



AGENDA REPORT
April 24, 2018

SUBJECT:

Approval, Re: Execution of Agreement between the Brevard County Board of County Commissioners and the Housing Authority of the City of Cocoa, Florida

FISCAL IMPACT:

FY 17/18 - There will be no fiscal impact to the General Fund. This action will utilize \$550,000 in SHIP grant funds located in Business Area 1490, Cost Center 298033.

FY 18/19 - There will be no fiscal impact to the General Fund.

DEPT/OFFICE:

Housing and Human Services

REQUESTED ACTION:

It is requested that the Board of County Commissioners (BOCC) authorize the Chair to execute an Agreement with the Housing Authority of the City of Cocoa (HACC) to rehabilitate nine (9) affordable housing units in the amount of \$550,000 and allow the Chair to execute any amendments or modifications to the agreement upon review and approval from the County Attorney's Office and Risk Management.

SUMMARY EXPLANATION and BACKGROUND:

Per the previous Local Housing Assistance Plan (LHAP) approved by the BOCC on April 28, 2015, the Housing and Human Services Department published a Request for Proposal (RFP) seeking to create new or rehabilitate existing affordable housing units within Brevard County utilizing State Housing Initiatives Partnership (SHIP) Program grant funds. The subsequent applications were reviewed by the Affordable Housing Council, which is recommending the BOCC approve this project.

The HACC was established more than fifty (50) years ago in Cocoa, Florida to provide affordable housing to eligible low-income individuals and families, with preference provided to the elderly, disabled, homeless and veterans. Their Mission is "to provide quality affordable housing for low and moderate income households in an effective and professional manner." The HACC administers a Housing Choice Voucher Program utilized by 149 households throughout Brevard County and also serves 328 households through public housing within a two mile area of the City of Cocoa. Their public housing units are primarily single story, garden style with a few two story townhome apartment buildings. The apartment's sizes range from studio apartments to five (5) bedroom apartments.

Through this project, HACC proposes to rehabilitate nine (9) affordable housing units, which will include (but is not limited to) the replacement of kitchen and bathroom cabinets and fixtures; new vinyl composition tile flooring in living areas and kitchen; installation of energy efficient appliances and impact resistant windows in each unit; installation of central HVAC; new hot water heaters; architectural shingles; attic insulation; and repairs to cementitious siding on the exterior of the building. In addition, all nine (9) units will be mobility accessible and three (3) units will be fully ADA Section 504 accessible.

CLERK TO THE BOARD INSTRUCTIONS:

Please have the Chair sign all copies of the Agreement and return to the Housing and Human Services Department.

ATTACHMENTS:

Description

- Ship Rental Agreement**
- Attachment A**
- Attachment B**
- Attachment C**
- Attachment D**
- Attachment E**

BREVARD COUNTY
BOARD OF COUNTY COMMISSIONERS

INITIAL CONTRACT REVIEW AND APPROVAL FORM

SECTION I - GENERAL INFORMATION

1. Contractor: The Housing Authority of the City of Cocoa, Florida	
2. Fund/Account #: 1490-298033	3. Department Name: Housing and Human Services
4. Contract Description: Affordable Rental Housing	
5. Contract Monitor: Brian Breslin	7. Contract Type: CONSTRUCTION
6. Dept/Office Director: Ian Golden	

SECTION II - REVIEW AND APPROVAL TO ADVERTISE

COUNTY OFFICE	APPROVAL		SIGNATURE	DATE
	YES	NO		
User Agency	<input type="checkbox"/>	<input type="checkbox"/>		
Risk Management	<input type="checkbox"/>	<input type="checkbox"/>		
County Attorney	<input type="checkbox"/>	<input type="checkbox"/>		

SECTION III - REVIEW AND APPROVAL TO EXECUTE

COUNTY OFFICE	APPROVAL		SIGNATURE	DATE
	YES	NO		
User Agency	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<i>Quanita D. Lewis</i> ML	12/04/17 12-4-2017
Risk Management	<input checked="" type="checkbox"/>	<input type="checkbox"/>		
County Attorney	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<i>[Signature]</i>	4/16/18

SECTION IV - CONTRACTS MANAGEMENT DATABASE CHECKLIST

CM DATABASE REQUIRED FIELDS	Complete ✓
Department Information	<input type="checkbox"/>
Department	<input type="checkbox"/>
Program	<input type="checkbox"/>
Contact Name	<input type="checkbox"/>
Cost Center, Fund, and G/L Account	<input type="checkbox"/>
Vendor Information (SAP Vendor #)	<input type="checkbox"/>
Contract Status	<input type="checkbox"/>
Contract Title	<input type="checkbox"/>
Contract Type	<input type="checkbox"/>
Contract Amount	<input type="checkbox"/>
Storage Location (SAP)	<input type="checkbox"/>
Contract Approval Date	<input type="checkbox"/>
Contract Effective Date	<input type="checkbox"/>
Contract Expiration Date	<input type="checkbox"/>
Contract Absolute End Date (No Additional Renewals/Extensions)	<input type="checkbox"/>
Material Group	<input type="checkbox"/>
Contract Documents Uploaded in CM database (Initial Contract Form with County Attorney/ Risk Management Approval; Signed/Executed Contract)	<input type="checkbox"/>
"Right To Audit" Clause Included in Contract	<input type="checkbox"/>
Monitored items: Uploaded to database (Insurance, Bonds, etc.)	<input type="checkbox"/>

AS
11/9/17



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

Telephone: (321) 637-2001
Fax: (321) 264-6972
Tammy.Rowe@brevardclerk.us

April 24, 2018

M E M O R A N D U M

TO: Ian Golding, Housing and Human Services Director

RE: Item II.B.2., Approval for Execution of Agreement Between the Brevard County Board of County Commissioners and Housing Authority of the City of Cocoa (HACC)

The Board of County Commissioners, in regular session on April 25, 2018, authorized the Chair to execute an Agreement with the HACC to rehabilitate nine affordable housing units in the amount of \$550,000; and to execute any amendments or modifications to the agreement upon review and approval from the County Attorney's Office and Risk Management. Enclosed are two executed copies of the Agreement.

Upon execution by the HACC, please return a fully-executed Agreement to this office for inclusion in the official record.

Your continued cooperation is always appreciated.

