

**DEVELOPER AGREEMENT BETWEEN
LEE COUNTY BOARD OF COUNTY COMMISSIONERS
AND**

THIS AGREEMENT is made and entered into this [_____] day of [_____] [_____] , 20_____, by and between Lee County, a municipal organization/body corporate and politic in the State of Florida (the “**County**”) whose address is: _____ and _____ (the “**Developer**”), a registered Florida corporation/limited liability corporation, whose address is: _____ and _____, (“**Owner**”), if applicable.

WITNESSETH:

WHEREAS, pursuant to Public Law 117-328, and the Federal Register Notice dated May 18, 2023 (88 FR 32046), the U.S. Department of Housing and Urban Development (HUD) has awarded \$1,107,881,000 in Community Development Block Grant – Disaster Recovery (CDBG-DR) funds to County for activities authorized under Title I of the Housing and Community Development Act of 1974 (42 U.S.C. 5301 et seq.) and described in the HUD-approved Lee County Action Plan for CDBG-DR Funds; and

WHEREAS, the County wishes to engage Developer to facilitate the development or improvement of affordable housing opportunities, pursuant to the terms of this Agreement by allocating \$ _____ (_____ Million Dollars and xx/100 cents); and

WHEREAS, the Developer is a For-Profit / Non-Profit (circle one) corporation which has experience as a developer of housing for low- and moderate-income persons, and has demonstrated its experience and qualifications to County; and

WHEREAS, this Agreement constitutes the entire agreement between the parties, superseding all prior oral and written statements or agreements for the provision of CDBG-DR funds between County and Developer;

NOW, THEREFORE, in consideration of the mutual covenants, promises and obligations, and subject to the terms and conditions in this Agreement, and which may be more thoroughly defined (but which are not waived or abridged) in the loan closing documents, including but not limited to, the Award Letter and Loan Term Sheet (including any and all amendments), the Restrictive Covenant, promissory note, and construction loan agreement (if applicable) attached as **EXHIBIT _____**, collectively referred to as (“Loan Documents”), the parties understand and agree as follows:

**ARTICLE I
GENERAL TERMS AND CONDITIONS OF AGREEMENT**

AWARD The total award provided by County, pursuant to this Agreement, is \$ _____ (the “Award”). Receipt of this Award by Developer from County is contingent upon Developer receiving all funds necessary to complete construction of the proposed

affordable housing units. The Award is additionally conditional upon completion of a HUD-compliant Environmental Review Record (ERR) and subsequent issuance of an Authorization to Use Grant Funds (AUGF) from HUD. The Award funds shall be used to finance the construction of the Project. The Award shall be used in a manner that is consistent with the provisions of 24 CFR Part 570 and Federal Register Notice 88 FR 32046.

Maximum Per-Unit Subsidy

Multifamily Rental Development Projects The per-unit maximum subsidy shall be no more than \$250,000 per unit. This amount is ONLY the CDBG-DR portion of the total subsidy. Additional leveraging of other sources of funding for the Project may result in total per-unit expenditure that exceeds this CDBG-DR subsidy amount.

Single-Family Homeownership Development Projects The per-unit maximum subsidy shall be no more than \$300,000 per unit. This amount is ONLY the CDBG-DR portion of the total subsidy. Additional leveraging of other sources of funding for the Project may result in total per-unit expenditure that exceeds this CDBG-DR subsidy amount.

LOAN TERMS In consideration for Developer's agreement to perform the obligations described in this Agreement, the CDBG funds will be provided to Developer in the form of (a) an interest-free Loan **AND** (b) a Restrictive Covenant. Further details regarding the structure of the Award of this Agreement are contained in the attached **EXHIBIT _____**.

- Repayment options

The Repayment option associated with this Agreement is unique to the Project and is described in detail and contained within the attached **EXHIBIT A-MF** or **EXHIBIT A-SF**.

AFFORDABILITY REQUIREMENTS Affordability requirements are outlined in the Federal Register Notice for the Grant from which this Project is awarded and are based upon the Program and type of activity(s) to be undertaken. Further details regarding the structure of the Affordability Period are contained in the attached **EXHIBIT A-MF** or **EXHIBIT A-SF** (as applicable). (24 CFR 92.252(e))

RESTRICTIVE COVENANT (Multifamily) An official declaration of the Affordability Period will be included in a Restrictive Covenant and recorded against each property, making the affordability requirements a covenant running with the land. It shall be the Developer's responsibility to file any notice required under Chapter 712, Florida Statutes, to ensure that the Restrictive Covenant remains in effect for the entire Affordability Period. At the end of the Affordability Period, provided that there is no default under this Agreement or any other loan documents, County will immediately and automatically release the Declaration through a Covenant contained within the Restrictive Covenant. The Declaration shall be subordinate to all financing liens and encumbrances filed of record against the property.

NATIONAL OBJECTIVE Proceeds of the Loan must result in housing that meets the CDBG-DR program objective of benefitting low- and moderate-income persons; specifically, through housing activities for individuals and families whose household income at initial occupancy is at or below 80% of the area median income ("AMI") adjusted for household size, as annually published by HUD. (24 CFR 570.200(a)(1)+(2), 570.201-570.209, 570.506)

NOTICE All notices, requests or other communications permitted or required to be made by Developer or County under this Agreement shall be given to the following:

Lee County

Glen Salyer, Assistant County Manager
Lee County
Strategic Resources & Government Affairs
1500 Monroe Street
Fort Myers, FL 33901
Phone:
Email: recovery@leegov.com

Developer

Notice shall be in writing, signed by Developer, and Owner, if applicable. Notice shall be effective upon acknowledged receipt.

**ARTICLE II
PROGRAM REQUIREMENTS**

The Project shall meet the following requirements:

ACCESSIBILITY In addition to any state and local requirements, due to the source of the Award, Developer shall comply with accessibility requirements in the Fair Housing Act and Section 504 of the Rehabilitation Act of 1973.

