

**STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION**

Florida Housing Finance Corporation
FILED 12/17/2020 1:44 P.M.

MADISON LANDING II, LLC, AND
ARC 2020, LLC, AND NEW SOUTH RESIDENTIAL, LLC,

Petitioners,

vs.

FHFC CASE NO.: 2020-072BP
APPLICATION NO: 2021-021C
REQUEST FOR APPLICATIONS: 2020-202

FLORIDA HOUSING FINANCE
CORPORATION,

Respondent.

_____ /

**FORMAL WRITTEN PROTEST OF AWARD
AND PETITION FOR ADMINISTRATIVE HEARING**

Pursuant to Sections 120.569 and 120.57(3), Florida Statutes, and Chapter 28-110 and Rule 28-106.201, Florida Administrative Code (“Fla. Admin. Code”), Petitioners, Madison Landing II, LLC, and ARC 2020, LLC and New South Residential, LLC (collectively, “Petitioners”), file this Formal Written Protest of Award and Petition for Administrative Hearing and state:

Affected Agency

1. The agency affected is the Florida Housing Finance Corporation (“Florida Housing”), 227 N. Bronough Street, Suite 5000, Tallahassee, Florida 32301-1329. The telephone number is 850-488-4197.

Petitioners

2. Petitioners’ address is 558 W. New England Ave., Suite 230, Winter Park, Florida 32789. Petitioners’ telephone number is 407-333-1440. For purposes of this proceeding, Petitioners’ address is that of its undersigned counsel.

3. Petitioner Madison Landing II, LLC (“Madison Landing”) is the Applicant entity for a proposed affordable housing development to be located in Orange County, Application

#2021-021C. ARC 2020, LLC (“ARC”) and New South Residential, LLC (“New South”) are the “Developer” entities as defined by Florida Housing in Rule 67-48.002(28), Fla. Admin. Code.

4. Petitioners are challenging the eligibility for funding under Request for Applications 2020-202, Housing Credit Financing for Affordable Housing Developments Located in Broward, Duval, Hillsborough, Orange, Palm Beach and Pinellas Counties (the “RFA” or “RFA-2020-202”) of the applicants named in this petition for their failure to meet Eligibility or Proximity Funding Preference Point requirements for an award of Housing Credits (“HC”) through an administrative hearing before the Department of Administrative Hearing (“DOAH”).

Petitioners’ Counsel

5. Counsel for Petitioners and Petitioners' address for this proceeding is:

J. Timothy Schulte
Zimmerman, Kiser, & Sutcliffe, P.A.
315 East Robinson Street, Suite 600
Orlando, Florida 32801
Email: tschulte@zkslawfirm.com

BACKGROUND

6. Florida Housing administers various affordable housing programs including the Housing Credit (HC) Program pursuant to Section 42 of the Internal Revenue Code (the “IRC” or “the Code”) and Section 420.5099, Florida Statutes, under which Florida Housing is designated as the Housing Credit agency for the State of Florida within the meaning of Section 42(h)(7)(A) of the IRC, and Chapters 67-48 and 67-60, Fla. Admin. Code.

7. Florida Housing administers a competitive solicitation process to implement the provisions of the housing credit program under which developers apply for funding. Chapter 67-60, Fla. Admin. Code.

8. Rule 67-60.006, Fla. Admin. Code, provides that “[t]he failure of an Applicant to supply required information in connection with any competitive solicitation pursuant to this rule chapter shall be grounds for a determination of non-responsiveness with respect to its Application.”

9. Furthermore, by applying, each applicant certifies that:

Proposed Developments funded under 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.

(RFA at pg. 6).

10. Because the demand for HC funding exceeds that which is available under the HC Program, qualified affordable housing developments must compete for this funding. To assess the merits of proposed developments, pursuant Chapters 67-48 and 67-60, Fla. Admin. Code, Florida Housing has established by rule a competitive solicitation process known as the Request for Applications (“RFA”).

11. Specifically, Florida Housing’s solicitation process for RFA 2020-202, as set forth in Rules 67-60.001-.009, Fla. Admin. Code, involves the following:

- a) Florida Housing publishes its competitive solicitation (RFA) in the Florida Administrative Register;
- b) applicants prepare and submit their response to the competitive solicitation;
- c) Florida Housing appoints a scoring committee (“Review Committee”) to evaluate the applications;
- d) the scoring committee makes recommendations to Florida Housing’s Board, which are then voted on by the Board; and
- e) applicants not selected for funding may protest the results of the competitive solicitation process.

12. Florida Housing issued RFA 2020-202 on or about August 26, 2020. The application deadline for the RFA as modified was October 20, 2020 (“Application Deadline”).

13. The RFA sets forth the information required to be provided by the applicants, which includes a general description of the type of projects that will be considered eligible for funding and delineates the submission requirements. (RFA at pp. 2-77). The RFA sets forth on Pages 70 and 71, a list of mandatory Eligibility and Point Items that must be included in a response. The RFA expressly provides that “[o]nly Applications that meet all of the Eligibility Items will be eligible for funding and considered for funding selection.” (RFA at pg. 70).

14. The highest scoring Applications are determined by sorting together all eligible Applications according to the priority established in the RFA. If all priorities are the same between applicants the applicant with the lowest lottery number receives preference. (RFA pg. 74).

15. On or about November 17, 2020, the Review Committee, which consisted of Florida Housing staff, met and considered the applications responding to the RFA. At the meeting the Review Committee listed and input the scores for each application and ultimately made recommendations to the Florida Housing Board of Directors (“Board”) for their consideration. The Review Committee determined that Madison Landing II was eligible, but not selected for funding.

16. On December 4, 2020, Florida Housing’s Board of Directors adopted the Review Committee’s recommendations and tentatively authorized the selection for funding of those applications identified in RFA 2020-202 Board Approved Preliminary Awards report, which reflected the preliminary funded applicants.

NOTICE OF AGENCY ACTION

17. Petitioners received notice on December 4, 2020 of Florida Housing’s Final Agency Action entitled “RFA 2020-202 Board Approved Preliminary Awards” dated December 4, 2020 (“Corporation’s Notice”).

NOTICE OF PROTEST

18. On December 7, 2020, Petitioners timely filed their Notice of Protest in which they challenged the selection of the applications in the Corporation's Notice (See attached Exhibit A, which includes the Corporation's Notice reflecting the preliminarily funded applicants).

SUBSTANTIAL INTERESTS

19. Petitioners timely submitted an application in response to the RFA, Application #2021-021C ("Application"). In their Application, Petitioners sought an allocation of \$1,950,000 in annual federal tax credits to help finance the development of their project, an 86-unit High Rise Apartment complex in Orange County. As reflected in RFA 2020-202, All Applications Report, Petitioners were assigned lottery number 5. Petitioners were scored as having satisfied eligibility requirements for funding, satisfied Proximity Funding Preference requirements and scored 25 out of 25 Total Points. (See RFA 2020-202 All Applications Report, attached as Exhibit (B)).

