

**BEFORE THE STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION**

ARTHUR MAYS VILLAS PHASE ONE, LLC

Petitioner,

vs.

FLORIDA HOUSING FINANCE CORPORATION,

Respondent.

FCHC Case No.: 2021-005BP

RFA: 2020-203

Application No: 2021-156C

RECEIVED

FEB 8 2021 10:47AM

FLORIDA HOUSING
FINANCE CORPORATION

FORMAL WRITTEN PROTEST

AND PETITION FOR ADMINISTRATIVE HEARING

Petitioner, Arthur Mays Villas Phase One, LLC, (“Petitioner” or “Arthur Mays”), files this Formal Written Protest and Petition for Administrative Hearing (“Petition”) pursuant to section 120.57(3), Florida Statutes, and rules 28-110.04 and 67-60.009, Florida Administrative Code. This Petition challenges the intended decision of Respondent, Florida Housing Finance Corporation (“Respondent” or “FHFC”), to award funding to applicants pursuant to RFA 2020-203 Housing Credit Financing for Affordable Housing Developments Located in Miami-Dade County (the “RFA”).

Introduction

1. This petition is filed pursuant to sections 120.57(1) and (3), Florida Statutes, Rules 28-110 and 67-60, Florida Administrative Code.

2. Petitioner is a Florida Limited Liability Company in the business of providing affordable housing with a principal address of 7735 NW 146th Street, Suite 306, Miami Lakes, Florida 33016. Petitioner’s address, telephone number and email address are those of its undersigned counsel for the purposes of this proceeding.

3. Petitioner is a RFA applicant for a proposed housing development in Miami-Dade County under application number 2021-156C. Petitioner is a “Developer” entity as defined by FHFC in rule 67-48.002, Florida Administrative Code.

4. The affected agency is the Florida Housing Finance Corporation located at 227 North Bronough Street, Suite 5000, Tallahassee, Florida 32301-1329.

5. FHFC is a public corporation created pursuant to section 420.054, Florida Statutes, with the intent to organize and promote the public welfare by administering the governmental function of financing affordable housing in Florida.

6. FHFC is designated as the housing credit agency for Florida within the meaning of section 42(h)(7)(A) of the Internal Revenue Code and Chapters 67-48 and 67-60, Florida Administrative Code. Pursuant to section 420.5099, Florida Statutes, FHFC has the authority to establish procedures for allocating and distributing low-income housing tax credits.

7. FHFC has implemented a competitive solicitation process known as the Request for Applications to implement the provisions of the housing credit program and assess the relative merits of proposed developments. *See* Chapters 67-60 and 67-48, Fla. Admin. Code.

8. Arthur Mays is challenging FHFC's determination regarding Southpointe Vista's eligibility and award under the RFA.

RFA 2020-203

9. On August 26, 2020, FHFC issued the RFA for applications. Through the RFA, FHFC anticipated awarding an estimated \$7,420,400 of housing credits for award to proposed developments located in Miami-Dade County.

10. All applications in response to the RFA were due on or before November 10, 2020.

11. The RFA provides the following funding goals:

- a. The Corporation has a goal to fund one proposed Development that (a) selected the Demographic Commitment of Family at question 2.a. of Exhibit A and (b) qualifies for the Geographic Areas of Opportunity/SADDA Goal as outlined in Section Four A.10.a.(1)(d) of the RFA.
- b. The Corporation has a goal to fund one proposed Development that selected the Demographic Commitment of Elderly (Non-ALF) at question 2.a. of Exhibit A.
- c. The Corporation has a goal to fund one proposed Development that qualifies for the Urban Center Designation, with a preference that the proposed Development be located in a Tier I Urban Center.

(RFA at 69)

12. The RFA describes the Application Sorting Order as follows:

The highest scoring Priority I Applications will be determined by first sorting together all eligible Applications from highest score to lowest score, with any scores that are tied separated in the following order. This will then be repeated for Priority II Applications:

- a. First, by the Application's eligibility for the Per Unit Construction Funding Preference which is outlined in Section Four A.10.e. of the RFA (with Applications that qualify for the preference listed above Applications that do not qualify for the preference);
- b. Next, by the Application's eligibility for the Development Category Funding Preference which is outlined in Section Four A.4.b.(4) of the RFA (with Applications that qualify for the preference listed above Applications that do not qualify for the preference);
- c. Next, by the Application's Leveraging Classification, applying the multipliers outlined in Item 3 of Exhibit C of the RFA (with Applications having the Classification of A listed above Applications having the Classification of B);
- d. Next, by the Application's eligibility for the Proximity Funding Level (which is outlined in Section Four A.5.e. of the RFA) with Applications that qualify for Level 1 listed above Level 2;
- e. Next, by the Application's eligibility for the Grocery Store Funding Preference which is outlined in Section Four A.5.e. of the RFA (with Applications that qualify for the preference listed above Applications that do not qualify for the preference);
- f. Next, by the Application's eligibility for the Transit Service Funding Preference which is outlined in Section Four A.5.e. of the RFA (with Applications that qualify for the preference listed above Applications that do not qualify for the preference);
- g. Next, by the Application's eligibility for the Community Service Preference which is outlined in Section Four A.5.e. of the RFA (with Applications that qualify for the preference listed above Applications that do not qualify for the preference);
- h. Next, by the Application's eligibility for the Florida Job Creation Funding Preference which is outlined in Item 4 of Exhibit C of the RFA (with Applications that qualify for the preference listed above Applications that do not qualify for the preference);
- i. And finally, by lottery number, resulting in the lowest lottery number receiving preference.

(RFA at 70)

13. The RFA describes the Funding Selection Process as follows:

- a. Goal to fund one Family Application that qualifies for the Geographic Areas of Opportunity / SADDA Goal

The first Application selected for funding will be the highest ranking eligible Priority I Family Application that qualifies for the Geographic Areas of Opportunity / SADDA Goal.

If there are none, then the first Application selected for funding will be the highest ranking eligible Priority II Family Application that qualifies for the Geographic Areas of Opportunity / SADDA Goal.

- b. Goal to fund one Elderly (Non-ALF) Development

The next Application selected for funding will be the highest ranking eligible Priority I Application that qualifies as an Elderly (Non-ALF) Development.

If there are none, then the next Application selected for funding will be the highest ranking eligible Priority II Application that qualifies as an Elderly (Non-ALF) Development.

c. Goal to fund one Urban Center Development

The next Application selected for funding will be the highest ranking eligible Priority I Application that qualifies as a Tier I Urban Center Development.* If there are none, then the next Application selected for funding will be the highest ranking eligible Priority I Application that qualifies as a Tier II Urban Center Development.* If there are none, then the next Application selected for funding will be the highest ranking eligible Priority II Application that qualifies as a Tier I Urban Center Development.*If there are none, then the next Application selected for funding will be the highest ranking eligible Priority II Application that qualifies as a Tier II Urban Center Development.*

*If this Application cannot be fully funded, it will be entitled to receive a Binding Commitment for the unfunded balance.

d. Remaining Funding

If funding remains after selecting the three highest ranking eligible unfunded Applications as outlined above, or if funding remains because there are not three eligible Applications that can be funded as outlined above, then no further Applications will be considered for funding and any remaining funding will be distributed as approved by the Board.

(RFA at 71)

14. The RFA set forth the information required to be provided by all applicants, which includes a general description of the type of projects that will be considered eligible for funding and delineates the submission requirements.

15. By submitting an application, each applicant certified that the “Proposed Developments funded this RFA will be subject to the requirements of the RFA, inclusive of all Exhibits, the Application requirements outlined in Rule Chapter 67-60, F.A.C., the requirements outlined in Rule Chapter 67-48, F.A.C., and the Compliance requirements of Rule Chapter 67-53, F.A.C.”

16. The RFA delineates the submission requirements and sets out the information required to be provided by an applicant, including, on pages 65-66, a list of mandatory “Eligibility Items” that must be included in an application. The mandatory Eligibility Items include “Evidence Applicant is a legally formed entity provided” and “Development Cost Pro Forma provided (listing expenses or uses) and Construction/Rehab analysis and Permanent analysis (listing sources) – Sources must equal or exceed uses.”

17. FHFC received 50 applications in response to the RFA, of which, 46 applications were identified as eligible by the FHFC.

Notice of Agency Action

18. Arthur Mays received notice of the Preliminary Awards/Notice of Intended Decisions (“Intended Decisions”) through electronic posting on January 22, 2021 at 2:50 p.m. A copy of the notice posted on FHFCs website are attached hereto as Exhibit “1”. Arthur Mays was deemed eligible for funding but was not among those recommended for funding.

Notice of Intent to Protest

19. On January 27, 2021 at 10:10 a.m., Arthur Mays timely submitted its Notice of Intent to Protest FHFC’s Intended Decisions. A copy of that Notice of Intent to Protest is attached hereto as Exhibit “2”.

Substantial Interests

20. Arthur Mays timely submitted application 2020-156C in response to the RFA. In its application, Arthur Mays sought \$2,600,000.00 in annual federal tax credits to help finance the new construction development of a 128 unit mid-rise development with a designation commitment to elderly non-ALF while qualifying for an Urban Center Designation, tier 1 (“Arthur Mays Application”).

21. The Arthur Mays Application was scored as having satisfied all eligibility requirements and was eligible for funding as an Elderly development and/or as an Urban Center development. The Arthur Mays Application was assigned lottery number four as reflected in the document entitled “RFA 2020-203 Application Submitted Report.”

22. Southpointe Vista, application number 2021-163C, was scored as satisfying all eligibility requirements and was eligible for funding. Southpointe Vista was assigned lottery number two.

23. The Review Committee selected applications for funding in the following order:

- a. Family Application that qualifies for the Geographic Area of Opportunity/HUD designated SADDA Goal: 2021-165C Residences at SoMi Parc (lottery number one)
- b. Elderly (ALF or Non-ALF) Application: 2021-143C Merrick Place (lottery number three)
- c. Urban Center Development: 2021-163C Southpointe Vista (lottery number two)

24. On January 22, 2021, FHFC's Board of Directors adopted the scoring committee's recommendations and tentatively authorized the selection for funding of those applications.

25. Arthur Mays is challenging and seeking a determination that FHFC erred in the determination of eligibility and award funding for Southpointe Vista. If not for FHFC's error in the eligibility and award funding determination, Arthur Mays Application would have received the allocation of funding from RFA 2020-203 as an Urban Center Development.

Southpointe Vista Eligibility

26. Southpointe Vista, as applicant, was required to identify the Managers and Members at the First Principal Disclosure level. MFP FL I Manager, LLC, is identified as both Manager and Non-Investor member.

27. MFP FL I Manager, LLC, at Second Disclosure level, identifies Archipelago Housing, LLC as both Manager and Member.

28. Upon information and belief, Archipelago Housing, LLC, has not been created as a legally formed entity in Florida or registered as a foreign corporation as of the Application Deadline.

29. Pursuant to section 605.0902, Florida Statutes, holds that a "foreign limited liability company may not transact business in this state until it obtains a certificate of authority from the [Department of State]."

30. Southpointe Vista's Principal Disclosure for Applicant Form should be rejected and Southpointe Vista should be deemed ineligible for funding for the Applicant failing to have Archipelago Housing, LLC created as a legally formed entity in Florida by the Application Deadline thus negating FHFC's ability to perform due diligence checks on the entity.¹

¹ See *Quail Roost Transit Village I, Ltd v. Florida Housing Finance Corp. and 675 Ali Baba, LLC, DOAH case No. 20-3094BID* (Applicants failure to properly identify manager, conceding "manager was not accurately disclosed on Principals Disclosure Form...and that to his knowledge no entity called "Ali Baba Manager, LLC, existed" was deemed a material error as "Florida Housing cannot perform due diligence checks on the entity if it is not correctly identified.")

Southpointe Vista Material Misrepresentation

31. As previously stated, only applications that meet the Eligibility Items are eligible for funding. Of these Eligibility Items, an Applicant is required to provide Evidence of Site Control and Development Cost Pro Forma. To demonstrate Evidence of Site Control, Southpointe Vista included, in its attachment 8, an agreement to purchase certain real property from Seller, McDowell Acquisitions, LLC (the “Agreement”). Attached as Exhibit “3”.

32. The Agreement reflects that the purchase price for the subject property is seven million dollars.

33. The Agreement includes an Exhibit “B”, an original purchase agreement between McDowell Acquisitions and original seller Cutler Ridge Investment Group, LLC. This exhibit’s recitals states: “Seller is the owner and holder of certain real property comprised of approximately 3.46 acres of vacant land located at the northeast corner of the intersection of SW 214th Street and SW 117th Court, Miami-Dade County, Florida, consisting of two (2) separate lots...”

34. The Agreement, in its Exhibit “B”, provides the following legal description of the property:

Legal Description of the Subject Property

FOLIO: 30-6912-000-0331

THE SOUTH 2 ACRES OF THE EAST 1/2 OF THE NORTHEAST 1/4 OF THE SOUTHEAST 1/4 OF THE SOUTHEAST 1/4 OF SECTION 12, TOWNSHIP 56 SOUTH, RANGE 39 EAST, MIAMI-DADE COUNTY, FLORIDA, ALSO KNOWN AS THE SOUTH 259.83 FEET OF THE EAST 1/2 OF THE NORTHEAST 1/4 OF THE SOUTHEAST 1/4 OF THE SOUTHEAST 1/4 OF SECTION 12, TOWNSHIP 56 SOUTH, RANGE 39 EAST, MIAMI-DADE COUNTY, FLORIDA, LESS RAILROAD RIGHT OF WAY AND EASEMENTS FOR UTILITY.

LESS THE FOLLOWING PORTIONS DEEDED TO DADE COUNTY FOR ROAD RIGHT OF WAY:

THE WEST 50.00 FEET, THE EAST 25.00 FEET AND THE SOUTH 25.00 FEET OF THE SOUTH 2 ACRES OF THE EAST 1/2 OF THE NORTHEAST 1/4 OF THE SOUTHEAST 1/4 OF THE SOUTHEAST 1/4 OF SECTION 12, TOWNSHIP 56 SOUTH, RANGE 39 EAST, MIAMI-DADE COUNTY, FLORIDA, A/K/A THE SOUTH 259.83 FEET OF THE EAST 1/2 OF THE NORTHEAST 1/4 OF THE SOUTHEAST 1/4 OF THE SOUTHEAST 1/4 LYING NORTHWESTERLY OF THE NORTHWESTERLY RIGHT OF WAY LINE OF THE FLORIDA EAST COAST RAILWAY.

AND

ALL THAT PART OF THE NORTHEAST 1/4 OF THE SOUTHEAST 1/4 OF THE SOUTHEAST 1/4 OF SAID SECTION 12 WHICH LIES SOUTHEASTERLY OF A LINE WHICH IS 50.0 FEET NORTHWESTERLY OF AND PARALLEL TO THE NORTHWESTERLY RIGHT OF WAY LINE OF THE FLORIDA EAST COAST RAILWAY.

AND

ALL THAT PART OF THE SOUTHEAST 1/4 OF SAID SECTION 12 WHICH LIES WITHIN THE EXTERNAL AREA FORMED BY A 25.00 FOOT RADIUS ARC CONCAVE TO THE NORTHEAST, TANGENT TO THE NORTH LINE OF THE SOUTH 25.00 FEET OF THE NE 1/4 OF THE SE 1/4 OF THE SE 1/4 OF SAID SECTION 12, AND TANGENT TO THE EAST LINE OF THE WEST 50.00 FEET OF THE EAST 1/2 OF THE NE 1/4 OF THE SE 1/4 OF THE SE 1/4 OF SAID SECTION 12.

AND

ALL THE PART OF THE SOUTHEAST 1/4 OF SAID SECTION 12 WHICH LIES WITHIN THE EXTERNAL AREA FORMED BY A 25.00 FOOT RADIUS ARC CONCAVE TO THE NORTHWEST, TANGENT TO THE NORTH LINE OF THE SOUTH 25.00 FEET OF THE NE 1/4 OF THE SE 1/4 OF THE SE 1/4 OF SAID SECTION 12, AND TANGENT TO A LINE 50.00 FEET NORTHWESTERLY OF AND PARALLEL TO THE NORTHWESTERLY RIGHT OF WAY LINE OF THE FLORIDA EAST COAST RAILWAY.

AND

ALL THAT PART OF THE SOUTHEAST 1/4 OF SAID SECTION 12 WHICH LIES WITHIN THE EXTERNAL AREA FORMED BY A 25.00 FOOT RADIUS ARC CONCAVE TO THE NORTHWEST, TANGENT TO THE WEST LINE OF THE EAST 25.00 FEET OF THE SE 1/4 OF SAID SECTION 12, AND TANGENT TO A LINE 50.00 FEET NORTHWESTERLY OF AND PARALLEL TO THE NORTHWESTERLY RIGHT OF WAY LINE OF THE FLORIDA EAST COAST RAILWAY.