Sincerely,

BOARD OF COUNTY COMMISSIONERS
SCOTT ELLIS, CLERK

Tammy Rowe

Tammy Rowe, Deputy Clerk

/kp

Encls. (2)

cc: Finance
Budget

**SHIP RENTAL AGREEMENT BETWEEN
BREVARD COUNTY BOARD OF COUNTY COMMISSIONERS
AND
HOUSING AUTHORITY OF THE CITY OF COCOA, FLORIDA
FOR
THE PRESERVATION OF AFFORDABLE RENTAL HOUSING**

THIS AGREEMENT, entered into this 24 day of Apr., **2018** (hereinafter the "Effective Date") 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 the **Housing Authority of the City of Cocoa, Florida** (hereinafter referred to as the "Owner") a public body corporate and politic established pursuant to Chapter 421 of the Florida Statutes.

WHEREAS, the State of Florida allocated State Housing Initiatives Partnership (SHIP) funds to Brevard County to fund housing programs that meet local needs and priorities; and

WHEREAS, the County in accordance with the SHIP program, allocates SHIP funds for projects that result in the creation of affordable housing for low income households; and

WHEREAS, the County desires to award a non-interest bearing forgivable SHIP loan in an amount of up to **(Five Hundred Fifty Thousand) (\$550,000)** to the **Owner** for the rehabilitation and preservation of affordable rental housing, known as the Project; and

WHEREAS, the Owner owns fee simple title to the land and improvements on which the Project is located and has entered into a long-term ground lease with Cocoa Housing Preservation II, LLC; and

WHEREAS, Owner is the sole managing member of CHA Preservation II, LLC, which in turn is the sole managing member of Cocoa Housing Preservation II, LLC; and

WHEREAS, Cocoa Housing Preservation II, LLC has retained a Contractor to perform the construction rehabilitation for this Project; and

WHEREAS, Owner has the authority and ability to control Cocoa Housing Preservation II, LLC for the purposes of this Agreement; and

WHEREAS, the Owner agrees to use those SHIP funds for the Project, which will be carried out in accordance with SHIP project requirements, as applicable, as well as other applicable SHIP requirements and the terms of this Agreement and those set forth in the submitted Application dated **April 06, 2017**.

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:

DEB
4/16/18

SECTION I: DEFINITIONS

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

Affordability Period: The specific number of years that the Property must comply with the Affordability restrictions stated in Attachment A (Land Use Restriction Agreement)

Agreement: This Agreement for Affordable Rental Housing. Also referred to herein as Contract to include the roles and responsibilities of each party in the use of funds.

Area Median Income (AMI): the median family income for Brevard County adjusted for family size as published by SHIP annually.

Annual Income: Projected annual income established in compliance with HOME and SHIP regulations, specifically established at 24 CFR Part 5.609.

Change Order: Any change or changes to the Work that increases or decreases the amount of the Construction Contract, or otherwise changes the scope of the Work.

CHDO: Community Housing Development Organization. A non-profit community-based, housing service organization whose staff has the capacity to develop affordable housing for the community it serves. CHDOs are certified by the Federal HOME program.

Contractor: The company or entity contracted by Cocoa Housing Preservation II, LLC that will be performing the construction and rehabilitation of the Project.

Developer: The entity responsible for putting the housing deal together. If a Project Manager has not been engaged, the Developer may also be the entity that oversees construction.

Department: Housing and Human Services Department of Brevard County.

Deferred Loan: A loan from the County or other funding source with 0% interest that requires no annual payments so long as the Developer and/or Owner abide by specific requirements. Lien periods vary according to the amount of the loan.

Developmental Disability: Means a disorder or syndrome that is attributable to intellectual disability, cerebral palsy, autism, spina bifida, Down syndrome, Phelan-McDermid syndrome, or Prader-Willi syndrome; that manifests before the age of 18; and that constitutes a substantial handicap that can reasonably be expected to continue indefinitely

Director: the Director of the Housing and Human Services Department.

Extremely Low Income: Individual or household whose gross annual income does not exceed thirty percent (30%) of the AMI (adjusted for family size).

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.

Final completion: Shall include all punch list items satisfactorily completed, all final documents submitted, including a Certificate of Occupancy.

Full Lease-Up: The date upon which each and every one of the nine (9) units of the Project are leased to qualified individuals.

Hard Costs: All costs that are directly associated with the acquisition and construction of a project, including engineering costs, permits, legal costs, funding of reserves, etc.

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

Net Cash Flow: Annual rental income minus annual rental expenses (including debt, if any) equals Net Cash Flow.

Operating Expense Ratio: A ratio that is determined by dividing annual net rental income by annual total operating expenses (including debt, if any).

Owner: The entity that holds title to the property.

Placed-in-Service: The date the Project may be occupied by tenants as granted in a Certificate of Occupancy.

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

Project Completion: The stage at which all necessary title transfer requirements and construction work have been performed; all Punch List items have been completed and a Certificate of Occupancy has been issued; the Project complies with all SHIP funding requirements; the final draw-down has been disbursed for the Project; and the Project completion information has been entered in the SHIP tracking system established by the State of Florida.

Request for Proposal (RFP): The request by the County soliciting proposals from the public for the award of funds to acquire and develop rental housing, of which this Agreement is part.

SHIP: State Housing Initiatives Partnership

Soft costs: Administrative, holding costs and construction-related costs not included in the Construction Contract (i.e. engineering, relocation, survey, legal, impact fees, Developer Fee, etc.), that are associated with the Project.

Sources and Uses Budget: The projected costs associated with the development of this Project, as specified in a Sources and Uses Budget prepared by the Developer or Owner in response to the RFP.

Special Needs: In accordance with Florida Statute 393.063 (12), an adult person requiring independent living services in order to maintain housing or develop independent living skills and who has a disabling condition; a young adult formerly in foster care who is eligible for services under Florida Statutes s. 409.1451(3); a survivor of domestic violence as defined in Florida Statutes s. 741.28; or a person receiving benefits under the Social Security Disability Insurance (SSDI) program or the Supplemental Security Income (SSI) program or Veterans' Disability Benefits.

Substantial Completion: All Work identified in the write-up has been completed, the unit is ready to be occupied, and a final building inspection by the County or municipality has been issued.

Supportive Housing: Supportive Housing provides *housing plus supportive social services* to homeless persons to enable them to transition from homelessness to independent living.

Total Development Cost (TDC): The total cost to acquire and develop the Project, as specified in the Sources and Uses Budget in the RFP. Sources and Uses must match.

Utility Allowance: Estimated monthly expenses for electricity, A/C or heat that are paid by the tenant and which must be deducted by the Owner from the tenant's rent. Utility Allowances for Brevard County are

published annually by HUD and specify not only the amount for specific utilities, but also identify the unit type (e.g., townhouse, garden style apartment, duplex, high-rise, single family home) and are pro-rated according to the number of bedrooms in the unit.

Very Low Income: Individual or household 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 required for the Project. Such work will be performed by the Contractor.

100% Qualified Lease-up: The lease-up and occupancy of all units by income-qualified individuals or households.

