected when weighed against the public interest served by avoiding the prohibited conflict; and (6) Any other relevant considerations.

(f) *Owners and Developers.* (1) No owner, developer or sponsor of a project assisted with HOME funds (or officer, employee, agent, elected or appointed official or consultant of the owner, developer or sponsor) whether private, for-profit or non-profit (including a community housing development organization (CHDO) when acting as an owner, developer or sponsor) may occupy a HOME-assisted affordable housing unit in a project. This provision does not apply to an individual who receives HOME funds to acquire or rehabilitate his or her principal residence or to an employee or agent of the owner or developer of a rental housing project who occupies a housing unit as the project manager or maintenance worker. (2) *Exceptions.* Upon written request of a housing owner or developer, the participating jurisdiction (or State recipient, if authorized by the State participating jurisdiction) may grant an exception to the provisions of paragraph (f) (1) of this section on a case-by-case basis when it determines that the exception will serve to further the purposes of the HOME program and the effective and efficient administration of the owner's or developer's HOME-assisted project. In determining whether to grant a requested exception, the participating jurisdiction shall consider the following factors:

(i) Whether the person receiving the benefit is a member of a group or class of low-income persons intended to be the beneficiaries of the assisted housing, and the exception will permit such person to receive generally the same interests or benefits as are being made available or provided to the group or class; (ii) Whether the person has withdrawn from his or her functions or responsibilities, or the decision making process with respect to the specific assisted activity in question; (4) Whether the interest or benefit was present before the affected person was in a position as described in paragraph (c) of this section; (5) Whether undue hardship will result either to the participating jurisdiction or the person affected when weighed against the public interest served by avoiding the prohibited conflict; and (6) Any other relevant considerations.

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the decision making process with respect to the specific assisted housing in question;(iii) Whether the tenant protection requirements of § 92.253 are being observed;(iv) Whether the affirmative marketing requirements of § 92.351 are being observed and followed; and(v) Any other factor relevant to the participating jurisdiction's determination, including the timing of the requested exception.

- **24 CFR 92.503 (b) REPAYMENTS:** Repayment of any HOME funds invest in housing that does not meet the affordability requirements for the period specified or a project that is terminated before completion for whatever reason, must be repaid by the Developer back to the County.
- **24 CFR PART 100 DISCRIMINATORY CONDUCT UNDER THE FAIR HOUSING ACT:** This act states that the following practices are prohibited: It is unlawful to refuse to sell or rent, or to negotiate for sale or rent, based on the protected classes. It is unlawful to discriminate in terms, conditions and privileges, services, and facilities. It is unlawful to discriminate in advertisements, statements, and notices.
- **24 CFR 107.10:** This regulation refers to the requirements of Executive Order 11063 – that all actions necessary and appropriate be taken to prevent discrimination because of race, color, religion, sex, and national origin in the sale, rental, leasing, or other disposition of residential property and related facilities, or in the use or occupancy thereof where such property or facilities are owned or operated by Federal Government or provided with federal assistance by the Department of Housing and Urban Development, and in the lending practices with respect to residential property and related facilities of lending institutions insofar as such practices relate to loans insured, guaranteed or purchased by the Department.
- **24 CFR 983.57 (e) SITE SELECTION STANDARDS; NEW CONSTRUCTION:** a site for newly constructed housing must meet the following site and neighborhood standards:
  - (1) The site must be adequate in size, exposure, and contour to accommodate the number and type of units proposed, and adequate utilities (water, sewer, gas, and electricity) and streets must be available to service the site.
  - (2) The site must not be located in an area of minority concentration, except as permitted under paragraph (e)(3) of this section, and must not be located in a racially mixed area if the project will cause a significant increase in the proportion of minority to non-minority residents in the area.
  - (3) A project may be located in an area of minority concentration only if:
    - (i) Sufficient, comparable opportunities exist for housing for minority families in the income range to be served by the proposed project outside areas of minority concentration (see paragraph (e)(3)(iii), (iv), and (v) of this section for further guidance on this criterion); or
    - (ii) The project is necessary to meet overriding housing needs that cannot be met in that housing market area (see paragraph (e) (3)(vi) of this section for further guidance on this criterion).
    - (iii) As used in paragraph (e)(3)(i) of this section, sufficient does not require that in every locality there be an equal number of assisted units within and outside of areas of minority concentration. Rather, application of this standard should produce a reasonable distribution of assisted units each year that, over a period of several years, will approach an appropriate balance of housing choices within and outside areas of minority concentration. An appropriate balance in any jurisdiction must

be determined in light of local conditions affecting the range of housing choices available for low-income minority families and in relation to the racial mix of the locality's population.