35. According to Southpointe Vista's application, the address of the development site is "East side of SW 117th Ct. approx. 600 feet north of the intersection of SW 214th St and SW 117th Ct. Miami-Dade County, FL", which appears to split the land from the description of the land from the Agreement, but the purchase price is still listed by Southpointe Vista as \$7,000,000. (Southpointe Vista Application at 5).

36. The principals from Southpointe Vista submitted a second application for consideration under the RFA, application number 2021-162C ("Southpointe Senior").

37. Southpointe Senior, included, in its attachment 8 for its application, an agreement to purchase certain real property from Seller, McDowell Acquisitions, LLC. Attached as Exhibit "4". This is the same exact agreement to purchase from Southpointe Vista with the same legal description of property:

Legal Description of the Subject Property

FOLIO: 30-6912-000-0331

THE SOUTH 2 ACRES OF THE EAST 1/2 OF THE NORTHEAST 1/4 OF THE SOUTHEAST 1/4 OF THE SOUTHEAST 1/4 OF SECTION 12, TOWNSHIP 56 SOUTH, RANGE 39 EAST, MIAMI-DADE COUNTY, FLORIDA, ALSO KNOWN AS THE SOUTH 259.83 FEET OF THE EAST 1/2 OF THE NORTHEAST 1/4 OF THE SOUTHEAST 1/4 OF THE SOUTHEAST 1/4 OF SECTION 12, TOWNSHIP 56 SOUTH, RANGE 39 EAST, MIAMI-DADE COUNTY, FLORIDA, LESS RAILROAD RIGHT OF WAY AND EASEMENTS FOR UTILITY.

LESS THE FOLLOWING PORTIONS DEEDED TO DADE COUNTY FOR ROAD RIGHT OF WAY:

THE WEST 50.00 FEET, THE EAST 25.00 FEET AND THE SOUTH 25.00 FEET OF THE SOUTH 2 ACRES OF THE EAST 1/2 OF THE NORTHEAST 1/4 OF THE SOUTHEAST 1/4 OF THE SOUTHEAST 1/4 OF SECTION 12, TOWNSHIP 56 SOUTH, RANGE 39 EAST, MIAMI-DADE COUNTY, FLORIDA, A/K/A THE SOUTH 259.83 FEET OF THE EAST 1/2 OF THE NORTHEAST 1/4 OF THE SOUTHEAST 1/4 OF THE SOUTHEAST 1/4 LYING NORTHWESTERLY OF THE NORTHWESTERLY RIGHT OF WAY LINE OF THE FLORIDA EAST COAST RAILWAY.

AND

ALL THAT PART OF THE NORTHEAST 1/4 OF THE SOUTHEAST 1/4 OF THE SOUTHEAST 1/4 OF SAID SECTION 12 WHICH LIES SOUTHEASTERLY OF A LINE WHICH IS 50.0 FEET NORTHWESTERLY OF AND PARALLEL TO THE NORTHWESTERLY RIGHT OF WAY LINE OF THE FLORIDA EAST COAST RAILWAY.

AND

ALL THAT PART OF THE SOUTHEAST 1/4 OF SAID SECTION 12 WHICH LIES WITHIN THE EXTERNAL AREA FORMED BY A 25.00 FOOT RADIUS ARC CONCAVE TO THE NORTHEAST, TANGENT TO THE NORTH LINE OF THE SOUTH 25.00 FEET OF THE NE 1/4 OF THE SE 1/4 OF THE SE 1/4 OF SAID SECTION 12, AND TANGENT TO THE EAST LINE OF THE WEST 50.00 FEET OF THE EAST 1/2 OF THE NE 1/4 OF THE SE 1/4 OF THE SE 1/4 OF SAID SECTION 12.

AND

ALL THE PART OF THE SOUTHEAST 1/4 OF SAID SECTION 12 WHICH LIES WITHIN THE EXTERNAL AREA FORMED BY A 25.00 FOOT RADIUS ARC CONCAVE TO THE NORTHWEST, TANGENT TO THE NORTH LINE OF THE SOUTH 25.00 FEET OF THE NE 1/4 OF THE SE 1/4 OF THE SE 1/4 OF SAID SECTION 12, AND TANGENT TO A LINE 50.00 FEET NORTHWESTERLY OF AND PARALLEL TO THE NORTHWESTERLY RIGHT OF WAY LINE OF THE FLORIDA EAST COAST RAILWAY.

AND

ALL THAT PART OF THE SOUTHEAST 1/4 OF SAID SECTION 12 WHICH LIES WITHIN THE EXTERNAL AREA FORMED BY A 25.00 FOOT RADIUS ARC CONCAVE TO THE NORTHWEST, TANGENT TO THE WEST LINE OF THE EAST 25.00 FEET OF THE SE 1/4 OF SAID SECTION 12, AND TANGENT TO A LINE 50.00 FEET NORTHWESTERLY OF AND PARALLEL TO THE NORTHWESTERLY RIGHT OF WAY LINE OF THE FLORIDA EAST COAST RAILWAY.

38. According to Southpointe Senior's application, the address of the development site is "East side of SW 117th Ct. northeast of the intersection of SW 214th St and SW 117th Ct. Miami-Dade County, FL", which appears to be the other part of the plot from the Agreement. (Southpointe Senior Application at 5).

39. Southpointe Senior's application lists the purchase price of the land at seven million dollars in its cost pro forma.

40. The principals for Southpointe Vista and Southpointe Senior submitted two separate applications for funding using the same land that it purchased for a total of seven million dollars, but split

into two separate lots, each with a purchase price of seven million dollars. The land was not valued individually for the development sites for each respective application.

41. Southpointe Vista and Southpointe Senior theoretically could have received an award of funding for two developments with a total cost of fourteen million dollars in land purchase value but would have only paid seven million dollars.

42. Southpointe Vista artificially increased the land value of the development in its application, which, in turn, affords them a greater opportunity to acquire maximum housing tax credits from this RFA.

Issues of Material Fact and Law

43. Disputed issues of material fact and law include those matters pled in this petition, and include but are not limited to the following:

- a. Whether the requirements for eligibility found in the provisions of the RFA have been followed with respect to the proposed allocation of tax credits to Southpointe Vista under the RFA or correct eligibility determinations have been made based on the provisions of the RFA;
- b. Whether FHFC's proposed allocation of the tax credits to Southpointe Vista are consistent with the RFA, the requirements of a competitive procurement process and FHFC's rules and governing statutes;
- c. Whether the criteria for determining eligibility, ranking and evaluation of proposals in the RFA were properly followed;
- d. Whether the preliminary rankings properly determine the eligibility of potential applicants for funding in accordance with the standards and provisions of the RFA;
- e. Whether the rankings and proposed awards are consistent with the RFA and the disclosed basis or grounds upon which tax credits are to be allocated;
- f. Whether the rankings and proposed awards are based on a correct determination of the eligibility of the applicants or correct scoring and ranking criteria in the RFA;

- g. Whether the rankings and proposed awards are consistent with fair and open competition for the allocation of tax credits;
- h. Whether the rankings and proposed awards are based upon clearly erroneous or capricious eligibility determinations, scoring or rankings;
- i. Whether the proposed awards improperly incorporate new policies and interpretations that impermissibly deviate from the RFA specifications, existing rules or prior FHFC interpretations and precedents;
- j. Whether Southpointe Vista's application should be deemed ineligible for funding under the RFA because of its failure to prove that the applicant is a legally formed entity;
- k. Whether Southpointe Vista's application should be deemed ineligible for funding under the RFA because of its material misrepresentation in incorrectly listing the land value.
- l. Whether the criteria and procedures for the scoring, ranking and eligibility determination of Southpointe Vista are arbitrary, capricious, contrary to competition, contrary to the RFA requirements, or are contrary to prior FHFC interpretations of the applicable statutes and administrative rules;
- m. Whether the RFA's criteria were properly followed in determining eligibility, ranking and evaluation of the Southpointe Vista application;
- n. Whether Southpointe Vista's eligibility determination and ranking is consistent with fair and open competition for the allocation of tax credits;
- o. Whether Southpointe Vista's eligibility determination and ranking are based on clearly erroneous or capricious eligibility determination, scoring or ranking;
- p. Whether Southpointe Vista's eligibility determination and ranking improperly incorporate new policies and interpretations that impermissibly deviate from the RFA specifications, existing rules or prior FHFC interpretations and precedents; and,
- q. Such other issues as may be revealed during the protest process.

Statement of Ultimate Facts and Law

44. As a matter of ultimate fact and law, Southpointe Vista failed to complete its application in accordance with the competitive solicitation; its application was not responsive to and failed to comply with relevant portions of the RFA; its application contained a material misrepresentation affording it a financial windfall; and, therefore, its application should not have been considered for funding or scored as being an eligible application.

45. As a matter of ultimate fact and law FHFC improperly determined that Southpoint Vista's application was completed in accordance with the competitive solicitation; was responsive to all applicable provisions of the RFA and, and as a result was eligible for funding under the RFA.

46. As a matter of ultimate fact and law FHFC improperly scored Southpointe Vista's application as having satisfied all mandatory eligibility requirements as of the Application Deadline.

47. As a matter of ultimate fact and law, FHFC improperly determined that Southpointe Vista was eligible for funding.

48. As a matter of ultimate fact and law, but for these errors in Southpointe Vista's application, Petitioner would have been entitled to an allocation of its requested tax credit funding.

Right to Amend the Petition

49. Petitioner reserves the right to amend this Petition if additional disputed issues of material fact are identified during the discovery process in this case.

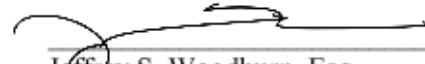
WHEREFORE, pursuant to section 120.57(3), Florida Statutes, and Rule 28-110, Florida Administrative Code, Petitioner requests that:

- A. An opportunity to resolve this protest by mutual agreement within seven days of the filing of this Petition as provided in section 120.57(3)(d)(1), Florida Statutes.
- B. If this protest cannot be resolved within seven days, that the matter be referred to the Division of Administrative Hearings for a formal hearing to be conducted before an Administrative Law Judge ("ALJ") pursuant to section 120.57(1) and (3), Florida Statutes.

C. The ALJ enter a Recommended Order determining that the application of Southpointe Vista, number 2021-163C, should have been deemed ineligible for funding and award funding to Petitioner.

D. That the FHFC adopt that Recommended Order of the ALJ.

Respectfully submitted on this 8th day of February 2021.

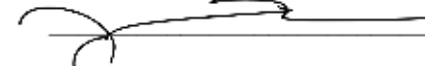


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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the foregoing Formal Written Protest and Petition for Administrative Hearing has been filed by email to the Florida Housing Finance Corporation Clerk at CorporationClerk@floridahousing.org, and a copy sent via email to the following this 8th day of February 2021:

Hugh R. Brown, General Counsel
Florida Housing Finance Corporation
227 North Bronough Street, Suite 5000
Tallahassee, Florida 32301-1329
Hugh.Brown@floridahousing.org

By: 

EXHIBIT

1

RFA 2020-203 Board Approved Preliminary Awards

Total HC Available for RFA	7,420,440.00
Total HC Allocated	8,603,920.00
Total HC Remaining	(1,183,480.00)

Application Number	Name of Development	Name of Authorized Principal Representative	Name of Developers	Demo	Total Units	HC Request Amount	Priority Level	Family Demo and qualifies for the Geographic Area of Opportunity / HUD-designated SADDAs Funding Goal?	If the Applicant stated that it qualified as an Urban Center Application, was it a Tier 1 or Tier 2	Total Points	Per Unit Construction Funding Preference	Development Category Funding Preference	Leveraging Classification	Number of Proximity Points awarded	Proximity Level	Grocery Store Funding Preference	Transit Service Preference	Community Service Preference	Florida Job Creation Preference	Lottery Number
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One Family Applications that qualifies for the Geographic Area of Opportunity/ HUD-designated SADDAs Goal

2021-165C*	Residences at SoMi Parc	Alberto Milo, Jr.	Residences at SoMi Parc Developer, LLC	F	171	2,882,000	1	Y	N/A	25	Y	Y	A	20.5	1	Y	Y	Y	Y	1
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One Elderly (ALF or Non-ALF) Application

2021-143C	Merrick Place	Matthew A. Rieger	HTG Merrick Developer, LLC	E, Non-ALF	120	2,839,920	1	N	1	25	Y	Y	A	21	1	Y	Y	Y	Y	3
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One Urban Center Development

2021-163C	Southpointe Vista	Christopher L Shear	MHP FL I Developer, LLC; Magellan Housing LLC	F	124	2,882,000	1	Y	1	25	Y	Y	A	20	1	Y	Y	Y	Y	2
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On January 22, 2021, the Board of Directors of Florida Housing Finance Corporation approved the Review Committee's motion and staff recommendation to select the above Applications for funding and invite the Applicants to enter credit underwriting.

Any unsuccessful Applicant may file a notice of protest and a formal written protest in accordance with Section 120.57(3), Fla. Stat., Rule Chapter 28-110, F.A.C., and Rule 67-60.009, F.A.C. Failure to file a protest within the time prescribed in Section 120.57(3), Fla. Stat., shall constitute a waiver of proceedings under Chapter 120, Fla. Stat.

EXHIBIT

2

January 27, 2021

RECEIVED

JAN 27 2021 10:10 AM

FLORIDA HOUSING
FINANCE CORPORATION

By E-Mail

Ms. Ana McGlamory (Ana.McGlamory@floridahousing.org)
Corporation Clerk
Florida Housing Finance Corporation
227 North Bronough, Suite 5000
Tallahassee, Florida 32301

Re: NOTICE OF INTENT TO PROTEST
Request for Applications ("RFA") 2020-203 Proposed Funding Selections

Dear Corporation Clerk:

On behalf of Arthur Mays Villas Phase One, LLC, application number 2021-156C, we hereby give notice of our intent to protest the Notice of Intended Decision for the RFA 2020-203 posted by Florida Housing Finance Corporation on January 22, 2021 at 2:50pm.

A formal protest petition will be submitted within ten (10) days of this Notice as required by law.

Sincerely,



Jeff Woodburn
Woodburn & Maine, Attorneys at Law

Cc: Hugh Brown, General Counsel

EXHIBIT

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Exhibit "B"

PURCHASE AND SALE AGREEMENT

THIS PURCHASE AND SALE AGREEMENT (this "Agreement") dated October 22, 2020 (the "Effective Date") is made by and between CUTLER RIDGE INVESTMENT GROUP, LLC a Florida limited liability company ("Seller"), and MCDOWELL ACQUISITIONS, LLC, a Delaware limited liability company, and/or its assigns ("Buyer").

RECITALS:

- A. Seller is the owner and holder of certain real property comprised of approximately 3.46 acres of vacant land located at the northeast corner of the intersection of SW 214th Street and SW 117th Court, Miami-Dade County, Florida, consisting of two (2) separate lots, all as more particularly described on the Exhibit "A" attached hereto ("Property");
- B. Buyer desires to purchase the Property from Seller, and Seller desires to sell the Property to Buyer, pursuant to the terms and conditions set forth herein.

NOW, THEREFORE, for good and valuable consideration, and the mutual covenants set forth in this Agreement, Seller and Buyer hereby agree as follows:

1. **Purchase and Sale.** Seller agrees to sell and convey the Property to Buyer, and Buyer agrees to purchase the Property from Seller. The Property includes all of Seller's right, title and interest in and to (i) all easements, rights of way, privileges, licenses, appurtenances and any other rights, privileges and benefits belonging to the owner of, running with title to, or in any way related to, the Property; (ii) all land use or other consents, authorizations, variances, waivers, licenses, permits, approvals, development orders, or any other entitlements issued or granted by or from any governmental authority with respect to the Property, to the extent assignable without the consent of the granting authority; (iii) all percolation, soil, topographical, traffic, engineering and environmental reports or studies in the possession or control of the Seller, and all riparian, littoral rights, title to submerged lands and other water rights related to or benefiting the Property; (iv) all utility mains, service laterals, hydrants, connections, hook-ups and valves located on, or adjacent to, and servicing or available to service the Property; and (v) any and all other agreements, contracts, covenants, variances and rights, benefits and privileges related to or benefiting the Property.
2. **Purchase Price.** The purchase price for the Property ("Purchase Price") is Seven Million Dollars (\$7,000,000.00), subject to the credits, prorations, and adjustments set forth herein. The Purchase Price is payable as follows:
 - a. **First Deposit.** Within five (5) business days of the Effective Date, Buyer will deliver to Nelson Mullins Broad and Cassel, as escrow agent ("Escrow Agent"), the sum of One Hundred Thousand Dollars (\$100,000.00) by wire transfer of immediately available funds (the "First Deposit"). The First deposit may be held by Escrow Agent in an interest-bearing account, to be disbursed only in accordance with the terms of this Agreement. Twenty Thousand Dollars (\$20,000.00) of the First Deposit will be non-refundable to Buyer upon receipt of the First Deposit by

Escrow Agent (the "Hard Deposit") and shall be released to Seller within the 5 days following receipt. The remaining Eighty Thousand Dollars (\$80,000.00) of the First Deposit will be refundable to Buyer until February 28, 2021. At any time through and until 5:00 PM EST February 28, 2021, Buyer may deliver written notice to Seller of termination and the First Deposit less the Hard Deposit shall be refunded by Escrow Agent to Buyer and this Agreement shall be deemed terminated for all purposes.