AFFIRMATIVE ACTION AND MARKETING If any Project under this Agreement involves the rental of five or more CDBG-DR units, Developer shall comply with County's requirements to affirmatively market any CDBG-DR unit available for rent in a manner to attract tenants without regard to race, color, national origin, sex (including gender identity and sexual orientation), religion, familial status, or disability. (24 CFR 570.602) Developer agrees, in soliciting tenants, to do the following:

- Use the Equal Housing Opportunity logo in all advertisements;
- Display a Fair Housing poster in the rental leasing office;
- Where appropriate, advertise, use media, including minority outlets, likely to reach persons least likely to apply for the housing;
- Maintain files of Developer's affirmative marketing activities for five (5) years and provide access there to County staff;
- For Multifamily Rental Housing Projects: Not refrain from renting to any tenant holding a Section 8 existing Housing Choice Voucher (HCV) or other housing assistance voucher;
- For Multifamily Rental Housing Projects: Comply with Section 8 HCV regulations when renting to any tenant holding a Section 8 HCV; and
- For Multifamily Rental Housing Projects: Exercise affirmative marketing of the units when vacated

Documentation regarding affirmative marketing shall be completed prior to unit occupancy and retained in the Developer's Project file.

DEBARMENT, SUSPENSION, AND EXCLUSION Developer certifies that, to the best of its knowledge and belief, that they nor any contractor, subcontractor or material/service provider hired under this Agreement is presently debarred, suspended, proposed for debarment, declared ineligible, or otherwise excluded from covered transactions by a federal department or

agency. Further, that Developer nor any contractor, subcontractor or material/service provider have not, within a 3-year period preceding this Agreement, 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 perform 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. The, nor any contractor, subcontractor or material/service provider hired under this Agreement, are not 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 this Agreement and have not been terminated for cause or default on a public transaction. (2 CFR 200.214)

DRUG-FREE WORKPLACE Developer will follow the Drug-free Workplace Act of 1988 (41 U.S.C. 701) and HUD's implementing regulations at 2 CFR Part 2429.

ENVIRONMENTAL REVIEW No Award of funds can be advanced, and no costs can be incurred, until an environmental review record (ERR) of the proposed site for the Project has been completed and a HUD Authorization to Use Grant Funds (AUGF) has been received as required under 24 CFR Part 58.

Execution of this Agreement indicates that the official ERR has been completed and submitted to HUD and that HUD has issued its official AUGF.

At the time of execution of this Agreement, the awarded Activity is fully compliant with all applicable environmental review requirements and regulations.

FLOOD HAZARDS AND FLOOD INSURANCE Developer shall comply with the mandatory flood insurance purchase requirements of Section 102 of the Flood Disaster Protection Act of 1973, as amended by the National Flood Insurance Reform Act of 1994 (42 USC 4012a). Additionally Developer shall comply with Section 582 of the National Flood Insurance Reform Act of 1994, as amended (42 USC 5154a), which includes the prohibition of flood disaster assistance, including loan assistance, to a person for repair, replacement, or restoration for damage to any personal, residential, or commercial property if that person at any time has received federal flood disaster assistance that was conditioned on the person first having obtained flood insurance under applicable federal law and the person has subsequently failed to obtain and maintain flood insurance as required under applicable Federal law on such property. Section 582 also includes a responsibility to notify property owners of their responsibility to notify transferees about mandatory flood insurance purchase requirements. More information about these requirements is available in the Federal Register Notice 88 FR 32046, governing the CDBG-DR award.

In addition, the following requirements apply to projects in floodplain zones:

- If the project occurs in a Coastal High Hazard Area (V Zone) or a floodway, federal assistance may not be used at this location if the project is a critical action pursuant to 24 CFR 55.1(c) and 55 subpart B, except as provided therein. For projects allowed under 24 CFR 55.1(c) and 55 subpart B, the eight-step process shall be followed pursuant to 24 CFR 55.20.
- If the project occurs in a 100-year floodplain or Special Flood Hazard Area (A Zone), the 8-Step Process is required as provided for in 24 CFR 55.20 or as reduced to the 5-Step

Process pursuant to 24 CFR 55.12(a), unless an exception is applicable pursuant to 24 CFR 55.12(b).

- If the project occurs in a 500-year floodplain (B Zone or shaded X Zone), the 8-Step Process is required for critical actions as provided for in 24 CFR 55.20 or as reduced to the 5-Step Process pursuant to 24 CFR 55.12(a), unless an exception is applicable pursuant to 24 CFR 55.12(b).

Additional elevation standards as may be required by the Federal Register Notice apply to projects funded by this Agreement. All structures, defined at 44 CFR 59.1, designed principally for residential use and located in the 1 percent annual (or 100-year) floodplain or Special Flood Hazard Area that receive assistance for new construction, repair of substantial damage, or substantial improvement, as defined at 24 CFR 55.2(b)(10), must be elevated with the lowest floor, including the basement, at least two feet above the 1 percent annual floodplain elevation. Residential structures with no dwelling units and no residents below two feet above the 1 percent annual floodplain, must be elevated or floodproofed, in accordance with FEMA floodproofing standards at 44 CFR 60.3(c)(3) or successor standard, up to at least two feet above the 1 percent annual floodplain.

All Critical Actions, as defined at 24 CFR 55.2(b)(3), within the 0.2 percent annual floodplain (or 500-year) floodplain must be elevated or floodproofed (in accordance with the FEMA standards) to the higher of the 0.2 percent annual floodplain flood elevation or three feet above the 1 percent annual floodplain. If the 0.2 percent annual floodplain or elevation is unavailable for Critical Actions, and the structure is in the 1 percent annual floodplain, then the structure must be elevated or floodproofed at least three feet above the 1 percent annual floodplain level. Applicable State, local, and tribal codes and standards for floodplain management that exceed these requirements, including elevation, setbacks, and cumulative substantial damage requirements, must be followed.

