

**SHIP FUNDING FOR  
MULTIFAMILY RENTAL DEVELOPMENT  
AFFORDABLE HOUSING DEVELOPER AGREEMENT AMONG  
POLK COUNTY, GROVE MANOR PHASE II, LLC AND  
NEIGHBORHOOD LENDING PARTNERS OF FLORIDA, INC.**

THIS AGREEMENT (the "Agreement") is made and entered into by and among POLK COUNTY, FLORIDA, a political subdivision of the State of Florida, (the "County"), GROVE MANOR PHASE II, LLC (the "Developer"), and Neighborhood Lending Partners of Florida, Inc., a Florida not-for-profit corporation and certified community development financial institution ("NLP") as of the Effective Date defined in Article XVIII, Section 1.11 below. The County, Developer, and NLP may hereinafter be collectively referred to as the "Parties", and each individually as a "Party".

**RECITALS**

**WHEREAS**, this Agreement dated the \_\_\_\_ day of \_\_\_\_\_, 2025 will be effective as of the 1st day of October 2023. This date sequence is necessary to allow for project invoice reimbursements related to federal and state grant funds with encumbrance and expenditure requirements. This allows any actions taken within the specified retroactive period to be covered and governed by this contract, providing legal validity to pre-contractual conduct.

**WHEREAS**, the County has received State Housing Initiatives Partnership ("SHIP") program funds to assist very-low-income, low-income, and moderate-income households by providing housing assistance through various strategies including purchase assistance, rehabilitation, new construction, and rental assistance in accordance with the SHIP Act, Sections 420.907 – 420.9079, Florida Statutes, and the Rules stated in Chapter 67-37 of the Florida Administrative Code (collectively, the "SHIP Program Requirements");

**WHEREAS**, to identify projects where the County could strategically invest the SHIP funds to produce or preserve affordable rental housing projects in the County, the County issued Request for Proposals 23-501, Local Government Area of Opportunity Funding Application (the "County RFP"); and

**WHEREAS**, the Developer and Lake Wales Housing Authority ("LWHA"), are parties to that certain Option to Enter into Ground Lease Agreement dated as of September 6, 2023 (as amended, the "Option") pursuant to which LWHA and Developer agreed to enter into a ground lease (the "Ground Lease"), with respect to certain real property, more specifically described in Exhibit "A", attached hereto, and incorporated herein by reference (the "Property") on which Developer intends to develop four new residential buildings with a total of 78 affordable rental units to be known as Grove Manor Phase II (the "Project") in accordance with the SHIP Program Requirements; and

**WHEREAS**, the Florida Housing Finance Corporation ("FHFC") has approved an award of Low-Income Housing Tax Credits to the Developer for the Project pursuant to FHFC's Request for Applications FHFC RFA 2023-201 (the "RFA"), Housing Credit Financing for Affordable Housing Developments Located in Medium and Small Counties, under FHFC's Low Income Housing Tax Credit Program ("LIHTC"); and

**WHEREAS**, the Developer submitted the Project as a proposal for consideration during the County's RFP process, and the County selected the Project to receive a loan (the "Project Loan") of SHIP funds in an amount not to exceed \$1,500,000 (One million, five hundred thousand dollars),

subject to all terms and conditions of this Agreement, to subsidize the construction of the Project, which will benefit very low-income and low-income persons or households; and

**WHEREAS**, NLP is a Community Development Financial Institution (CDFI) and is an organization described in Section 501(c)(3) of the Internal Revenue Code of 1986, as amended (the "IRC"), exempt from federal income taxation that was established by its member area and regional commercial banks and financial institutions to assist its member banks in providing loans for construction and/or rehabilitation of affordable housing projects by underwriting and servicing such loans, and monitoring the projects financed thereby; and

**WHEREAS**, the County has determined the most efficient method to provide the required Project Loan underwriting, closing, administration, disbursement, servicing, management, monitoring, and reporting services (collectively, as more particularly described in this Agreement below, the "Services") is through engagement of NLP, an entity experienced in underwriting subordinate county loans for multi-family affordable developments, providing construction loans to build new and preserve existing multi-family affordable housing developments with LIHTCs and other subsidies, monitoring project property and rental compliance, and providing required project status reports and annual reviews; and

**WHEREAS**, NLP has agreed to provide the Services in accordance with all SHIP Program Requirements, and the Developer has agreed to accept the Project Loan in accordance with the same.

**NOW, THEREFORE**, in consideration of the mutual covenants and conditions contained herein, the parties agree as follows:

## **ARTICLE I**

Section 1. **Recitals.** The foregoing recitals are true and correct and are incorporated herein as a material part of this Agreement.

## **ARTICLE II**

Section 1. **Definitions.** In construing this Agreement, the following words, phrases, and terms shall have the following meanings, unless the context requires otherwise:

1.1 "Very Low-Income Person or Household" shall mean one or more natural persons or a family that has a total annual gross household income that does not exceed 50 percent of the median annual income adjusted for family size for households within the Lakeland-Winter Haven metropolitan statistical area, the County, or the nonmetropolitan median for the state, whichever is greatest ("AMI"). With respect to rental units, the very-low-income household's annual income at the time of initial occupancy may not exceed 50 percent of the AMI adjusted for family size. While occupying the rental unit, a very-low-income household's annual income may increase to an amount not to exceed 140 percent of 50 percent of the AMI adjusted for family size.

1.2 "Low Income Person or Household" shall mean one or more natural persons or a family that has a total annual gross household income that does not exceed 80 percent of the AMI. With respect to rental units, the low-income household's annual income at the time of initial occupancy may not exceed 80 percent of the AMI adjusted for family size. While occupying the rental unit, a low-income household's annual income may increase to an amount not to exceed 140 percent of 80 percent of the area's median income adjusted for family size.

1.3 For SHIP assistance, "Affordability Period" shall mean a thirty ~~five~~ (30 ~~45~~) year affordability period (the "Affordability Period") commencing upon Project Completion, and shall be required for all SHIP Set-Aside Units (as defined below) in the Project.

1.4 "Project Completion" means that construction work on the Project has been performed and a certificate of completion and/or temporary or permanent certificate of occupancy ("Certificate of Occupancy") has been issued by the City of Lake Wales Building Division for the Project.

1.5 "First Mortgagee" means the holder and its successors and/or assigns, of any permanent loan secured by a mortgage on the Property which has been assigned to it by a financial institution, or by any other holder of the first mortgage securing a permanent loan for the Project, including without limitation NLP.

1.6 "Extended Use Agreement" means an Extended Low-Income Housing Agreement to be entered into between the Developer and FHFC to set forth the LIHTC Extended Use Period, the Compliance Period (as such terms will be defined in the Extended Use Agreement), and to evidence commitments made by the Developer in the RFA or subsequently agreed to by the FHFC, pursuant to Section 42(h)(6) of the IRC.

1.7 "E-Verify System" means an Internet-based system operated by the United States Department of Homeland Security that allows participating employers to electronically verify the employment eligibility of newly hired employees.