- b. Second Deposit. Buyer will deliver to Escrow Agent the sum of One Hundred Thousand Dollars (\$100,000.00) by wire transfer of immediately available funds within five (5) business days after the expiration of the Financing Period ("Second Deposit"). The Second Deposit may be held by Escrow Agent in the same interest-bearing account as the First Deposit. Upon Buyer's delivery of the Second Deposit to Escrow Agent, the Second Deposit will be (i) non-refundable to Buyer except as otherwise provided herein, and (ii) applied to the Purchase Price at Closing.
- c. Third Deposit. On or before June 30, 2021, ✓ Buyer will deliver to Escrow Agent the sum of Two Hundred and Fifty Thousand Dollars (\$250,000.00) by wire transfer of immediately available funds ("Third Deposit"). The Third Deposit may be held by Escrow Agent in the same interest bearing account as the First Deposit and the Second Deposit. Upon Buyer's delivery of the Third Deposit to Escrow Agent, the Third Deposit will be (i) non-refundable to Buyer except as otherwise provided herein, and (ii) applied to the Purchase Price at Closing.
- d. The First Deposit, Second Deposit and Third Deposit, to the extent delivered to the Escrow Agent, are sometimes collectively referred to as the "Deposit". Notwithstanding anything in this Agreement to the contrary, the Deposit will be refundable to Buyer in the event that (i) Seller defaults under the terms of the Agreement; (ii) one or more of the Closing Conditions in favor of the Buyer set forth in Section 8 have not been satisfied; or (iii) as otherwise specifically provided in this Agreement.
- e. Balance. The Deposit will be applied to the Purchase Price at Closing, and Buyer will pay to Seller the balance of the Purchase Price, subject to credits, adjustments and prorations as herein provided, by a cashier's check or by wire transfer of immediately available funds.
- f. Escrow Deposit. The Escrow Agent shall promptly give Seller written notice of receipt of each Deposit. The Deposit may be invested by Escrow Agent in an interest-bearing account, but only after Buyer has executed all necessary governmental forms, including a W-9 and delivered such form to Escrow Agent. Any and all interest earned on the Deposit will accrue to the benefit of Buyer and will be reported to Buyer's federal tax identification number. Escrow Agent will have no responsibility in case of failure or suspension of business of the institution holding the Deposit. Interest earned, if any, will be credited to Buyer upon Closing, or, in the event of Buyer's default, paid to Seller.

3. **Financing Period.** Buyer shall have through March 31, 2021 (the "Financing Period") to terminate this Agreement if Buyer does not secure financing on terms acceptable to Buyer, or any other reason, in Buyer's sole and absolute discretion, by delivering written notice thereof to Seller prior to the expiration of Financing Period. In the event Buyer delivers written notice terminating this Agreement prior to the expiration of the Financing Period, Buyer shall receive a refund of the portion of First Deposit which remains refundable to Buyer in accordance with Section 2.a., together with accrued interest thereon without the need for Seller's signature or consent for its release.

Buyer agrees to submit an application for funding to construct a residential multi-family development on the Property (the "Application") under Florida Housing Finance Corporation ("FHFC") RFA 2020-203 "Housing Credit Financing for Affordable Housing Developments Located in Miami-Dade County" (the "RFA") on or prior to the RFA deadline, currently scheduled for November 10, 2020 (as may be amended by FHFC, the "Application Deadline"). If Buyer fails to submit the Application under the RFA on or prior to the Application Deadline, then Seller shall have the right to terminate this Agreement by providing written notice to Buyer, and upon such termination by Seller, the portion of First Deposit which remains refundable to Buyer in accordance with Section 2.a. shall be refunded to Buyer and the Parties shall be relieved of all further liability under this Agreement.

4. **Title Insurance/Survey.**

- a. **Title.** Within ten (10) business days following the Effective Date, Seller will deliver to Buyer a copy of Seller's title insurance policy insuring Seller's fee simple title to the Property. Prior to March 31, 2021, Buyer, at Buyer's expense, will obtain an owner's title insurance commitment (the "Title Commitment") from First American Title Insurance Company (the "Title Company") through Nelson Mullins Broad and Cassel as title agent ("Title Agent"). Marketable title will be determined according to the Title Standards adopted by authority of The Florida Bar and in accordance with Florida law. The legal description of the Property contained in the Title Commitment shall include any off-site easements which benefit the Property. The Title Commitment shall be accompanied by true, complete and legible copies of all documents creating or evidencing any exception to title noted in the Title Commitment. The Title Commitment shall evidence the requirements subject to which Title Company will insure in Buyer good and marketable record fee simple title to the Property, free and clear of all liens, encumbrances, exceptions or qualifications to title whatsoever except for the Permitted Exceptions, as such term is hereinafter defined.
- b. **Survey.** Within ten (10) business days following the Effective Date, Seller will deliver to Buyer a copy of Seller's existing survey, prepared by a Florida licensed surveyor, of the Property, if available. By March 31, 2021, Buyer will obtain, at its sole cost and expense, an updated ALTA/ACSM survey identifying (i) total acreage, (ii) any areas within a flood zone, (iii) any easements, rights of way or other encroachments, and, (iv) following delivery of the Title Commitment to the surveyor, all of the plottable exceptions to the Title Commitment (the "Survey").

- c. Title and Survey Objections. Buyer will have until June 30, 2021, to examine the condition of Seller's title to the Property (the "Title Review Period"). If the Title Commitment or the Survey reflects that title to the Property is subject to any exceptions or other survey matters unacceptable to Buyer, Buyer will notify Seller in writing prior to the expiration of the Title review Period of any defects (the "Title Objections"). Any exceptions listed in the Title Commitment to which Buyer has not timely objected will be deemed to be "Permitted Exceptions." If Buyer gives a Title Objection to Seller within the Title Review Period, then on or before ten (10) days after receipt of the Title Objection ("Response Deadline"), Seller may, in Seller's sole discretion, give Buyer notice of those Title Objections, if any, that Seller is willing to seek to cure prior to the Closing Date ("Response Notice"), in which case, Seller shall have thirty (30) days in which to cure such Title Objections ("Objection Cure Period"). If Seller fails to deliver a Response Notice by the Response Deadline, Seller shall be deemed to have elected not to cure or otherwise resolve any matter set forth in the Title Objection. If Seller is not successful in correcting or removing the Title Objections within Objection Cure Period, or Seller has elected not to cure the Title Objections, Buyer will have the option of (i) accepting the title in its existing condition, or (ii) terminating this Agreement by sending written notice of termination to Seller and Escrow Agent within two (2) Business Days following the Objection Cure Period. In the event that Buyer elects to terminate this Agreement, notwithstanding anything in Section 2 to the contrary, Escrow Agent will return the Deposit to Buyer, and, thereafter, neither Buyer nor Seller will have any further liabilities or obligations hereunder except with respect to those obligations which expressly survive termination. If Buyer fails to give notice to terminate this Agreement pursuant to this Section 4(c), Buyer shall be deemed to have elected to approve and irrevocably waived any objections to matters covered by the Title Commitment or the Survey, except as provided in Section 4(d) hereof.
- d. Title and Survey Updates. Seller covenants and agrees that after the Effective Date it will not enter into or record any document or instrument, or enter into any lease or other agreement, affecting or burdening the Property, unless Buyer has consented in writing to the execution or recordation of such document, instrument, lease or agreement. If any updated endorsement to the Title Commitment or any update of the Survey reveals any exception or survey defect not reflected on the Title Commitment or the Survey that was not consented to by Buyer, then Seller, at Seller's sole cost and expense, will have such exception promptly deleted from the Title Commitment, or such survey defect removed or cured, and in any event prior to Closing. If Seller is not successful in removing the same within thirty (30) days from written notice from Buyer, Buyer will have the option of (i) allowing Seller additional time to cure such defects, (ii) accepting the title in its existing condition, or (iii) terminating this Agreement by sending written notice of termination to Seller and Escrow Agent within two (2) Business Days following said thirty (30) day period. In the event that Buyer elects to terminate this Agreement, notwithstanding anything in Section 2 to the contrary, Escrow Agent will return the Deposit to Buyer, and, thereafter, neither Buyer nor Seller will have any further liabilities or obligations hereunder except with respect to those obligations which

expressly survive termination. Notwithstanding anything else to the contrary in this Agreement, in the event Seller fails to remove, prior to or at Closing, an exception revealed in the Title Commitment, or any update thereof (whether or not objected to by Buyer), in the form of: (1) a mortgage or other security interest entered into by Seller; (2) a lien or encumbrance of any kind or nature voluntarily created by Seller at any time on or after the date of this Agreement; or (3) a mechanic's or materialman's lien or a judgment docketed against the Property, in any case resulting from the non-payment by Seller of any sums alleged to be due and owing by Seller to a contractor or materialman or otherwise voluntarily caused or created by Seller, then in addition to the return of the Deposit, Buyer will be entitled to recover from Seller all third party costs incurred by Buyer, including reasonable attorneys' fees and costs, in connection with satisfying said encumbrance.

5. **Inspections.** So long as the Agreement remains in effect the Buyer will have the right to determine in their absolute and sole discretion if the Intended Improvements (as defined in Section 6.a.) are viable. If Buyer determines that the Intended Improvements are not viable, Buyer may, without liability to Seller, terminate this Agreement by written notice to Seller and Escrow Agent, following which Escrow Agent will disburse the escrowed Deposits in accordance with the provisions of Section 2 of this Agreement within five (5) calendar days following termination, without further authorization of the Buyer, and both parties will be released from all further obligations or liability under this Agreement, except for those obligations which expressly survive termination. Notwithstanding the foregoing, Buyer shall complete and provide a copy of Phase I Environmental Site Assessment report to Seller on or before February 28, 2021 (the "Phase I"). If the Phase I ESA indicates Recognized Environmental Condition that render the Intended Improvements infeasible, in Buyer's sole discretion, notwithstanding anything set forth in Section 2 to the contrary, Buyer may terminate the Agreement and be entitled to a refund of the portion of First Deposit which remains refundable to Buyer in accordance with Section 2.a.
- a. **Access and Deliverables.** So long as this Agreement remains in effect, Seller hereby grants to Buyer and its agents, employees, contractors and representatives, a right of entry upon every portion of the Property, and a right to examine all records, documents, data or information of any kind or nature relating to or concerning the Property in the possession or under the control of Seller or other matters pertaining to the Property (and Seller hereby agrees to make any and all records, documents, data or information of any kind or nature relating to or concerning the Property in the possession or under the control of Seller available to Buyer) from time to time at all reasonable times for the purpose of making surveys, engineering studies, drainage studies, appraisals, zoning and land use studies, impact studies, surface and subsurface explorations, tests, excavations, borings and such other investigations, inspections, assessments or reports as Buyer, in its sole and absolute discretion, may elect to make. Seller will deliver to Buyer, within ten (10) business days after the Effective Date, copies of any and all surveys (in CADD format, if available), site plans or layouts, engineering, environmental, soil, wetlands determinations, zoning, land use, appraisal and feasibility studies, reports and assessments, concurrency evaluations, any plans and specifications for the Property approved by the local building department having jurisdiction over the

Property, which Seller has in its possession or control (collectively, “Plans and Specs”), and any correspondence concerning any such topics that Seller has in its possession or control, and all other governmental orders, approvals, exemptions, waivers, permits, licenses, special exceptions or variances relating to the Property or any proposed use thereof which are in Seller’s possession or control. Seller will also deliver to Buyer, within ten (10) business days after the Effective Date, legible copies of all leases, service contracts, operating agreements, management agreements and warranties relating to or concerning the Property.

- b. Liability and Indemnity. Buyer assumes liability for all acts of its agents who enter onto the Property and agrees to indemnify and hold harmless the Seller from any loss, damage, cost or expense incurred by Seller as a result of such acts of Buyer and its agents that cause injury to persons or damage to the Property. Further, Buyer agrees to promptly pay when due the costs of all tests, investigations and examinations done with regard to the Property and will not permit any liens to attach to the Property by reason of the exercise of its rights of inspection hereunder. During the pendency of this Agreement, Seller shall maintain all insurance Seller was carrying on the Effective Date.

6. **Government Approvals.**

- a. Government Approvals. Buyer shall pursue final issuance of: (i) all zoning and other governmental approvals from applicable governmental authorities having jurisdiction over the Property, to permit the construction, completion and operation of a multifamily residential project together with related amenities and accessory uses, which includes allowable density for a number of dwelling units in an amount sufficient for Buyer, in Buyer’s sole discretion (the “Intended Improvements”); (ii) site plan approval, for which all appeal periods have expired with no appeal having been filed, for the Intended Improvements from the applicable governmental and regulatory authority(ies); (iii) concurrency and utility approvals; (iv) storm water drainage permit issued by the relevant drainage district; (v) building permits issued by the relevant municipality or county; and (vii) any other governmental and regulatory approvals and/or permits required in connection with the construction of the Intended Improvements (collectively the “Government Approvals”).
- b. Seller Cooperation. As fee simple title holder, Seller agrees to be the applicant on, or join in any and all applications, permits, consents, zoning, land use, concurrency, platting and other permitting, etc., that may be required to be filed in connection with the Government Approvals. Seller will cooperate with Buyer in performing its due diligence with respect to the Property and in seeking any and all consents, permits or approvals regarding the Property as Buyer may reasonably request, and Seller will promptly join in all applications for building permits, certificates or other agreements, and permits for sewer, water, or other utility services, other instruments or other permits or approvals, the granting of or entry into which, by any governmental or quasi-governmental authority having jurisdiction over the Property, is, in Buyer’s reasonable opinion, necessary to permit the development, construction, use or occupancy of the Intended Improvements. In the event Buyer

reasonably determines that Seller has failed to cooperate with Buyer with respect to Buyer's due diligence regarding the Property or in seeking the Governmental Approvals, Buyer shall provide written notice to Seller of such default. In such event, Seller shall have twenty (20) days to remedy or cure such default, or such longer time not to exceed sixty (60) days provided that Seller has commenced action to cure such default within said twenty (20) day period.

7. **Covenants of Seller: Operation of the Property.** Seller hereby covenants and agrees that from and after the Effective Date:
- a. Seller will not, without the Buyer's prior written consent, create any encumbrances on the Property. For purposes of this provision the term "encumbrances" includes, but is not limited to, any liens, claims, options, or other encumbrances, encroachments, rights-of-way, easements, covenants, conditions, or restrictions.
 - b. Seller will not enter into or record any document or instrument, or enter into any lease or other agreement, affecting or burdening the Property, unless Buyer has consented in writing to the execution or recordation of such document, instrument, lease or agreement.
 - c. Seller will pay all assessments and taxes prior to becoming delinquent.
 - d. Seller will not create or consent to the creation of any special taxing districts or associations with the authority to impose taxes, liens or assessments on the Property.
 - e. Seller will not remove any fill or cause any change to be made to the physical condition of the Property without the prior written consent of Buyer.
 - f. Seller will take no action with respect to the Property that would alter or affect any of the representations or warranties of Seller under this Agreement or which would in any manner affect Buyer's future use and development of the Property.
 - g. Seller will cause all mortgage debt, if any, applicable to the Property to remain in good standing through and until the Closing.
 - h. If applicable, Seller will provide Buyer and the Title Company with any and all approvals from any lenders to sell the Property for less than the balance owed to such lender.
8. **Closing Conditions.** Buyer's obligation to close this transaction will be subject to the satisfaction of each of the following conditions on or before the Closing Date:
- a. Seller is not in default under any term, covenant or condition of this Agreement, and shall have performed all of its covenants, agreements and obligations under this Agreement.

- b. Each of the representations and warranties of Seller set forth in this Agreement is true, complete and correct on the Effective Date and at the date of the Closing as if made at that time, and the Seller has delivered its certificate to such effect.
- c. There will not be a sewer, water, building or other moratorium, condemnation or any proceedings in effect which would interfere with the immediate construction and occupancy of Buyer's Intended Improvements ("Moratorium").
- d. The Property has not been damaged by any casualty loss as provided in Section 15.b. or by any environmental matter arising after the Effective Date.
- e. At the Closing, the Title Insurance Company will irrevocably commit to issue to Buyer an ALTA Owner's Policy of title insurance, dated as of the date and time of the recording of the deed, in the amount of the Purchase Price, insuring Buyer as owner of good, marketable and indefeasible fee simple title to the Property, free and clear of liens and encumbrances, and subject only to the Permitted Exceptions (the "Title Policy").
- f. Sole and exclusive possession of the Property will be delivered to Buyer at Closing.