SECTION II: USE OF SHIP FUNDS AND PROJECT DESCRIPTION

A. Project Description:

The project, Barlow Homes: Grove Avenue (the "Project"), consists of the rehabilitation of nine (9) units of affordable housing located in one (1) building in Cocoa, Florida. Each unit has a unique address:

1132, 1134, 1136, 1138, 1140, 1142, 1144, 1146, and 1148 Grove Avenue. The Project was built in the 1950s and is owned by the Housing Authority of the City of Cocoa, Florida with a long-term ground lease in favor of Cocoa Housing Preservation II, LLC, which has retained a Contractor to perform construction Work in connection with this Agreement. The Owner represents that it has the authority and ability to control Cocoa Housing Preservation II, LLC and ensure that construction Work is performed in conformance with the terms of this Agreement. The Project will provide the community a much-needed revitalization of the existing affordable housing available in the neighborhood. The Project is currently connected to all utilities and the use is consistent with the current zoning. The Project does not face any environmental challenges and the Project is not in a flood zone. The Project will not be impacted by flood zones, wetlands, waterbodies, coastal hazard areas, historic resources, wildlife, hazardous or flammable materials or uses, highways, railroad lines, airport runways, or power lines.

The Project's rehabilitation will include (but is not limited to) the replacement of all kitchen and bathroom cabinets and fixtures; bathroom floors re-grouted; new VCT flooring in living areas and kitchen; installation of energy efficient appliances and impact resistant windows in each unit; installation of central HVAC; painting throughout the Project; new hot water heaters; architectural shingles; attic insulation; and repairs to cementitious siding on the exterior of the building.

In addition, all nine (9) units will be mobility accessible and three (3) units 1132, 1146 and 1148 will be fully ADA Section 504 accessible.

The Project is currently occupied by existing tenants. The existing tenants will be temporarily relocated during the construction period and will have the right to return to their units upon completion.

Upon completion the units will be rented to persons whose income is at or below 30% Area Medium Income.

B. Terms of Commencement and Completion:

1. Owner can and will ensure construction begins within 210 calendar days from the date the County sends Owner written notice that it may proceed.
2. Owner can and will ensure that all construction work to be performed by the Contractor on the Project shall be completed in accordance with the timetable set forth in Section IIC.7. below.
3. If the Owner cannot meet a deadline in the construction timetable referenced above, it may request an extension from the County. Such extension must be submitted in writing prior to the final completion date. The County may, in its sole discretion, approve or deny extension requests. Extension requests will not be unreasonable denied. The County will not provide extra compensation for any reason, including approved timetable extensions.

C. Owner's Rights and Responsibilities:

1. The **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.
2. In accordance with 24 CFR 109.30 Fair Housing policy and practices: All advertising of residential real estate for sale, rent, or financing must contain an Equal Housing Opportunity Logo type, statement, or slogan as a means of educating the home-seeking public that the Property is available to all persons regardless of race, color, religion, sex, disability, familial status, or national origin.
- 3 Project Commencement and Project Completion: Prior to the commencement of construction, as well as upon the completion of construction, the **Owner** shall update the Sources and Uses Budget that the **Owner** submitted in the original Request for Proposal application to the County. In both instances Sources and Uses must match. The **Owner** must complete the Sources and Uses budget on an Excel form provided by the County.
 - a) If upon completion of the Project, the Sources and Uses budget is less than the amount projected in the original Request for Proposal application: (i) the **Owner** contribution of matching funds must equal the percentage projected in the original Request for Proposal (i.e., if the **Owner** matching funds equaled 10% in the original budget, it must equal 10% in the final budget).
 - b) If upon completion of the Project, the Sources and Uses budget exceeds the amount projected in the original Request for Proposal application, the responsibility for providing the additional funds shall be solely that of the **Owner**. In no event shall the County be responsible for filling any funding gap.

7. Project Timeline: Owner shall ensure all deadlines below are met:

MILESTONE	COMPLETION DATE
Notice to proceed issued to Contractor	August 01, 2018.
Construction Start Date	October 01, 2018.
50% construction completion	February 01, 2019.
Placed in service/ Certificate of Occupancy	April 30, 2019.
Full Leased up with qualified tenants	May 31, 2019.

D: County's Rights and Responsibilities

The County may make periodic visits to the site to monitor the progress and quality of the construction in order to assess compliance with this Agreement and with the Housing Rehabilitation Quality Standards (Housing and Human Services Programs). The County will notify Owner of any defects in construction and the Owner shall correct or ensure correction of such defects in a timely manner.

E. Construction/Rehabilitation Management:

- 1. Construction and Rehabilitation Standards:** Projects shall be designed incorporating the following specifications and standards: Fair Housing Act standards, State and Local Building Codes, Energy, Hardening and Preventive Maintenance Standards, and the Brevard County Housing and Human Services Rehabilitation Quality Standards. Further, if the **Owner** has been awarded points under the Sustainable Building Practices section of the Request for Proposal application, the **Owner** must meet those specifications and standards during the construction of the Project. The **Owner** shall correct or ensure correction of any Work that fails to comply with the requirements of the Contract before payment is approved.
- 2. Accessibility:** At a minimum, two units must comply with the accessibility standards specified in the Fair Housing Act Design Manual Standards. In addition, in any project consisting of 4 or more units, at least 25% of the units must have accessible front and rear entrances, grab bars in the bathrooms, and accommodations on the ground floor to include an accessible bedroom, accessible kitchen, accessible bath, and accessible washer and dryer that is on the premises.
- 3. Contracts and Sub-Contracts:** The **Owner** shall be fully responsible to the County for the acts and omissions of Cocoa Housing Preservation II, LLC, the Contractor, and any subcontractors associated with this Project. Nothing contained in this Agreement shall create any contractual relationship between the **County** and the Contractor or any of the subcontractors associated with this Project.
- 4. Licenses and Permits:** The **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, safety and other applicable

regulatory codes.

5. **24 CFR 92.353:** The **Owner** agrees to adhere to the Displacement, Relocation, and Acquisition Act, also known as the Uniform Relocation Act.

SECTION III: TIMING AND DURATION OF AGREEMENT

The term of this Agreement between the County and the **Owner** shall begin on the date of execution by both parties and shall continue for **20 years** from the date of Full Lease-up, which is defined as the date every unit in the 9-unit project is leased by a qualified tenant unless extended in accordance with the provisions of this Agreement.

SECTION IV: AFFORDABILITY REQUIREMENTS

The Owner shall ensure that the unit(s) meet the Affordability requirement and the applicable property standards for a period of **20 years** following Full Lease-up .