### **ARTICLE III**

#### **Section 1. SHIP Requirements.**

1.1 Housing that is newly constructed with SHIP funds must meet all applicable State and local codes, ordinances, and zoning requirements. SHIP Set-Aside new construction projects must meet State or local residential and building codes, as applicable or, in the absence of a State or local building code, the International Residential Code or International Building Code (as applicable to the type of housing) of the International Code Council. The housing must meet the applicable requirements upon Project Completion.

1.2 All units constructed, rehabilitated, or otherwise assisted with the Project Loan must be occupied by an eligible person or eligible household as those terms are defined in Section 420.9071, Florida Statutes. (For purposes of this Agreement and the Project Loan, seven (7) units in the Project shall be deemed to have been constructed or otherwise assisted with the Project Loan and shall be referred to as the "SHIP Set-Aside Units"). The SHIP Set-Aside Units shall be floating, with a specific unit number or designation within the Project. Any remaining Project units will serve eligible persons (as defined in Section 420.9071, Florida Statutes).

1.3 The County and NLP will annually monitor those Project rental units constructed, rehabilitated, or otherwise assisted with the Project Loan, or to the extent another government entity or FHFC program provides such periodic monitoring, the County may rely on that entity's monitoring for the Affordability Period for compliance with tenant income and affordability requirements, except as referenced in Section 420.9075(4)(e), Florida Statutes (but NLP will still monitor yearly as part of its loan management) In determining the maximum allowable rents for the SHIP Set-Aside Units, thirty percent (30%) of the applicable income category (which for purposes of this Agreement shall mean 50% of AMI) divided by twelve (12) months

shall be used based on the number of bedrooms which maximum allowable rent shall not include any payments under Section 8 of the United States Housing Act of 1937 or any other rental assistance program that is paid to Developer by any governmental program of assistance or any tax-exempt organization. A one-person household shall be used for an efficiency unit, and for units with separate bedrooms, one and one-half persons per bedroom shall be used. FHFC will annually provide the County a rental limit chart based on the above calculation adjusted for bedroom size.

1.4 The Developer must also comply with the income, affordability and other LIHTC requirements pursuant to the Extended Use Agreement. Similarly, any Project units receiving assistance from other federal, State, or local programs shall be required to comply with any requirements specified by the other program in addition to applicable SHIP Program Requirements. In the event Project units are subject to multiple programs having restrictions on the same issue, the more restrictive regulation shall take precedence. If one program is silent on an issue, the program with a regulation on the issue shall apply.

1.5 Projects receiving assistance from the County's local housing assistance plan and from other State or federal programs that have conflicting verification and certification requirements, shall comply with requirements of the most restrictive program applicable to the Project.

#### **ARTICLE IV**

##### **Section 1. Scope of Services - NLP**

1.1 NLP shall provide the Services which will include Project Loan underwriting, loan closing, loan servicing, compliance monitoring, and Project monitoring. The program guidelines ("Program Guidelines") that NLP and the County shall follow are contained in the SHIP Program Requirements and in the Polk County SHIP Local Housing Assistance Plans 2023-2024, 2024-2025, and 2025-2026. NLP shall provide all Services in accordance with the Program Guidelines. Further NLP shall:

- A. Provide all the services and loan documentation including recording the loan documents necessary to facilitate and accomplish the loan closings for the Project Loan to include construction loan closing, permanent loan closing, disbursement of the Project Loan proceeds, and loan servicing. NLP shall also provide all services and documentation necessary to facilitate the disbursement of the Project Loan which will be evidenced by a subordinate promissory note and secured by a subordinate mortgage lien against Developer's leasehold interest in the Property executed and delivered by the Developer to NLP as the servicing agent for the County. Such mortgage and promissory note shall be subordinate in all respects to the Developer's first mortgage financing for the acquisition and construction of the Project and to the permanent First Mortgage. In addition, the Developer intends to obtain subordinate loans from (i) the City of Lake Wales in the approximate amount of \$1,000,000 to be secured by a third priority leasehold mortgage, and (ii) a loan from LWHA in the approximate amount of [\$\_\_\_\_\_] to be secured by a fourth priority leasehold mortgage.
- B. Prior to closing the Project Loan, the Developer must provide a Phase I Environmental Assessment of the Property reasonably acceptable to NLP. Upon receipt of the environmental report, NLP will review the findings to determine whether the Property (including the subsurface) is adversely affected by any hazardous, toxic or harmful

substances, wastes, materials, pollutants or contaminants (including, without limitation, asbestos or asbestos-containing materials, polychlorinated biphenyls, petroleum or petroleum products or byproducts, flammable explosives, radioactive materials, lead-based paint, mold, infectious substances or raw materials which include hazardous constituents) or any other substances or materials which are included under or regulated by federal or state law. If the Phase 1 Assessment or other environmental reports indicate additional testing is necessary, it will be the Developer's responsibility to obtain the necessary testing and reports at its cost and expense. The Developer cannot proceed with Project development without satisfactory environmental reports, as reasonably determined by NLP.

- C. NLP will recommend a course of action and a final loan amount after careful review of the Developer's application, the appraisal, and the environmental reports. Said recommendation will conform to NLP's standard underwriting criteria including a projected debt service ratio with respect to the First Mortgage loan, which is commonly accepted by its member lending institutions.
- D. After the Project Loan closing, NLP shall provide on-going Project quality monitoring. NLP shall provide an impartial evaluation by October 31 of each year regarding the state of the Project, including an on-site annual physical inspection. The purpose of said monitoring is to ensure that the Project meets and maintains the projected financial performance, affordability levels and high quality of life standards that are expected from the County. NLP will provide a Credit Review Memo, Property Underwriting Analysis, and a Site Inspection Report highlighting the financial performance and the physical condition of the Property and each building over the preceding year.
- E. In addition, NLP will annually require the Developer provide it proof of Project insurance payment and real estate taxes. This documentation will be housed at NLP and open to the County for review at any time. The documentation will be subject to public inspection under Florida's public records law (Article I, Section 24, Constitution of the State of Florida and Chapter 119, Florida Statutes); provided, however, NLP shall have no obligation to the County to determine whether any request for such public inspection is exempt from such disclosure.

## **ARTICLE V**

### **Section 1. PROJECT LOAN**

1.1 County shall provide NLP with funds for it to disburse Project Loan to the Developer in accordance with the Program Guidelines and the terms of this Agreement. The Project Loan shall be evidenced by a promissory note from the Developer and shall be secured by a second priority leasehold mortgage, both instruments made in favor of NLP, as servicing agent for the County. If such Project Loan is not secured by a first mortgage as previously disclosed to and accepted by the County, the Project Loan shall be subordinate only to such senior mortgage or mortgages as approved by NLP and the County.

1.2 The Parties recognize and agree that the notes, mortgages, and other security documents (collectively "Security Instruments") executed in connection with the Project Loan hereunder will be made in the name of NLP with the County being the sole beneficial owner of all Project loan documents and the Project Loan with NLP solely as the servicing agent for the County. The County will also retain ownership of any uncommitted County funds in the

possession of NLP. NLP will be authorized to retain for its own benefit only such fees and other amounts as are authorized under this Agreement.