It shall additionally be a condition precedent to Seller's and Buyer's respective obligations to close hereunder that Buyer shall acquire title to both of the lots that comprise the Property. ✓

In the event that any of the foregoing conditions precedent to Closing have not been satisfied as of the Closing Date, Buyer will have the right to waive any or all of the foregoing conditions and close this transaction or Buyer will have the right to terminate the Agreement. In the event Buyer elects to terminate this Agreement by reason of the failure of any of the conditions described in Section 8., the Deposit and all interest earned thereon will be refunded to Buyer and neither party will have any further rights or obligations hereunder, except those obligations which survive termination of the Agreement.

9. **Closing Documents.** The Closing documents will be provided by the parties as set forth below, in form acceptable to Buyer:
- a. At Closing Seller will execute and/or deliver to Buyer:
 - i. **Special Warranty Deed.** A special warranty deed in recordable form, duly executed by Seller, conveying to the Buyer good, marketable and insurable fee simple title to the Property subject only to the permitted exceptions as reflected in the Commitment which have not been objected to by Buyer, with the legal description provided in the Commitment.
 - ii. **Affidavit.** An owner's affidavit adequate for title insurance to be issued by the Title Company without exception for parties in possession, mechanics' or materialmen's liens and to permit the Title Company to delete the "gap" in the Title Commitment.

- iii. FIRPTA Affidavit. In order to comply with the requirements of the Foreign Investment Real Property Tax Act of 1980 ("FIRPTA"), Seller will deliver to Buyer at Closing Seller's affidavit under penalty of perjury stating the Seller is not a "foreign person," as defined in Section 1445 of the Internal Revenue Code of 1986 and the U.S. Treasury Regulations thereunder, setting forth Seller's taxpayer identification number, and that Seller intends to file a United States income tax return with respect to the transfer. Seller represents and warrants to Buyer that it has not made nor does Seller have any knowledge of any transfer of the Property or any part thereof that is subject to any provisions of FIRPTA that has not been fully complied with by either transferor or transferee.
 - iv. Closing Certificate. A duly executed certification that every representation and warranty of Seller under this Agreement is true and correct as of the Closing as if made by Seller at such time;
 - v. Assignment. A duly executed assignment of permits, approvals and development rights.
 - vi. Authority Documents. Any and all documents reasonably requested by Buyer or the title company in connection with Seller's authority to execute this Agreement, the deed and all other documents contemplated under this Agreement;
 - vii. Closing Statement. A closing statement prepared by Title Agent setting forth all amounts paid, credited and otherwise due, payable and paid hereunder ("Closing Statement"); and
 - viii. Other Documents. Such additional documents or instruments as may be required to effectuate the terms, conditions and provisions hereof and to carry out the intent of the parties hereto, or as may be reasonably required by the title insurance company, so as to be able to delete at Closing all of the requirements of Schedule B-Section 1 of the Title Commitment and all of the standard printed exceptions (other than the exception for taxes and assessments for the current year not yet due and payable, and the survey exception, which will be limited to the specific matters affecting the Property reflected on the Survey) from Schedule B-Section 2 of the Title Commitment, and to insure the gap between the effective date of the Title Commitment and the recording of the deed conveying title to the Property from Seller to Buyer.
- b. At Closing, Buyer will deliver to Seller:
- (i) Closing Statement. Closing Statement executed in counterpart;
 - (ii) Purchase Price. The Purchase Price (as adjusted for all credits, adjustments and prorations set forth in this Agreement); and

- (iii) Other Documents. Such additional documents or instruments as may be reasonably required or requested by Seller to effectuate the terms, conditions and provisions of this Agreement.
10. Closing/Closing Expenses. Except as otherwise provided herein, the consummation of the transactions described in this Agreement (the "Closing") will take place using mail away procedures no later than July 31, 2021 (the "Closing Date") with all executed documents delivered prior to Closing being held in escrow by Escrow Agent until the occurrence, satisfaction or waiver of the conditions to Closing. Time is of the essence. At Closing, Seller will pay the cost of documentary stamp tax on the special warranty deed. Buyer will pay all title search fees and other costs pertaining to the Title Commitment and for the title insurance premium on the owner's title insurance policy to be issued to Buyer pursuant to the Title Commitment in an amount equal to the Purchase Price. Buyer will pay the fee for recording the special warranty deed, the costs of the Survey and costs associated with obtaining financing, permits and impact fees in connection with the development for the Intended Improvements, and the cost for any lender's title insurance policy and any endorsements required by Buyer or lender. Each party will pay its own attorneys' fees.
11. Closing Extensions. Buyer shall have the right, at Buyer's sole option, to extend the Closing Date by up to three (3) consecutive forty-five (45) day periods by providing notice to Seller in writing of such desire on or before the Closing Date, as may be extended, and depositing fifty thousand dollars (\$50,000.00) (the "Extension Payment") with Escrow Agent by wire transfer. Each consecutive Extension Payment shall be non-refundable for any reason if Seller is ready, willing and able to close by the Closing Date, released to Seller no later than three (3) business days following Escrow Agent's receipt of the Extension Payment and applied toward the Purchase Price.
12. Prorations. The following items will be adjusted, apportioned, and allowed as of the Closing Date:
- a. Apportionment. Seller shall pay all ad valorem real estate and/or personal property taxes, charges and/or assessments (special or otherwise) for all years prior to the year of the Closing Date. Buyer shall pay all ad valorem real estate and/or personal property taxes, charges and/or assessments (special or otherwise) for all years after the year of the Closing Date. Seller and Buyer shall pay their proportionate share of the ad valorem real estate and/or personal property taxes, charges and/or assessments (special or otherwise) for the year of the Closing Date, prorated at the Closing based upon, at the highest allowable discount and upon the actual days during the year in which Seller and Buyer owned the Property.
- b. Special Assessment Liens. If, on the Closing Date, the Property or any part thereof, will be or will have been affected by any certified, confirmed, and ratified special assessment liens, the same will be paid and discharged by Seller. Pending liens will be assumed by Buyer; provided, however, that once the amount of a pending special assessment lien has been finally determined, the amount of the special assessment lien will be prorated and Seller will reimburse Buyer for any amounts

paid by Buyer which are allocable to the period of time Seller owned the Property within thirty (30) days of Buyer's delivery to Seller of the proration statement.

- c. Real Estate Taxes. If the Closing will occur before the tax rate is fixed, the apportionment of taxes will be based upon the real estate taxes for the previous year. If the tax rate is not fixed at Closing, the parties agree to make an appropriate adjustment upon the issuance of the actual statement for the taxable year. Thus, if at the time of Closing, the taxes for the current year have not been finally determined, Seller or Buyer, as the case may be, agree to pay any balance later found to be due on the reparation of the actual taxes for the year in which the Closing occurred, within thirty (30) days of the determination thereof. At the option of Buyer, the parties shall deposit a reasonable amount in escrow at closing to pay any expected reparation.
 - d. The provisions of this section will survive the Closing.
13. **Seller's Representations and Warranties.** Seller represents and warrants to Buyer and covenants and agrees with Buyer as follows:
- a. Seller has not entered into any contracts, subcontracts, arrangements, leases, licenses, concessions, easements, or other agreements, either recorded or unrecorded, written or oral, affecting all, or any portion of, or any interest in the Property, which will not have been terminated or expired prior to Closing, except as may be included in the Permitted Exceptions;
 - b. No other contract or agreement to sell, transfer or convey the Property exists;
 - c. There are no: to the knowledge of Seller, (1) existing or pending improvement or special assessment liens affecting the Property; (2) violations of building codes and/or zoning ordinances or other governmental or regulatory laws, ordinances, regulations, orders or requirements affecting the Property; (3) existing, pending or threatened lawsuits, or appeals of prior lawsuits, affecting the Property; (4) existing, pending or, to the knowledge of Seller, threatened condemnation proceedings affecting the Property; (5) existing, pending or, to the best knowledge of Seller, threatened zoning, building or other moratoria, downzoning petitions, proceedings, restrictive allocations or similar matters that could adversely affect the development of the Intended Improvements on the Property; or (6) unrecorded easements, restrictions or encumbrances affecting all or any part of the Property;
 - d. Seller has not used, manufactured, stored, or released any "Hazardous Materials" (as hereinafter defined) on, in or around the Property, and, to Seller's knowledge, no other person or entity has ever used, manufactured, stored or released any Hazardous Materials on, in or around the Property, and, to the best of Seller's knowledge, no Hazardous Materials are present in, on, under or around the Property. As used herein, "Hazardous Materials" will mean petroleum and petroleum-based products and any other substance or material, the use, manufacture, storage, release or presence of which in land, water or elsewhere in the environment is limited,

prohibited or in any other way regulated by any federal, state or local law, ordinance, rule or regulation. Seller further represents and warrants that, to Seller's best knowledge, no portion of the Property has ever been used as a landfill or a dump;

- e. There are no agreements currently in effect which prohibit or restrict the sale of the Property;
- f. Seller has the right, power and authority to execute and deliver this Agreement, to perform each and every obligation of Seller hereunder, and to consummate the transactions contemplated by it; no consent, approvals or authorizations from any person, entity or governmental authority is required with respect to this Agreement and the consummation of the transaction contemplated herein; neither the execution and delivery of this Agreement, and the performance or consummation of the obligations and transactions contemplated by it, nor the fulfillment of, nor the compliance with, the terms, conditions and provisions of this Agreement will conflict with, or result in a violation or breach of, any relevant law, or any other instrument or agreement of any nature to which Seller is a party or by which it is bound or may be affected, or constitute (with or without the giving of notice or the passage of time) a default under such an instrument or agreement;
- g. No unrecorded commitments or agreements have been made by Seller to any governmental authority, utility company, school board, church or other religious body, any homeowners or homeowners' association, or any other organization, group or individual, relating to the Property which impose an obligation upon Buyer to make any contributions or dedications of money, land, or any interest in land, to construct, install or maintain any improvements of a public or private nature on or off the Property, or otherwise impose any obligations or liability on Buyer or the Property;
- h. All agreements, documents, studies and other materials delivered to Buyer are true, correct and complete copies of all such items;
- i. The balance of all existing liens and mortgages will be satisfied at or before Closing, and Seller agrees to provide Buyer and Title Agent approvals from any lender to sell the Property for less than the balance owed to said lender, if any;
- j. Seller has received no notice and to the best of Seller's knowledge, there is no violation of any law, regulation, ordinance, order or judgment affecting the Property;
- k. Seller owns the Property in fee simple, subject only to those matters disclosed in the Title Commitment;
- l. To the best knowledge of Seller, no default exists under the terms of any document disclosed in the Title Commitment; and
- m. At all times during the term of this Agreement and as of the Closing Date, all of Seller's representations, warranties and covenants in this Agreement will be true

and correct; no representation or warranty by Seller contained in this Agreement and no statement delivered or information supplied to Buyer pursuant to this Agreement contains any untrue statement of a material fact or omits to state a material fact necessary in order to make the statements or information contained in them or in this Agreement not misleading. The provisions of this section will survive the Closing for a period of twelve (12) months.

14. **Broker.** Seller and Buyer represent and warrant each they have not dealt with any real estate broker, salesperson or finder in connection with this transaction. In the event of any claim for a broker's or a finder's fee or commission in connection with the negotiation, execution or consummation of this Agreement or the transactions contemplated hereby, each party will defend, indemnify and hold harmless the other party from and against any such claim based upon any statement, representation or agreement of such party. The mutual indemnities and representations and warranties of each of Seller and Buyer in this section will survive the Closing.

15. **Damage, Destruction or Condemnation.**

- a. **Risk of Loss.** Risk of loss to the Property occurring prior to the Closing Date will be borne by Seller.
- b. **Casualty Loss.** In the event of loss, damage or destruction to the Property which prohibits or materially affects the development of the Intended Improvements by Buyer prior to Closing, Buyer may elect either (i) to proceed with Closing, without adjustment of the Purchase Price, and Seller will assign to Buyer all insurance proceeds received as a result of the loss, damage or destruction, or (ii) to terminate this Agreement, in which event the Deposit will be returned to Buyer. Seller will promptly notify Buyer in writing of any such material casualty loss to the Property. Buyer will make such election within ten (10) business days following Seller's written notice to Buyer of the casualty event, and if such election is not timely made, Buyer will be deemed to have elected to terminate this Agreement.
- c. **Condemnation and Moratorium.** In the event that any moratorium or condemnation proceedings are instituted, or notice of intent to condemn is given, with respect to all or any portion of the Property, Seller will promptly notify Buyer in writing thereof, in which event Buyer will have the option either to terminate this Agreement and receive a refund of the Deposit, or to consummate the purchase of the Property without reduction of the Purchase Price and the right to collect any condemnation award or compensation for such condemnation will be assigned by Seller to Buyer at Closing. Buyer must make such election within ten (10) business days following Seller's written notice to Buyer of the condemnation proceedings, and if such election is not timely made, Buyer will be deemed to have elected to terminate this Agreement.

16. **Default.** In the event that Buyer fails to perform its obligations hereunder (including the failure to timely make any Deposit) and such failure is through no fault or failure of Seller to comply with its obligations hereunder, Seller may, as its sole, exclusive and absolute remedy, terminate this Agreement and retain, as full and complete agreed upon liquidated

damages, the Deposit; provided, however, if the Buyer breaches its obligation to make any Deposit, Seller may also pursue a claim against Buyer for the amount of the Deposit which has not been timely made. If Seller will refuse to close, despite its obligation to close hereunder, or if any of the representations, warranties and covenants of Seller will at any time on or before Closing be found to be false or misleading in any material respect, or if Seller is otherwise in default under the terms and provisions of this Agreement, Buyer may: (i) terminate this Agreement and obtain the return of its Deposit, or (ii) seek specific performance of Seller's obligations hereunder. Notwithstanding anything to the contrary herein, there shall be no default of Buyer hereunder unless and until Seller shall have provided Buyer written notice of such default and Buyer shall have failed to cure said default within thirty (30) days of its receipt of such notice; provided, however, that if Buyer is unable to cure within said time period, Buyer shall have such time to cure as is reasonable under the circumstances provided that Buyer has undertaken efforts to cure in said time period. Notwithstanding the foregoing no such cure shall apply to failure to make any Deposit required hereunder in the required time period.

17. **Notice.** All notices, consents, approvals, waivers and elections which any party will be required or will desire to make or give under this Agreement will be in writing and given by delivery in person, or sent by U.S. mail, return receipt requested, overnight courier, facsimile or email, as provided below:

To Buyer: MCDOWELL ACQUISITIONS, LLC
c/o McDowell Housing Partners, LLC
601 Brickell Key Drive, Suite 700
Miami, Florida 33131
Attn: Christopher Shear
Email: cshear@mcdhousing.com

With a copy to: Nelson Mullins Broad and Cassel
390 N. Orange Avenue, Suite 1400
Orlando, Florida 32801
Attn: Roman Petra, Esq.

To Seller: CUTLER RIDGE INVESTMENT GROUP, LLC
7275 NW 87th Avenue
Miami, Florida 33178

With a copy to: Alejandra Marquez Villa, Esq.
AMV Legal Group P.A.
2450 Hollywood Blvd Ste 300
Hollywood FL 33020
Email: ale@amvlegalgroup.com

To Escrow Agent: Nelson Mullins Broad and Cassel
215 South Monroe Street, Suite 400
Tallahassee, Florida 32301
Attn: Melissa N. VanSickle, Esq.
Email: melissa.vansickle@nelsonmullins.com

Notices, consents, approvals, waivers and elections given or made as aforesaid will be deemed to have been dated, given and received: (i) three (3) business days after deposit with the U.S. Mail, postage prepaid, if sent by U.S. Mail, return receipt requested, (ii) the next business day after deposit with an overnight courier service, (iii) on the day of receipt if delivered in person, (iv) on the date of transmission, if transmitted by telecopier and confirmation of successful transmission is provided by such telecopier, (v) on the date of transmission if sent by email, provided the recipient emails acknowledgement of receipt, in the absence of which a copy will also be sent via overnight courier on or before the next business day.

18. **Assignment.** Buyer will be entitled to assign Buyer's rights and obligations under this Agreement to any other related entity owned by, controlled by, under common control, or affiliated with, Buyer. Any other assignment will require the prior written consent of Seller.
19. **Radon Gas Notice.** Pursuant to Florida Statutes Section 404.056(5), Seller hereby makes, and Buyer hereby acknowledges, the following notification:

RADON GAS: RADON IS A NATURALLY OCCURRING RADIOACTIVE GAS THAT, WHEN IT HAS ACCUMULATED IN A BUILDING IN SUFFICIENT QUANTITIES, MAY PRESENT HEALTH RISKS TO PERSONS WHO ARE EXPOSED TO IT OVER TIME. LEVELS OF RADON THAT EXCEED FEDERAL AND STATE GUIDELINES HAVE BEEN FOUND IN BUILDINGS IN FLORIDA. ADDITIONAL INFORMATION REGARDING RADON AND RADON TESTING MAY BE OBTAINED FROM YOUR COUNTY PUBLIC HEALTH UNIT.