The **Owner** agrees to execute a Land Use Restriction Agreement, made a part hereof by reference as **Attachment A**, which shall be subordinate to the Rental Assistance Demonstration (RAD) Use Agreement and any Land Use Restriction Agreement required by other lenders of funds to the Project.

The Owner will be required to repay the SHIP funds if the housing does not meet the Affordability requirements for the specified period and/or if the **Owner** violates any provision of the Agreement made with the County, including the Land Use Restriction.

SECTION V: INCOME, RENT AND OCCUPANCY REQUIREMENTS

The **Owner** shall be responsible for adhering to SHIP Income, Rent and Occupancy requirements. On an annual basis, it shall be the responsibility of the County to verify that the Property is in compliance with SHIP Income and Rent limits, as well as Utility Allowances. (See **Attachment B** for the 2018 SHIP Income and Rent Limits). The County shall annually provide The **Owner** with current Income and Rent limits and any other applicable SHIP requirements, and The **Owner** shall within 30 days implement the new annual Rent and Income limits upon their publication by Florida Housing Finance Corporation. The Owner will use its own Utility Allowance that is applicable to the City of Cocoa. The practice of annually updating the Rent and Income limits shall continue throughout the Affordability Period. In no event may rents be increased more than 3% per annum unless approved in advance by Brevard County Housing and Human Services Department.

SECTION VI: OPERATING BUDGET

The **Owner** and the County understand and agree that the Operating Budget submitted with the application may have changed by the time the Project is ready to begin lease-up. Therefore, one (1) month prior to the commencement of lease-up, the **Owner** shall submit to the County an updated Operating Budget, Rent Schedule and 15-Year Cash Flow projection on an Excel form provided by the County. The Excel sheet will automatically calculate the Operating Coverage Ratio for Year 1, which may not be less than 115% or more than 135%. If the Operating Coverage Ratio exceeds 135%, the **Owner** must reduce rents to bring the Ratio within a range acceptable by the County. If the Ratio is less than 115%, the County will meet with

the **Owner** to discuss ways to increase the Ratio, but in no instance will the County accept a Ratio less than 110%.

During annual monitoring visits, the County will track Operating Coverage Ratios for the purpose of gathering data but will not enforce the limits described in the preceding paragraph; provided, however, that the **Owner** may not increase rents more than 3% per annum unless approved in advance by the County, as specified in Section V of this Agreement. The County will also gather Per Unit Annual averages for expenses associated with the **Owner** Operating Budget. By execution of this Agreement, the **Owner** agrees to provide the data to the County on the Excel sheet mentioned in the preceding paragraph.

Annually, the **Owner** must establish an Operating Reserve fund that will be funded at the rate of 1/12 of that year's Operating Budget. Funds may be withdrawn for use in any year that the Project suffers an operating deficit but must be accounted for during county monitoring.

The **Owner** also establishes a Replacement Reserve fund at the rate of \$500.00 per unit annually, and deposited in a separate account. Use of the funds must be accounted for during county monitoring.

SECTION VII: COMPLIANCE MONITORING

County monitoring includes compliance with all contractual requirements, including, but not limited to, reporting, record retention and Project development. In addition, the Project is subject to ongoing SHIP compliance requirements for **20 years** from the date of Full Lease-up. During this compliance period, the **Owner** shall ensure continued compliance with SHIP requirements. Compliance for rental units shall include without limitation maintaining property standards, occupancy; rent limits compliance, and income eligibility.

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

- Affirmative Marketing Policy and Procedures
- Tenant Selection Policies and Procedures (to include over-income tenants)
- Application form
- Income Verification and Certification Forms
- Rent Limits and Utility Allowances.
- Upon the release of construction retainage the **Owner** must:
 - a) Pre-fund Operating Reserves in an amount equal to 3 months of the projected annual Operating Budget. These funds will be used to fund deficits during the initial lease-up of the Property. Any unused funds shall be deposited into an Operating Reserve account that will be funded annually. (Annual funding and accountability of the Operating Reserve during Operations is discussed in Section VI.)

- b) Pre-fund Replacement Reserves in an amount equal to \$500/unit. These funds must be held in a separate account. (Annual funding and accountability of the Replacement Reserve during Operations is discussed in Section VI.)

B. On-going Monitoring for the Term of Affordability:

- Unit eligibility (rent Limits)
- Tenants eligibility
- Utility Allowances: Any utility that a tenant is responsible for paying at the date the Property is Placed-in-Service may not be changed in future years without the consent of the County.
- Physical inspection of the units
- Financial Review to include: Operating Reserves, Replacement Reserves and Operating Coverage Ratio (see Section VI)

SECTION VIII: ENFORCEMENT PROVISIONS

Timely completion of the construction of the Project specified in this Agreement is an integral and essential part of performance. The expenditure for SHIP funds is subject to State deadlines and could result in the loss of State funds. By the acceptance and execution of this Agreement, the **Owner** understands and agrees that the Project will be completed as expeditiously as possible, and that the **Owner** will ensure that the construction of the Project will proceed without delays. Failure to meet deadlines specified in Section II. C. 7 (Project Timeline) may result in the cancellation of this Agreement and the revocation of SHIP funds. The Owner represents that it has the authority and ability to control Cocoa Housing Preservation II, LLC and ensure timely and proper construction of the Project.

All SHIP funds are subject to repayment if the Project fails to meet (a) the commitments made by the **Owner** at the time of the Affordable Housing Council's approval of the Project, or (b) any of the provisions in this Agreement.

It is understood that, upon the completion of the Project, any SHIP funds reserved but not expended under this Agreement, will revert to the County.

SHIP funds awarded to the **Owner** for rehabilitation of the Project shall constitute a Land Use Restriction to be placed on the Property for **20 years**, as specified in Attachment A. The funds shall be a deferred, interest-free forgivable loan so long as the provision in the Land Use Restriction Agreement (Attachment A) and any provision in this Agreement are adhered to by the **Owner**.

At the time of execution of the Land Use Restriction Agreement, the **Owner** must also agree to a Right of First Refusal with the County. The Right of First Refusal shall provide that sale of the Property to another party may occur only with approval from the County, and those CHDOs, Brevard County housing authorities and other qualified non-profits organizations must be given an opportunity to purchase the Property before it can be marketed on the open market. Entering into a ground lease does not constitute a

sale of the property requiring County approval. If a qualified buyer cannot be found within thirty (30) days, the **Owner** may sell the Property to any buyer; provided, however, that the purchaser shall assume all obligations of the **Owner** under this Agreement, including the Land Use Restriction Agreement. Provisions in these documents provide for the retraction of the affordability and/or lien requirements only in the event of a third-party foreclosure or a deed in lieu of foreclosure.