## Section 2. **NLP FEES**

2.1 NLP shall receive from the Developer the following fees and payments for its Agreement services.

A. Application Fee: The Developer will pay NLP the sum of \$1,500.00 as an application fee and underwriting of \$6,250.

B. Origination Fee: As compensation for originating the Project Loan, the Developer shall pay NLP an origination fee of one percent (1%) of the Project Loan which NLP will retain for its account.

C. Loan Servicing Fee: As compensation for servicing the Project Loan, NLP shall be entitled to annually receive a fee of 75 basis points on the Project Loan balance (the "Servicing Fee"), which fee shall be paid out of the annual interest payments NLP collects on the Project Loan. This fee shall be \$11,250 collected once a year. ~~to the extent the annual interest payment exceeds the Servicing Fee.~~

D. Developer shall pay NLP all reasonable fees and charges incurred in closing the Project Loan and disbursement of the Project Funds. NLP shall remit to the County the Developer's payment under the Project Loan documents pursuant to the terms and conditions of the Program Administration Agreement

E. Liability for Collecting Fees: The County shall not be liable to NLP for any uncollected origination or program administration fees for debt on the Project Loan, the risk of collection being borne solely by NLP.

F. Payment: In addition to the amounts that NLP is entitled to receive under this Article V, Section 2, the County may request additional services, not to exceed a total of \$50,000 annually for all services, under this Agreement. NLP shall provide proper invoices and receipts to the County. Since these services will enhance the County's ability to create viable affordable housing communities, the County will pay invoices with supporting documentation of work performed by NLP beginning upon the approval and full execution of this Agreement.

## Section 3. **FUNDING AND METHOD OF PAYMENT**

3.1 The SHIP Project Loan shall be made in accordance with the Program Guidelines. Requests for funds to close the Project Loan will be made in writing by NLP which request shall contain a statement affirming that, to the best belief of NLP, based upon the Developer's certifications (with invoices and other backup) expenditures were made in accordance with the Program Guidelines. NLP shall request an advance of the Project Loan funds in order to provide payment of eligible costs.

3.2 All disbursement records and any other documents related to loan services by NLP shall be fully documented and retained by NLP for five (5) years after the satisfaction of the Project Loan or at the conclusion of any claim, audit, or litigation commenced and not concluded prior to the end of that five-year period, so as to be available, at the request of the

County, for inspection or audit in accordance with the provisions of this Agreement and applicable law.

3.3 The repayment and disposition of interest, if any, and principal payments made by the Developer to NLP shall be as follows:

A. NLP shall remit net interest received, if any, (less its 75-basis point Servicing Fee) to the County annually along with a report summarizing loan activity.

B. NLP shall remit principal payments received by NLP less any authorized expenses to the County annually along with a report summarizing loan activity.

3.4 The County shall pay NLP for any and all reasonable costs and expenses which NLP incurs to enforce the Project Loan documents, including legal fees and expenses of counsel retained by NLP who shall be reasonable acceptable to the County, and, upon foreclosure of the Developer's interests in the Property or the acceptance of a deed in lieu of foreclosure, the reasonable expenses incurred by NLP in holding such Property as agent for the County for ultimate sale or other disposition as the County may direct, including property taxes and assessments, insurance, demolition of unsafe structures on the Property, compliance and other costs, including reimbursement of amounts advanced by NLP to pay taxes and insurance, demolition and compliance costs.

3.5 Any SHIP Funds not disbursed to NLP in accordance with the Agreement by June 30, 2026 (as such date may be extended) shall be retained by the County, and the County shall have no further obligation to disburse the remaining Project Loan proceeds.

#### **Section 4. NLP Participation Provisions**

4.1 Either the County or NLP may terminate NLP's participation under this Agreement without cause upon providing the other Party at least thirty (30) days prior written notice of intent to terminate, delivered by certified mail, return receipt requested, or in person with proof of delivery.

4.2 If NLP materially breaches any provision of this Agreement and fails to cure such breach within thirty (30) days after written notice thereof, the County may seek any remedy available to it at law or in equity to include without limitation termination of NLP as a Party to this Agreement immediately upon the completion of the applicable cure period. However, if such breach is not a breach of fiduciary duty or an unauthorized or improper use of SHIP Funds and the default cannot reasonably be cured within thirty (30) days, the County, at its option, may extend the cure period provided NLP begins such cure within the thirty (30) day period and diligently prosecutes such cure to completion within the extended period.

4.3 Effect of Termination: After NLP's receipt of a notice of termination from the County's Housing and Neighborhood Development Office and except as otherwise directed, NLP shall:

A. Cease making any further disbursement of Project Loan funds to the extent specified in the notice of termination or suspension.

B. Immediately return all SHIP Funds to the County, including the balance of funds in the loan account, together with all accounts receivable from the Developer attributable to the use of those funds.

C. Prepare all necessary reports and documents required under the terms of this Agreement, including the semi-annual financial report of usage/income of Project Loan funds and the annual financial report, showing required information up to the date of termination.

D. Take any other reasonable actions related to the termination of this Agreement as directed in writing by the County.

4.4 Termination of NLP's participation as a Party to this Agreement will not affect NLP's obligations under any separate agreement by and between the County and NLP unless termination of this Agreement is for a breach of fiduciary duty, an unauthorized use of funds, or any other unlawful act and County acts pursuant to the separate agreement(s). Further, the termination of NLP's participation as a Party to this Agreement, shall not relieve the County or NLP from the payment or distributions of any amounts due (or to be made) to Developer under this Agreement. The County shall find a reasonable successor to assume NLP's responsibilities if NLP's participation in the Agreement is terminated, in which case such successor shall continue to perform NLP's obligations in accordance with all the terms, provisions, and conditions herein.

## ARTICLE VI

### Section 1. DEVELOPER TERMS AND CONDITIONS

1.1 Developer shall accept and utilize SHIP Funds along with other financing source(s) to construct the Project. Upon Completion, seven (7) units will be set aside to be used for Polk County Tenant Based Rental Assistance ("TBRA") clients for the Affordability Period. **[Rick to confirm TBRA will not violate EUA or Fair Housing].**

1.2 Developer shall provide the County with the final FHFC Credit Underwriting Report (CUR) for review by the County, with a copy to NLP, prior to the closing on the Project Funds if the CUR is available; otherwise, Developer shall provide the CUR after the closing of the Project Funds once the CUR becomes available.

1.3 Developer will ensure that all its employees, agents, subcontractors, representatives, or any other individual or entity which it utilizes for the Project will fully comply with all of the terms and conditions set forth herein.

1.4 Developer shall be solely responsible for the means, methods, techniques, sequences, safety programs, procedures and permitting necessary to legally, properly, and fully complete the work associated with the Project.

1.5 Developer shall comply with all applicable laws, ordinances, judicial decisions, orders, regulations, and guidelines of federal, state, county, and municipal governments applicable to the Project in effect at the time of execution of this Agreement, during the term of the Project Loan note, mortgage and other security instruments, and during the Affordability Period, the Extended Use Agreement.