LEAD-BASED PAINT (if applicable) Developer agrees that any construction or rehabilitation of housing with assistance provided under this Agreement shall be subject to HUD's Lead-Based Paint Regulations at 24 CFR 570.608, 24 CFR Part 35, Subparts A, B, J, and R.

LIMITED ENGLISH PROFICIENCY Federal Executive Order 13166 requires that County, programs, subrecipients, contractors, subcontractors, and/or developers funded in whole or in part with CDBG-DR financial assistance to ensure fair and meaningful access to programs and services for families and individuals with Limited English Proficiency (LEP) and/or those who are deaf/hard of hearing.

NONDISCRIMINATION In the selection of occupants for the Project units, Developer shall comply with all nondiscrimination requirements of 24 CFR 570.601-602 and 24 CFR Part 8.

RELOCATION If the Project is occupied at the time of this Agreement, Developer will comply with the relocation requirements of 24 CFR 570.201, 24 CFR 570.606, and 49 CFR Part 24.

REAL PROPERTY ACQUISITION, AND ONE-FOR-ONE HOUSING REPLACEMENT Developer will take all necessary steps possible to minimize displacement in the Project. To the extent feasible, tenants displaced or relocated as a result of the development of the Project must be provided a reasonable opportunity to lease and occupy a suitable, decent, safe, sanitary, and affordable dwelling unit in the complex (for Multifamily Housing Projects) upon completion of the Project. Developer shall comply, when applicable, with the Uniform Relocation

Assistance and Real Property Acquisition Policies Act of 1970, as amended (URA), 42 USC 4601 – 4655, 49 CFR part 24, 24 CFR part 42, and 24 CFR 570.606. In addition to other URA requirements, these regulations implement Section 414 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 USC 5181, which provides: “Notwithstanding any other provision of law, no person otherwise eligible for any kind of replacement housing payment under the [URA] shall be denied such eligibility as a result of his being unable, because of a major disaster as determined by the President, to meet the occupancy requirements set by such Act.” Portions of these regulations have been waived for the funds provided under this Agreement, pursuant to the Federal Register Notice.

ARTICLE III DEVELOPMENT AND CONSTRUCTION

DEVELOPMENT OF THE PROJECT In strict conformance with the terms and conditions of this Agreement, Developer shall perform multifamily residential construction and/or rehabilitation construction services // single-family residential construction services (circle one) for disaster recovery to assist County in fulfilling State and Federal responsibilities related to recovery from Hurricane Ian. Developer shall perform services in compliance with (a) applicable HUD requirements, (b) this Agreement and all exhibits, addenda or attachments, (c) any amendments to this Agreement, and (d) any Technical Guidance Letters or Revisions that may be issued by County.

MINIMUM PROJECT REQUIREMENTS The Project shall, at a minimum, meet the following criteria:

- The Project must contain a minimum of _____ residential units with associated and appropriate common areas (if applicable), including but not limited to: parking, sidewalks, open space areas and stormwater retention areas and/or all other local codes.
- The Project (other than the Community Space, if applicable) shall be for residential use only. Mixed-use projects are prohibited.
- Units may be available for resident occupancy in a phased manner as buildings/units are completed and receive Certificate of Occupancy.
- Projects involving new construction shall comply with the Green Building Standard for all construction of residential buildings under at least one of the following: (a) Enterprise Green Communities, (b) LEED (New Construction, Homes, Midrise, Existing Buildings Operations and Maintenance, or Neighborhood Development, (c) Living Building Challenge, or (e) Any other equivalent green building program acceptable to HUD. Lee County encourages use of the Florida Green Building Coalition standards and inspection/certification.
- Projects involving rehabilitation shall comply with the guidelines specified in the HUD CPD Green Building Retrofit Checklist (www.hud.gov/sites/dfiles/CPD/documents/CPD-Green-Building-Retrofit-Checklist.pdf)

- The Project shall meet the following accessibility standards:
 - o All common facilities and areas must be accessible (Section 504 of the Rehabilitation Act of 1973)
 - o The development must incorporate universal design features (Section 504)
 - o For Multifamily Rental Housing Projects with over five units: Five percent (5%) of all units must be mobility accessible (The Americans with Disabilities Act of 1990)
 - o For Multifamily Rental Housing Projects with over five units: An additional two percent (2%) of all units must be sensory accessible.
 - o For Multifamily Rental Housing Projects with over five units: Accessible units must be spread throughout the Project and may not be concentrated on one floor or in one building (Section 504)
 - o Broadband infrastructure in common areas and units shall be installed to meet the requirements of Federal Register Notice 88 FR 32046

DEVELOPER RESPONSIBILITIES Developer must comply with all items outlined in the original application, attached herein and referred to as the Scope of Work at **EXHIBIT B**.

Income Determinations of Tenants (For Multifamily Rental Housing Development Projects)

The determination of whether annual income of a household occupying or seeking to occupy a unit within the Project complies with the requirements of the Program shall be made by the Developer prior to admission of such household to occupancy in a unit. Thereafter, such determinations shall be made by the Developer at least annually. Additional information regarding Income Determinations of Tenants may be found in **EXHIBIT A-MF**.

Income Determinations of Homebuyers (For Single-Family Homeownership Development Projects)

The determination of whether annual income of a household desiring to purchase a home offered under the Program's Single-Family Homeownership Development projects shall be made by the Developer prior to execution of a Residential Contract for Sale and Purchase. Additional information regarding Income Determinations of Homebuyers may be found in **EXHIBIT A-SF**.

Lease Provisions (For Multifamily Rental Housing Development Projects)

All tenant leases entered into during the Affordability Period/Restrictive Covenant term, shall be in writing. Additional information regarding Lease Provisions may be found in **EXHIBIT A-MF**.