20. **Escrow Agent.**
 - a. Escrow Agent undertakes to perform only such duties as are expressly set forth in this Agreement. Escrow Agent will not be deemed to have any implied duties or obligations under or related to this Agreement.
 - b. Escrow Agent may: (a) act in reliance upon any writing or instrument or signature which it, in good faith, believes to be genuine; (b) assume the validity and accuracy of any statement or assertion contained in such a writing or instrument; and (c) assume that any person purporting to give any writing, notice, advice or instructions in connection with the provisions of this Agreement has been duly authorized to do so. Escrow Agent will not be liable in any manner for the sufficiency or correctness as to form, manner of execution, or validity of any instrument deposited in escrow, nor as to the identity, authority, or right of any person executing any instrument; Escrow Agent's duties under this Agreement are and will be limited to those duties specifically provided in this Agreement.

- c. The parties to this Agreement do and will indemnify Escrow Agent and hold it harmless from any and all claims, liabilities, losses, actions, suits or proceedings at law or in equity, or other expenses, fees, or charges of any character or nature, including attorneys' fees and costs, which it may incur or with which it may be threatened by reason of its action as Escrow Agent under this Agreement, except for such matters which are the result of Escrow Agent's gross negligence or willful misconduct.
 - d. If the parties (including Escrow Agent) will be in disagreement about the interpretation of this Agreement, or about their respective rights and obligations, or about the propriety of any action contemplated by Escrow Agent, Escrow Agent may, but will not be required to, file an action in interpleader to resolve the disagreement; upon filing such action, Escrow Agent will be released from all obligations under this Agreement. Escrow Agent will be indemnified for all costs and reasonable attorneys' fees, including those for appellate matters and for paralegals and similar persons, incurred in its capacity as escrow agent in connection with any such interpleader action; Escrow Agent may represent itself in any such interpleader action and charge its usual and customary legal fees for such representation, and the court will award such attorneys' fees, including those for appellate matters and for paralegals and similar persons, to Escrow Agent from the losing party. Escrow Agent will be fully protected in suspending all or part of its activities under this Agreement until a final judgment in the interpleader action is received.
 - e. Escrow Agent may resign upon five (5) calendar days' written notice to Seller and Buyer. If a successor escrow agent is not appointed jointly by Seller and Buyer within the five (5) calendar-day period, Escrow Agent may petition a court of competent jurisdiction to name a successor.
 - f. Seller and Buyer acknowledge and agree that Escrow Agent is the law firm representing Buyer with regard to this Agreement and the transaction which is the subject hereof, and hereby waive any claim against Escrow Agent based upon a conflict of interest as a result of Escrow Agent serving in such dual capacities, excluding only actions by Escrow Agent constituting knowing and intentional misconduct. Seller further agrees that Escrow Agent will be permitted to represent Buyer in all aspects of this Agreement and the subject transaction, including, without limitation, any dispute with respect to the Deposit.
 - g. The provisions of this Section will survive the Closing and also the cancellation of this Agreement.
21. **General Provisions.** The following general terms and conditions apply to this Agreement:
- a. **Singular/Plural – Masculine/Feminine.** Words used herein in the singular will include the plural and words in the masculine/feminine/neuter gender will include words in the masculine/feminine/neuter where the text of this Agreement requires.

- b. Titles. Headings in this Agreement are for convenience only.
- c. Successors. The terms, covenants, and conditions of this Agreement will be binding upon and inure to the benefit of the parties hereto and their respective heirs, successors, and assigns, except as herein limited.
- d. Choice of Law. THIS AGREEMENT SHALL BE CONSTRUED IN ACCORDANCE WITH AND GOVERNED BY THE LAWS OF THE STATE OF FLORIDA AND THE LAWS OF THE UNITED STATES OF AMERICA APPLICABLE TO TRANSACTIONS WITHIN THE STATE OF FLORIDA. VENUE AND JURISDICTION FOR ANY ACTION BROUGHT HEREUNDER IS HEREBY AGREED TO BE PROPER AND LIE EXCLUSIVELY WITH THE APPROPRIATE COURT LOCATED IN MIAMI-DADE COUNTY, FLORIDA.
- e. Time. Time is of the essence in the performance of each and every one of the obligation of the parties to this Agreement. Unless otherwise specified, in computing any period of time described herein, the day of the act or event for which the designated period of time begins to run is not to be included and the last day of the period so computed is to be included, unless such last day is a Saturday, Sunday or legal holiday, in which event the period will run until the end of the next day which is neither a Saturday, Sunday or legal holiday.
- f. Jury Trial Waiver. IN THE EVENT THAT IT BECOMES NECESSARY FOR EITHER PARTY TO BRING SUIT TO ENFORCE THE TERMS OF THIS AGREEMENT, THEN EACH PARTY HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY. THIS WAIVER IS MADE KNOWINGLY, VOLUNTARILY AND INTENTIONALLY.
- g. Attorneys Fees. In the event that there is an action brought either at law or in equity by either party against the other by reason of any matter or dispute arising out of this Agreement, the parties agree that the prevailing party in such litigation will be entitled to recover from the non-prevailing party the prevailing party's reasonable attorneys' fees therein, including fees incurred in bankruptcy proceedings or on appeal, plus court costs, and including such fees and costs incurred in establishing the right to recover such fees and costs and the amount to be recovered.
- h. Liability Joint and Several. If more than one party is named herein as Seller, then such parties hereby agree that the liability of each hereunder will be joint and several.
- i. Entire Agreement; Construction; Severability. This Agreement integrates and supersedes all other agreements and understandings of every character of the parties and comprises the entire agreement between them. This Agreement may not be changed, except in writing signed by the parties. No waiver of any rights or obligations hereunder will be deemed to have occurred unless in writing signed by the party against whom such waiver is asserted and no waiver will be deemed a

waiver of any other or subsequent right or obligations. The parties acknowledge that the parties and their respective counsel have reviewed and revised this Agreement and, therefore, the normal rule of construction of contracts that any ambiguities are to be resolved against the drafting party will not be employed in the interpretation of this Agreement and any exhibits or amendments thereto. If any portion of this Agreement is held to be invalid or inoperative, the remainder of it will be deemed valid and operative, and effect will be given to the intent manifested by the portion held invalid or inoperative to the extent possible.

- j. **Counterpart Signatures.** This Agreement may be executed in two or more counterparts, and it shall not be necessary that any one of the counterparts be executed by all of the parties hereto. Each fully or partially executed counterpart shall be deemed an original, but all such counterparts taken together shall constitute but one and the same instrument. This Agreement may be executed in multiple copies, and by telecopy or email PDF transmission, each of which shall be deemed to be an original for all purposes.
22. **Confidentiality.** Seller and Buyer each a "Party" (for purposes of this Section 22) acknowledge that the transaction described herein is of a confidential nature and shall not be disclosed by any Party, nor by any of their respective parents, subsidiaries, employees, or affiliates, except to partners of Seller and Buyer, attorneys, Florida Housing Finance Corporation ("FHFC"), lenders, potential equity sources, accountants, consultants, advisors, members and affiliates, as a result of any action required to be performed by a party under this Agreement, or as required by law. Prior to Closing, no Party shall make any public disclosure of the specific terms of this Agreement, except as required by law. In connection with the negotiation of this Agreement and the preparation for the consummation of the transactions contemplated hereby, each Party acknowledges that it will have access to confidential information relating to the other party. Each Party shall treat such information as confidential, preserve the confidentiality thereof, and not duplicate or use such information, except to the partners of Seller or Buyer, and attorneys, FHFC, lenders, potential equity sources, accountants, advisors, members, consultants, and affiliates in connection with the transactions contemplated hereby. In the event of the termination of this Agreement for any reason whatsoever, except in the event of Seller's default, Buyer shall return to Seller, at Seller's request, all documents, work papers, and other material (including all copies thereof) obtained from Seller in connection with the transactions contemplated hereby during the term of this Agreement ("Inspection Documents"), and each party shall use reasonable best efforts, including instructing its employees and others who have had access to such information, to keep confidential and not to use any such information except as otherwise permitted by law. Notwithstanding any other provision of this Agreement, Buyer shall not be required to deliver to Seller such of the Inspection Documents as to which Buyer is not the owner or does not have the unconditional legal right to transfer possession thereof to Seller. Moreover, with respect to such Inspection Documents delivered by Buyer to Seller, Seller agrees that the subsequent use of any such Inspection Documents by Seller or any other party or parties shall be at the sole risk of Seller and such other party or parties and that Buyer shall have no responsibility or liability to Seller or any other party or parties in connection with the use of any such Inspection Documents by Seller or any other party or parties. Neither Seller

nor Buyer shall make statements to the press or issue a press release regarding the transaction contemplated by this Agreement prior to Closing but may do so after Closing without the consent of the other party; provided, however, that any statements to the press or press release by Seller or its employees, directors, constituent entities, or any of their respective representatives must not disclose the Purchase Price. Notwithstanding the foregoing, after Closing, Seller may disclose the amount of the Purchase Price for the Property to actual and/or potential investors and/or actual or potential lenders in similar projects of Seller (or its affiliates). Further, notwithstanding anything contained in this Section 22 or elsewhere in this Agreement to the contrary, neither Buyer nor Seller shall have any liability concerning information (including, without limitation, information regarding the Purchase Price) which becomes public due to no wrongful action on the part of such party, or which is ordered or required to be publicly released by the requirement of any governmental agency or entity.

23. **Exclusive Right.** From and after the Effective Date, and during the term of this Agreement, Seller shall not discuss or negotiate the sale of the Property with any other person other than Buyer.


(Signatures follow on next page)

IN WITNESS WHEREOF, the parties have executed this Agreement as of the Effective Date.

BUYER:

McDowell Acquisitions, LLC, a Delaware limited liability company,

By: McDowell Properties, a California corporation, its Manager,

By: 
W. Patrick McDowell,
Chairman and CEO

SELLER:

CUTLER RIDGE INVESTMENT GROUP, LLC, a Florida limited liability company,

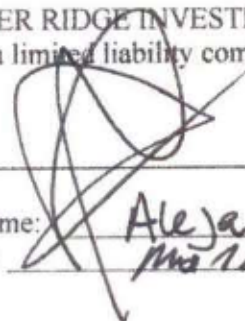
By: 
Name: Alejandro Ambrugno
Its: Manager 10/22/2020

Exhibit "A"

Legal Description of the Property

FOLIO: 30-6912-000-0331

THE SOUTH 2 ACRES OF THE EAST 1/2 OF THE NORTHEAST 1/4 OF THE SOUTHEAST 1/4 OF THE SOUTHEAST 1/4 OF SECTION 12, TOWNSHIP 56 SOUTH, RANGE 39 EAST, MIAMI-DADE COUNTY, FLORIDA, ALSO KNOWN AS THE SOUTH 259.83 FEET OF THE EAST 1/2 OF THE NORTHEAST 1/4 OF THE SOUTHEAST 1/4 OF THE SOUTHEAST 1/4 OF SECTION 12, TOWNSHIP 56 SOUTH, RANGE 39 EAST, MIAMI-DADE COUNTY, FLORIDA, LESS RAILROAD RIGHT OF WAY AND EASEMENTS FOR UTILITY.

LESS THE FOLLOWING PORTIONS DEEDED TO DADE COUNTY FOR ROAD RIGHT OF WAY:

THE WEST 50.00 FEET, THE EAST 25.00 FEET AND THE SOUTH 25.00 FEET OF THE SOUTH 2 ACRES OF THE EAST 1/2 OF THE NORTHEAST 1/4 OF THE SOUTHEAST 1/4 OF THE SOUTHEAST 1/4 OF SECTION 12, TOWNSHIP 56 SOUTH, RANGE 39 EAST, MIAMI-DADE COUNTY, FLORIDA, A/K/A THE SOUTH 259.83 FEET OF THE EAST 1/2 OF THE NORTHEAST 1/4 OF THE SOUTHEAST 1/4 OF THE SOUTHEAST 1/4 LYING NORTHWESTERLY OF THE NORTHWESTERLY RIGHT OF WAY LINE OF THE FLORIDA EAST COAST RAILWAY.

AND

ALL THAT PART OF THE NORTHEAST 1/4 OF THE SOUTHEAST 1/4 OF THE SOUTHEAST 1/4 OF SAID SECTION 12 WHICH LIES SOUTHEASTERLY OF A LINE WHICH IS 50.0 FEET NORTHWESTERLY OF AND PARALLEL TO THE NORTHWESTERLY RIGHT OF WAY LINE OF THE FLORIDA EAST COAST RAILWAY.

AND

ALL THAT PART OF THE SOUTHEAST 1/4 OF SAID SECTION 12 WHICH LIES WITHIN THE EXTERNAL AREA FORMED BY A 25.00 FOOT RADIUS ARC CONCAVE TO THE NORTHEAST, TANGENT TO THE NORTH LINE OF THE SOUTH 25.00 FEET OF THE NE 1/4 OF THE SE 1/4 OF THE SE 1/4 OF SAID SECTION 12, AND TANGENT TO THE EAST LINE OF THE WEST 50.00 FEET OF THE EAST 1/2 OF THE NE 1/4 OF THE SE 1/4 OF THE SE 1/4 OF SAID SECTION 12.

AND

ALL THE PART OF THE SOUTHEAST 1/4 OF SAID SECTION 12 WHICH LIES WITHIN THE EXTERNAL AREA FORMED BY A 25.00 FOOT RADIUS ARC CONCAVE TO THE NORTHWEST, TANGENT TO THE NORTH LINE OF THE SOUTH 25.00 FEET OF THE NE 1/4 OF THE SE 1/4 OF THE SE 1/4 OF SAID SECTION 12, AND TANGENT TO A LINE 50.00 FEET NORTHWESTERLY OF AND PARALLEL TO THE NORTHWESTERLY RIGHT OF WAY LINE OF THE FLORIDA EAST COAST RAILWAY.

AND

ALL THAT PART OF THE SOUTHEAST 1/4 OF SAID SECTION 12 WHICH LIES WITHIN THE EXTERNAL AREA FORMED BY A 25.00 FOOT RADIUS ARC CONCAVE TO THE NORTHWEST, TANGENT TO THE WEST LINE OF THE EAST 25.00 FEET OF THE SE 1/4 OF SAID SECTION 12, AND TANGENT TO A LINE 50.00 FEET NORTHWESTERLY OF AND PARALLEL TO THE NORTHWESTERLY RIGHT OF WAY LINE OF THE FLORIDA EAST COAST RAILWAY.

FOLIO: 30-6912-000-0330

BEGINNING AT THE SOUTHWEST CORNER OF LAND OWNED BY ARTHUR MAYS AND D. C. CAIL; THENCE RUNNING EAST ALONG LINE OF SAID LAND 335 FEET; THENCE SOUTH 130 FEET; THENCE WEST 335; THENCE NORTH 130 FEET TO PLACE OF BEGINNING, LYING AND BEING IN THE EAST 1/2 OF THE NORTHEAST 1/4 OF THE SOUTHEAST 1/4 OF THE SOUTHEAST 1/4 OF SECTION 12, TOWNSHIP 56 SOUTH, RANGE 39 EAST.

AND

THE NORTH 2 ACRES OF THE EAST 1/2 OF THE NORTHEAST 1/4 OF THE SOUTHEAST 1/4 OF THE SOUTHEAST 1/4 OF SECTION 12, TOWNSHIP 56 SOUTH, RANGE 39 EAST, LYING AND BEING IN MIAMI-DADE COUNTY, FLORIDA;

LESS

THE EAST 25 FEET THEREOF AND LESS THE WEST 50 FEET THEREOF FOR RIGHT OF WAY PURPOSES.

EXHIBIT

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Exhibit "B"

PURCHASE AND SALE AGREEMENT

THIS PURCHASE AND SALE AGREEMENT (this "Agreement") dated October 22, 2020 (the "Effective Date") is made by and between CUTLER RIDGE INVESTMENT GROUP, LLC a Florida limited liability company ("Seller"), and MCDOWELL ACQUISITIONS, LLC, a Delaware limited liability company, and/or its assigns ("Buyer").

RECITALS:

- A. Seller is the owner and holder of certain real property comprised of approximately 3.46 acres of vacant land located at the northeast corner of the intersection of SW 214th Street and SW 117th Court, Miami-Dade County, Florida, consisting of two (2) separate lots, all as more particularly described on the Exhibit "A" attached hereto ("Property");
- B. Buyer desires to purchase the Property from Seller, and Seller desires to sell the Property to Buyer, pursuant to the terms and conditions set forth herein.