1.6 Developer, at its sole cost and expense, shall supply NLP with all documentation (including, but not limited to, mortgagee title insurance commitments, surveys, physical needs



assessments, engineering reports, environmental assessments, plans and specifications and legal opinions, required to close on the Project Loan.

#### **1.8 E-Verify**

A. Unless otherwise defined herein, terms used in this section which are defined in Section 448.095, Florida Statutes, as may be amended from time to time, shall have the meaning ascribed in said statute.

B. Pursuant to Section 448.095(5), Florida Statutes, the Developer, NLP, and any subcontractor thereof (unless otherwise exempt therefrom), must register with and use the E-Verify system to verify the work authorization status of all new employees of NLP or subcontractor. Developer and NLP each acknowledge and agree that (i) the Parties may not enter into this Agreement, and the Developer and NLP may not enter into any subcontracts hereunder, unless the Developer, NLP and each non-exempt party to any subcontracts hereunder, registers with and uses the E-Verify system; and (ii) use of the U.S. Department of Homeland Security's E-Verify System and compliance with all other terms of this Certification and Section 448.095, Fla. Stat., is an express condition of this Agreement, and the County may treat a failure to comply as a material breach of this Agreement.

C. By entering into this Agreement, Developer and NLP each become obligated to comply with the provisions of Section 448.095, Fla. Stat., "Employment Eligibility," as amended from time to time. This includes but is not limited to utilization of the E-Verify System to verify the work authorization status of all newly hired employees and requiring all subcontractors to provide an affidavit attesting that the subcontractor does not employ, contract with, or subcontract with, an unauthorized alien. Developer and NLP shall each maintain a copy of such affidavit for the duration of this Agreement. Failure to comply will lead to termination of this Agreement, or if a subcontractor of either Developer or NLP knowingly violates the statute or Section 448.09(1), Fla. Stat., the subcontract must be terminated immediately. If this Agreement is terminated pursuant to Section 448.095, Fla. Stat., such termination is not a breach of contract and may not be considered as such. Any challenge to termination under this provision must be filed in the Tenth Judicial Circuit Court of Florida no later than 20 calendar days after the date of termination. If this Agreement is terminated for a violation of Section 448.095, Fla. Stat., by NLP, then the offending Party may not be awarded a public contract for a period of 1 year after the date of termination. The offending Party shall be liable for any additional costs incurred by the County as a result of the termination of this Agreement. Nothing in this section shall be construed to allow intentional discrimination of any class protected by law.

### **ARTICLE VII**

#### **Section 1. Payment and Project Loan Terms**

1.1 This Agreement constitutes a commitment to make the Project Loan to the Developer subject to the terms and conditions hereof.

1.2 The Developer shall use the Project Loan advances to construct the Project. The Developer shall construct the Project in accordance with its response to the County RFP, as modified by the finalized Project schedule (with task listing), Project budget, and Project Loan Reimbursement Requests as approved by the Construction Lender (as defined in Section 1.3 of Article XVI, below) and the County.

1.3 The County shall advance Project Loan funds allocated herein to NLP in accordance with SHIP funding requirements. NLP will disburse the Project Loan for County SHIP funds to

the Developer and will disburse Project Loan funds in one or more advances subject to the Developer's project reimbursement request approved by NLP, and subject to the terms and conditions set forth herein and in the applicable loan documents to the Developer at the closing of the Project Loan pursuant to each request for project invoice reimbursement. The Developer may not request disbursement of Project Loan funds until the needed reimbursement requests are submitted for eligible costs. The amount of each loan reimbursement request shall be limited to the amount needed to pay such eligible costs. The Project Loan shall be evidenced by a promissory note(s) and secured by a second priority leasehold mortgage(s) and other loan documents, and the Project Loan shall be subject to the terms and conditions of an agreement ("Subordination Agreement") which subordinates the lien(s) securing the Project Loan to the lien(s) securing the First Mortgage loan. The Developer shall agree to the documents evidencing the Project Loan and expressly agrees to comply with and perform all of the terms and conditions of this Agreement, the note(s), the mortgage(s), the restrictive covenants contained in the Extended Use Agreement, and the other loan documents related thereto described below.

1.4 The Project Loan shall bear an interest rate from the date of the Note of two percent (2%) per annum, simple interest on the outstanding principal balance, for thirty (30) years. During the term of the Project Loan, interest only payments shall be made annually for thirty (30) years from seventy-five percent (75%) of Cash Flow (as defined below) and provided that Developer is not in breach or default beyond any applicable cure period, under the terms of Subordinate Note (as defined below), Subordinate Mortgage (as defined below), and this Agreement, the principal and accrued interest, if any, may be forgiven at maturity, in County's sole and absolute discretion. "Cash Flow" is defined as revenue from the Project for the previous calendar year less all expenses of the Project for the same period, including but not limited to all payments (principal and interest) on any First Mortgage, reserves due under such First Mortgage, and any Deferred Development Fee (defined as the portion of the developer fee that will not be paid from the project funding sources but will be paid from the project's cash flow and from proceeds from certain capital contributions). In the event there is insufficient Cash Flow in any year for the Developer to make any portion or the entire annual interest only payment for any given year (the amounts not paid being referred to herein, collectively as the "Deferred Amount"), the Deferred Amount shall accrue until the date when there is sufficient Cash Flow available to make such payment. To the extent there is insufficient Cash Flow in any year for Developer to pay all or any portion of the loan payment(s), the amount of the loan payments made shall be deferred and shall accrue, without interest, and will be payable at the not bear interest and such Deferred Amount shall be deferred to the thirtieth (30th) anniversary date of the promissory note evidencing the Project Loan.

1.5 Prior to the Project Loan closing NLP shall submit a written request to the County for advancement of SHIP funds to NLP for subsequent disbursement to the Developer in accordance with this Agreement.

The written funding request to the County from NLP shall be submitted together with the following documents relating to the Project Loan.

1. Executed promissory note from the Developer to NLP ("Subordinate Note").
2. Executed subordinate mortgage against the Developer's leasehold interest in the Property in favor of NLP (the "Subordinate Mortgage").
3. Title Insurance Commitment.

1.6 NLP shall immediately deposit Grove Manor Phase II Project Loan funds into an interest-bearing escrow account with a bank selected by NLP until such funds are advanced by NLP to the Developer pursuant to an approved reimbursement request and the terms of this Agreement. All interest earned in the account shall be retained in the account and paid monthly to the County.

1.7 Each advance of the Project Loan funds from NLP to the Developer shall be deemed to be an advance under the Subordinate Note. NLP may apply any amounts due to the Developer thereunder toward satisfaction of any of the terms or conditions of this Agreement and amounts so applied shall be part of the Project Loan and shall be secured by the lien of the Subordinate Mortgage, and all disbursements from any "contingency" categories shall be made at NLP's discretion after approval by the County pursuant to the terms of this Agreement and the applicable Project Loan document. Such approval and discretion shall not be unreasonably withheld.