20. MHP FL II, LLC ("The Enclave") submitted an application in response to the RFA, Application #2021-013C. The Enclave sought an allocation of \$1,828,000 in annual federal tax credits to help finance the development of its project, a 96-unit Garden Apartments complex in Orange County. As reflected in RFA 2020-202 All Applications Report, The Enclave was assigned lottery number 1.

21. WRDG T4 Phase Two, LP ("WRDG") submitted an application in response to the RFA, Application #2021-025C. WRDG sought an allocation of \$2,375,000 in annual federal tax credits to help finance the development of its project, a 120-unit High-rise Apartment complex in Hillsborough County. As reflected in RFA 2020-202 All Applications Report, WRDG was assigned lottery number 2.

22. All of the challenged applicants were scored as having satisfied eligibility requirements for funding, satisfied Proximity Funding Preference and Mandatory Distance requirements and scored 25 out of 25 Total Points. (See RFA 2020-202 All Applications Report).

23. The challenged applicants failed to meet or satisfy RFA eligibility requirements, and are not entitled to the eligibility determination of their applications. As a result of the preliminarily scoring process the challenged applicants were incorrectly included in the preliminary awards rankings and should have been scored lower than Petitioners' Application. As discussed below, Florida Housing improperly determined that these applicants satisfied RFA mandatory eligibility requirements.

24. Through this proceeding Petitioners are challenging and seeking a determination that Florida Housing erred in its preliminary eligibility and the decision to preliminary award Housing Credits to The Enclave and WRDG. But for the errors described in this petition, Petitioners would have been ranked in the funded range and would have been entitled to an allocation of housing credits from RFA 2020-202. (Although this Petition challenges a number of competing applicants, Petitioners are not required to displace all of the challenged applicants in order to be funded.)

25. The defects in each challenged application are presented below, delineated first by applicant name and then each issue applicable to that applicant.

THE ENCLAVE

1. Site Control

26. With respect to Site Control and an Eligible Contract, Section Four, Part A. of the RFA provides, in pertinent part:

7. Readiness to Proceed

a. Site Control:

Demonstrate site control by providing, as Attachment 8 to Exhibit A, the properly completed and executed Florida Housing Finance Corporation Site Control Certification form (Form Rev. 08-18), which is provided on the RFA Webpage.

For the Site Control Certification form to be considered complete, as an attachment to the form, include the documentation required in Items (1), (2), and/or (3), as indicated below, demonstrating that it is a party to an eligible contract or lease, or is the owner of the subject property. Such documentation must include all relevant intermediate contracts, agreements, assignments, options, conveyances, intermediate leases, and subleases. If the proposed Development consists of Scattered Sites, site control must be demonstrated for all of the Scattered Sites.

(RFA pg. 35-37).

27. In an attempt to demonstrate Site Control, The Enclave Application included as part of Attachment 8, a Purchase and Sale Agreement (“Enclave Agreement”) entered into by and between Kennedy Commercial, LLC and E.G. Banks, collectively the (“Seller”) and McDowell Acquisitions, LLC, (“Buyer”) which was later assigned to MHP FL II, LLC (“Applicant”). The Enclave Agreement is attached hereto as Exhibit C.

28. The Enclave Agreement references multiple times that there is a lease (the “Lease”) on the property that is the subject of The Enclave Application (“The Enclave Property”). However, the Lease was not included in The Enclave Application as required by the RFA.

29. A lease gives possession of real property to the tenant during the term of the lease. Even if the lease is not recorded, when the property is sold to another owner the lease holder’s interest will be superior to the interest of the new owner for the term of the lease. The new owner will take ownership subject to the possession rights of the tenant.

30. Without a copy of the Lease, there is no way to determine the term of the Lease. The Enclave Agreement states that “Seller shall terminate the Grazing Lease on or before Closing;”

which implies that the term of the Lease is longer than the term of the Enclave Agreement. The Lease is relevant to determine whether the Seller has a right to unilaterally terminate the Lease.

31. For this reason, the Lease mentioned in the Enclave Agreement is a relevant intermediate lease that should have been included in The Enclave's application.

32. There is no information within the The Enclave's Application to determine whether the Lease can be terminated prior to the Closing. This information is relevant in determining whether the Seller actually has the ability to sell The Enclave Property to the Buyer/Applicant and whether the Buyer can take possession of and develop the Property.

33. The Enclave failed to demonstrate site control, because The Enclave failed to include a relative intermediate lease in its site control documentation.

34. The Enclave's Application is ineligible, because it did not include a relevant intermediate lease with The Enclave Agreement for purposes of demonstrating site control.

2. Zoning

35. Zoning is also a Mandatory Item in the RFA. If an Applicant does not demonstrate Appropriate Zoning as required by the RFA, then the Application must be deemed nonresponsive and ineligible for consideration of funding. Rule 67-60.006(1). Fla. Admin. Code.

36. With respect to Appropriate Zoning, the RFA states:

(1) Appropriate Zoning. Demonstrate that as of **the Application Deadline the entire proposed Development site is appropriately zoned and consistent with local land use regulations** regarding density and intended use or that the proposed Development site is legally non-conforming by providing, as Attachment 9 to Exhibit A, the applicable properly completed and executed verification form:

(a) The Florida Housing Finance Corporation Local Government Verification that Development is Consistent with Zoning and Land Use Regulations form (Form Rev. 06-20); or

(b) The Florida Housing Finance Corporation Local Government Verification that Permits are Not Required for this Development form (Form Rev. 06-20).

(RFA pg. 37) (Emphasis added).

37. The Enclave included at Attachment 9 to its application Florida Housing's Zoning Verification Form in an attempt to demonstrate zoning for the Development site. (See attached Exhibit D).

38. However, the Zoning Verification Form is incorrect. The current zoning for the Development site is Commercial and does not allow the Applicant's proposed multifamily construction. Thus, the Applicant's intended use is in fact, NOT consistent with current land use regulations.

39. The Zoning Verification Form should not have been signed, and Florida Housing's determination that The Enclave was eligible for funding was incorrect.

WRDG

Eligibility – Development Location Point

40. One of the mandatory Eligibility Items is "Development Location Point (DLP) provided." (RFA pg. 70).

41. The DLP must be on the Development Site. Rule 67-48.002(34), F.A.C provides:
(34) "Development Location Point" means a single point selected by the Applicant on the proposed Development site that is located within 100 feet of a residential building existing or to be constructed as part of the proposed Development.

42. The RFA requires applicants to provide latitude/longitude coordinates for the DLP on the proposed Development. (RFA pg. 21).

43. WRDG's Application identified its DLP as follows:

“(1) Development Location Point:

Latitude in decimal degrees, rounded to at least the sixth decimal place:

27.958129

Longitude in decimal degrees, rounded to at least the sixth decimal place:

-82.472088”

44. When the coordinates are plotted and compared against the WRDG's Development Site, the DLP is not located on the WRDG Development Site.