NOW, THEREFORE, for good and valuable consideration, and the mutual covenants set forth in this Agreement, Seller and Buyer hereby agree as follows:

1. **Purchase and Sale.** Seller agrees to sell and convey the Property to Buyer, and Buyer agrees to purchase the Property from Seller. The Property includes all of Seller's right, title and interest in and to (i) all easements, rights of way, privileges, licenses, appurtenances and any other rights, privileges and benefits belonging to the owner of, running with title to, or in any way related to, the Property; (ii) all land use or other consents, authorizations, variances, waivers, licenses, permits, approvals, development orders, or any other entitlements issued or granted by or from any governmental authority with respect to the Property, to the extent assignable without the consent of the granting authority; (iii) all percolation, soil, topographical, traffic, engineering and environmental reports or studies in the possession or control of the Seller, and all riparian, littoral rights, title to submerged lands and other water rights related to or benefiting the Property; (iv) all utility mains, service laterals, hydrants, connections, hook-ups and valves located on, or adjacent to, and servicing or available to service the Property; and (v) any and all other agreements, contracts, covenants, variances and rights, benefits and privileges related to or benefiting the Property.
2. **Purchase Price.** The purchase price for the Property ("Purchase Price") is Seven Million Dollars (\$7,000,000.00), subject to the credits, prorations, and adjustments set forth herein. The Purchase Price is payable as follows:
 - a. **First Deposit.** Within five (5) business days of the Effective Date, Buyer will deliver to Nelson Mullins Broad and Cassel, as escrow agent ("Escrow Agent"), the sum of One Hundred Thousand Dollars (\$100,000.00) by wire transfer of immediately available funds (the "First Deposit"). The First deposit may be held by Escrow Agent in an interest-bearing account, to be disbursed only in accordance with the terms of this Agreement. Twenty Thousand Dollars (\$20,000.00) of the First Deposit will be non-refundable to Buyer upon receipt of the First Deposit by

Escrow Agent (the "Hard Deposit") and shall be released to Seller within the 5 days following receipt. The remaining Eighty Thousand Dollars (\$80,000.00) of the First Deposit will be refundable to Buyer until February 28, 2021. At any time through and until 5:00 PM EST February 28, 2021, Buyer may deliver written notice to Seller of termination and the First Deposit less the Hard Deposit shall be refunded by Escrow Agent to Buyer and this Agreement shall be deemed terminated for all purposes.

- b. Second Deposit. Buyer will deliver to Escrow Agent the sum of One Hundred Thousand Dollars (\$100,000.00) by wire transfer of immediately available funds within five (5) business days after the expiration of the Financing Period ("Second Deposit"). The Second Deposit may be held by Escrow Agent in the same interest-bearing account as the First Deposit. Upon Buyer's delivery of the Second Deposit to Escrow Agent, the Second Deposit will be (i) non-refundable to Buyer except as otherwise provided herein, and (ii) applied to the Purchase Price at Closing.
- c. Third Deposit. On or before June 30, 2021, ✓ Buyer will deliver to Escrow Agent the sum of Two Hundred and Fifty Thousand Dollars (\$250,000.00) by wire transfer of immediately available funds ("Third Deposit"). The Third Deposit may be held by Escrow Agent in the same interest bearing account as the First Deposit and the Second Deposit. Upon Buyer's delivery of the Third Deposit to Escrow Agent, the Third Deposit will be (i) non-refundable to Buyer except as otherwise provided herein, and (ii) applied to the Purchase Price at Closing.
- d. The First Deposit, Second Deposit and Third Deposit, to the extent delivered to the Escrow Agent, are sometimes collectively referred to as the "Deposit". Notwithstanding anything in this Agreement to the contrary, the Deposit will be refundable to Buyer in the event that (i) Seller defaults under the terms of the Agreement; (ii) one or more of the Closing Conditions in favor of the Buyer set forth in Section 8 have not been satisfied; or (iii) as otherwise specifically provided in this Agreement.
- e. Balance. The Deposit will be applied to the Purchase Price at Closing, and Buyer will pay to Seller the balance of the Purchase Price, subject to credits, adjustments and prorations as herein provided, by a cashier's check or by wire transfer of immediately available funds.
- f. Escrow Deposit. The Escrow Agent shall promptly give Seller written notice of receipt of each Deposit. The Deposit may be invested by Escrow Agent in an interest-bearing account, but only after Buyer has executed all necessary governmental forms, including a W-9 and delivered such form to Escrow Agent. Any and all interest earned on the Deposit will accrue to the benefit of Buyer and will be reported to Buyer's federal tax identification number. Escrow Agent will have no responsibility in case of failure or suspension of business of the institution holding the Deposit. Interest earned, if any, will be credited to Buyer upon Closing, or, in the event of Buyer's default, paid to Seller.

3. **Financing Period.** Buyer shall have through March 31, 2021 (the "Financing Period") to terminate this Agreement if Buyer does not secure financing on terms acceptable to Buyer, or any other reason, in Buyer's sole and absolute discretion, by delivering written notice thereof to Seller prior to the expiration of Financing Period. In the event Buyer delivers written notice terminating this Agreement prior to the expiration of the Financing Period, Buyer shall receive a refund of the portion of First Deposit which remains refundable to Buyer in accordance with Section 2.a., together with accrued interest thereon without the need for Seller's signature or consent for its release.

Buyer agrees to submit an application for funding to construct a residential multi-family development on the Property (the "Application") under Florida Housing Finance Corporation ("FHFC") RFA 2020-203 "Housing Credit Financing for Affordable Housing Developments Located in Miami-Dade County" (the "RFA") on or prior to the RFA deadline, currently scheduled for November 10, 2020 (as may be amended by FHFC, the "Application Deadline"). If Buyer fails to submit the Application under the RFA on or prior to the Application Deadline, then Seller shall have the right to terminate this Agreement by providing written notice to Buyer, and upon such termination by Seller, the portion of First Deposit which remains refundable to Buyer in accordance with Section 2.a. shall be refunded to Buyer and the Parties shall be relieved of all further liability under this Agreement.

4. **Title Insurance/Survey.**

- a. **Title.** Within ten (10) business days following the Effective Date, Seller will deliver to Buyer a copy of Seller's title insurance policy insuring Seller's fee simple title to the Property. Prior to March 31, 2021, Buyer, at Buyer's expense, will obtain an owner's title insurance commitment (the "Title Commitment") from First American Title Insurance Company (the "Title Company") through Nelson Mullins Broad and Cassel as title agent ("Title Agent"). Marketable title will be determined according to the Title Standards adopted by authority of The Florida Bar and in accordance with Florida law. The legal description of the Property contained in the Title Commitment shall include any off-site easements which benefit the Property. The Title Commitment shall be accompanied by true, complete and legible copies of all documents creating or evidencing any exception to title noted in the Title Commitment. The Title Commitment shall evidence the requirements subject to which Title Company will insure in Buyer good and marketable record fee simple title to the Property, free and clear of all liens, encumbrances, exceptions or qualifications to title whatsoever except for the Permitted Exceptions, as such term is hereinafter defined.
- b. **Survey.** Within ten (10) business days following the Effective Date, Seller will deliver to Buyer a copy of Seller's existing survey, prepared by a Florida licensed surveyor, of the Property, if available. By March 31, 2021, Buyer will obtain, at its sole cost and expense, an updated ALTA/ACSM survey identifying (i) total acreage, (ii) any areas within a flood zone, (iii) any easements, rights of way or other encroachments, and, (iv) following delivery of the Title Commitment to the surveyor, all of the plottable exceptions to the Title Commitment (the "Survey").

- c. Title and Survey Objections. Buyer will have until June 30, 2021, to examine the condition of Seller's title to the Property (the "Title Review Period"). If the Title Commitment or the Survey reflects that title to the Property is subject to any exceptions or other survey matters unacceptable to Buyer, Buyer will notify Seller in writing prior to the expiration of the Title review Period of any defects (the "Title Objections"). Any exceptions listed in the Title Commitment to which Buyer has not timely objected will be deemed to be "Permitted Exceptions." If Buyer gives a Title Objection to Seller within the Title Review Period, then on or before ten (10) days after receipt of the Title Objection ("Response Deadline"), Seller may, in Seller's sole discretion, give Buyer notice of those Title Objections, if any, that Seller is willing to seek to cure prior to the Closing Date ("Response Notice"), in which case, Seller shall have thirty (30) days in which to cure such Title Objections ("Objection Cure Period"). If Seller fails to deliver a Response Notice by the Response Deadline, Seller shall be deemed to have elected not to cure or otherwise resolve any matter set forth in the Title Objection. If Seller is not successful in correcting or removing the Title Objections within Objection Cure Period, or Seller has elected not to cure the Title Objections, Buyer will have the option of (i) accepting the title in its existing condition, or (ii) terminating this Agreement by sending written notice of termination to Seller and Escrow Agent within two (2) Business Days following the Objection Cure Period. In the event that Buyer elects to terminate this Agreement, notwithstanding anything in Section 2 to the contrary, Escrow Agent will return the Deposit to Buyer, and, thereafter, neither Buyer nor Seller will have any further liabilities or obligations hereunder except with respect to those obligations which expressly survive termination. If Buyer fails to give notice to terminate this Agreement pursuant to this Section 4(c), Buyer shall be deemed to have elected to approve and irrevocably waived any objections to matters covered by the Title Commitment or the Survey, except as provided in Section 4(d) hereof.
- d. Title and Survey Updates. Seller covenants and agrees that after the Effective Date it will not enter into or record any document or instrument, or enter into any lease or other agreement, affecting or burdening the Property, unless Buyer has consented in writing to the execution or recordation of such document, instrument, lease or agreement. If any updated endorsement to the Title Commitment or any update of the Survey reveals any exception or survey defect not reflected on the Title Commitment or the Survey that was not consented to by Buyer, then Seller, at Seller's sole cost and expense, will have such exception promptly deleted from the Title Commitment, or such survey defect removed or cured, and in any event prior to Closing. If Seller is not successful in removing the same within thirty (30) days from written notice from Buyer, Buyer will have the option of (i) allowing Seller additional time to cure such defects, (ii) accepting the title in its existing condition, or (iii) terminating this Agreement by sending written notice of termination to Seller and Escrow Agent within two (2) Business Days following said thirty (30) day period. In the event that Buyer elects to terminate this Agreement, notwithstanding anything in Section 2 to the contrary, Escrow Agent will return the Deposit to Buyer, and, thereafter, neither Buyer nor Seller will have any further liabilities or obligations hereunder except with respect to those obligations which

expressly survive termination. Notwithstanding anything else to the contrary in this Agreement, in the event Seller fails to remove, prior to or at Closing, an exception revealed in the Title Commitment, or any update thereof (whether or not objected to by Buyer), in the form of: (1) a mortgage or other security interest entered into by Seller; (2) a lien or encumbrance of any kind or nature voluntarily created by Seller at any time on or after the date of this Agreement; or (3) a mechanic's or materialman's lien or a judgment docketed against the Property, in any case resulting from the non-payment by Seller of any sums alleged to be due and owing by Seller to a contractor or materialman or otherwise voluntarily caused or created by Seller, then in addition to the return of the Deposit, Buyer will be entitled to recover from Seller all third party costs incurred by Buyer, including reasonable attorneys' fees and costs, in connection with satisfying said encumbrance.

5. **Inspections.** So long as the Agreement remains in effect the Buyer will have the right to determine in their absolute and sole discretion if the Intended Improvements (as defined in Section 6.a.) are viable. If Buyer determines that the Intended Improvements are not viable, Buyer may, without liability to Seller, terminate this Agreement by written notice to Seller and Escrow Agent, following which Escrow Agent will disburse the escrowed Deposits in accordance with the provisions of Section 2 of this Agreement within five (5) calendar days following termination, without further authorization of the Buyer, and both parties will be released from all further obligations or liability under this Agreement, except for those obligations which expressly survive termination. Notwithstanding the foregoing, Buyer shall complete and provide a copy of Phase I Environmental Site Assessment report to Seller on or before February 28, 2021 (the "Phase I"). If the Phase I ESA indicates Recognized Environmental Condition that render the Intended Improvements infeasible, in Buyer's sole discretion, notwithstanding anything set forth in Section 2 to the contrary, Buyer may terminate the Agreement and be entitled to a refund of the portion of First Deposit which remains refundable to Buyer in accordance with Section 2.a.
- a. **Access and Deliverables.** So long as this Agreement remains in effect, Seller hereby grants to Buyer and its agents, employees, contractors and representatives, a right of entry upon every portion of the Property, and a right to examine all records, documents, data or information of any kind or nature relating to or concerning the Property in the possession or under the control of Seller or other matters pertaining to the Property (and Seller hereby agrees to make any and all records, documents, data or information of any kind or nature relating to or concerning the Property in the possession or under the control of Seller available to Buyer) from time to time at all reasonable times for the purpose of making surveys, engineering studies, drainage studies, appraisals, zoning and land use studies, impact studies, surface and subsurface explorations, tests, excavations, borings and such other investigations, inspections, assessments or reports as Buyer, in its sole and absolute discretion, may elect to make. Seller will deliver to Buyer, within ten (10) business days after the Effective Date, copies of any and all surveys (in CADD format, if available), site plans or layouts, engineering, environmental, soil, wetlands determinations, zoning, land use, appraisal and feasibility studies, reports and assessments, concurrency evaluations, any plans and specifications for the Property approved by the local building department having jurisdiction over the

Property, which Seller has in its possession or control (collectively, "Plans and Specs"), and any correspondence concerning any such topics that Seller has in its possession or control, and all other governmental orders, approvals, exemptions, waivers, permits, licenses, special exceptions or variances relating to the Property or any proposed use thereof which are in Seller's possession or control. Seller will also deliver to Buyer, within ten (10) business days after the Effective Date, legible copies of all leases, service contracts, operating agreements, management agreements and warranties relating to or concerning the Property.

- b. Liability and Indemnity. Buyer assumes liability for all acts of its agents who enter onto the Property and agrees to indemnify and hold harmless the Seller from any loss, damage, cost or expense incurred by Seller as a result of such acts of Buyer and its agents that cause injury to persons or damage to the Property. Further, Buyer agrees to promptly pay when due the costs of all tests, investigations and examinations done with regard to the Property and will not permit any liens to attach to the Property by reason of the exercise of its rights of inspection hereunder. During the pendency of this Agreement, Seller shall maintain all insurance Seller was carrying on the Effective Date.

6. **Government Approvals.**

- a. Government Approvals. Buyer shall pursue final issuance of: (i) all zoning and other governmental approvals from applicable governmental authorities having jurisdiction over the Property, to permit the construction, completion and operation of a multifamily residential project together with related amenities and accessory uses, which includes allowable density for a number of dwelling units in an amount sufficient for Buyer, in Buyer's sole discretion (the "Intended Improvements"); (ii) site plan approval, for which all appeal periods have expired with no appeal having been filed, for the Intended Improvements from the applicable governmental and regulatory authority(ies); (iii) concurrency and utility approvals; (iv) storm water drainage permit issued by the relevant drainage district; (v) building permits issued by the relevant municipality or county; and (vii) any other governmental and regulatory approvals and/or permits required in connection with the construction of the Intended Improvements (collectively the "Government Approvals").
- b. Seller Cooperation. As fee simple title holder, Seller agrees to be the applicant on, or join in any and all applications, permits, consents, zoning, land use, concurrency, platting and other permitting, etc., that may be required to be filed in connection with the Government Approvals. Seller will cooperate with Buyer in performing its due diligence with respect to the Property and in seeking any and all consents, permits or approvals regarding the Property as Buyer may reasonably request, and Seller will promptly join in all applications for building permits, certificates or other agreements, and permits for sewer, water, or other utility services, other instruments or other permits or approvals, the granting of or entry into which, by any governmental or quasi-governmental authority having jurisdiction over the Property, is, in Buyer's reasonable opinion, necessary to permit the development, construction, use or occupancy of the Intended Improvements. In the event Buyer

reasonably determines that Seller has failed to cooperate with Buyer with respect to Buyer's due diligence regarding the Property or in seeking the Governmental Approvals, Buyer shall provide written notice to Seller of such default. In such event, Seller shall have twenty (20) days to remedy or cure such default, or such longer time not to exceed sixty (60) days provided that Seller has commenced action to cure such default within said twenty (20) day period.

7. **Covenants of Seller: Operation of the Property.** Seller hereby covenants and agrees that from and after the Effective Date:
 - a. Seller will not, without the Buyer's prior written consent, create any encumbrances on the Property. For purposes of this provision the term "encumbrances" includes, but is not limited to, any liens, claims, options, or other encumbrances, encroachments, rights-of-way, easements, covenants, conditions, or restrictions.
 - b. Seller will not enter into or record any document or instrument, or enter into any lease or other agreement, affecting or burdening the Property, unless Buyer has consented in writing to the execution or recordation of such document, instrument, lease or agreement.
 - c. Seller will pay all assessments and taxes prior to becoming delinquent.
 - d. Seller will not create or consent to the creation of any special taxing districts or associations with the authority to impose taxes, liens or assessments on the Property.
 - e. Seller will not remove any fill or cause any change to be made to the physical condition of the Property without the prior written consent of Buyer.
 - f. Seller will take no action with respect to the Property that would alter or affect any of the representations or warranties of Seller under this Agreement or which would in any manner affect Buyer's future use and development of the Property.
 - g. Seller will cause all mortgage debt, if any, applicable to the Property to remain in good standing through and until the Closing.
 - h. If applicable, Seller will provide Buyer and the Title Company with any and all approvals from any lenders to sell the Property for less than the balance owed to such lender.