1.8 Upon request from NLP, the Developer shall submit those documents requested by NLP including the invoices and reports on the actual work completed on the Project. AIA documents may be used to support other documents for application and certificate of payment. The final advance under the Project Loan will be made after NLP and the County have made an on-site inspection. The Developer shall supply partial and final lien releases from all materialmen, contractors, and sub-contractors, as may be required by the County and/or NLP in their sole discretion.

1.9 If the Developer fails to request disbursement of any Project Loan funds for a period of six (6) consecutive months from the date of this Agreement, subject to unavoidable delays, the County may, subject to the terms and conditions of the Subordination Agreement, at its option and upon fifteen (15) days prior written notice to the Developer, recoup part or all of any remaining Project Loan funds. Funds that are recouped by the County shall no longer be available for advance hereunder to the Developer.

1.10 After the Project Completion and stabilization, the Developer shall provide NLP and the County with a copy of the recorded Extended Use Agreement from FHFC promptly following the recording thereof.

## **ARTICLE VIII**

### **Section 1. Project Construction**

1.1 The Developer shall obtain all necessary governmental permits and approvals, as needed, and shall cause construction of the Project to begin no later than sixty (60) days after the date of closing of the SHIP Project Loan and only after the recording of a notice of commencement, and shall cause such construction to be completed with diligence and dispatch so that the construction of the Project is fulfilled in substantial accordance with the final plans, in form and content acceptable to the County, free and clear of all liens or claims for materials, labor, services, or other items furnished in the construction of the Project, and in full compliance with all building, zoning and all other applicable local, state and federal laws, ordinances and regulations for multi-family housing. Completion of the Project shall be evidenced by the Certificate of Completion and/or Certificate of Occupancy issued by the governmental authorities having jurisdiction and a final certification by the qualified construction inspector that the Project has been completed in substantial accordance with the

final plans. The Developer shall construct and operate the Project in compliance with all applicable SHIP Requirements as they pertain to the SHIP Set-Aside Units.

1.2 The County, NLP, and any other agent or representative of the County shall have the right to enter the Project during normal business hours, after reasonable notice to the Developer, for the purpose of inspecting the Project. The Developer shall cause the general contractor and all subcontractors and suppliers to cooperate with the County and their agents and representatives in the exercise of their rights and performance of their duties hereunder.

## **ARTICLE IX**

### **Section 1. Insurance Requirements**

1.1 The Developer shall maintain, at all times, the following minimum levels of insurance and shall, without in any way altering their liability, obtain, pay for, and maintain insurance for the coverages and amounts of coverage not less than those set forth below. Provide to the County original Certificates of Insurance satisfactory to the County to evidence such coverage before any work commences. Polk County, a political subdivision of the State of Florida, shall be an additional named insured or loss payee, as applicable on all policies related to the project, excluding workers' compensation and professional liability. The Workers' Compensation and General Liability policies shall contain a waiver of subrogation in favor of Polk County. All insurance coverage shall be written with a company having an A.M. Best Rating of at least the "A" category and size category of VIII. The firm's deductible per line of coverage shall not exceed \$25,000 (other than as to wind storm coverage) without the permission of the County. Policies that include Self Insured Retention may not be accepted, as provided by federal rule or regulation. In the event of any failure by the Developer to comply with these provisions, the County may, at its option, on notice to the Developer suspend the Project for cause until there is full compliance. Alternatively, the County may purchase such insurance at the Developer's expense, provided that the County shall have no obligation to do so and if the County shall do so, the Developer shall not be relieved of or excused from the obligation to obtain and maintain such insurance amounts and coverages.

If applicable, Worker's Compensation and Employer's Liability Insurance providing statutory benefits, including those that may be required by any applicable federal statute:

Admitted in Florida - Yes  
Employer's Liability - \$200,000  
All States Endorsement - Statutory  
Voluntary Compensation - Statutory

Commercial General Liability Insurance. \$1,000,000 combined single limit of liability for bodily injuries, death, and property damage, and personal injury resulting from any one occurrence, including the following coverages:

Premises and Operations and Products/Completed Operations.

Broad Form Commercial General Liability Endorsement to include blanket contractual liability (specifically covering, but not limited to, the contractual obligations assumed by the Firm); Personal Injury (with employment and contractual exclusions deleted) and Broad Form Property Damage coverages; independent Contractors; Delete Exclusion relative to Collapse, Explosion and Underground Property Damage Hazards; Policy must include Separation of Insureds Clause.

If applicable, Comprehensive Automobile Liability Insurance. \$1,000,000 combined single limit of liability for bodily injuries, death, and property damage, and personal injury resulting from any one occurrence, including all owned, hired, and non-owned vehicles.

Prior to Project Completion, the Developer must obtain comprehensive Builder's Risk insurance for the Project with the County named as an Additional Insured on the Policy.

1.2 The Developer shall require and ensure that each of its contractors, sub-contractors and consultants providing services hereunder (if any) procures and maintains until the completion of their respective services, insurance of the types and to the limits specified herein.

1.3 Insurance carriers providing coverage required herein must be licensed to conduct business in the State of Florida and must possess a current A.M. Best's Financial Strength Rating of A- Class VIII or better.

1.4 Any request for an exception to these insurance requirements must be submitted in writing to the County for approval, which County may decline to approve in the County's sole discretion.

1.5 Prior to execution and commencement of any Project operations/services provided under this Agreement, the Developer shall provide the County and NLP with current certificates of insurance evidencing all required coverage. In addition to the certificate(s) of insurance, the Developer shall also provide a Blanket Additional Insured Endorsement for each policy as required above. The certificates shall clearly indicate that the Developer has obtained insurance of the type, amount and classification as required for strict compliance with this insurance section. No material change or cancellation of the insurance shall be effective without thirty (30) days' prior written notice to the County. Certificates shall specifically reference the respective contract number. The certificate holder shall read:

Polk County, a political subdivision of the State of Florida  
Attn.: Housing and Neighborhood Development Office  
1290 Golfview Ave.  
P.O. Box 9005  
Bartow, Florida 33831

## Section 2. Indemnification

The Developer shall indemnify, defend, and hold harmless the County, and each of their respective officers, agents, and employees, from and against any and all actions, claims, or actual damages arising out of, relating to, or resulting from the intentional, negligent, or wrongful act(s) of the Developer, or any of its officers, agents, or employees pertaining to its Agreement duties and obligations, the Project, and the Project Loan. The County shall provide the Developer with written notice of any matter subject to this indemnity provision and an opportunity to defend any third-party claim which may result in an indemnification obligation under this Agreement and the County shall not settle an indemnification claim without the consent of the Developer.

## ARTICLE X

### Section 1. Fair Housing

1.1 The Developer shall not discriminate against any person or family on the grounds of race, color, national origin, religion, familial status, sex, sexual orientation, or disability. The Developer shall comply with Polk County Ordinance 2005-043, the Polk County Fair Housing Ordinance.

1.2 The Developer shall maintain records of its affirmative marketing efforts and keep them available for review by the County's Housing and Neighborhood Development Office staff.

1.3 The Developer shall assess the success of its affirmative action efforts and when applicable, undertake all necessary corrective actions as mandated by the County, when affirmative marketing requirements are not met.