45. The RFA requires the DLP to be used to measure distances from the proposed Development to Transit Services and Community Services. Those measurements establish whether the applicant has chosen a site that meets all Mandatory Distance requirements, Proximity Eligibility requirements, and Proximity Tiebreakers in the RFA. (RFA pp. 21-26). WRDG submitted distance measurements on pages 6-7 of its Application.

46. Those measurements are all incorrect, because the measurements start from a DLP that is not on the proposed Development.

47. As a result, FHFC incorrectly scored the WRDG application as meeting all Mandatory Distance requirements, Proximity Eligibility requirements and Proximity Tiebreakers.

48. WRDG's failure to provide correct DLP coordinates for their Development Site and failure to provide correct proximity measurements is an “omission of material information.” The correct DLP coordinates and correct proximity measurements cannot be found elsewhere in the WRDG Application. WRDG has obtained a competitive advantage over other applicants that were required to provide the correct information at the time of application. The WRDG

Application should therefore be deemed ineligible and Florida Housing's determination that The Enclave was eligible for funding was incorrect.

ISSUES OF MATERIAL FACT AND LAW

49. 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 The Enclave and WRDG under the RFA or correct eligibility determinations have been made based on the provisions of the RFA;

b) Whether Florida Housing's proposed allocation of the tax credits to The Enclave and WRDG are consistent with the RFA, the requirements of a competitive procurement process and Florida Housing'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 Florida Housing interpretations and precedents;

j) Whether The Enclave's Application should be deemed ineligible for funding under the RFA because of its failure to satisfy RFA requirements with respect to Site Control.

k) Whether The Enclave's Application should be deemed ineligible for funding under the RFA because of its failure to satisfy RFA requirements with respect to Zoning.

l) Whether WRDG's Application should be deemed ineligible for funding under the RFA because of its failure to satisfy RFA requirements with respect to Development Location Point, Proximity Points, Mandatory Distance and Proximity Funding Preference;

m) Whether the criteria and procedures for the scoring, ranking and eligibility determination of The Enclave and WRDG Applications are arbitrary, capricious, contrary to competition, contrary to the RFA requirements, or are contrary to prior Florida Housing interpretations of the applicable statutes and administrative rules;

n) Whether the RFA's criteria were properly followed in determining eligibility, ranking and evaluation of the The Enclave and WRDG's Applications;

o) Whether The Enclave and WRDG's eligibility determination and ranking is consistent with fair and open competition for the allocation of tax credits;

p) Whether The Enclave and WRDG's eligibility determination and ranking are based on clearly erroneous or capricious eligibility determination, scoring or ranking;

q) Whether The Enclave and WRDG's eligibility determination and ranking improperly incorporate new policies and interpretations that impermissibly deviate from the RFA specifications, existing rules or prior Florida Housing interpretations and precedents; and,

r) Such other issues as may be revealed during the protest process.

50. Petitioners reserve the right to seek leave to amend this petition to include additional disputed issues of material fact and law that may become known through discovery.

STATEMENT OF ULTIMATE FACTS AND LAW

51. As a matter of ultimate fact and law, The Enclave and WRDG failed to complete their applications in accordance with the competitive solicitation; their applications were not responsive to and failed to comply with relevant portions of the RFA 2020-202; and, therefore, their applications should not have been considered for funding or scored as being an eligible application.

52. As a matter of ultimate fact and law, Florida Housing improperly determined that The Enclave and WRDG applications were completed in accordance with the competitive solicitation; were responsive to all applicable provisions of the RFA 2020-202 and, as a result, were eligible for funding under RFA 2020-202.

53. As a matter of ultimate fact and law, Florida Housing improperly scored The Enclave and WRDG's Applications as having satisfied all mandatory eligibility requirements as of the Application Deadline.

54. As a matter of ultimate fact and law, Florida Housing improperly scored the WRDG Application as having satisfied all Development Location Point, Proximity Funding Preference Point and Mandatory Distance requirements as of the Application Deadline.

55. As a matter of ultimate fact and law, Florida Housing improperly determined that The Enclave and WRDG were eligible for funding.

56. As a matter of ultimate fact and law, but for these errors in The Enclave and WRDG's Applications, Petitioners would have been entitled to an allocation of its requested tax credit funding.

STATUTES AND RULES

Statutes and rules governing this proceeding are Sections 120.569 and 120.57(3), and Chapter 420, Fla. Stat., and Chapters 28-106, 67-60, 67-48 and 67-40, Fla. Admin. Code.

WHEREFORE, Petitioners request that:

A. Florida Housing refer this Petition to the Division of Administrative Hearings for a formal administrative hearing and the assignment of an Administrative Law Judge pursuant to Section 120.57(3), Fla. Stat.;

B. The Administrative Law Judge enter a Recommended Order determining that:

- 1) The Enclave and WRDG failed to complete their applications in accordance with the competitive solicitation; that their applications were non-responsive to and failed to comply with RFA 2020-202; and that their applications should not have been scored as having satisfied mandatory eligibility, Proximity Funding Preference, and Mandatory Distance requirements as prescribed by RFA 2020-202;
- 2) Florida Housing improperly determined that the applications submitted by The Enclave and WRDG were completed in accordance with the competitive solicitation;
- 3) Florida Housing improperly determined that the applications submitted by The Enclave and WRDG were responsive to RFA 2020-202.
- 4) Florida Housing improperly determined that The Enclave and WRDG applications were eligible for funding under RFA 2020-202.

C. The Administrative Law Judge enter a Recommended Order recommending Florida Housing award Petitioners their requested tax credit funding;

D. Florida Housing enter a Final Order awarding Petitioners their requested tax credit funding; and,

E. Petitioners be granted such other relief as may be deemed appropriate.


Respectfully submitted this 17th day of December, 2020.



J. Timothy Schulte, Esquire
FBN: 769169
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CERTIFICATE OF SERVICE

I certify that the original of the foregoing Formal Written Protest of Award and Petition for Administrative Hearing (Application #2021-021C) has been filed by electronic mail to the Corporation Clerk, Florida Housing Finance Corporation, 227 N. Bronough Street, Suite 5000, Tallahassee, Florida 32301 (CorporationClerk@floridahousing.org) and a copy furnished via electronic mail to Hugh Brown, Esq., General Counsel, Florida Housing Finance Corporation, 227 N. Bronough Street, Suite 5000, Tallahassee, Florida 32301 (Hugh.Brown@floridahousing.org) this 17th day of December, 2020.



J. Timothy Schulte, Esquire
Florida Bar No.: 769169
Zimmerman, Kiser & Sutcliffe, P.A.



J. Timothy Schulte, Esquire
tschulte@zkslawfirm.com

December 7, 2020

Via Electronic Mail: CorporationClerk@floridahousing.org
And Federal Express Tracking #772283754205
Corporation Clerk
Florida Housing Finance Corporation
227 N. Bronough St., Ste. 5000
Tallahassee, FL 32301

Florida Housing Finance Corporation
FILED 12/07/2020 2:03 P.M.