(iv) Units may be considered comparable opportunities, as used in paragraph (e)(3)(i) of this section, if they have the same household type (elderly, disabled, family, large family) and tenure type (owner/renter); require approximately the same tenant contribution towards rent; serve the same income group; are located in the same housing market; and are in standard condition.

(v) Application of this sufficient, comparable opportunities standard involves assessing the overall impact of HUD-assisted housing on the availability of housing choices for low-income minority families in and outside areas of minority concentration, and must take into account the extent to which the following factors are present, along with other factors relevant to housing choice:

(A) A significant number of assisted housing units are available outside areas of minority concentration.

(B) There is significant integration of assisted housing projects constructed or rehabilitated in the past 10 years, relative to the racial mix of the eligible population.

(C) There are racially integrated neighborhoods in the locality.

(D) Programs are operated by the locality to assist minority families that wish to find housing outside areas of minority concentration.

(E) Minority families have benefited from local activities (e.g., acquisition and write-down of sites, tax relief programs for homeowners, acquisitions of units for use as assisted housing units) undertaken to expand choice for minority families outside of areas of minority concentration.

(F) A significant proportion of minority households have been successful in finding units in non-minority areas under the tenant-based assistance programs.

(G) Comparable housing opportunities have been made available outside areas of minority concentration through other programs.

(vi) Application of the overriding housing needs criterion, for example, permits approval of sites that are an integral part of an overall local strategy for the preservation or restoration of the immediate neighborhood and of sites in a neighborhood experiencing significant private investment that is demonstrably improving the economic character of the area (a revitalizing area). An overriding housing need, however, may not serve as the basis for determining that a site is acceptable, if the only reason the need cannot otherwise be feasibly met is that discrimination on the basis of race, color, religion, sex, national origin, age, familial status, or disability renders sites outside areas of minority concentration unavailable or if the use of this standard in recent years has had the effect of circumventing the obligation to provide housing choice.

(4) The site must promote greater choice of housing opportunities and avoid undue concentration of assisted persons in areas containing a high proportion of low-income persons.

(5) The neighborhood must not be one that is seriously detrimental to family life or in which substandard dwellings or other undesirable conditions predominate, unless there is actively in progress a concerted program to remedy the undesirable conditions.

(6) The housing must be accessible to social, recreational, educational, commercial, and health facilities and services and other municipal facilities and services that are at least equivalent to those typically found in neighborhoods consisting largely of unassisted, standard housing of similar market rents.

(7) Except for new construction, housing designed for elderly persons, travel time, and cost via public transportation or private automobile from the neighborhood to places of employment providing a range of jobs for lower-income workers, must not be excessive.

- **AFFIRMATIVE MARKETING:** The Developer will actively market the units to segments of the population that might otherwise not apply for the available housing. For any homeownership or rental projects that have five (5) or more HOME-assisted units, the Developer must comply with applicable provisions of 24 CFR 92.351(a)(1). Affirmative marketing of the units must continue throughout the affordability period.
- **AMERICANS WITH DISABILITIES ACT (ADA) TITLE II:** ADA prohibits discrimination against persons with disabilities in all programs, activities, and services of a public entity.
- **AGE DISCRIMINATION:** The Age Discrimination in Employment Act of 1967 (ADEA) protects individuals who are forty (40) years of age or older from employment discrimination based on age.
- **CONFLICT OF INTEREST:** No owner, developer, or sponsor of a project assisted with HOME funds. Whether private, for-profit, or non-profit (including CHDOs) may occupy a HOME assisted affordable housing unit in a project without the express written permission of the County. In addition, no officer, employee, agent, or consultant of the owner, developer, or sponsor may occupy a HOME assisted unit.
- **CONTRACT WORK HOURS AND SAFETY STANDARDS ACT:** This Act, as amended, must be followed by the Developer. Mechanics and laborers employed on federally assisted construction projects are paid time and one-half for work in excess of forty (40) hours per week and provides for the payment of liquidated damages where violations occur. All required safe and healthy working conditions indentified in the Act must be followed.
- **COPELAND (ANTI-KICKBACK) ACT (40 USC 276c):** This act governs the deductions from the paychecks that are allowable. Under this law, it is a criminal offense to induce anyone employed on a federally assisted project to relinquish any compensation to which the employee is entitled and requires all contractors to submit weekly payrolls and statements of compliance.
- **EXECUTIVE ORDER 11063 AND 12259:** Addresses equal opportunity in housing, and implementing regulations at 24 CFR Part 107. These Executive Orders prohibit discrimination against individuals on the basis of race, color, religion, sex, and national origin in the sale, rental, leasing or other disposition of residential property, or in the use or occupancy of housing assisted with Federal funds.
- **EXECUTIVE ORDER 11246:** The Developer will not discriminate against any employee or applicant for employment because of race, color, religion, gender, or national origin.
- **FAIR LABOR STANDARDS ACT of 1938:** This Act, as amended, establishes the basic minimum wage for all work and requires the payment of overtime at the rate of at least time and one-half. Developers are also required to make the payment of wages for the entire time that an employee is required or permitted to work and established child labor standards.
- **NONDISCRIMINATION IN FEDERALLY ASSISTED PROGRAMS OF THE DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT-EFFECTUATION OF TITLE VI OF THE CIVIL RIGHTS ACTS OF 1964 PART 1:** The purpose of this Part 1 effectuate the provisions of Title VI of the Civil