Qualification as Affordable Housing (For Single-Family Homeownership Development Projects)

Each CDBG-DR assisted unit must be sold to and occupied by households that are eligible as low/moderate income families as defined in 24 CFR 92.2 and 24 CFR 92.217. Low/Moderate Income families are families whose annual gross income does not exceed 80 percent of the Area Median Income for the area, as determined by HUD, with adjustments for family size. Additional information regarding Qualification as Affordable Housing (for Homeownership) may be found in **EXHIBIT A-SF**.

COUNTY RESPONSIBILITIES

1. County shall furnish Developer with information regarding the requirements for this Project, including any changes in the CDBG-DR regulations or program limits that affect the Project. Notwithstanding the foregoing, the failure of County to notify Developer of such changes shall not excuse the Developer from complying with the changed regulations or program limits and shall not be deemed a breach of this Agreement by County, and County shall have no liability to the Developer for such failure.
2. County will prepare an Environmental Review Record (ERR) in compliance with HUD governing rules and regulations for CDBG-DR activities for each parcel identified by the Developer for acquisition prior to approval. Developer understands that County must give environmental clearance, through issuance of a HUD AUGF, for any property to be acquired prior to acquisition.

County will conduct progress inspections of work completed and will review project files and information to protect its interest as funder, lender and regulatory authority for this Project and will provide information to Developer regarding any progress inspection or monitoring to assist it in ensuring compliance. County's review and approval of the work will relate to overall compliance with the general requirements of the Agreement and HUD and CDBG-DR requirements, and all County regulations and ordinances.

ARTICLE IV

ADMINISTRATIVE REQUIREMENTS, MONITORING, REPORTING AND BUDGET

UNIFORM ADMINISTRATIVE REQUIREMENTS, COST PRINCIPLES AND AUDIT REQUIREMENTS FOR FEDERAL AWARDS

Developer shall comply with the applicable provisions in 2 CFR Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, except as modified by the Federal Register notice and other Federal Register Notices and HUD guidance. These provisions include:

- Financial and Program Management. Developer shall expend and account for all CDBG-DR funds received under this Agreement in accordance with the requirements in 2 CFR Part 200, including 2 CFR Part 200, Subpart D, which covers Standards for Financial and Program Management.
- Cost Principles. Costs incurred, whether charged on a direct or indirect basis, must be in conformance with 2 CFR Part 200, Subpart E. All items of cost listed in 2 CFR Part 200, Subpart E, that require prior federal agency approval are allowable without prior approval of HUD to the extent that they comply with the general policies and principles stated in 2 CFR 200, Subpart E and are otherwise eligible under this Agreement, except for the following:
 - o Depreciation methods for fixed assets shall not be changed without the approval of the federal cognizant agency.
 - o Fines, penalties, damages, and other settlements are unallowable costs to the CDBG program.

- Cost of housing (e.g., depreciation, maintenance, utilities, furnishings, rent), housing allowances and personal living expenses (goods or services for personal use) regardless of whether reported as taxable income to the employees (2 CFR 200.445).
- Organizational costs (2 CFR 200.455).

BUDGET AND EXPENDITURE OF FUNDS Developer's approved Project Budget under this Agreement is attached at **Exhibit _____**. Only expenditures within the attached line-item budget will be eligible for reimbursement following satisfactory submission of all required supporting documentation needed to validate the expenditures.

Developer will ensure that any expenditure of the Award will be in compliance with the requirements of the Affordable Housing Development & Preservation Program, along with the specific Program Manual associated with the type of housing development to be undertaken (Multifamily Program Manual; Single-Family Program Manual), along with any subsequent billing guidance, as well as all requirements set forth by County and acknowledges that Award funds will only be provided as reimbursement for eligible costs incurred, including actual expenditures or invoices for work completed. Developer is prohibited from charging to this Award the costs of ineligible activities under 24 CFR 570.207, and from using funds provided herein or personnel employed in the administration of activities under this Agreement for political activities, inherently religious activities, or lobbying.

CONFIDENTIALITY OF DATA Developer is required to maintain potentially sensitive data under this Agreement. Developer must maintain and preserve the confidentiality of any and all information and records that are subject to protection by state and federal laws, which include but are not limited to, the laws regarding: Personally Identifiable Information (including names, addresses, birth dates, driver's license information, social security numbers, and financial information); data provided to Developer and County in the form of FEMA Individual Assistance, Public Assistance, Hazard Mitigation Assistance, National Flood Insurance Program, as well as Small Business Administration disaster loans; trade secrets; tax records; and individually identifiable health information. Developer may not disclose information to current or prospective vendors regarding ongoing procurements. If the Developer receives a public record request or request for protected information, Developer must notify and refer the request to County. Developer must ensure that all employees and contractors return all physical and electronic copies of all County files and other records containing confidential information upon termination or completion of his or her position with Developer.

DOCUMENTATION AND RECORDKEEPING Developer shall establish and maintain records sufficient to enable County to:

- Determine whether Developer has complied with this Agreement, applicable federal statutes and regulations, and the terms and conditions of County's federal award; and
- Satisfy all recordkeeping requirements applicable to County. These records include the records described in the following Covenant of this Agreement. At a minimum, Developer shall maintain records required by 24 CFR 570.506, as if the requirements in 24 CFR 570.506 were directly imposed upon Developer and any additional, applicable recordkeeping requirements imposed by the Federal Register Notice.

DRAWDOWN OF FUNDS The Loan will be disbursed in one or more draws after Developer has incurred expenditures toward the construction of the Project in accordance with the Loan Agreement. Except as set forth herein, or unless otherwise authorized in writing by County, costs incurred for eligible activities or allowable costs prior to the effective date of this Agreement are ineligible for reimbursement with CDBG-DR funds.