Re: RFA 2020-202 Housing Credit Financing for Affordable Housing
Developments in Large Counties ("the RFA")
Notice of Protest

Dear Corporation Clerk:

On behalf of Applicant Madison Landing II, LLC, Application No. 2021-012C ("Madison Landing II") and Developers ARC 2020, LLC, and New South Residential, LLC (collectively "ARC") this letter constitutes a Notice of Protest ("Notice") filed pursuant to sections 120.569 and 120.57(3); Florida Statutes, Rules 28-110 and 67-60.009, Florida Administrative Code; and the RFA. Madison Landing II and ARC protest Florida Housing Finance Corporation's ("Corporation") intended decision with respect to the scoring, ranking and selection of applications in the RFA, including but not limited to those applications selected for funding as identified in the notice of intended decision. (See Board Approved Preliminary Awards attached as Exhibit "A.")

This Notice is being filed within 72 hours (not including weekends) of the posting of the notice of intended decision on the Corporation's website on Friday, December 4, 2020. Madison Landing II and ARC reserve the right to file a formal written protest within (10) days of the filing of this Notice pursuant to section 120.57(3), Florida Statutes. This Notice is being filed to, among other matters, preserve Madison Landing II's and ARC's ability to initiate or intervene in proceedings that may impact that scoring, ranking and funding determination.

Please acknowledge receipt of this filing by stamping the date and time on the enclosed copy of this letter.

Very truly yours,

J. Timothy Schulte

JTS/jle

Encls. (Including stamped, addressed return envelope)
cc: Madison Landing II, LLC (via email)
ARC 2020, LLC (via email)



Corporation Clerk
Florida Housing Finance Corporation
December 7, 2020
Notice of Protest
Page 2

cc cont.:

New South Residential, LLC (via email)
D. Scott Baker, Esq. (via email)
Ava M. Sigman, Esq. (via email)

| | |
|----------------------------|---------------|
| Total HC Available for RFA | 18,669,520.00 |
| Total HC Allocated | 18,077,900.00 |
| Total HC Remaining | 591,620.00 |

| App Number | Name of Development | County | Name of Authorized Principal Representative | Developers | Demo | Total Units | HC Funding Amount | Eligible For Funding ? | Development is in Hillsborough County or Orange County and serves the Family Demographic Commitment, and qualifies for the Geographic Area of Opportunity Funding/SADDA funding goal | Qualifies for the Local Government Area of Opportunity | Total Points | Per Unit Construction Funding Preference | Development Category Funding Preference | Leveraging Classification | Proximity Funding Preference | Grocery Store Funding Preference | Transit Service Funding Preference | Community Service Preference | Florida Job Creation Preference | Lottery Number |
|--|----------------------------|--------------|---|----------------------------------|------------|-------------|-------------------|------------------------|--|--|--------------|--|---|---------------------------|------------------------------|----------------------------------|------------------------------------|------------------------------|---------------------------------|----------------|
| Local Government Areas of Opportunity Funding Goal in Broward County | | | | | | | | | | | | | | | | | | | | |
| 2021-016C | Mount Hermon Apartments | Broward | Matthew A. Rieger | HFG Mount Hermon | E, Non-ALF | 103 | 2,881,900 | Y | N | Y | 25 | Y | Y | A | Y | Y | Y | Y | Y | 8 |
| Local Government Areas of Opportunity Funding Goal in Duval County | | | | | | | | | | | | | | | | | | | | |
| 2021-022C | Parkview Commons | Duval | J. David Page | Southport Development | F | 122 | 1,868,000 | Y | N | Y | 25 | Y | Y | A | Y | Y | Y | Y | Y | 32 |
| Local Government Areas of Opportunity Funding Goal in Palm Beach County | | | | | | | | | | | | | | | | | | | | |
| 2021-020C | Berkeley Landing | Palm Beach | Jonathan L. Wolf | Berkeley Landing | F | 112 | 2,375,000 | Y | N | Y | 25 | Y | Y | A | Y | Y | Y | Y | Y | 6 |
| Local Government Areas of Opportunity Funding Goal in Pinellas County | | | | | | | | | | | | | | | | | | | | |
| 2021-010C | Blue Dolphin Tower | Pinellas | Shawn Wilson | Blue Sky Developer, LLC | F | 81 | 1,868,000 | Y | N | Y | 25 | Y | Y | A | Y | Y | Y | Y | Y | 15 |
| Family Application located in Hillsborough County that meets the Geographic Areas of Opportunity / SADDA funding goal | | | | | | | | | | | | | | | | | | | | |
| 2021-021C | Kelsey Cove | Hillsborough | James R. Hoover | TVC Development | F | 108 | 2,000,000 | Y | Y | N | 25 | Y | Y | A | Y | Y | Y | Y | Y | 14 |
| Family Application located in Orange County that meets the Geographic Areas of Opportunity / SADDA funding goal | | | | | | | | | | | | | | | | | | | | |
| 2021-013C | The Enclave at Lake Shadow | Orange | Christopher L. Shear | MHP FL II Developer, LLC | F | 96 | 1,828,000 | Y | Y | N | 25 | Y | Y | A | Y | Y | Y | Y | Y | 1 |
| One Additional Application in Broward County | | | | | | | | | | | | | | | | | | | | |
| 2021-017C | Pinnacle 441 | Broward | David O. Deutch | Pinnacle Communities, LLC | F | 110 | 2,882,000 | Y | N | N | 25 | Y | Y | A | Y | Y | Y | Y | Y | 4 |
| One Additional Application | | | | | | | | | | | | | | | | | | | | |
| 2021-025C | WRDG T4 Phase Two | Hillsborough | Leroy Moore | WRDG T4 Phase Two Developer, LLC | E, Non-ALF | 120 | 2,375,000 | Y | N | N | 25 | Y | Y | A | Y | Y | Y | Y | Y | 2 |

On December 4, 2020, 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.