SECTION IX: COMMUNITY HOUSING DEVELOPMENT ORGANIZATION (CHDO)

The **Owner** understands that the **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. **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 X: ADMINISTRATIVE REQUIREMENTS

A. Record Keeping

The **Owner** shall be responsible for maintaining a Project file and tenant files for the term of this Agreement, to include all documentation relevant to this Project, such as, but not limited to: the **Owner** response to the Request for Proposal that awarded the SHIP funds provided by this Agreement; all financial expenditures associated with development of the Property or its operations, including tenant income, rents, utility allowances, and any relevant correspondence. All records shall be presented and maintained in sufficient detail as required to ensure a proper audit.

B. Record Retention

The **Owner** shall retain sufficient records demonstrating its 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 during regular business hours.

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, Utility Allowances and inspection information must be maintained for the most recent five (5) years, up to and including the five (5) year period after the Affordability Period ends.

C. Reporting

The **Owner** agrees to submit a Demographics Report to the County at the time of initial occupancy, attached hereto and made a part of by reference **Attachment C**, and a monthly status report, attached hereto and made a part of by reference **Attachment D**.

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

SECTION XI: PROPOSED DEVELOPMENT BUDGET

It is agreed and understood that the total amount to be paid by the County under this Agreement shall not exceed the awarded SHIP funds, in an amount up to **Five Hundred and Fifty Thousand (\$550,000)**

It is further agreed and understood that the **Owner** must provide at least 10% of the Total Development Cost (TDC) from a Source other than SHIP/County funds, and that at the conclusion of construction Sources must equal uses. If Uses at the end of construction are less than those projected in the Sources and Uses Budget submitted in the Request for Proposal, the reduction in Uses shall not relieve the **Owner** of the obligation to provide Sources equaling at least 10% of the TDC. However, if Uses have increased at the conclusion of construction, the County will not provide additional SHIP funds and it shall be the Owner's sole responsibility for securing funds to close the funding gap. Further, if the **Owner** received points in the Request For Proposal for providing Sources equaling or exceeding 25%, and at the conclusion of construction the Uses have increased or decreased, the preceding provisions shall prevail.

A proposed budget has been submitted by the **Owner** as part of the **Owner** proposal. It is further understood that the **Owner** will submit a final budget, based upon the Work write up report prepared by the County Inspector, if applicable, as it relates to acquisition, construction/rehabilitation, soft costs, development fees, and other allowable costs/activities, prior to the disbursement of SHIP funds. Said budget shall identify all Sources and Uses of funds, and shall allocate SHIP and non-SHIP funds to specific activities or line items.

- A. Eligible Use of Funds:** SHIP funds may be used solely for the purpose of acquisition and/or rehabilitation of the Property, including architect or engineering fees, legal expenses relocation of tenants, and other costs that have been approved by the County.
- B. Ineligible Uses of Funds:** SHIP funds may not be used to fund Operating or Replacement Reserves. Nor may SHIP funds be used for supportive services. Costs, expenses, and items which would be disallowed as supportive services shall include, but not be limited to: taxes in arrears, 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 **Owner** for any interest charges, late payment charges, or litigation expenses, such as, but not limited to, attorney's fees and legal costs the **Owner** may incur for the **Owner's** failure to pay any subcontractors and/or supplier in a timely manner as provided for by contract or statute.

Funds must be used as outlined below:

BUDGETED ITEM	PROPOSED BUDGETED	SOURCE
Rehabilitation	\$479,000	Brevard County SHIP
Site work	\$5,000	Brevard County SHIP
Construction Contingency	\$36,300	Brevard County SHIP
Architect	\$10,694	Brevard County SHIP
Engineering	\$1,000	Brevard County SHIP

Survey	\$1,800	Brevard County SHIP
Environmental Study	\$1,000	Brevard County SHIP
Accounting/Audit/Cost Certification	\$750	Brevard County SHIP
Real Estate Attorney Fees	\$2,100	Brevard County SHIP
Building permits	\$3,800	Brevard County SHIP
Relocation	\$6,500	Brevard County SHIP
Soft cost contingency	\$2,056	Brevard County SHIP
Total	\$550,000	Brevard County SHIP

- C. The **Owner** will submit a final budget to the County for review and approval by Housing and Human Services staff at least two (2) weeks prior to the execution of this Agreement.
- D. **Change Order Process and Requirements:** The Owner will submit any change orders it receives from the Contractor or from Cocoa Housing Preservation II, LLC to the County to be reviewed for consistency with the scope of the Project as provided herein. Change Orders that modify, alter, or exceed the scope of the Project as provided herein may cause the Owner to be in breach of this Agreement. The **Owner** shall be solely responsible for any increase in the price of the construction. The County's funding contribution will not exceed \$550,000.

SECTION XII: REQUEST FOR DISBURSEMENT OF FUNDS/PAYMENT PROCEDURES

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

- A. The **Owner** shall submit and the County shall approve a draw schedule prior to any payments being made to the **Owner**.
- C. **All disbursement requests are subject to an inspection and approval by Brevard County Housing and Human Services Department to ensure compliance and consistency with the provisions of this Agreement.**
- D. Brevard County will withhold ten percent (10%) of each draw request as retainage for rehabilitation costs associated with the Project. After the initial payment, **Release of Liens for previous payments Owner made to Cocoa Housing Preservation II, LLC, its contractors and/or its sub-contractors** will be required from those parties before additional draw requests will be approved. The final payment to the **Owner** of the withheld retainage 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. Withheld retainage will not be paid if the Project is unreasonably delayed. Full release of liens, final inspection from the County and proof of warranty from the General Contractor must be provided by the **Owner** before the final payment is processed.

E. Upon receipt of supporting documentation associated with construction, disbursements will be mailed directly to the **Owner**, payable to the **Owner**.

G. Payments may be withheld for breach of any provision of this Agreement including without limitation any of the following reasons: (1) defective construction work not remedied; (2) construction work that does not pass inspections performed by the County or municipal Building Department; and (3) documentation required by the County that has not been submitted by the Owner. The Project is owned by the Housing Authority of the City of Cocoa, Florida with a long-term ground lease in favor of Cocoa Housing Preservation II, LLC, which has retained a Contractor to perform construction Work in connection with this Agreement. The Owner represents that it has the authority and ability to control Cocoa Housing Preservation II, LLC and ensure that construction Work is performed in conformance with the terms of this Agreement

H. Final payment shall not be due until the **Owner** has delivered to the County guarantees and warranties, release of liens from all contractors and/or subcontractors, as well as a release of any claim that could be made by any party, including municipal or County inspectors, that could result in a lien being placed on the property.