## **ARTICLE XI**

### **Section 1. Rental Housing Restrictions**

1.1 The Project shall consist of seventy-eight (78) units, including 18 – 1-bedroom units, 42 – 2-bedroom units, and 18, 3-bedroom units. Pursuant to the Extended Use Agreement, the Extended Use Agreement unit set-aside levels are 30%, 60%, 70%, and 80% of the AMI, with twelve (12) units at or below 30% AMI, 42 units at or below 60% AMI, 12 units at or below 70% AMI, and 12 at or below 80% AMI.

1.2 The Polk County Housing & Neighborhood Development Office will make the referrals for SHIP Set-Aside Units. The referrals for TBRA clients will follow all HOME Program Guidelines. TBRA clients are 50% and below the AMI.

1.3 When complying with its Article XI, Section 1.3 obligations, the Developer's property manager ("Management Company") shall obtain a certification of income and age for each prospective tenant prior to the commencement of a proposed assisted unit lease. Source documentation for each adult household member shall be obtained to support income claims. The form of Certification shall be as required by the SHIP program income certification requirements.

Should the annual income at recertification of a household occupying a SHIP Set-Aside Unit result in non-compliance with the unit's income occupancy requirements, the Management Company must rent the next available Project unit to a qualifying household to ensure its continuing compliance with the SHIP Program Requirements for the Project.

1.4 The SHIP Set-Aside Units will assist Very Low-Income Persons or Households (i.e., persons or households with income at or below 50% AMI). The County acknowledges that the Developer is also subject to restrictions of the LIHTC program under Section 42 of the IRC. The Developer will be in compliance with the average income test as provided in Section 42 of the IRC and its accompanying Treasury Regulations. Rents payable by the tenant as the SHIP Set-Aside Units shall comply with the federal rent guidelines released annually by HUD, the most current of which is attached and made part of this Agreement as Exhibit C

1.5 All of the SHIP Set-Aside Units in the Project shall be affordable for no less than a minimum period of thirty ~~fifteen~~ (30 ~~15~~) years from the date of Certificate of Completion or Certificate of Occupancy for the Project issued by the County. When using blended funds to finance the Project, the use of Funds in the SHIP/HOME-American Rescue Plan

Program/LIHTC requires the Developer to adhere to requirements from each funding source and apply whichever is more restrictive.

1.6 The Developer shall cooperate with the County and NLP by allowing on-site inspections of the SHIP Set-Aside Units for compliance with Housing Quality Standards and local code requirements. These inspections will be conducted on each unit before occupancy and, thereafter, a sample of units will be inspected at a minimum every year during the Affordability Period.

1.7 Notwithstanding the foregoing, the Developer may establish compliance with the requirements of this Article by providing to the County the annual compliance monitoring reports prepared by the FHFC's compliance monitor.

1.8 All the Project's SHIP Set-Aside Units shall be rented solely to Very Low-Income Persons or Households whose incomes do not exceed those as provided under the SHIP Program Requirements.

1.9 The Developer shall verify the household income and age of the prospective tenants for eligibility in all SHIP Set-Aside Units prior to the initial occupancy, thereafter, income verification shall be performed on an annual basis.

1.10 The Management Company shall obtain a certification of income and age for each prospective tenant prior to admission to the Project. Source documentation for each adult household member shall be obtained to support income claims. The form of Certification shall be as required by the SHIP regulations.

Should the annual income recertification of such households result in non-compliance with income occupancy requirements, the next available unit must be rented to a qualifying household in order to ensure continuing compliance of the Project.

## **ARTICLE XII**

### **Section 1. Records and Reports**

1.1 During the construction of the Project, the Developer shall provide the County and NLP, a status construction report concerning the progress made on the Project as requested by NLP not less than quarterly. The information provided should be a narrative summary of progress, including but not limited to, the percentage of the Project completion, selection of contractors, expenditures, and such other information as required under this Agreement and as may be deemed appropriate by the County. Such report shall be due within ten (10) days of NLP's request.

1.2 The Developer shall cooperate with the County and NLP in the implementation and maintenance of an evaluation system to monitor the Project. Such cooperation shall include, but not be limited to, periodic submission of tenant data reports, affirmative marketing efforts, and annual tenant income re-certifications and other obligations in this Agreement.

1.3 The Developer shall maintain complete and accurate records of the income for each of the qualifying occupants and the rents charged for the SHIP Set-Aside Units. All records shall be maintained in accordance with the SHIP Program Requirements. The Developer shall permit any duly authorized representative of Polk County to inspect the books and records upon reasonable notice and during reasonable business hours.

1.4 The Developer shall furnish to the County's Housing and Neighborhood Development office a copy of the Developer's annual Certificate of Housing Credit Program Compliance Form AOC-1, Program Report Summary Form PR-1 and Recap of Tenant Income Certification Form AR-1 submitted to the FHFC. Copies shall be submitted on an annual basis subsequent to the issuance of the first certificate of occupancy for the Project.

1.5 Notwithstanding anything contained herein to the contrary, if the requirements set forth in this Article XII shall in any manner conflict with the Low-Income Housing Credit requirements of Section 42 of the IRC, as they may be amended from time to time, such provisions of the IRC shall control.

### **ARTICLE XIII**

#### **Section 1. Compliance with Applicable Laws and Other Conditions**

1.1 In the performance of its Services under this Agreement, NLP shall comply with the SHIP Program Guidelines as well as any other applicable laws and regulations of the State of Florida and with those county, state, and federal laws, ordinances, rules, regulations, and resolutions of governmental authorities described on Exhibit B attached hereto and made a part hereof.

1.2. Audit Requirements – In the event that the Developer expends a total amount of state financial assistance equal to or in excess of \$750,000.00 in any fiscal year of such recipient (for fiscal years ending June 30, 2017, and thereafter), the recipient must have a state single or project-specific audit for such fiscal year in accordance with section 215.97, Florida Statutes; Rule Chapter 69I-5, Florida Administrative Code, State Financial Assistance; and Chapters 10.550 (local governmental entities) and 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General. HIP Rule: 67-37.007(11), F.A.C

A. In determining the state financial assistance expended in its fiscal year, the recipient shall consider all sources of state financial assistance, including state financial assistance provided from the State Housing Initiatives Partnership (SHIP) funds, other state agencies, and other nonstate entities. State financial assistance does not include federal direct or pass-through awards and resources received by a nonstate entity for federal program matching requirements.

B. For the audit requirements addressed in Part II, paragraph 1, the recipient shall ensure that the audit complies with the requirements of section 215.97(8), F.S. This includes submission of a financial reporting package as defined by section 215.97(2), F.S., and Chapters 10.550 (local governmental entities) and 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General.

C. If the recipient expends less than \$750,000.00 in state financial assistance in its fiscal year (for fiscal years ending June 30, 2017, and thereafter), an audit conducted in accordance with the provisions of section 215.97, Florida Statutes, is not required. If the recipient expends less than \$750,000.00 in state financial assistance in its fiscal year and elects to have an audit conducted in accordance with the provisions of section 215.97, Florida Statutes, the cost of the audit must be paid from the nonstate entity's resources (i.e., the cost of such an audit must be paid from the recipient's resources obtained from other than state entities).