RFA 2020-202 Board Approved Scoring Results

| App Number | Name of Development | County | Name of Authorized Principal Representative | Developers | Demo | Total Units | HC Funding Amount | Eligible For Funding? | Development is in Hillsborough County or Orange County and serves the Family Demographic Commitment, and qualifies for the Geographic Area of Opportunity Funding/SADDA Goal | Qualifies for the Local Government Area of Opportunity | Total Points | Per Unit Construction Funding Preference | Development Category Funding Preference | Leveraging Classification | Proximity Funding Preference | Grocery Store Funding Preference | Transit Service Funding Preference | Community Service Preference | Florida Job Creation Preference | Lottery Number |
|------------|---------------------|--------|---|------------|------|-------------|-------------------|-----------------------|--|--|--------------|--|---|---------------------------|------------------------------|----------------------------------|------------------------------------|------------------------------|---------------------------------|----------------|
|------------|---------------------|--------|---|------------|------|-------------|-------------------|-----------------------|--|--|--------------|--|---|---------------------------|------------------------------|----------------------------------|------------------------------------|------------------------------|---------------------------------|----------------|

Eligible Applications

| | | | | | | | | | | | | | | | | | | | | |
|-----------|-------------------------------|----------|----------------------|--|------------|-----|-----------|---|---|---|----|---|---|---|---|---|---|---|---|----|
| 2021-001C | Tallman Pines - Phase I | Broward | Matthew A. Rieger | HTG Tallman Villas Developer, LLC; Building Better Communities, Inc. | F | 80 | 2,145,200 | Y | N | Y | 25 | Y | Y | A | Y | Y | Y | Y | Y | 28 |
| 2021-002C | University Station - Phase II | Broward | Matthew A. Rieger | University Station II Developer, LLC | E, Non-ALF | 108 | 2,881,940 | Y | N | N | 25 | Y | Y | A | Y | Y | Y | Y | Y | 23 |
| 2021-003C | Parkview | Duval | Matthew A Rieger | HTG Parkview Developer, LLC | F | 110 | 1,855,000 | Y | N | N | 20 | Y | Y | B | Y | Y | N | Y | Y | 3 |
| 2021-004C | Madison Park | Broward | Matthew A Rieger | HTG Madison Park Developer, LLC | E, Non-ALF | 103 | 2,881,960 | Y | N | N | 25 | Y | Y | A | Y | Y | Y | Y | Y | 7 |
| 2021-005C | University Station - Phase I | Broward | Matthew A. Rieger | University Station I Developer, LLC | F | 108 | 2,881,880 | Y | N | Y | 25 | Y | Y | A | Y | Y | Y | Y | Y | 12 |
| 2021-006C | City Place | Broward | Francisco A Rojo | Landmark Development Corp. | F | 110 | 2,796,000 | Y | N | Y | 25 | Y | Y | A | Y | Y | Y | Y | Y | 11 |
| 2021-007C | Ocean Crest | Broward | Matthew A. Rieger | HTG Ocean Crest Developer, LLC | E, Non-ALF | 80 | 2,266,000 | Y | N | N | 25 | Y | Y | A | Y | Y | Y | Y | Y | 26 |
| 2021-008C | Residences at Marina Mile | Broward | Robert G. Hoskins | NuRock Development Partners, Inc. | F | 100 | 2,482,000 | Y | N | N | 25 | Y | Y | A | Y | Y | Y | Y | Y | 33 |
| 2021-009C | Paramount Park | Broward | Matthew A. Rieger | HTG Paramount Developer, LLC | E, Non-ALF | 103 | 2,881,980 | Y | N | N | 25 | Y | Y | A | Y | Y | Y | Y | Y | 10 |
| 2021-010C | Blue Dolphin Tower | Pinellas | Shawn Wilson | Blue Sky Developer, LLC | F | 81 | 1,868,000 | Y | N | Y | 25 | Y | Y | A | Y | Y | Y | Y | Y | 15 |
| 2021-012C | Madison Landing II | Orange | Patrick E. Law | ARC 2020, LLC; New South Residential, LLC | E, Non-ALF | 86 | 1,950,000 | Y | N | N | 25 | Y | Y | A | Y | Y | Y | Y | Y | 5 |
| 2021-013C | The Enclave at Lake Shadow | Orange | Christopher L. Shear | MHP FL II Developer, LLC; Magellan Housing LLC | F | 96 | 1,828,000 | Y | Y | N | 25 | Y | Y | A | Y | Y | Y | Y | Y | 1 |
| 2021-014C | Heritage Oaks | Pinellas | Brian Evjen | Norstar Development USA, LP; PCHA Development, LLC; Newstar Development, LLC | E, Non-ALF | 80 | 1,868,000 | Y | N | Y | 25 | Y | Y | A | Y | Y | Y | N | Y | 25 |
| 2021-015C | Blanche Ely Villas | Broward | Ralph Adderly | Ambar3, LLC; HAPB Supporting Housing Opportunities, Inc. | E, Non-ALF | 102 | 2,608,000 | Y | N | Y | 25 | Y | Y | B | Y | Y | Y | N | Y | 19 |
| 2021-016C | Mount Hermon Apartments | Broward | Matthew A. Rieger | HTG Mount Hermon Developer, LLC | E, Non-ALF | 103 | 2,881,900 | Y | N | Y | 25 | Y | Y | A | Y | Y | Y | Y | Y | 8 |



RFA 2020-202 Board Approved Scoring Results

| App Number | Name of Development | County | Name of Authorized Principal Representative | Developers | Demo | Total Units | HC Funding Amount | Eligible For Funding? | Development is in Hillsborough County or Orange County and serves the Family Demographic Commitment, and qualifies for the Geographic Area of Opportunity Funding/SADDA Goal | Qualifies for the Local Government Area of Opportunity | Total Points | Per Unit Construction Funding Preference | Development Category Funding Preference | Leveraging Classification | Proximity Funding Preference | Grocery Store Funding Preference | Transit Service Funding Preference | Community Service Preference | Florida Job Creation Preference | Lottery Number |
|------------|--------------------------|--------------|---|--|------------|-------------|-------------------|-----------------------|--|--|--------------|--|---|---------------------------|------------------------------|----------------------------------|------------------------------------|------------------------------|---------------------------------|----------------|
| 2021-017C | Pinnacle 441 | Broward | David O. Deutch | Pinnacle Communities, LLC | F | 110 | 2,882,000 | Y | N | N | 25 | Y | Y | A | Y | Y | Y | Y | Y | 4 |
| 2021-018C | Tallman Pines - Phase II | Broward | Matthew A. Rieger | HTG Tallman HR Developer, LLC; Building Better Communities, Inc. | E, Non-ALF | 75 | 2,256,500 | Y | N | N | 25 | Y | Y | A | Y | Y | Y | Y | Y | 22 |
| 2021-019C | Island Cove Apartments | Palm Beach | Darren J Smith | SHAG Island Cove, LLC; Delray Housing Group, Inc. | F | 54 | 1,140,000 | Y | N | Y | 25 | Y | Y | A | Y | Y | Y | Y | Y | 24 |
| 2021-020C | Berkeley Landing | Palm Beach | Jonathan L. Wolf | Berkeley Landing Developer, LLC; Pinnacle Communities, LLC | F | 112 | 2,375,000 | Y | N | Y | 25 | Y | Y | A | Y | Y | Y | Y | Y | 6 |
| 2021-021C | Kelsey Cove | Hillsborough | James R. Hoover | TVC Development, Inc. | F | 108 | 2,000,000 | Y | Y | N | 25 | Y | Y | A | Y | Y | Y | Y | Y | 14 |
| 2021-022C | Parkview Commons | Duval | J. David Page | Southport Development, Inc., a WA Corporation doing business in FL as Southport Development Services, Inc. | F | 122 | 1,868,000 | Y | N | Y | 25 | Y | Y | A | Y | Y | Y | Y | Y | 32 |
| 2021-023C | Pinnacle at La Cabaña | Broward | David O. Deutch | Pinnacle Communities, LLC | E, Non-ALF | 114 | 2,882,000 | Y | N | Y | 25 | Y | Y | A | Y | Y | Y | Y | Y | 17 |
| 2021-024C | Island View | Palm Beach | Matthew A. Rieger | HTG Island View Developer, LLC | F | 104 | 2,020,000 | Y | N | N | 25 | Y | Y | B | Y | Y | Y | Y | Y | 34 |
| 2021-025C | WRDG T4 Phase Two | Hillsborough | Leroy Moore | WRDG T4 Phase Two Developer, LLC | E, Non-ALF | 120 | 2,375,000 | Y | N | N | 25 | Y | Y | A | Y | Y | Y | Y | Y | 2 |
| 2021-026C | Cypress Preserve | Broward | Matthew A. Rieger | HTG Preserve Developer, LLC | E, Non-ALF | 80 | 1,923,550 | Y | N | N | 25 | Y | Y | B | Y | Y | Y | Y | Y | 27 |
| 2021-027C | Burlington Post II | Pinellas | Oscar A Sol | Burlington Post 2 Dev, LLC | E, Non-ALF | 68 | 1,672,100 | Y | N | Y | 25 | Y | Y | A | Y | Y | Y | Y | Y | 21 |
| 2021-028C | Marina Grand | Broward | Oscar A Sol | Grand Mile GM Dev, LLC; SFCLT Grande Mile Developer, LLC | F | 94 | 2,690,000 | Y | N | N | 25 | Y | Y | B | Y | Y | Y | Y | Y | 30 |
| 2021-029C | Heritage Place | Hillsborough | Matthew A. Rieger | HTG Heritage Developer, LLC | F | 88 | 2,224,880 | Y | Y | N | 20 | Y | Y | B | Y | Y | Y | Y | Y | 35 |
| 2021-030C | Calusa Pointe | Palm Beach | J David Page | Southport Development, Inc., a WA Corporation doing business in FL as Southport Development Services, Inc. | E, Non-ALF | 140 | 2,375,000 | Y | N | Y | 25 | Y | Y | A | Y | Y | Y | Y | Y | 13 |