8. **Closing Conditions.** Buyer's obligation to close this transaction will be subject to the satisfaction of each of the following conditions on or before the Closing Date:
 - a. Seller is not in default under any term, covenant or condition of this Agreement, and shall have performed all of its covenants, agreements and obligations under this Agreement.

- b. Each of the representations and warranties of Seller set forth in this Agreement is true, complete and correct on the Effective Date and at the date of the Closing as if made at that time, and the Seller has delivered its certificate to such effect.
- c. There will not be a sewer, water, building or other moratorium, condemnation or any proceedings in effect which would interfere with the immediate construction and occupancy of Buyer's Intended Improvements ("Moratorium").
- d. The Property has not been damaged by any casualty loss as provided in Section 15.b. or by any environmental matter arising after the Effective Date.
- e. At the Closing, the Title Insurance Company will irrevocably commit to issue to Buyer an ALTA Owner's Policy of title insurance, dated as of the date and time of the recording of the deed, in the amount of the Purchase Price, insuring Buyer as owner of good, marketable and indefeasible fee simple title to the Property, free and clear of liens and encumbrances, and subject only to the Permitted Exceptions (the "Title Policy").
- f. Sole and exclusive possession of the Property will be delivered to Buyer at Closing.

It shall additionally be a condition precedent to Seller's and Buyer's respective obligations to close hereunder that Buyer shall acquire title to both of the lots that comprise the Property. ✓

In the event that any of the foregoing conditions precedent to Closing have not been satisfied as of the Closing Date, Buyer will have the right to waive any or all of the foregoing conditions and close this transaction or Buyer will have the right to terminate the Agreement. In the event Buyer elects to terminate this Agreement by reason of the failure of any of the conditions described in Section 8., the Deposit and all interest earned thereon will be refunded to Buyer and neither party will have any further rights or obligations hereunder, except those obligations which survive termination of the Agreement.

9. **Closing Documents.** The Closing documents will be provided by the parties as set forth below, in form acceptable to Buyer:
- a. At Closing Seller will execute and/or deliver to Buyer:
 - i. **Special Warranty Deed.** A special warranty deed in recordable form, duly executed by Seller, conveying to the Buyer good, marketable and insurable fee simple title to the Property subject only to the permitted exceptions as reflected in the Commitment which have not been objected to by Buyer, with the legal description provided in the Commitment.
 - ii. **Affidavit.** An owner's affidavit adequate for title insurance to be issued by the Title Company without exception for parties in possession, mechanics' or materialmen's liens and to permit the Title Company to delete the "gap" in the Title Commitment.

- iii. FIRPTA Affidavit. In order to comply with the requirements of the Foreign Investment Real Property Tax Act of 1980 ("FIRPTA"), Seller will deliver to Buyer at Closing Seller's affidavit under penalty of perjury stating the Seller is not a "foreign person," as defined in Section 1445 of the Internal Revenue Code of 1986 and the U.S. Treasury Regulations thereunder, setting forth Seller's taxpayer identification number, and that Seller intends to file a United States income tax return with respect to the transfer. Seller represents and warrants to Buyer that it has not made nor does Seller have any knowledge of any transfer of the Property or any part thereof that is subject to any provisions of FIRPTA that has not been fully complied with by either transferor or transferee.
 - iv. Closing Certificate. A duly executed certification that every representation and warranty of Seller under this Agreement is true and correct as of the Closing as if made by Seller at such time;
 - v. Assignment. A duly executed assignment of permits, approvals and development rights.
 - vi. Authority Documents. Any and all documents reasonably requested by Buyer or the title company in connection with Seller's authority to execute this Agreement, the deed and all other documents contemplated under this Agreement;
 - vii. Closing Statement. A closing statement prepared by Title Agent setting forth all amounts paid, credited and otherwise due, payable and paid hereunder ("Closing Statement"); and
 - viii. Other Documents. Such additional documents or instruments as may be required to effectuate the terms, conditions and provisions hereof and to carry out the intent of the parties hereto, or as may be reasonably required by the title insurance company, so as to be able to delete at Closing all of the requirements of Schedule B-Section 1 of the Title Commitment and all of the standard printed exceptions (other than the exception for taxes and assessments for the current year not yet due and payable, and the survey exception, which will be limited to the specific matters affecting the Property reflected on the Survey) from Schedule B-Section 2 of the Title Commitment, and to insure the gap between the effective date of the Title Commitment and the recording of the deed conveying title to the Property from Seller to Buyer.
- b. At Closing, Buyer will deliver to Seller:
- (i) Closing Statement. Closing Statement executed in counterpart;
 - (ii) Purchase Price. The Purchase Price (as adjusted for all credits, adjustments and prorations set forth in this Agreement); and

- (iii) Other Documents. Such additional documents or instruments as may be reasonably required or requested by Seller to effectuate the terms, conditions and provisions of this Agreement.
10. Closing/Closing Expenses. Except as otherwise provided herein, the consummation of the transactions described in this Agreement (the "Closing") will take place using mail away procedures no later than July 31, 2021 (the "Closing Date") with all executed documents delivered prior to Closing being held in escrow by Escrow Agent until the occurrence, satisfaction or waiver of the conditions to Closing. Time is of the essence. At Closing, Seller will pay the cost of documentary stamp tax on the special warranty deed. Buyer will pay all title search fees and other costs pertaining to the Title Commitment and for the title insurance premium on the owner's title insurance policy to be issued to Buyer pursuant to the Title Commitment in an amount equal to the Purchase Price. Buyer will pay the fee for recording the special warranty deed, the costs of the Survey and costs associated with obtaining financing, permits and impact fees in connection with the development for the Intended Improvements, and the cost for any lender's title insurance policy and any endorsements required by Buyer or lender. Each party will pay its own attorneys' fees.
11. Closing Extensions. Buyer shall have the right, at Buyer's sole option, to extend the Closing Date by up to three (3) consecutive forty-five (45) day periods by providing notice to Seller in writing of such desire on or before the Closing Date, as may be extended, and depositing fifty thousand dollars (\$50,000.00) (the "Extension Payment") with Escrow Agent by wire transfer. Each consecutive Extension Payment shall be non-refundable for any reason if Seller is ready, willing and able to close by the Closing Date, released to Seller no later than three (3) business days following Escrow Agent's receipt of the Extension Payment and applied toward the Purchase Price.
12. Prorations. The following items will be adjusted, apportioned, and allowed as of the Closing Date:
- a. Apportionment. Seller shall pay all ad valorem real estate and/or personal property taxes, charges and/or assessments (special or otherwise) for all years prior to the year of the Closing Date. Buyer shall pay all ad valorem real estate and/or personal property taxes, charges and/or assessments (special or otherwise) for all years after the year of the Closing Date. Seller and Buyer shall pay their proportionate share of the ad valorem real estate and/or personal property taxes, charges and/or assessments (special or otherwise) for the year of the Closing Date, prorated at the Closing based upon, at the highest allowable discount and upon the actual days during the year in which Seller and Buyer owned the Property.
- b. Special Assessment Liens. If, on the Closing Date, the Property or any part thereof, will be or will have been affected by any certified, confirmed, and ratified special assessment liens, the same will be paid and discharged by Seller. Pending liens will be assumed by Buyer; provided, however, that once the amount of a pending special assessment lien has been finally determined, the amount of the special assessment lien will be prorated and Seller will reimburse Buyer for any amounts

paid by Buyer which are allocable to the period of time Seller owned the Property within thirty (30) days of Buyer's delivery to Seller of the proration statement.

- c. Real Estate Taxes. If the Closing will occur before the tax rate is fixed, the apportionment of taxes will be based upon the real estate taxes for the previous year. If the tax rate is not fixed at Closing, the parties agree to make an appropriate adjustment upon the issuance of the actual statement for the taxable year. Thus, if at the time of Closing, the taxes for the current year have not been finally determined, Seller or Buyer, as the case may be, agree to pay any balance later found to be due on the reparation of the actual taxes for the year in which the Closing occurred, within thirty (30) days of the determination thereof. At the option of Buyer, the parties shall deposit a reasonable amount in escrow at closing to pay any expected reparation.
 - d. The provisions of this section will survive the Closing.
13. **Seller's Representations and Warranties.** Seller represents and warrants to Buyer and covenants and agrees with Buyer as follows:
- a. Seller has not entered into any contracts, subcontracts, arrangements, leases, licenses, concessions, easements, or other agreements, either recorded or unrecorded, written or oral, affecting all, or any portion of, or any interest in the Property, which will not have been terminated or expired prior to Closing, except as may be included in the Permitted Exceptions;
 - b. No other contract or agreement to sell, transfer or convey the Property exists;
 - c. There are no: to the knowledge of Seller, (1) existing or pending improvement or special assessment liens affecting the Property; (2) violations of building codes and/or zoning ordinances or other governmental or regulatory laws, ordinances, regulations, orders or requirements affecting the Property; (3) existing, pending or threatened lawsuits, or appeals of prior lawsuits, affecting the Property; (4) existing, pending or, to the knowledge of Seller, threatened condemnation proceedings affecting the Property; (5) existing, pending or, to the best knowledge of Seller, threatened zoning, building or other moratoria, downzoning petitions, proceedings, restrictive allocations or similar matters that could adversely affect the development of the Intended Improvements on the Property; or (6) unrecorded easements, restrictions or encumbrances affecting all or any part of the Property;
 - d. Seller has not used, manufactured, stored, or released any "Hazardous Materials" (as hereinafter defined) on, in or around the Property, and, to Seller's knowledge, no other person or entity has ever used, manufactured, stored or released any Hazardous Materials on, in or around the Property, and, to the best of Seller's knowledge, no Hazardous Materials are present in, on, under or around the Property. As used herein, "Hazardous Materials" will mean petroleum and petroleum-based products and any other substance or material, the use, manufacture, storage, release or presence of which in land, water or elsewhere in the environment is limited,

prohibited or in any other way regulated by any federal, state or local law, ordinance, rule or regulation. Seller further represents and warrants that, to Seller's best knowledge, no portion of the Property has ever been used as a landfill or a dump;

- e. There are no agreements currently in effect which prohibit or restrict the sale of the Property;
- f. Seller has the right, power and authority to execute and deliver this Agreement, to perform each and every obligation of Seller hereunder, and to consummate the transactions contemplated by it; no consent, approvals or authorizations from any person, entity or governmental authority is required with respect to this Agreement and the consummation of the transaction contemplated herein; neither the execution and delivery of this Agreement, and the performance or consummation of the obligations and transactions contemplated by it, nor the fulfillment of, nor the compliance with, the terms, conditions and provisions of this Agreement will conflict with, or result in a violation or breach of, any relevant law, or any other instrument or agreement of any nature to which Seller is a party or by which it is bound or may be affected, or constitute (with or without the giving of notice or the passage of time) a default under such an instrument or agreement;
- g. No unrecorded commitments or agreements have been made by Seller to any governmental authority, utility company, school board, church or other religious body, any homeowners or homeowners' association, or any other organization, group or individual, relating to the Property which impose an obligation upon Buyer to make any contributions or dedications of money, land, or any interest in land, to construct, install or maintain any improvements of a public or private nature on or off the Property, or otherwise impose any obligations or liability on Buyer or the Property;
- h. All agreements, documents, studies and other materials delivered to Buyer are true, correct and complete copies of all such items;
- i. The balance of all existing liens and mortgages will be satisfied at or before Closing, and Seller agrees to provide Buyer and Title Agent approvals from any lender to sell the Property for less than the balance owed to said lender, if any;
- j. Seller has received no notice and to the best of Seller's knowledge, there is no violation of any law, regulation, ordinance, order or judgment affecting the Property;
- k. Seller owns the Property in fee simple, subject only to those matters disclosed in the Title Commitment;
- l. To the best knowledge of Seller, no default exists under the terms of any document disclosed in the Title Commitment; and
- m. At all times during the term of this Agreement and as of the Closing Date, all of Seller's representations, warranties and covenants in this Agreement will be true

and correct; no representation or warranty by Seller contained in this Agreement and no statement delivered or information supplied to Buyer pursuant to this Agreement contains any untrue statement of a material fact or omits to state a material fact necessary in order to make the statements or information contained in them or in this Agreement not misleading. The provisions of this section will survive the Closing for a period of twelve (12) months.

14. **Broker.** Seller and Buyer represent and warrant each they have not dealt with any real estate broker, salesperson or finder in connection with this transaction. In the event of any claim for a broker's or a finder's fee or commission in connection with the negotiation, execution or consummation of this Agreement or the transactions contemplated hereby, each party will defend, indemnify and hold harmless the other party from and against any such claim based upon any statement, representation or agreement of such party. The mutual indemnities and representations and warranties of each of Seller and Buyer in this section will survive the Closing.

15. **Damage, Destruction or Condemnation.**

- a. **Risk of Loss.** Risk of loss to the Property occurring prior to the Closing Date will be borne by Seller.
- b. **Casualty Loss.** In the event of loss, damage or destruction to the Property which prohibits or materially affects the development of the Intended Improvements by Buyer prior to Closing, Buyer may elect either (i) to proceed with Closing, without adjustment of the Purchase Price, and Seller will assign to Buyer all insurance proceeds received as a result of the loss, damage or destruction, or (ii) to terminate this Agreement, in which event the Deposit will be returned to Buyer. Seller will promptly notify Buyer in writing of any such material casualty loss to the Property. Buyer will make such election within ten (10) business days following Seller's written notice to Buyer of the casualty event, and if such election is not timely made, Buyer will be deemed to have elected to terminate this Agreement.
- c. **Condemnation and Moratorium.** In the event that any moratorium or condemnation proceedings are instituted, or notice of intent to condemn is given, with respect to all or any portion of the Property, Seller will promptly notify Buyer in writing thereof, in which event Buyer will have the option either to terminate this Agreement and receive a refund of the Deposit, or to consummate the purchase of the Property without reduction of the Purchase Price and the right to collect any condemnation award or compensation for such condemnation will be assigned by Seller to Buyer at Closing. Buyer must make such election within ten (10) business days following Seller's written notice to Buyer of the condemnation proceedings, and if such election is not timely made, Buyer will be deemed to have elected to terminate this Agreement.

16. **Default.** In the event that Buyer fails to perform its obligations hereunder (including the failure to timely make any Deposit) and such failure is through no fault or failure of Seller to comply with its obligations hereunder, Seller may, as its sole, exclusive and absolute remedy, terminate this Agreement and retain, as full and complete agreed upon liquidated

damages, the Deposit; provided, however, if the Buyer breaches its obligation to make any Deposit, Seller may also pursue a claim against Buyer for the amount of the Deposit which has not been timely made. If Seller will refuse to close, despite its obligation to close hereunder, or if any of the representations, warranties and covenants of Seller will at any time on or before Closing be found to be false or misleading in any material respect, or if Seller is otherwise in default under the terms and provisions of this Agreement, Buyer may: (i) terminate this Agreement and obtain the return of its Deposit, or (ii) seek specific performance of Seller's obligations hereunder. Notwithstanding anything to the contrary herein, there shall be no default of Buyer hereunder unless and until Seller shall have provided Buyer written notice of such default and Buyer shall have failed to cure said default within thirty (30) days of its receipt of such notice; provided, however, that if Buyer is unable to cure within said time period, Buyer shall have such time to cure as is reasonable under the circumstances provided that Buyer has undertaken efforts to cure in said time period. Notwithstanding the foregoing no such cure shall apply to failure to make any Deposit required hereunder in the required time period.

17. **Notice.** All notices, consents, approvals, waivers and elections which any party will be required or will desire to make or give under this Agreement will be in writing and given by delivery in person, or sent by U.S. mail, return receipt requested, overnight courier, facsimile or email, as provided below:

To Buyer: MCDOWELL ACQUISITIONS, LLC
c/o McDowell Housing Partners, LLC
601 Brickell Key Drive, Suite 700
Miami, Florida 33131
Attn: Christopher Shear
Email: cshear@mcdhousing.com

With a copy to: Nelson Mullins Broad and Cassel
390 N. Orange Avenue, Suite 1400
Orlando, Florida 32801
Attn: Roman Petra, Esq.

To Seller: CUTLER RIDGE INVESTMENT GROUP, LLC
7275 NW 87th Avenue
Miami, Florida 33178

With a copy to: Alejandra Marquez Villa, Esq.
AMV Legal Group P.A.
2450 Hollywood Blvd Ste 300
Hollywood FL 33020
Email: ale@amvlegalgroup.com

To Escrow Agent: Nelson Mullins Broad and Cassel
215 South Monroe Street, Suite 400
Tallahassee, Florida 32301
Attn: Melissa N. VanSickle, Esq.
Email: melissa.vansickle@nelsonmullins.com

Notices, consents, approvals, waivers and elections given or made as aforesaid will be deemed to have been dated, given and received: (i) three (3) business days after deposit with the U.S. Mail, postage prepaid, if sent by U.S. Mail, return receipt requested, (ii) the next business day after deposit with an overnight courier service, (iii) on the day of receipt if delivered in person, (iv) on the date of transmission, if transmitted by telecopier and confirmation of successful transmission is provided by such telecopier, (v) on the date of transmission if sent by email, provided the recipient emails acknowledgement of receipt, in the absence of which a copy will also be sent via overnight courier on or before the next business day.