- County will retain ten percent (10%) of the Loan until (a) a Certificate of Occupancy has been issued for the Project, (b) all conditions to payment of the retainage under the construction contract have been satisfied, and (c) County has received a certified public accountant's Cost Certification and Independent Audit of the aggregate amount of actual construction costs incurred by Developer for the Project, such certification performed at Developer's own expense.
- Developer shall provide AIA forms G701/G703 or similar industry-standard format, signed by the General Contractor and certified by the engineer performing inspection services for the Project, documenting the costs for which reimbursement is being requested, and noting overall percent completion of the Project.
- County may return a draw request and ask for additional information regarding the contents of the draw request. Under such circumstances, the timeframe for payment shall be extended by the time necessary to receive the additional information. Upon receipt and verification of the draw request, County shall process the request and forward payment to Developer as soon as practicable (generally, within 30 days of final verification and acceptance).
- Denied draw requests shall be returned to Developer with detailed notification of the reason for denial, including any specific line item or section of the draw request.

MONITORING Developer will be monitored by County for compliance with the regulations of 24 CFR 570.900 for the Affordability Period. Developer will provide reports and access to project files and records as requested by County during the Affordability Period and for five (5) years after completion and closeout of this Agreement.

RECORDS TO BE KEPT Developer must maintain records in order to meet recordkeeping requirements imposed by federal statute, regulation, specifically 24 CFR 570.506, and the terms and conditions of County's federal award, and to assist County in meeting its recordkeeping and reporting requirements. The following list is not exhaustive.

- Records providing a full description of each Project activity undertaken;
- Records demonstrating that each Project activity undertaken meets one of the National Objectives of the CDBG-DR program;
- Records required to determine the eligibility of Project activities;
- Records required to document the acquisition, improvement, use or disposition of real property acquired or improved with grant funds;
- Records documenting compliance with the Fair Housing and Equal Employment Opportunity requirements of the federal regulations (24 CFR 570.601 and 570.607);

- Financial records as required by 2 CFR Part 200, including records necessary to demonstrate compliance with all applicable procurement requirements; and
- Other records necessary to document compliance with this Agreement, any other applicable federal statutes and regulations, and the terms and conditions of this County's federal award.

REPORTING Developer shall report to County regular performance metrics that are necessary to comply with County's and HUD's grant reporting requirements (24 CFR 570.507, including those metrics necessary for County's Quarterly Performance Reports (QPRs) submitted to HUD. County will provide a list of required data and metrics that must be included in the reports in the Agreement, which may be amended from time to time and automatically incorporated herein. County, at its sole discretion, may provide technical assistance to Developer on topics related to the Program.

Developer shall deliver to County:

- Within ten (10) days after the last day of each month, until Project is closed out, a Unit Status Report.
- From time to time and promptly upon each request, such data, certificates, reports, statements, documents, or further information regarding the assets of the business, liabilities, financial position, projections, results of operations, or business prospects of Developer or other such matters concerning Developer's compliance with HUD regulations as County may reasonably request during the construction, rehabilitation, or reconstruction of the units within the Project during the entirety of the Affordability Period.
- Other federally required reports concerning:
 - o Equal opportunity and fair housing records containing:
 - Data on the extent to which each racial and ethnic group and single-headed household have applied for, participated in, or benefited from, any program or activity funded in whole or in part with CDBG-DR funds.
 - Documentation of actions undertaken to meet the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended.
 - Documentation and data on the steps taken to implement the Developer's outreach programs to minority-owned and women-owned businesses pursuant to 2 CFR 200.321, including data indicating the racial/ethnic or gender character of each business entity receiving a contract or subcontract of \$25,000 or more and documentation of the Developer's affirmative steps to assure that minority- and women-owned business enterprises have an equal opportunity to obtain or compete for contracts and subcontracts as sources of supplies, equipment, construction, and services.
 - Documentation of the actions of the Developer to affirmatively further fair housing.
 - o Records demonstrating compliance with Davis-Bacon and Related Acts.

Developer shall use County's designated system to upload reporting documents and other records as requested. Access to the designated system shall be provided to Developer by County as required.

ARTICLE IV AMENDMENT AND TERMINATION

AMENDMENT County and Developer may amend this Agreement at any time provided that such amendments are in writing, make specific reference to this Agreement, are approved by all parties, and are signed by a duly authorized representative of each party. Such amendments shall not invalidate this Agreement, nor relieve or release County of Developer from their obligations under this Agreement. Amendments will generally be required when any of the following are anticipated:

- Revision to the scope or objectives of the Program, including purpose or beneficiaries;
- Need to extend the availability of grant funds;
- Movement of funds within the existing budget; and
- Revision that would result in the need for additional funding;

County may, in its sole discretion, amend this Agreement to conform with Federal, state or local governmental guidelines, policies and available funding amounts, or for other reasons. If such amendments result in a change in the funding, the scope of services, or schedule of the activities to be undertaken as part of this Agreement, such modifications will be incorporated only by written amendment signed by County and Developer.

TERMINATION OF AGREEMENT BY MUTUAL CONSENT OR CONVENIENCE The parties may terminate this Agreement by mutual written consent. County may terminate this Agreement, in whole or in part, for convenience, with 30 days written notice to Developer.

TERMINATION IN THE EVENT OF DEFAULT County may suspend, reduce, or terminate their obligations under this Agreement, in whole or in part, upon 30 days' notice, whenever County determines that Developer has failed to comply with any term, condition, requirement, or provision of this Agreement. Developer shall be afforded a reasonable period of time to cure any noncompliance. Failure to comply with any terms of this Agreement, include, but are not limited to, the following:

- Default in Performance. The default by Developer in the observance or performance of any of the terms, conditions or covenants of this Agreement, as determined by County.
- Misrepresentation. If any representation or warranty made by Developer in connection with this Agreement, or any information, certificate, statement or report heretofore or hereafter made shall be untrue or misleading in any natural respect at the time made, as determined by County.

- Abandonment of the Project. If Developer abandons or otherwise ceases to continue to make reasonable progress toward completion of the Project, as determined by County.