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

If the **Owner** has not requested a payment/disbursement within a twelve (12) month period, regardless of whether previous requests for disbursement have been made, the **Owner** will be required to provide a written narrative explaining the reason(s) to the County. Failure to provide such narrative may result in cancelation of the project.

SECTION XIII: GENERAL CONDITIONS

A. Indemnification

The **Owner** shall indemnify and hold harmless the County and its agents and employees from and against all claims, damages, losses, and expenses, including attorney's fees arising out of or resulting from the performance of its Work under this Agreement, where such claim, damage, loss, or expense is caused, in whole or in part, by the act or omission of the Developer/Owner, or anyone directly or indirectly employed by the **Owner**, or anyone for whose acts any of them may be liable, regardless of whether or not it is caused, in part, by a party indemnified hereunder. In any and all claims against the County, or any of its agents or anyone directly or indirectly employed by the **Owner**, or anyone for whose acts any of them may be liable, indemnification obligation under this paragraph shall not be limited in any way by a limitation on the amount or type of damages, compensation or benefits payable by or for the custodial the **Owner**, under workers' compensation acts, or other related policies of insurance. The parties acknowledge specific consideration has been exchanged for this provision.

Further, nothing in this indemnity provision shall be deemed or construed as a waiver of any privilege, immunity or other protection available to the Owner or the County under the doctrine of sovereign immunity or the limitations of liability contained in Section 768.28, Florida Statutes. Likewise, any claim for indemnity brought under this indemnity provision shall comply with the procedural requirements and pre-suit conditions contained in Section 768.28, Florida Statutes.

B. Amendments/Modifications to Contract

This Agreement, together with any attachments, constitute the entire agreement between the County and the **Owner** and supersedes all prior written or oral understandings. This Agreement and any attachments, may only be amended, supplemented or cancelled by a written instrument duly executed by the parties hereto. The Director of the Housing and Human Services Department is authorized to sign any amendments/modifications to this Agreement.

C. Insurance

The **Owner** and/or the rental management company, shall at their own expense, keep in force and at all times maintain, during construction and then during the term of this Agreement, the insurance as listed below. The **Owner** will also be responsible for any losses incurred due to theft, vandalism or any other related losses until which time the Property is sold.

1. **General Liability Insurance:** General Liability Insurance issued by responsible insurance companies, and in a form acceptable to the County, with combined single limits of not less than One Million Dollars \$1,000,000.00 for Bodily Injury and Property Damage per occurrence, if applicable.
2. **Directors and Officers Insurance:** Directors and Officers coverage with minimum limits of One Million Dollars \$1,000,000.00, if applicable.
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, if applicable.
4. **Workers' Compensation Coverage:** Full and complete Workers' Compensation Coverage, as required by the State of Florida law shall be provided, if applicable.
5. **Builders Risk Insurance:** Loss limits shall be equal to the value of the construction Project, if applicable.
6. **Property Insurance:** Coverage providing all risk insurance including windstorm protection, in an amount equal to the replacement cost of the structure.
7. **Insurance Certificates:** The **Owner** shall provide the County with Certificate(s) of Insurance on all the policies of insurance and renewals thereof in a form(s) acceptable to the County. Said Liability Policies shall provide that the County be 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 **Owner** shall ensure that its insurance of its contracted agents is adequate and sufficient to cover the activities performed under this Agreement and that the insurance requirements 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 **Owner** responsibility to comply with all federal, state and local laws.

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 **Owner** shall not assign any portion of the Agreement without written permission of the County.

I. Termination

If either party fails or refuses to perform any of the provisions of this Agreement or otherwise fails to timely satisfy the Agreement provisions, either may notify the other party in writing of the non-performance or terminate the Agreement or such part of the Agreement as to which there has been delay or a failure to properly perform. Such termination is effective upon the other party's receipt of the notice of termination. In the event of termination or breach by the Owner, Owner shall repay to the County any and all SHIP funds paid in connection with this Agreement. The Director of Housing and Human Services may terminate this Agreement at any time based upon the availability of funds, as determined by an evaluation of the departmental expenditure goals, or the **Owner** non-compliance with the terms of this Agreement, or regulatory non-compliance.

J. Independent Contractor

The **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 this Agreement shall be interpreted or construed to constitute the **Owner** or any of its agents or employees to be the agent, employee or representative of the County.

K. RIGHT TO AUDIT:

The 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 during regular business hours by an authorized representative of the County and shall be retained by the Owner for a period of five (5) years after termination of this Agreement. 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 Owner in the United States or any other country. All records or documents created by the County or provided to the **Owner** by the County in connection with activities or services provided by The Owner under the terms of this agreement, are

public records and The **Owner** agrees to comply with any request for such public records or documents made in accordance with section 119.07 Florida Statutes.

L. AUDIT REQUIREMENTS:

If the **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 **Owner** expends \$750,000 or more in Federal awards in its fiscal year, the **Owner** must have a single or program-specific audit conducted in accordance with the Single Audit Act Amendments of 1996, and 2 CFR Part 200 Subpart F, as revised. In determining the Federal awards expended in its fiscal year, the **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 2 CFR Part 200 Subpart F, as revised. An audit of the Operating Agency conducted by an independent certified public accountant (IPA) licensed under Chapter 473, Florida Statutes, in accordance with the provisions of 2 CFR Part 200 Subpart F, as revised, will meet the requirements of this paragraph. If the Operating Agency Inc. expends less than \$750,000 in Federal awards in its fiscal year, an audit conducted in accordance with the provisions of 2 CFR Part 200 Subpart F, as revised, is not required. In the event that the Agency. 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 2 CFR Part 200 Subpart F, as revised, the cost of the audit must be paid from non-Federal resources (i.e., the cost of such audit must be paid from the Operating Agency's resources obtained from other than Federal entities).

In accordance with 2 CFR Part 200 Subpart F, as revised, if applicable, the **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 Operating Agency must submit a written request for an extension approval by the Director of Housing & Human Services Department to the following address:

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

The **Owner** shall also provide the County with the records, reports or financial statements upon request for the purposes of auditing and monitoring the funds awarded under this Agreement. The **Owner** is requested to provide copies of any monitoring conducted during the term of this Agreement, conducted by any agency or agent, and agency responses to such audits or monitoring within 30 days of receipt in order to facilitate county monitoring requirements. All information shall be sent to address as shown above.

The **Owner** shall retain sufficient records demonstrating its compliance with the terms of this Agreement for a period of five (5) years from the date the audit report is issued, and shall allow the County or its designee, the Comptroller, or the Funding Agency access to such records upon request. However, if litigation or an audit has been initiated prior to the expiration of the five-year period, the records shall be retained until the litigation or audit findings have been resolved. The agency shall ensure that audit working papers are made available to the County, or its designee, the Comptroller, or Funding Agency upon request for a period of three (3) years from the date the audit report is issued, unless extended in writing by the County.