18. **Assignment.** Buyer will be entitled to assign Buyer's rights and obligations under this Agreement to any other related entity owned by, controlled by, under common control, or affiliated with, Buyer. Any other assignment will require the prior written consent of Seller.
19. **Radon Gas Notice.** Pursuant to Florida Statutes Section 404.056(5), Seller hereby makes, and Buyer hereby acknowledges, the following notification:

RADON GAS: RADON IS A NATURALLY OCCURRING RADIOACTIVE GAS THAT, WHEN IT HAS ACCUMULATED IN A BUILDING IN SUFFICIENT QUANTITIES, MAY PRESENT HEALTH RISKS TO PERSONS WHO ARE EXPOSED TO IT OVER TIME. LEVELS OF RADON THAT EXCEED FEDERAL AND STATE GUIDELINES HAVE BEEN FOUND IN BUILDINGS IN FLORIDA. ADDITIONAL INFORMATION REGARDING RADON AND RADON TESTING MAY BE OBTAINED FROM YOUR COUNTY PUBLIC HEALTH UNIT.

20. **Escrow Agent.**
 - a. Escrow Agent undertakes to perform only such duties as are expressly set forth in this Agreement. Escrow Agent will not be deemed to have any implied duties or obligations under or related to this Agreement.
 - b. Escrow Agent may: (a) act in reliance upon any writing or instrument or signature which it, in good faith, believes to be genuine; (b) assume the validity and accuracy of any statement or assertion contained in such a writing or instrument; and (c) assume that any person purporting to give any writing, notice, advice or instructions in connection with the provisions of this Agreement has been duly authorized to do so. Escrow Agent will not be liable in any manner for the sufficiency or correctness as to form, manner of execution, or validity of any instrument deposited in escrow, nor as to the identity, authority, or right of any person executing any instrument; Escrow Agent's duties under this Agreement are and will be limited to those duties specifically provided in this Agreement.

- c. The parties to this Agreement do and will indemnify Escrow Agent and hold it harmless from any and all claims, liabilities, losses, actions, suits or proceedings at law or in equity, or other expenses, fees, or charges of any character or nature, including attorneys' fees and costs, which it may incur or with which it may be threatened by reason of its action as Escrow Agent under this Agreement, except for such matters which are the result of Escrow Agent's gross negligence or willful misconduct.
 - d. If the parties (including Escrow Agent) will be in disagreement about the interpretation of this Agreement, or about their respective rights and obligations, or about the propriety of any action contemplated by Escrow Agent, Escrow Agent may, but will not be required to, file an action in interpleader to resolve the disagreement; upon filing such action, Escrow Agent will be released from all obligations under this Agreement. Escrow Agent will be indemnified for all costs and reasonable attorneys' fees, including those for appellate matters and for paralegals and similar persons, incurred in its capacity as escrow agent in connection with any such interpleader action; Escrow Agent may represent itself in any such interpleader action and charge its usual and customary legal fees for such representation, and the court will award such attorneys' fees, including those for appellate matters and for paralegals and similar persons, to Escrow Agent from the losing party. Escrow Agent will be fully protected in suspending all or part of its activities under this Agreement until a final judgment in the interpleader action is received.
 - e. Escrow Agent may resign upon five (5) calendar days' written notice to Seller and Buyer. If a successor escrow agent is not appointed jointly by Seller and Buyer within the five (5) calendar-day period, Escrow Agent may petition a court of competent jurisdiction to name a successor.
 - f. Seller and Buyer acknowledge and agree that Escrow Agent is the law firm representing Buyer with regard to this Agreement and the transaction which is the subject hereof, and hereby waive any claim against Escrow Agent based upon a conflict of interest as a result of Escrow Agent serving in such dual capacities, excluding only actions by Escrow Agent constituting knowing and intentional misconduct. Seller further agrees that Escrow Agent will be permitted to represent Buyer in all aspects of this Agreement and the subject transaction, including, without limitation, any dispute with respect to the Deposit.
 - g. The provisions of this Section will survive the Closing and also the cancellation of this Agreement.
21. **General Provisions.** The following general terms and conditions apply to this Agreement:
- a. **Singular/Plural – Masculine/Feminine.** Words used herein in the singular will include the plural and words in the masculine/feminine/neuter gender will include words in the masculine/feminine/neuter where the text of this Agreement requires.

- b. Titles. Headings in this Agreement are for convenience only.
- c. Successors. The terms, covenants, and conditions of this Agreement will be binding upon and inure to the benefit of the parties hereto and their respective heirs, successors, and assigns, except as herein limited.
- d. Choice of Law. THIS AGREEMENT SHALL BE CONSTRUED IN ACCORDANCE WITH AND GOVERNED BY THE LAWS OF THE STATE OF FLORIDA AND THE LAWS OF THE UNITED STATES OF AMERICA APPLICABLE TO TRANSACTIONS WITHIN THE STATE OF FLORIDA. VENUE AND JURISDICTION FOR ANY ACTION BROUGHT HEREUNDER IS HEREBY AGREED TO BE PROPER AND LIE EXCLUSIVELY WITH THE APPROPRIATE COURT LOCATED IN MIAMI-DADE COUNTY, FLORIDA.
- e. Time. Time is of the essence in the performance of each and every one of the obligation of the parties to this Agreement. Unless otherwise specified, in computing any period of time described herein, the day of the act or event for which the designated period of time begins to run is not to be included and the last day of the period so computed is to be included, unless such last day is a Saturday, Sunday or legal holiday, in which event the period will run until the end of the next day which is neither a Saturday, Sunday or legal holiday.
- f. Jury Trial Waiver. IN THE EVENT THAT IT BECOMES NECESSARY FOR EITHER PARTY TO BRING SUIT TO ENFORCE THE TERMS OF THIS AGREEMENT, THEN EACH PARTY HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY. THIS WAIVER IS MADE KNOWINGLY, VOLUNTARILY AND INTENTIONALLY.
- g. Attorneys Fees. In the event that there is an action brought either at law or in equity by either party against the other by reason of any matter or dispute arising out of this Agreement, the parties agree that the prevailing party in such litigation will be entitled to recover from the non-prevailing party the prevailing party's reasonable attorneys' fees therein, including fees incurred in bankruptcy proceedings or on appeal, plus court costs, and including such fees and costs incurred in establishing the right to recover such fees and costs and the amount to be recovered.
- h. Liability Joint and Several. If more than one party is named herein as Seller, then such parties hereby agree that the liability of each hereunder will be joint and several.
- i. Entire Agreement; Construction; Severability. This Agreement integrates and supersedes all other agreements and understandings of every character of the parties and comprises the entire agreement between them. This Agreement may not be changed, except in writing signed by the parties. No waiver of any rights or obligations hereunder will be deemed to have occurred unless in writing signed by the party against whom such waiver is asserted and no waiver will be deemed a

waiver of any other or subsequent right or obligations. The parties acknowledge that the parties and their respective counsel have reviewed and revised this Agreement and, therefore, the normal rule of construction of contracts that any ambiguities are to be resolved against the drafting party will not be employed in the interpretation of this Agreement and any exhibits or amendments thereto. If any portion of this Agreement is held to be invalid or inoperative, the remainder of it will be deemed valid and operative, and effect will be given to the intent manifested by the portion held invalid or inoperative to the extent possible.

- j. **Counterpart Signatures.** This Agreement may be executed in two or more counterparts, and it shall not be necessary that any one of the counterparts be executed by all of the parties hereto. Each fully or partially executed counterpart shall be deemed an original, but all such counterparts taken together shall constitute but one and the same instrument. This Agreement may be executed in multiple copies, and by telecopy or email PDF transmission, each of which shall be deemed to be an original for all purposes.
22. **Confidentiality.** Seller and Buyer each a "Party" (for purposes of this Section 22) acknowledge that the transaction described herein is of a confidential nature and shall not be disclosed by any Party, nor by any of their respective parents, subsidiaries, employees, or affiliates, except to partners of Seller and Buyer, attorneys, Florida Housing Finance Corporation ("FHFC"), lenders, potential equity sources, accountants, consultants, advisors, members and affiliates, as a result of any action required to be performed by a party under this Agreement, or as required by law. Prior to Closing, no Party shall make any public disclosure of the specific terms of this Agreement, except as required by law. In connection with the negotiation of this Agreement and the preparation for the consummation of the transactions contemplated hereby, each Party acknowledges that it will have access to confidential information relating to the other party. Each Party shall treat such information as confidential, preserve the confidentiality thereof, and not duplicate or use such information, except to the partners of Seller or Buyer, and attorneys, FHFC, lenders, potential equity sources, accountants, advisors, members, consultants, and affiliates in connection with the transactions contemplated hereby. In the event of the termination of this Agreement for any reason whatsoever, except in the event of Seller's default, Buyer shall return to Seller, at Seller's request, all documents, work papers, and other material (including all copies thereof) obtained from Seller in connection with the transactions contemplated hereby during the term of this Agreement ("Inspection Documents"), and each party shall use reasonable best efforts, including instructing its employees and others who have had access to such information, to keep confidential and not to use any such information except as otherwise permitted by law. Notwithstanding any other provision of this Agreement, Buyer shall not be required to deliver to Seller such of the Inspection Documents as to which Buyer is not the owner or does not have the unconditional legal right to transfer possession thereof to Seller. Moreover, with respect to such Inspection Documents delivered by Buyer to Seller, Seller agrees that the subsequent use of any such Inspection Documents by Seller or any other party or parties shall be at the sole risk of Seller and such other party or parties and that Buyer shall have no responsibility or liability to Seller or any other party or parties in connection with the use of any such Inspection Documents by Seller or any other party or parties. Neither Seller

nor Buyer shall make statements to the press or issue a press release regarding the transaction contemplated by this Agreement prior to Closing but may do so after Closing without the consent of the other party; provided, however, that any statements to the press or press release by Seller or its employees, directors, constituent entities, or any of their respective representatives must not disclose the Purchase Price. Notwithstanding the foregoing, after Closing, Seller may disclose the amount of the Purchase Price for the Property to actual and/or potential investors and/or actual or potential lenders in similar projects of Seller (or its affiliates). Further, notwithstanding anything contained in this Section 22 or elsewhere in this Agreement to the contrary, neither Buyer nor Seller shall have any liability concerning information (including, without limitation, information regarding the Purchase Price) which becomes public due to no wrongful action on the part of such party, or which is ordered or required to be publicly released by the requirement of any governmental agency or entity.

23. **Exclusive Right**. From and after the Effective Date, and during the term of this Agreement, Seller shall not discuss or negotiate the sale of the Property with any other person other than Buyer.


(Signatures follow on next page)

IN WITNESS WHEREOF, the parties have executed this Agreement as of the Effective Date.

BUYER:

McDowell Acquisitions, LLC, a Delaware limited liability company,

By: McDowell Properties, a California corporation, its Manager,

By: 
W. Patrick McDowell,
Chairman and CEO

SELLER:

CUTLER RIDGE INVESTMENT GROUP, LLC, a Florida limited liability company,

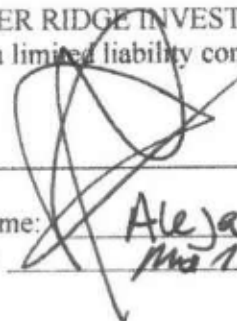
By: 
Name: Alejandro Ambrugno
Its: Manager 10/22/2020

Exhibit "A"

Legal Description of the Property

FOLIO: 30-6912-000-0331

THE SOUTH 2 ACRES OF THE EAST 1/2 OF THE NORTHEAST 1/4 OF THE SOUTHEAST 1/4 OF THE SOUTHEAST 1/4 OF SECTION 12, TOWNSHIP 56 SOUTH, RANGE 39 EAST, MIAMI-DADE COUNTY, FLORIDA, ALSO KNOWN AS THE SOUTH 259.83 FEET OF THE EAST 1/2 OF THE NORTHEAST 1/4 OF THE SOUTHEAST 1/4 OF THE SOUTHEAST 1/4 OF SECTION 12, TOWNSHIP 56 SOUTH, RANGE 39 EAST, MIAMI-DADE COUNTY, FLORIDA, LESS RAILROAD RIGHT OF WAY AND EASEMENTS FOR UTILITY.

LESS THE FOLLOWING PORTIONS DEEDED TO DADE COUNTY FOR ROAD RIGHT OF WAY:

THE WEST 50.00 FEET, THE EAST 25.00 FEET AND THE SOUTH 25.00 FEET OF THE SOUTH 2 ACRES OF THE EAST 1/2 OF THE NORTHEAST 1/4 OF THE SOUTHEAST 1/4 OF THE SOUTHEAST 1/4 OF SECTION 12, TOWNSHIP 56 SOUTH, RANGE 39 EAST, MIAMI-DADE COUNTY, FLORIDA, A/K/A THE SOUTH 259.83 FEET OF THE EAST 1/2 OF THE NORTHEAST 1/4 OF THE SOUTHEAST 1/4 OF THE SOUTHEAST 1/4 LYING NORTHWESTERLY OF THE NORTHWESTERLY RIGHT OF WAY LINE OF THE FLORIDA EAST COAST RAILWAY.

AND

ALL THAT PART OF THE NORTHEAST 1/4 OF THE SOUTHEAST 1/4 OF THE SOUTHEAST 1/4 OF SAID SECTION 12 WHICH LIES SOUTHEASTERLY OF A LINE WHICH IS 50.0 FEET NORTHWESTERLY OF AND PARALLEL TO THE NORTHWESTERLY RIGHT OF WAY LINE OF THE FLORIDA EAST COAST RAILWAY.

AND

ALL THAT PART OF THE SOUTHEAST 1/4 OF SAID SECTION 12 WHICH LIES WITHIN THE EXTERNAL AREA FORMED BY A 25.00 FOOT RADIUS ARC CONCAVE TO THE NORTHEAST, TANGENT TO THE NORTH LINE OF THE SOUTH 25.00 FEET OF THE NE 1/4 OF THE SE 1/4 OF THE SE 1/4 OF SAID SECTION 12, AND TANGENT TO THE EAST LINE OF THE WEST 50.00 FEET OF THE EAST 1/2 OF THE NE 1/4 OF THE SE 1/4 OF THE SE 1/4 OF SAID SECTION 12.

AND

ALL THE PART OF THE SOUTHEAST 1/4 OF SAID SECTION 12 WHICH LIES WITHIN THE EXTERNAL AREA FORMED BY A 25.00 FOOT RADIUS ARC CONCAVE TO THE NORTHWEST, TANGENT TO THE NORTH LINE OF THE SOUTH 25.00 FEET OF THE NE 1/4 OF THE SE 1/4 OF THE SE 1/4 OF SAID SECTION 12, AND TANGENT TO A LINE 50.00 FEET NORTHWESTERLY OF AND PARALLEL TO THE NORTHWESTERLY RIGHT OF WAY LINE OF THE FLORIDA EAST COAST RAILWAY.

AND

ALL THAT PART OF THE SOUTHEAST 1/4 OF SAID SECTION 12 WHICH LIES WITHIN THE EXTERNAL AREA FORMED BY A 25.00 FOOT RADIUS ARC CONCAVE TO THE NORTHWEST, TANGENT TO THE WEST LINE OF THE EAST 25.00 FEET OF THE SE 1/4 OF SAID SECTION 12, AND TANGENT TO A LINE 50.00 FEET NORTHWESTERLY OF AND PARALLEL TO THE NORTHWESTERLY RIGHT OF WAY LINE OF THE FLORIDA EAST COAST RAILWAY.

FOLIO: 30-6912-000-0330

BEGINNING AT THE SOUTHWEST CORNER OF LAND OWNED BY ARTHUR MAYS AND D. C. CAIL; THENCE RUNNING EAST ALONG LINE OF SAID LAND 335 FEET; THENCE SOUTH 130 FEET; THENCE WEST 335; THENCE NORTH 130 FEET TO PLACE OF BEGINNING, LYING AND BEING IN THE EAST 1/2 OF THE NORTHEAST 1/4 OF THE SOUTHEAST 1/4 OF THE SOUTHEAST 1/4 OF SECTION 12, TOWNSHIP 56 SOUTH, RANGE 39 EAST.

AND

THE NORTH 2 ACRES OF THE EAST 1/2 OF THE NORTHEAST 1/4 OF THE SOUTHEAST 1/4 OF THE SOUTHEAST 1/4 OF SECTION 12, TOWNSHIP 56 SOUTH, RANGE 39 EAST, LYING AND BEING IN MIAMI-DADE COUNTY, FLORIDA;

LESS

THE EAST 25 FEET THEREOF AND LESS THE WEST 50 FEET THEREOF FOR RIGHT OF WAY PURPOSES.