1.3 The Developer shall comply with the Architectural Barriers Act of 1968 (42 U.S.C. §§ 4151-4157), the Uniform Federal Accessibility Standards, the Americans with Disabilities Act of 1990 (42 U.S.C. §12131), and all state and local laws requiring physical and program accessibility to people with disabilities. Any contracts entered into by the Developer shall include a provision for compliance with all such regulations. The Developer shall keep records demonstrating compliance with these regulations.

1.4 The Developer shall provide a drug-free workplace. The Developer shall comply with the Drug-Free Workplace Act of 1988.

1.5 By executing this Agreement, the Developer hereby certifies that it is not on the "Convicted Vendor List" maintained by the Department of Management Services pursuant to Section 287.133(3)(d), Florida Statutes, and that it shall not contract or subcontract with any entity that appears on such list for the performance of any work or services pursuant to this Agreement. The Developer understands that should this certification be falsified, that the County reserves the right to: (1) terminate this Agreement; and (2) pursue any of the County's available legal rights and remedies.

1.6 If the completed rental Project is not occupied by eligible tenants within six months following the date of Project Completion, the County will request that the Developer submit marketing information, and if appropriate a marketing plan. The County will require the Developer to repay Project Loan funds invested in any Project housing unit that has not been rented at least once to eligible tenants within eighteen (18) months after the date of Project Completion.

## **ARTICLE XV**

### **Section 1. Additional Developer Covenants**

1.1 The Developer shall comply promptly with all applicable federal, state, and local laws, ordinances and regulations relating to the construction, use, and leasing of the Project, and shall obtain and keep in good standing all necessary licenses, permits and approvals required or desirable for construction and use of the Project.

1.2 The Developer will not knowingly engage in any activity or enter into any relationship which will give rise to any loan or brokerage commission with regard to the Project Loan, and the Developer hereby agrees to indemnify NLP and the County from the claims of brokers arising by reason of the execution hereof or the consummation of the transactions contemplated hereby.

1.3 The Developer will, upon reasonable demand of NLP or the County, correct any structural defect in the Project or any material and substantial departure from the final construction plan documents not approved by NLP and the County, or perform any material condition to NLP or the County's obligations hereunder not satisfied or no longer satisfied. The advance of any proceeds of the Project Loan shall not constitute a waiver of NLP's or the County's right to require compliance with this covenant with respect to any such defects or material and substantial departures from the final construction plan documents not theretofore discovered by, or called to the attention of NLP, the County and the inspector, or with respect to the Developer's failure to satisfy or continue to satisfy any condition under this Agreement, whether or not NLP required performance thereof. However, if any defects cited by or not approved by NLP or the County remain unresolved for more than sixty (60) days, then NLP may withhold future payment to the Developer under this Agreement or the Project Loan

documents until the defect is resolved or cured to the reasonable satisfaction of NLP and the County.

1.4 The Developer shall establish and maintain a reasonable accounting system in accordance with Generally Accepted Accounting Principles, which enables ready identification of its contractors and of the Developer's cost of goods and use of funds. Such an accounting system shall also include adequate records and documents to justify all prices for all items invoiced as well as all charges, expenses and costs incurred in providing the goods for at least five (5) years after completion of the Project. The Developer shall ensure in its contract with its general contractor that NLP and the County or its designee shall have access to such books, records, contracts, subcontract(s), financial operations, and documents of the general contractor as required to comply with this section for the purpose of inspection or audit upon reasonable notice during normal business hours at the general contractor's place of business.

1.5 The Developer shall cooperate with NLP in obtaining for NLP and the County the benefits of any insurance or other proceeds lawfully or equitably payable to it in connection with the transaction contemplated hereby and the collection of any indebtedness or obligation of the Developer to NLP incurred hereunder (including the payment by the Developer of the expense of an independent appraisal on behalf of NLP in case of a fire or other casualty affecting the Development). The prosecution, settlement and use of insurance claims/proceeds shall be governed by the respective terms of the first mortgage and loan documents of the Senior Lender.

1.6 The Developer will do all acts and execute all documents for the better and more effective carrying out of the intent and purposes of this Agreement, as NLP and the County shall reasonably require from time to time and will do such other acts reasonably necessary or desirable to preserve and protect the collateral at any time securing or intending to secure the Subordinate Note, as NLP or the County may reasonably require.

1.7 The Developer will utilize the proceeds of the Project Loan solely for the Construction Costs for the Project (as such term is defined in the Developers' fully executed Project Loan documents) pursuant to the terms of such documents.

1.8 The Developer shall not assign this Agreement or any interest therein, and any such assignment shall be void and of no effect.

1.9 They shall not incur new or additional liabilities that would constitute liens against the Property or the Project, other than as expressly provided for herein and in the loan documents of the Senior Lender and except for liabilities incurred in the ordinary course of business unless otherwise approved by the County.

1.10 If for any reason the entire amount of the Project Loan is not used to fund the Construction Costs or toward permanent financing of the Development, the principal amount of the Project Loan shall be reduced by the amount of the unused funds, which shall be retained by the County, and the principal sum of the Subordinate Note shall be adjusted accordingly.

1.11 Neither NLP nor the County shall be liable to materialmen, contractors, subcontractors, sub-subcontractors, laborers, suppliers or others for goods or services delivered by them in or upon the Property or employed in the construction of the Project, or for any debts or claims

accruing to any of said parties against the Developer or against the Property, and it is distinctly understood and agreed that there is no contractual relationship, either express or implied, between either NLP or the County, and any material men, contractors, sub-contractors, sub-subcontractors, craftsmen, laborers or any person supplying any work, labor or material. The Developer is not, and shall not be, the agent of either NLP or the County for any purpose, nor shall any of them be the agent of the Developer for any purpose, except, as to both, as may be specifically set forth herein. Nothing in this Agreement, or any Project Loan document shall be construed to make the Developer and NLP and the County partners, or joint or co-venturers, and the relationship of the Developer with respect to NLP and the County shall at all times be that of debtor and creditor.

## **ARTICLE XVI**

### **Section 1. Default**

1.1 Upon the occurrence of any of the following events and subject to any applicable cure periods (an "Event of Default") all obligations on the part of NLP and the County to make any advances under the Project Loan documents shall, if NLP elects, terminate, and NLP may, subject to the terms and conditions of the Subordination Agreement, at its option exercise any of its remedies set forth herein, and in the Project Loan documents but NLP may make any advances or parts of advances after the happening of any Events of Default without thereby waiving the right to exercise such remedies without becoming liable to make any further advance. Upon the occurrence of any Event of Default under the Project Loan documents, NLP will, subject to the terms and conditions of the Subordination Agreement, demand and consider a cure provided within the applicable cure period by, as applicable. An Event of Default includes the following:

A. Prior to completion of construction of the Project, if the Developer fails to, or is unable to, satisfy or keep satisfied any condition within the Developer's reasonable control to an advance under this Agreement for a period in excess of thirty (30) days following written notice from NLP or the County.