If, after notice of default or noncompliance, Developer has not cured such default within a reasonable time or is not diligently pursuing a cure satisfactory to County, then County shall promptly notify Developer, in writing, of its determination and reasons for the termination together with the date on which the termination shall take effect, along with other notifications required under 2 CFR Part 200, Subpart D. Upon termination, County retains the right to recover any improper expenditures from Developer and Developer shall return to County any improper expenditures no later than 30 days after the date of termination. County may, at its sole discretion, allow the Developer to retain or be reimbursed for costs reasonably incurred prior to termination, that were not made in anticipation of termination and cannot be cancelled, provided that said costs meet the provisions of this Agreement, 2 CFR Part 200, Subpart E, Costs Principles, and any other applicable state or Federal statutes, regulations or requirements.

ADDITIONAL REMEDIES If the Developer defaults, County shall have the power and authority, consistent with their statutory authorities, to:

- Prevent any impairment of the Grant activities by any acts which may be unlawful or in violation of this Agreement or any other item or document required herein;
- Compel specific performance of any of Developer's obligations under this Agreement;
- Obtain return of all Grant funds; and
- Seek damages from any appropriate person or entity.

County shall be under no obligation to complete the activities funded by this Agreement.

NONWAIVER No delay, forbearance, waiver, or omission by County to exercise any right, power or remedy upon any event of default shall exhaust or impair any such right, power or remedy or shall be construed to waive any such event of default or to constitute acquiescence therein.

ARTICLE VI RECORDS AND REPORTS

Developer shall maintain records sufficient to meet the requirements of 24 CFR 570.490. Developer further agrees to abide by the requirements and policies of County and its successors as it pertains to public records requests; if the requirements differ, the more restrictive requirement or policy will govern.

- Developer shall maintain records specific to each individual unit including tenant income eligibility documentation, so that all documentation regarding each unit will be easily retrievable.

- All original records pertinent to this Agreement shall be retained by Developer for a period of five (5) years following the date of termination of this Agreement or of submission of the final close-out report, whichever is later, with the following exceptions:
 - o If any litigation, claim, or audit is started before the expiration of the five (5) year period and/or extends beyond the five (5) year period, the records will be maintained until all litigation, claims or audit findings involving the records have been resolved.
 - o Records for the disposition of non-expendable personal property valued at \$1,000 or more at the time of acquisition shall be retained for five (5) years after final disposition.
- All records, including supporting documentation of all program costs, shall be sufficient to determine compliance with the requirements and the applicable federal laws and regulations and all other applicable laws and regulations.
- Developer, its employees, and agents, including all subcontractors or consultants to be paid from CDBG-DR Funds provided under this Agreement, shall allow access to its records at reasonable times to County, its employees and agents, and to HUD. "Reasonable" shall be construed according to the circumstances, but ordinarily shall mean during normal business hours of 8:00 a.m. to 5:00 p.m., local time, Monday through Friday. The term "agents" shall include but is not limited to auditors or consultants retained by Developer or County.
- Developer shall submit to County a Monthly Progress Report which is due on the tenth (10th) day of each month during the term of this Agreement.
- Developer's failure to submit Monthly Progress Reports shall give cause for future payments to Developer being withheld until said report(s) are submitted.
- Developer shall provide County with additional program information as requested.

ARTICLE VII DURATION OF AFFORDABILITY PERIOD

This Agreement shall commence upon its execution by both parties and shall terminate after

f the date of final inspection and acceptance by County and the completion and certification of the CDBG-DR Units. If the award of funds from County is not approved or construction funding is not finalized by Developer, this Agreement may be terminated by County at the time notice of such is received. Additional termination provisions are provided in **ARTICLE IV** above.

ARTICLE VIII TIME OF PERFORMANCE

Developer agrees to construct the Project and comply with a timetable agreed upon by all parties but which may not exceed _____ months including close-out procedures.

EXTENSIONS The burden is on the Developer to request deadline extensions under this Agreement, unless explicitly stated otherwise. Requests for extensions must be made in writing, addressed to County, explain why an extension is needed and must proposed a new deadline. County must receive this request at least 30 days before the applicable deadline. Within its sole discretion, County may or may not approve the extension, based on project performance and other contributing factors. County is not responsible for notifying Developer of any approaching deadlines.

CLOSEOUT Developer shall closeout its use of the awarded funding and its obligations under this Agreement by complying with the closeout procedures in 2 CFR 200.344. Activities during this closeout period may include, but are not limited to:

- Making final payments;
- Disposing of program assets (including the return of all unused materials, equipment, unspent cash advances, program income balances (if applicable), and accounts receivable to County) (24 CFR 570.503(b)(7)); and
- Determining the custodianship of records.

Notwithstanding the foregoing, the terms of this Agreement shall remain in effect during any period that Developer has control over awarded funding, including program income. The rules governing program income acquired after closeout are modified in the Federal Register Notice applicable to this Agreement.

Record Retention and Transmission of Records to County. Prior to closeout of this Agreement, Developer must transmit to Grantee records sufficient for the Grantee to demonstrate that all costs under this Agreement met the requirements of the federal award. Developer shall retain financial records, supporting documents, statistical records, records and all other Developer records pertinent to this Agreement and Developer's subaward for the longer of 5 years after the expiration or termination of this Agreement. Developer must continue to collect and maintain records to ensure that any real property under Developer's control that was acquired or improved, in whole or part, with Grant Funds is used to meet one of the national objectives until 5 years after expiration of this Agreement.

The following exceptions apply to the 5-year retention requirement:

- If any litigation, claim, or audit is started before the expiration of the 5-year period, the records must be retained until all litigation, claims, or audit findings involving the records have been resolved and final action taken; or
- When Developer is notified in writing by HUD, the cognizant agency for audit as defined in 2 CFR 200.1, the oversight agency for audit as defined in 2 CFR 200.1, the cognizant agency for indirect costs as defined in 2 CFR 200.1, or County, Developer shall extend the retention period consistent with the notification.