In the event the audit shows that any or all of the funds disbursed hereunder were not spent in accordance with the conditions of this Agreement, the Contractor shall reimburse the County of all such funds within thirty (30) days after the County has notified the Contractor in writing of such noncompliance.

M. Unauthorized Alien Workers

The County will not intentionally award publicly-funded contracts to any entity which 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 the **Owner's** intentional employment of unauthorized aliens as grounds for immediate termination of this Agreement.

N. Federal Tax ID Number

The **Owner** shall provide to the County the Owner's Federal Tax ID Number.

O. Conflict of Interest

The **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 **Owner** shall not accept gratuities, favors or anything of monetary value from contractors, potential contractors or parties to sub-agreements. The **Owner** shall not award a contract or subcontract under this Agreement to any company who the **Owner** has a financial or any other interest in, including but not limited to employing an employee, an employee of the **Owner** or any member of an employee's, agents, or officer's immediate family of the **Owner** employee, including officers, employees, agents, consultants or elected or appointed officials. The **Owner** and/or any of the aforementioned entities may not occupy a unit unless approved by the County.

P. Public Entity Crimes

The Contractor has executed the County's Public Entity Crimes Affidavit, which will remain on file with the County.

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.

SECTION XIV: 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 XV: 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 OWNER:

Housing Authority of the City of Cocoa, Florida
Herbert Hernandez, Executive Director
828 Stone St.
Cocoa, FL. 32922

Section XVI: SEVERABILITY

If any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or otherwise unenforceable, the remaining provisions shall nevertheless continue in full force without being impaired or invalidated in any way.

Cocoa Housing Preservation II, LLC hereby acknowledges and consents to this Agreement.

COCOA HOUSING PRESERVATION II, LLC

Herbert Hernandez, Executive Director of Housing
Authority of the City of Cocoa.
Sole Managing member of CHA Preservation II, LLC.
Sole managing member of Cocoa Housing
Preservation II, LLC.

Reviewed as to form
And legal content for
Use and reliance of
Brevard County only.



Diana Yuan, Assistant County Attorney

Date: 4/16/18

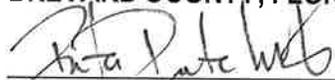
IN WITNESS WHEREOF: the parties have hereunto set their hands and seals on the day and year first above written.

ATTEST:



Scott Ellis, Clerk

BOARD OF COUNTY COMMISSIONERS OF
BREVARD COUNTY, FLORIDA



Rita Pritchett, Chair

As approved by the Board on: 4/24/18

HOUSING AUTHORITY OF THE CITY OF COCOA,
Florida

Herbert Hernandez, Executive Director
Housing Authority of the City of Cocoa, Florida a public
body corporate and politic established pursuant to Chapter
421 of the Florida Statutes

Date: _____

STATE OF FLORIDA
COUNTY OF BREVARD

The foregoing instrument was acknowledged before me this _____ day of _____, 2018,
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 A

LAND USE RESTRICTION AGREEMENT

This LAND USE RESTRICTION AGREEMENT (hereinafter called the Agreement) is made and entered into as of this _____ day of _____, 2018 between the Owner public body corporate and politic established pursuant to Chapter 421 of the Florida Statutes. (hereinafter called the 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:

Lots 8 through 19, Block "I", Replat No.2, Cocoa Annex Re-Subdivision, according to the plat thereof as recorded in Plat Book 9, Page 36, Public Records of Brevard County, Florida, lying in Section 32, Township 24 South, Range 36 East, Brevard County, Florida

PREAMBLE

WHEREAS, the County has agreed under certain conditions to issue a deferred payment loan using SHIP funds to provide financing for acquisition & preservation of affordable rental housing for families who have an income at or below thirty (30%) of Area Median Income located at address to be occupied by eligible persons as described in Section II of the project agreement signed on _____; and

WHEREAS, in addition to any other requirements the County may impose incident to its SHIP Rental Agreement, the 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 Definitions of the project agreement signed on _____;

WHEREAS, should the 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 Owner do hereby contract and agree as follows:

AGREEMENT

ARTICLE I. RENTAL HOUSING RESTRICTIONS

1.1 Occupancy

The housing unit must be set-aside for persons who upon initial occupancy of the unit must have annual gross incomes at or below **thirty (30%)** AMI for the Melbourne-Titusville-Palm Bay Metropolitan Statistical Areas. In addition, all nine (9) units will be mobility accessible and three (3) units 1146 and 1148 will be fully ADA Section 504 accessible.

1.2 Income/Eligibility

The Developer/Owner shall verify and document the income of all tenants following SHIP regulations. The annual income of tenants renting SHIP-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 SHIP-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. The next unit in the Project that becomes vacant is to be rented to an income-eligible tenant until the Project is again in compliance.

1.3 SHIP Affordability

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

1.4 Long-term Affordability

The SHIP-assisted unit shall be affordable for the duration of the Agreement. The Owner also agrees to a Right of First Refusal with the County. The Right of First Refusal shall provide that sale of the property to another party may occur only with approval from the County, and those CHDOs, Brevard County housing authorities and other qualified non-profits organizations must be given an opportunity to purchase the property before it can be marketed on the open market. Entering into a ground lease does not constitute a sale of the property requiring County approval. If a qualified buyer cannot be found within thirty (30) days, the Owner may sell the property to any buyer; provided, however, that the purchaser shall assume all obligations of the Owner under this Agreement. Provisions in those documents provide for the retraction of the affordability and/or lien requirements only in the event of a third-party foreclosure or a deed in lieu of foreclosure.

1.5 Housing Standards

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

ARTICLE II. CONSIDERATION

The County has authorized and issued a SHIP deferred payment loan to the Owner as an inducement to the Owner to operate the units in the Project for the benefit of very low-income persons whose incomes are at or below thirty percent (30%) of Annual Median Income) for a period of 20 years following completion of the Project. In consideration of the issuance of the loan by the County for the foregoing purposes, the County Owner has entered into this Agreement.

ARTICLE III. RELIANCE

In performing its duties hereunder, the County may rely upon statements and certifications of the 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 Owner pertaining to occupancy of the Project. In addition, the Florida Housing Finance Corporation (FHFC) may consult with counsel, and the opinion of such counsel shall be full and complete authorization and protection with respect to any action taken or suffered by the County in good faith and in conformity with the opinion of such counsel. The 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 from 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) days' notice prior to expiration.