Rights Act of 1964 to that end no person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination under any program or activity receiving Federal financial assistance from the Department of Housing and Urban Development (HUD).

- **SECTION 3:** Created by Housing and Urban Development Act of 1968, Section 3 applies to public and Indian housing program, housing and community development programs, and other Federal and HUD assistance. The purpose of Section 3 is to ensure that employment and other economic opportunities generated by HUD financial assistance shall, to the greatest extent feasible, be directed to low-and very low-income persons, particularly those who are recipients of government assistance for housing, and to business concerns which provide economic opportunities to low and very low income person.
- **SECTION 504 OF THE REHABILITATION ACT AND IMPLEMENTING REGULATIONS AT 24 CFR PART 8:** Prohibits discrimination based on disability in all programs or activities operated by recipients of Federal financial assistance.
- **TITLE II OF THE CIVIL RIGHTS ACT OF 1964:** Title VII prohibits employment discrimination based on race, color, religion, sex, and national origin.
- **24 CFR 92.252:** HOME assisted rental units must be occupied by income eligible households within 18 months of project completion; if not, the Owner/developer must repay HOME funds for the vacant units. Note, for units that remain vacant six months following completion, the Developer/Owner must identify and develop an enhanced marketing plan and report this information to the Department.

I, the undersigned, have read and fully agree to abide by all applicable HOME Requirements as referenced above.

**Brevard Community Partnership, Inc.**

\_\_\_\_\_  
**Name of Authorized Signer**

\_\_\_\_\_  
**Signature and Title of Authorized Signer**

\_\_\_\_\_  
**Date**





**BREVARD COUNTY  
BOARD OF COUNTY COMMISSIONERS**

**INITIAL CONTRACT FORM**



**SECTION I**

The following information must be completed on all new contracts submitted to the Board.

<b>1. Contractor:</b> Brevard Community Partnership	
<b>2. Fund/Account #:</b> 1472-303052-5460000	<b>Division Name:</b> Contracts
<b>4. Contract Description:</b> Rehabilitation of Affordable Rental Housing	
<b>5. Contract Monitor:</b> Brian Breslin	<b>6. Mail Stop #:</b> 82
<b>7. Dept./Office Director:</b> Ian Golden	<b>8. Contract Type:</b> Rehab/Rental Housing
<b>ACTION DATE:</b> 30 days from entry	<b>ACTION REQUIREMENT:</b> Review

**SECTION II**

The following departments must approve all contracts submitted to the Board:

<u>COUNTY OFFICE</u>	<u>APPROVAL</u>		<u>INITIALS</u>	<u>DATE</u>
	<u>YES</u>	<u>NO</u>		
User Agency	<input checked="" type="checkbox"/>	<input type="checkbox"/>		<u>7/14/15</u>
Risk Management	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
County Attorney	<input checked="" type="checkbox"/>	<input type="checkbox"/>		<u>7/15/15</u>

If any office denies approval, the package will be returned immediately to the User Agency.

**NOTE:** This form should be attached to all new contracts being submitted to the Board for approval. After the contract has been approved, the contract package, including this form, will go to the Clerk to the Board. The Clerk's office will return the Initial Contract Form to department for contract to be entered into the Contract Management System. See AO-29 for additional information.

AO-29: EXHIBIT I

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*Handwritten initials and date*  
APP  
7/13/15

**BREVARD COUNTY  
BOARD OF COUNTY COMMISSIONERS**

**INITIAL CONTRACT FORM**



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*Handwritten:* APP 7/13/15