Deobligation of Unused Funds. When project costs are less than the award of Grant Funds, Developer shall deobligate excess funds back to County.

Refunds; Unexpended Funds. Developer shall repay to County, or its successor, any funds received that exceed the amount that has been allocated per this Agreement, including any interest earned on excess funds. If Developer has funds on hand or accounts receivable

attributable to the use of funds at the time of termination of this Agreement, Developer must transfer all funds and attributable accounts receivable to County, or its successor.

Improper Expenditures. In the sole discretion of County, or its successor, County, or its successor, may recapture from Developer any amount of awarded funds improperly expended, either deliberately or non-deliberately, by any person or entity.

ARTICLE IX GENERAL PROVISIONS

The following general provisions apply:

- **Independent Contractor**
Nothing contained in this Agreement is intended to, or shall be construed in any manner, as creating, or establishing the relationship of employer/employee between the parties. Developer shall at all times remain an "independent contractor" with respect to the services to be performed under this Agreement. County shall be exempt from payment of all Unemployment Compensation, FICA, retirement, life and/or medical insurance and Workers' Compensation Insurance, as Developer is an independent contractor.
- **Hold Harmless**
Developer shall hold harmless, defend, and indemnify County from any and all claims, actions, suits, charges, and judgments whatsoever that arise out of Developer's performance or nonperformance of the services or subject matter called for in this Agreement.
- **Workers' Compensation**
Developer shall provide Workers' Compensation Insurance coverage for all of its employees involved in the performance of this Agreement.
- **Insurance & Bonding**
Developer shall carry sufficient insurance coverage to protect contract assets from loss due to theft, fraud and/or undue physical damage, and as a minimum shall purchase a blanket fidelity bond covering all employees in an amount equal to cash advances from County.

Developer shall comply with the bonding and insurance requirements of 24 CFR 84.31 and 84.48, Bonding and Insurance.
- **County Recognition**
Developer shall ensure recognition of the role of County in providing services through this Agreement. All activities, facilities and items utilized pursuant to this Agreement shall be prominently labeled as to funding source. In addition, Developer will include a reference to the support provided herein in all publications made possible with funds made available under this Agreement.

ARTICLE X EMPLOYMENT AND CONTRACTING RESTRICTIONS

Developer is prohibited from using Award funds or personnel employed in the administration of the program for: political activities; inherently religious activities; lobbying; political patronage; and nepotism activities (24 CFR 570.200(j), 570.207(a)(3)). Hiring and contracting activities are subject to compliance with 24 CFR Part 570 and other applicable, local, state, and federal laws and regulations.

LABOR STANDARDS Developer agrees to comply with the requirements of the Secretary of Labor in accordance with the Davis-Bacon Act as amended, the provisions of Contract Work Hours and Safety Standards Act (40 U.S.C. 327 et seq.) and all other applicable federal, state, and local laws and regulations pertaining to labor standards insofar as those acts apply to the performance of this Agreement. Developer agrees to comply with the Copeland Anti-Kick Back Act (18 U.S.C. 874 et seq.) and its implementing regulations of the U.S. Department of Labor at 29 CFR Part 5. Developer shall maintain documentation that demonstrates compliance with hour and wage requirements of this part.

Such documentation shall be made available to County for review upon request.

Developer agrees that, except with respect to the rehabilitation or construction of residential property containing less than eight (8) units, all contractors engaged under contracts in excess of \$2,000 for construction, renovation or repair work financed in whole or in part with assistance provided under this contract, shall comply with Federal requirements adopted by County pertaining to such contracts and with the applicable requirements of the regulations of the Department of Labor, under 29 CFR Parts 1, 3, 5 and 7 governing the payment of wages and ratio of apprentices and trainees to journey workers; provided that, if wage rates higher than those required under the regulations are imposed by state or local law, nothing hereunder is intended to relieve Developer of its obligation, if any, to require payment of the higher wage. Developer shall cause or require to be inserted in full, in all such contracts subject to such regulations, provisions meeting the requirements of this paragraph.

The **WAGE DETERMINATION** for this Project, as determined by the U.S. Department of Labor, and issued through SAM.GOV, is:

General Decision Number: _____

MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISE (MWBE) Developer will use its best efforts to afford small businesses, minority business enterprises, and women's business enterprises the maximum practicable opportunity to participate in the performance of this contract. As used in this contract, the terms "small business" means a business that meets the criteria set forth in section 3(a) of the Small Business Act, as amended (15 U.S.C. 632), and "minority and women's business enterprise" means a business at least fifty-one (51) percent owned and controlled by minority group members or women. Developer may rely upon written representations by businesses regarding their status as minority and female business enterprises in lieu of an independent investigation.

ACCESS TO RECORDS Developer shall furnish and cause each of its own developers or subcontractors to furnish all information and reports required hereunder and will permit access to its books, records, and accounts by County, HUD or its agent, or other authorized federal officials for purposes of investigation to ascertain compliance with the rules, regulations and provisions stated herein.

NOTIFICATIONS Developer will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer, advising the labor union or worker's representative of Developer's commitments hereunder, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

SUBCONTRACT PROVISIONS Developer will include the Labor Standards provisions listed above in every subcontract or purchase order, specifically or by reference, so that such provisions will be binding upon each of its own Developers or subcontractors.

ARTICLE XI CONFLICT OF INTEREST

In the procurement of labor, supplies, equipment, construction, and services by Developer or by any subcontractor, the conflict of interest provisions in 24 C.F.R. 570.611(b) and 2 CFR 200.112 apply.