RFA 2020-202 Board Approved Scoring Results

| App Number | Name of Development | County | Name of Authorized Principal Representative | Developers | Demo | Total Units | HC Funding Amount | Eligible For Funding? | Development is in Hillsborough County or Orange County and serves the Family Demographic Commitment, and qualifies for the Geographic Area of Opportunity Funding/SADDA Goal | Qualifies for the Local Government Area of Opportunity | Total Points | Per Unit Construction Funding Preference | Development Category Funding Preference | Leveraging Classification | Proximity Funding Preference | Grocery Store Funding Preference | Transit Service Funding Preference | Community Service Preference | Florida Job Creation Preference | Lottery Number |
|------------|------------------------|----------|---|--|------------|-------------|-------------------|-----------------------|--|--|--------------|--|---|---------------------------|------------------------------|----------------------------------|------------------------------------|------------------------------|---------------------------------|----------------|
| 2021-031C | Sunshine Lofts on 78th | Pinellas | Brian Evjen | Norstar Development USA, LP; PCHA Development, LLC; Newstar Development, LLC | E, Non-ALF | 78 | 1,868,000 | Y | N | Y | 25 | Y | Y | A | Y | Y | N | Y | Y | 29 |
| 2021-032C | Avalon | Pinellas | Mara S. Mades | Cornerstone Group Partners, LLC | F | 96 | 1,868,000 | Y | N | N | 25 | Y | Y | A | Y | Y | Y | Y | Y | 20 |
| 2021-033C | Douglas Gardens VI | Broward | Christopher L Shear | MHP Douglas Developer II, LLC; Douglas Gardens VI Developer, LLC; Magellan Housing LLC | E, Non-ALF | 130 | 2,882,000 | Y | N | N | 25 | Y | Y | A | Y | Y | Y | Y | Y | 16 |
| 2021-034C | Andrew Landing | Duval | James R. Hoover | TVC Development, Inc. | E, Non-ALF | 96 | 1,800,000 | Y | N | N | 25 | Y | Y | A | Y | Y | Y | Y | Y | 9 |
| 2021-035C* | Springfield Plaza | Duval | Clifton Phillips | Roundstone Development, LLC | F | 96 | 1,868,000 | Y | N | N | 25 | Y | Y | A | Y | Y | Y | Y | Y | 31 |

Ineligible Applications

| | | | | | | | | | | | | | | | | | | | | |
|------------|--------------------------|------------|--------------|---|---|----|---------|---|---|---|----|---|---|--|---|---|---|---|---|----|
| 2021-011C* | Coleman Park Renaissance | Palm Beach | Terri Murray | NRI Development Corp.; Neighborhood Renaissance, Inc.; Stone Soup Development, Inc. | F | 42 | 921,567 | N | N | N | 15 | Y | Y | | Y | Y | Y | Y | Y | 18 |
|------------|--------------------------|------------|--------------|---|---|----|---------|---|---|---|----|---|---|--|---|---|---|---|---|----|

*The Corporation Funding Per Set-Aside Amounts were calculated during scoring.

On December 4, 2020, the Board of Directors of Florida Housing Finance Corporation approved the Review Committee’s motion to adopt the scoring results above.

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.

PURCHASE AND SALE AGREEMENT

THIS PURCHASE AND SALE AGREEMENT (this "Agreement") dated October 16, 2020 (the "Effective Date") is made by and between KENNEDY COMMERCIAL, LLC a Florida limited liability company, as to its 2/3 undivided interest, and E.G. BANKS, as to his 1/3 undivided interest (collectively, the "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 14.93 acres of vacant land located approximately 890 feet west of the intersection of Keller Road and Kennedy Blvd., Eatonville, Orange County, Florida., 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 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 the greater of (i) One Million Nine Hundred Seventy Five Thousand and no/100 Dollars (\$1,975,000.00) or (ii) One Million Nine Hundred Seventy Five Thousand and no/100 Dollars (\$1,975,000.00) plus Twenty Thousand Five Hundred Seventy Five and no/100 Dollars



(\$20,575.00) per multi-family unit in excess of ninety six (96) units pursuant to an approved site plan for the Intended Improvements (defined in Section 6 below), subject to the credits, prorations, and adjustments set forth herein. The Purchase Price is payable as follows:

- a. First Deposit. Within three (3) business days after the Effective Date, Buyer will deliver to Nelson Mullins Broad and Cassel, as escrow agent ("Escrow Agent"), the sum of Forty Thousand Dollars (\$40,000.00) 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. The First Deposit will be refundable to Buyer until March 31, 2021. At any time through and until 5:00 PM EST on March 31, 2021 (the "Financing Period Deadline"), Buyer may deliver written notice to Seller of Buyer's termination of this Agreement and the First Deposit shall be refunded by Escrow Agent to Buyer and this Agreement shall be deemed terminated for all purposes; provided, however, if Buyer does not terminate this Agreement on or before the Financing Period Deadline, the First Deposit will be (i) non-refundable to Buyer except as otherwise provided herein, and (ii) applied to the Purchase Price at Closing.
- b. Second Deposit. Buyer will deliver to Escrow Agent the sum of One Hundred Thousand and no/100 Dollars (\$100,000.00) by wire transfer of immediately available funds within three (3) business days after the expiration of the Financing Period Deadline ("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. The First Deposit, and Second 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 shall 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.
- d. 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.

e. 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 W9 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 and until the Financing Period Deadline 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 Deadline. In the event Buyer delivers written notice terminating this Agreement to Seller prior to the expiration of the Financing Period Deadline, Buyer shall receive a refund of the First Deposit, 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 2020-202 "Housing Credit Financing for Affordable Housing Developments Located in Broward, Duval, Hillsborough, Orange, Palm Beach, And Pinellas Counties" (the "RFA") on or prior to the RFA deadline, currently scheduled for October 20, 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 First Deposit 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 fifteen (15) business days following the Effective Date, Seller will deliver to Buyer a copy of any title insurance policy insuring Seller's fee simple title to the Property that Seller may have in its possession. 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. No later than March 31, 2021, Buyer may 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"). The Survey shall be properly certified to Seller and such other parties as Buyer may elect.
- 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 on or prior to the Closing Date ("Response Notice"), in which case, Seller shall have thirty (30) days in which to cure such Title Objections or advise Buyer that Seller shall commit to cure such Title Objections on or prior to Closing Date ("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 the applicable Objection Cure Period, or if 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 applicable Objection Cure Period. In the event that Buyer elects to terminate this Agreement due to Seller not curing any Title Objection, 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 or has been deemed to have consented (see Section 7(b) 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 and which did not exist or was not known to Buyer or Title Agent at time the Title Commitment or the Survey were prepared and issued, 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. Notwithstanding the foregoing, Seller shall have no obligation to remove or cure any exception or survey defect which existed and was known to Buyer or Title Agent. 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 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 Deposits pursuant to the terms of the Agreement 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 order, and Seller shall cooperate for Buyer to obtain, a complete Phase I Environmental Site Assessment report on or before March 15, 2021 (the "Phase I"), a copy of which shall be delivered to Seller on or before such date. If the Phase I ESA indicates Recognized Environmental Condition that renders the Intended Improvements infeasible, in Buyer's sole discretion, notwithstanding anything set forth in Section 2 to the contrary, Buyer may terminate the Agreement prior to March 31, 2021 and be entitled to a refund of the First Deposit in accordance with Section 2.a.

a. **Access.** 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; provided, however, Buyer acknowledges that since the Property is subject to the Grazing Lease (see Section 7(b)) pursuant to which cattle graze on the Property from time to time, Buyer shall coordinate its access to the Property with Seller to avoid interaction or release of the cattle from the Property. Buyer shall, at its sole cost and expense, repair any material damage to the Property caused by its entry thereon and restore the same to substantially the same condition in which it existed prior to such entry. Said obligations of Buyer to repair and restore the Property and for Buyer to indemnify and hold Seller harmless as stated herein shall survive the termination of this Agreement.

b. **Deliverables:** 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. All such items as Seller supplies or delivers to Buyer pursuant to this Agreement shall be referred to as "Seller's Due Diligence Materials" or "Inspection Documents". In the event Buyer terminates this Agreement or fails to close the transaction contemplated hereby for any reason, Buyer shall promptly, after such termination or failure to close, at Seller's election, either (i) destroy, or (ii) return to Seller the Seller's Due Diligence Materials supplied to Buyer by or at the direction of Seller. This right of Seller and obligation of Buyer shall survive termination of this Agreement.

- c. 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 which shall be deemed to include damage to the cattle or Property of the Tenant pursuant to the Grazing Lease. 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, join, without any obligation to expend monies or to make representations regarding the Property other than Seller’s ownership thereof, 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 use reasonable commercial best efforts to cooperate with Buyer in Buyer performing Buyer’s 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. Seller will, to the extent reasonably practical, 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 is failing 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 Seller’s lack of cooperation. In such event, Seller shall have twenty (20) days to remedy or cure such lack of cooperation, or such longer time not to exceed sixty (60) days provided that Seller has commenced action to do so 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, which consent shall not be unreasonably withheld, 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 new 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, which consent shall not be unreasonably withheld; provided, however, Buyer acknowledges that there is a Grazing Lease with Glen

Rodgers as amended and extended from time to time (the "Grazing Lease") which is anticipated to remain in place during the term of the Agreement and which shall be deemed to be consented to by Buyer for purposes of Section 4 of this Agreement provided that Seller shall terminate the Grazing Lease on or before Closing.

- c. Seller will pay all assessments and taxes prior to same 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 which consent shall not be unreasonably withheld.
 - 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 materially by any casualty loss as provided in Section 15.b. or by any environmental matter as provided in Section 13.d. arising

after the Effective Date that would interfere with Buyer constructing the Intended Improvement.

- 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.

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 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 (subject to the best of Seller's knowledge where so provided in Section 13 below);
 - 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 of Seller 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, the navigable water exception and the survey exception, which will be limited to the specific matters affecting the Property reflected on the Survey which constitute Permitted Exceptions) 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 One Hundred and Twenty 120 days following the expiration of the Financing Period Deadline (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 Twenty Five Thousand Dollars (\$25,000.00) (the "Extension Payment") with Escrow Agent by wire transfer. Each consecutive Extension Payment shall be non-refundable 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.
- 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. Other than the Grazing Lease, 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. To the best of Seller's knowledge and except as may be included in the Permitted Exception, there are no (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 the best of Seller’s 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. Each party constituting the Seller has the right, power and authority to execute and deliver this Agreement, to perform each and every obligation of said party as 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 each party as 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. To the best of Seller’s knowledge, with the exception of the Developer’s Agreement by and between Seller and the Town of Eatonville recorded April 28, 2004 in O.R. Book 7402, Page 781, of the Public Records of Orange County, Florida, 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. To the best of Seller's knowledge, 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 which are anticipated to be disclosed in the Title Commitment;
- l. To the best knowledge of Seller, no default exists under the terms of any document expected to be disclosed in the Title Commitment; and
- m. As of the time of entering into this Agreement, all of Seller's representations, warranties and covenants in this Agreement are true and correct (subject to the best of Seller's knowledge where provided above) and 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 ninety (90) days.

14. **Broker.** Seller and Buyer represent and warrant, that, aside from Seller's payment of a commission to Dodge Management Services, Inc., which payment is covered under a separate agreement, neither Buyer nor Seller has 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 Agreement will survive the Closing.

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

- a. **Risk of Loss.** Risk of loss to the Property, other than loss caused by the acts or negligence of Buyer or its agents, 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. Each party will promptly notify the other party 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 not to terminate this Agreement, but to proceed with Closing.
- 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 not to terminate this Agreement, but to proceed with Closing.