ARTICLE VI. DAMAGE, DESTRUCTION OF THE PROJECT

Subject to the superior rights of the holder of any first mortgage, in the event that the Project is damaged or destroyed, the 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 SHIP Rental Agreement. The County shall make any such insurance proceeds available to provide funds for such restoration work. In the event the 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 SHIP Rental 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 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 SHIP 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. Entering into a ground lease does not constitute a sale of the property requiring County approval.

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

If the Owner defaults in the performance of its obligations under this Agreement or breaches any covenant, agreement or warranty of the Owner set forth in this Agreement, and if such default remains uncured for a period of thirty (30) days after notice thereof shall have been given by the County to the Owner (or for an extended period approved by the County if such default stated in such notice can be corrected, but not within such thirty (30) day period, and if the Owner commences such correction within such thirty (30) day period, and thereafter diligently pursues the same to completion within such extended period), then the County may take any lawful action, whether for specific performance of any covenant in this Agreement or such other remedy as may be deemed most effective by the County to enforce the obligations of the Owner with respect to the Project. If a default by the Owner under this Agreement is not timely cured, the County may institute foreclosure proceedings on the Project, but only as provided in the SHIP Rental Agreement.

Notwithstanding any of the foregoing, the County will have the right to seek specific performance of any of the covenants and requirements of this Agreement concerning the rehabilitation and operation of the Project.

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 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

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

FOR THE OWNER

Housing Authority of the City of Cocoa, Florida
Herbert Hernandez, Executive Director
828 Stone St.
Cocoa, FL. 32922

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

AGENCY

Herbert Hernandez, Executive Director
Housing Authority of the City of Cocoa Florida a public
body corporate and politic established pursuant to Chapter
421 of the Florida Statutes

Date

**STATE OF FLORIDA
COUNTY OF BREVARD**

The foregoing instrument was acknowledged before me this ____ day of _____, **2018**, by Herbert Hernandez, as Executive Director of the Housing Authority of the City of Cocoa, Florida, a public body corporate and politic established pursuant to Chapter 421 of the Florida Statutes, 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 B
SHIP 2017 INCOME AND RENT LIMITS**

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

HOUSEHOLD SIZE	30% of AMI
1	\$12,950
2	\$16,240
3	\$20,420
4	\$24,600
5	\$28,780
6	\$32,960
7	\$37,140
8	\$40,750

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

AMI	SRO	1 BR
30%	\$323	\$364

ATTACHMENT C

SHIP DEMOGRAPHIC AND TRACKING SHEET

Organization's Name: _____

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 E
HOUSING AND HUMAN SERVICES DEPARTMENT
REQUEST FOR REIMBURSEMENT OF FUNDS /SUPPLEMENTAL SHEET
HOUSING AUTHORITY OF THE CITY OF COCOA, FLORIDA

REVIEWED BY: CONTRACT/PROJECT MONITOR: <u>BRIAN BRESLIN</u>	
FINANCIAL APPROVAL: _____	
BUSINESS AREA: <u>1490</u> COST CENTER: <u>298033</u> G.L. ACCOUNT: <u>5460000</u>	
VENDOR # <u>406817</u>	P.O.#: _____ DOC.#: _____
AMOUNT: \$ _____	
APPROVED FOR PAYMENT BY: _____	
AUTHORIZED SIGNATURE	DATE
FUNDING SOURCE:	SHIP
NAME OF ORGANIZATION:	HOUSING AUTHORITY OF THE CITY OF COCOA, FLORIDA
CONTACT PERSON:	
PROGRAM ADDRESS:	828 Stone St Cocoa, FL. 32922
MAILING ADDRESS: (if different from program address)	
E-MAIL ADDRESS:	
TELEPHONE NUMBER:	
REQUEST DATE:	
REQUEST NUMBER:	#
FINAL PAYMENT REQUEST:	Yes/No
FUNDS ARE HEREBY REQUESTED FOR THE FOLLOWING:	
Rehabilitation Cost	\$
TOTAL AMOUNT TO BE PAID	\$
AUTHORIZED SIGNATURE:	

Rehabilitation Cost

Rehabilitation Draw Request number	(- 10% Retainage)	Amount
\$550,000	\$0.00	\$550,000

Total Amount Expended: \$550,000

Summary

Total Budgeted: \$550,000

Total Previous: \$0.00

Total This Request: \$0.00

Remaining Funds: \$550,000

YEAR TO DATE EXPENSES:

Previous Expenses: \$0.00

Beginning Budget: \$550,000

Current Expenses: \$0.00

Total YTD Expenses: \$0.00

Remaining Funds: \$550,000

#	Date of Request	Amount Expended	Amount Retained	Amount Requested	Amount Expended YTD	Percentage expanded (%) Spent YTD	Balance
							\$550,000

PAYMENT APPLICATION

Brevard County Housing & Human Services

Owner/Developer: Housing Authority of the City of Cocoa, Florida

Contractor:

Address: 828 Stone St
Cocoa, FL 32922

Address:



Phone: 321-636-8535

Phone:

Period Ending

Payment Request #

- 1. Original Contract Sum **\$550,000.00**
- 2. Net Change by Change Orders **\$0.00**
- 3. Contract Sum to Date (Col. C) **\$550,000.00**
- 4. Total Completed to Date (Col. F) **\$0.00**
- 5. 10% OF Completed Work (Col. I) **\$0.00**
- 6. Total Earned less Retainage **\$0.00**
(Line 4 less Line 5 Total)
- 7. Less Previous Draw Requests **\$0.00**
- 8. Current Payment Due **\$0.00**
- 9. Balance to Finish **\$550,000.00**
(Line 3 minus Line 6 plus Line 5) / (Col. H)

Change Order Summary	Additions	Deletions
Total Changes Previously		
Total Approved This Period		
TOTALS		
NET CHANGES by Change Order		

Developer: The undersigned Developer certifies that to the best of the Developer's knowledge, information and belief the Work covered by this Draw Request Application has been completed in accordance with the Contract Documents, that all amounts have been paid by the Developer for Work for which previous Draw Request were issued and payments received from the County, and that current payment shown herein is now due.

DEVELOPER: _____

By: _____ **Date:** _____

State of: _____ County of: _____

Subscribed and sworn to before me this _____ day of _____

Notary Public: _____

My Commission expires: _____

Contractor: I certify I have satisfactorily completed the necessary work to justify this request and all bills incurred for labor and materials furnished in making repairs and improvements have been paid in full for which previous payments were issued.

Contractor: _____ **Date:** _____

Project Inspector: I hereby certify all work has been completed as indicated and request approval of payment to the Developer in the amount of \$ _____

Project Inspector: _____ **Date:** _____

PO#: _____ **Vendor #:** 406817 **Fund/Cost Cent:** 1490-298033

Payment Doc #: _____ **IO#:** _____ **Financial Approval:** _____