No person who is an employee, agent, consultant, officer, or elected official or appointed official of County, or of any designated public agencies, or subcontractors which are receiving CDBG-DR funds or who exercise or have exercised any functions or responsibilities with respect to CDBG-DR funded activities or who are in a position to participate in a decision making process or gain inside information with regard to such activities, may obtain a personal or financial interest or benefit from the activity, or have an interest in any contract, subcontract, or agreement with respect thereto, or the proceeds there under, either for themselves or those with whom they have family or business ties during their tenure or for one year thereafter. This prohibition includes the following:

- Any interest in any contract, subcontract or agreement with respect to any CDBG-DR assisted-projects or programs administered by Developer, or the proceeds thereunder; or
- Any unit benefits or financial assistance associated with CDBG-DR funds or programs administered by Developer including, occupancy of a multifamily rental housing unit in a CDBG-DR Unit in the Project;

This prohibition does not apply to an employee or agent of Developer who is income qualified and occupies a CDBG-DR Unit in the Project as the on-site project manager or maintenance worker.

Any potential conflict of interest shall be reported using the **COUNTY'S** disclosure form.

ARTICLE XII SECTION 3

SECTION 3 OF THE HOUSING AND URBAN DEVELOPMENT ACT NOTICE Developer shall follow the regulations of 24 CFR Part 75 et seq. that implement Section 3 of the Housing and Urban Development Act of 1968. If applicable, Developer agrees to the following:

- Any work to be performed under this Agreement that is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701 u (Section 3) shall follow the requirements of 24 CFR Part 75. The purpose of Section 3 is to ensure that employment and other economic opportunities

generated by HUD assistance or HUD-assisted projects covered by Section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing, community development assistance, public housing financial assistance, or assistance from the Lead Hazard Control and Healthy Homes programs, as authorized by Sections 501 or 502 of the Housing and Urban Development Act of 1970, the Lead-Based Paint Poisoning Prevention Act, and the Residential Lead-Based Paint Hazard Reduction Act of 1992.

- Developer agrees to include Section 3 language in every contract subject to compliance with regulations in 24 CFR Part 75, and agrees to take appropriate action, as provided in an applicable provision of the contract or in this Section 3 language, upon finding that a contract is in violation of the regulations in 24 CFR Part 75. Developer will not subcontract with any entity where Developer has notice or knowledge that the entity has been found in violation of the regulations in 24 CFR Part 75.
- Execution of this Agreement is contingent upon the acceptance and approval by NCORR of a Section 3 Utilization Plan consistent with HUD guidelines. If Developer does not have a Section 3 Utilization Plan consistent with 24 CFR Part 75 regulations upon signature, Developer shall abide by the NCORR Section 3 guidelines. County's Section 3 Policy and subsequent amendments shall be automatically incorporated herein with this Agreement if Developer does not have a Section 3 Utilization Plan, or until Developer has a final Section 3 Utilization Plan.
- Noncompliance with HUD's regulations in 24 CFR Part 75 may result in sanctions, termination of this Agreement for default, and debarment or suspension from future HUD assisted contracts.
- Pursuant to 24 CFR 75.27, Developer shall include, or cause its borrowers, contractors, and subcontractors receiving CDBG-DR funds under this Agreement to include Section 3 language and Section 3 requirements in every Section 3 project (as defined in 24 CFR 75.3(A)(2)). Recipients of Section 3 funding must require contractors and subcontractors to meet the requirements of 24 CFR 75.19, regardless of whether Section 3 language is included in agreements, program regulatory agreements, or contracts.
- Developer will certify that any vacant employment positions, including training positions, that are filled (1) after Developer is selected but before the contract (or Agreement) is executed, and (2) with persons other than those to whom the regulations of 24 CFR Part 75 require employment opportunities be directed, were not filled to circumvent Developer's obligations under 24 CFR Part 75.
- With respect to work performed in contracts, subcontracts, grants or subgrants subject to Section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 5307(b)) or subject to tribal preference requirements as authorized under 101(k) of the Native American Housing Assistance and Self-Determination Act (25 U.S.C. 4111(k)) must provide preferences in employment, training, and business opportunities to Indians and Indian organizations, and are therefore not subject to the requirements of 24 CFR Part 75.

ARTICLE XIII GOVERNING LAW

This agreement is governed by and shall be construed in accordance with the laws of the State of Florida. Developer and County consent to the exclusive jurisdiction of the Courts of the State of Florida and County, in all proceedings arising under this Agreement.

ARTICLE XIV ENTIRE AGREEMENT

This Agreement represents the entire agreement by and between the parties hereto for the matter specified herein. No statement, representation, writing, understanding, or agreement made by either party, or a representative of either party shall be binding unless expressed herein. All changes, amendments, modifications, or revisions to this Agreement shall be binding only when in writing and signed by both parties, by their respective authorized officers, agents, or representatives.

ARTICLE XV INCORPORATION

The recitals at the beginning of this Agreement are true and correct and, by this reference, are incorporated herein and made a part hereof. All exhibits attached hereto are, by this reference, incorporated herein and made a part hereof.

ARTICLE XVI PROGRAM INCOME REQUIREMENTS

County and Developer agree to comply with Program Income requirements in 24 CFR 570.504 and County policy.

ARTICLE XVII COUNTERPARTS

This Agreement may be executed in counterparts, each of which will be deemed an original, but all of which, taken together, will constitute one and the same agreement. Execution by facsimile, by scanned attachments, or by electronic signature (including, but not limited to DocuSign) shall have the same force and effect as a wet signature. An executed copy of this Agreement delivered by facsimile, e-mail or other means of electronic transmission will be deemed to have the same legal effect as delivery of an original signed copy of that document.

IN WITNESS WHEREOF, County and Developer and Owner (if applicable) have caused this Agreement to be duly executed as of the date first written above.

LEE COUNTY BOARD OF COUNTY COMMISSIONERS

By: _____
(Lee County BoCC Authorized Representative signature)

Date: _____

APPROVED AS TO FORM AND LEGALITY

By: _____
(Lee County Attorney / Notary Public)

Date: _____

DEVELOPER

[Insert Developer Signatory and Title]

By: _____

Date: _____

OWNER

[Insert Owner Signatory and Title]

By: _____

Date: _____