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 either Party hereunder unless and until such party shall have provided the allegedly defaulting party with written notice of such default and the allegedly defaulting party shall have failed to cure said default within thirty (30) days of its receipt of such notice; provided, however, that if the allegedly defaulting party is unable to cure within said time period, the allegedly defaulting party shall have such time to cure as is reasonable under the circumstances provided that the allegedly defaulting party 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: KENNEDY COMMERCIAL, LLC
1065 Maitland Center Commons Blvd.
Suite 201
Maitland, FL 32751
Attn: Linda S. Dodge
Email: LDodge@ClaytonRE.com

With a copy to: Clayton & McCulloh, P.A.
1065 Maitland Center Commons Blvd.
Maitland, FL 32751
Attn: Kenneth M. Clayton, Esq.
Email: KClayton@Clayton-McCulloh.com

To Escrow Agent: Nelson Mullins Broad and Cassel
390 N. Orange Avenue, Suite 1400
Orlando, Florida 32801
Attn: William T. Costolo, Esq.

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, which duties include promptly notifying Seller when Escrow Agent receives or disburses Deposit monies. 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 ORANGE 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 Inspection Documents, including without limitation, 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. Buyer 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 or in performing any of its agreements, provided for in this Agreement.

23. **Exclusive Right.** From and after the Effective Date, and during the term of this Agreement, Seller shall not negotiate the sale of the Property with any person other than Buyer and the persons so authorized in Section 22 entitled "Confidentiality".

(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:

Kennedy Commercial, LLC, a Florida limited liability company,

By: Clayton Investments, Ltd., a Florida limited partnership, its Sole Member

By: WMC Management, LLC, a Florida limited Liability company, its Sole General Partner

By: 

Kenneth M. Clayton, Member/Manager

And

Mr. E.G. Banks, an individual

By: 

E.G Banks

Exhibit "A"

Legal Description of the Property

Parcel 1 (Dennison-A)

Parcel Identification Number: 34-21-29-0000-00-012

The West 165 feet of the West 330 feet of the Southwest 1/4 of the Northeast 1/4 of Section 34, Township 21 South, Range 29 East (less the South 40 feet for road), Orange County, Florida.

AND

Parcel 2 (Dennison-B)

Parcel Identification Number: 34-21-29-0000-00-013

The East 165 feet of the West 330 feet of the Southwest 1/4 of the Northeast 1/4 of Section 34, Township 21 South, Range 29 East (less the South 40 feet for road), Orange County, Florida.

AND

Parcel 4 (Rogers)

Parcel Identification Number: 34-21-29-0000-00-041

From the Southeast corner of the Northwest 1/4 of Section 34, Township 21 South, Range 29 East, run N. 04 degrees 01' 15" W. along the East line of the Northwest 1/4 of said Section 34, a distance of 40.10 feet to a point on the North right-of-way line of Lake Avenue for a Point of Beginning; continue N. 04 degrees 01' 15" W., a distance of 1255.67 feet to the Northeast corner of the Southeast 1/4 of the Northwest 1/4 of said Section 34; thence N. 89 degrees 46' 45" W. along the North line of the Southeast 1/4 of the Northwest 1/4 of said Section 34, a distance of 144.23 feet; thence run S. 02 degrees 49' 00" W. a distance of 1254.69 feet to the North right-of-way line of Lake Avenue; thence East, a distance of 293.94 feet to the Point of Beginning.

LESS ("Retained Parcel"):

From the Southeast corner of the Northwest 1/4 of Section 34, Township 21 South, Range 29 East, run N. 04 degrees 01' 15" W. along the East line of the Northwest 1/4 of said Section 34, a distance of 40.10 feet to a point on the North right-of-way line of Lake Avenue; thence run West along said North right-of-way line 155.94 feet to the Point of Beginning; thence leaving said North right-of-way line run North 192.00 feet; thence West 128.55 feet; thence S. 02 degrees 49' 00" W. 192.23 feet to the aforesaid North right-of-way line; thence East 138.00 feet to the Point of Beginning (the "Retained Parcel").

TOGETHER WITH a non-exclusive access easement over a portion of the Retained Parcel described as follows (the "Access Easement"):

From the Southeast corner of the Northwest 1/4 of Section 34, Township 21 South, Range 29 East, run N. 04 degrees 01' 15" W. along the East line of the Northwest 1/4 of said Section 34, a distance of 40.10 feet to a point on the North right-of-way line of Lake Avenue; thence run West along said North right-of-way line 155.94 feet to the Point of Beginning; thence leaving said North right-of-way line run North 192.00 feet; thence West 22.00 feet; thence South 192.00 feet to the aforesaid North right-of-way line; thence run East along said North right-of-way line 22.00 feet to the Point of Beginning.

FLORIDA HOUSING FINANCE CORPORATION LOCAL GOVERNMENT VERIFICATION THAT DEVELOPMENT IS CONSISTENT WITH ZONING AND LAND USE REGULATIONS

Name of Development: The Enclave at Lake Shadow

Development Location: 1001, 2051, 2057 W Kennedy Blvd, Orange County, Eatonville, FL
(At a minimum, provide the address number, street name and city, and/or provide the street name, closest designated intersection and either the city (if located within a city) or county (if located in the unincorporated area of the county). The location of all Scattered Sites, if applicable, must also be included.

Number of Units in the Development: 96
This number must be equal to or greater than the number of units stated by the Applicant in Exhibit A of the RFA.

The undersigned service provider confirms that, as of the date that this form was signed, the above referenced Development's proposed number of units, density, and intended use are consistent with current land use regulations and zoning designation or, if the Development consists of rehabilitation, the intended use is allowed as a legally non-conforming use.

CERTIFICATION

I certify that the City/County of Town of Eatonville / Orange County has vested in me the authority to verify
(Name of City/County)
consistency with local land use regulations and zoning designation or, if the Development consists of rehabilitation, the intended use is allowed as a "legally non-conforming use" and I further certify that the foregoing information is true and correct. In addition, if the proposed Development site is in the Florida Keys Area as defined in Rule Chapter 67-48, F.A.C., I further certify that the Applicant has obtained the necessary Rate of Growth Ordinance (ROGO) allocations from the Local Government.


Signature

James Benderson
Print or Type Name

Town Planner
Print or Type Title

10.06.2020
Date Signed

307 E Kennedy Blvd
Address (street address, city, state)

Eatonville, FL 32751
Address (street address, city, state)

407.623.8904
Telephone Number (including area code)

This certification must be signed by the applicable City's or County's Director of Planning and Zoning, appointed official (staff) responsible for determination of issues related to comprehensive planning and zoning, City Manager, or County Manager/Administrator/Coordinator. Signatures from elected local government officials are not acceptable, nor are other signatories. If there are alterations made to this form that change the meaning of the form, the form will not be accepted.