B. If for any cause whatsoever other than Unavoidable Delays (as hereinafter defined) the construction of the Project is at any time discontinued for more than sixty (60) consecutive business days, or not carried on with diligence and dispatch, in the reasonable judgment of NLP, or if the Project, in the reasonable judgment of NLP, is not being constructed or has not been completed in a good and workmanlike manner in substantial accordance with the final plans, this Agreement, and all laws, rules, regulations and requirements of all governmental authorities having or claiming jurisdiction, now existing or hereafter enacted, adopted or promulgated, or if the certificate of occupancy for the Development or other certificates of compliance with zoning ordinances and building regulations have not been issued within thirty (30) days after the Completion Date, as the same may be extended. "Unavoidable Delays" is defined as delays due to strikes, blackouts, acts of God, failure or inability to secure materials or labor by reason of priority or similar regulation or order of any governmental authority, enemy action, civil disturbance, fire, inclement weather which results in a local declaration of emergency under state law, or any other act beyond the reasonable control of the Developer, (excluding, however, the inability or failure of the Developer to obtain any financing which may be necessary to carry out its obligations under this Agreement), provided, however, within thirty (30) days after the termination of the occurrence which caused any such delay, the Developer shall have given written notice to NLP of the cause of the delay and the period of time during which it existed, and the period of Unavoidable Delay shall be such period of time

during which the particular delay existed or such longer period of time as NLP, in its reasonable discretion, may determine.

C. If any warranty or material representation made by the Developer in this Agreement or pursuant to the terms of the Project Loan documents shall at any time be found to be false or misleading in any material respect as of the date made, or if the Developer shall fail to keep, observe, or perform any of the terms, covenants, representations or warranties contained in this Agreement, the Subordinate Note, the Subordinate Mortgage, the First Mortgage, or any other Project Loan document (provided, that with respect to nonmonetary Events of Default, NLP shall give written notice to the Developer, who shall have forty-five (45) days to cure which time may be reasonably extended by NLP and that with respect to monetary Events of Default, the Developer shall have a fifteen (15) day grace period), or is unable or unwilling to meet its obligations thereunder.

D. If any building permit or other governmental permit, license or approval required in connection with the Project is not maintained in full force and effect, expires, or is cancelled and not reinstated or renewed within thirty (30) days of such cancellation or expiration, and such permit, license or approval is necessary for the stage of construction then ongoing, or for the operation of the Project once complete.

E. Developer's uncured default of any other agreement through which it has received funding necessary to develop and construct the Project.

1.2 If the Developer has failed to comply with its obligations under the Project Loan documents, then NLP shall give written notice to the Developer, who shall have fifteen (15) days, or such additional period of time approved in writing by NLP to provide any additional information requested by NLP and thirty (30) days to cure such insecurity if a cure is deemed necessary by NLP.

1.3 Any notice of default given to Developer hereunder shall also be given the investor member of Developer and the construction phase first mortgagee (the "Construction Lender"), and the County and/or NLP shall accept any timely cure by the Investor Member as if such cure was made by Developer, these entities shall be determined prior to disbursement of funds.

## **ARTICLE XVII**

### **Section 1. Remedies of NLP and the County**

1.1 Subject to the terms of the Subordination Agreement with the Senior Lender, upon the occurrence of an Event of Default as provided in Section XVI, above, which has continued beyond any applicable cure period, or upon the Developer's failure to timely deliver any portion, or the entirety, of the Project in accordance with the Project Loan unless such failure is timely cured in accordance with any applicable time period, then the County or NLP, at their option and upon delivering written notice to the Developer, may pursue any one or more of the following remedies for such default:

A. Immediately terminate the Agreement.

B. Commence an appropriate legal or equitable action to require the Developer's specific performance under this Agreement.

C. Accelerate payment of the Subordinate Note and any amounts due under the Project Loan documents and any other sums secured by the Subordinate Mortgage and commence appropriate legal and equitable actions to foreclose the Subordinate Mortgage and to collect all amounts due from the Developer under the Project Loan documents.

D. Exercise all rights under the Project agreements with the general contractor, the architect, and the engineer for the Project, or employ others to complete the construction, and thereafter lease or let the Project; and take such action as may be reasonable to preserve and protect the Project and the construction site, and any construction materials stored thereon.

E. Exercise any other rights or remedies the County or NLP may have under the Subordinate Mortgage, or any other Project Loan document or other document executed in connection with the Project Loan, or which may be available under applicable law; and

F. Pursue any and all other options, rights, and remedies available in law, equity, or under any Project document for the County or NLP to protect their respective interests.

1.2 Certain Material Defaults. Among other matters, including without limitation, the Developer's failure to timely deliver any portion, or the entirety, of the Project in accordance with the Agreement documents, as described immediately above, any of the following shall constitute the Developer's material default of the Agreement: the appointment of a receiver to take possession of all or substantially all of the Developer's assets, a general assignment by the Developer for the benefit of creditors, or any action taken by or suffered by Developer under any insolvency or bankruptcy act; or the Developer is convicted of a public entity crime, is determined to have violated federal or state law prohibiting discrimination as stated in Section 287.134, Florida Statutes, or is prohibited from performing work for or transacting business with the County pursuant to Section 287.133 or to Section 287.134, Florida Statutes; or an assignment of the Agreement made without the express written consent of the County; or the submission of a false certification to the County or engagement in prohibited business operations, both as described in the Project Loan documents and within any other Project Loan agreements by and between the County (or NLP as the County's agent) and the Developer.

1.3 No right, power, or remedy of NLP or the County as provided in this Agreement is intended to be exclusive of any other right, power, or remedy of NLP or the County, but each and every such right, power, and remedy shall be cumulative and concurrent and in addition to any other right, power or remedy available to NLP and the County now or hereafter existing at law or in equity and may be pursued separately, successively, or concurrently at the sole discretion of NLP and/or the County. The failure of NLP or the County to exercise any such right, power or remedy, shall in no event, be construed as a waiver or release of any right, power, or remedy thereof.

1.4 The Developer shall not sell, exchange, assign, convey, transfer, or otherwise dispose of the Property, the Project, or any building in the Project without prior written notice to the County.

## **ARTICLE XVIII**

### **Section 1. General Terms**

The following shall be applicable throughout the period of this Agreement or thereafter as provided herein:

1.1 All conditions imposed on the Developer hereunder are imposed solely and exclusively for the benefit of NLP and/or the County and its successors and assigns, and no other person shall have standing to require satisfaction of such conditions or be entitled to assume that NLP will make Project Loan advances in the absence of strict compliance with any or all conditions and requirements thereof, and no other person shall, under any circumstances, be deemed to be a beneficiary of this Agreement or the Project Loan documents, any provisions of which may be freely waived in whole or in part by NLP or the County at any time if, in their sole discretion, they deem it desirable to do so.

NLP and the County make no representations and assume no duties or obligations as to third parties concerning the quality of the construction by the Developer of the Project or the absence thereof of defects. All inspections and other services rendered by or on behalf of NLP or the County shall be rendered solely for the protection and benefit of NLP or the County. Neither the Developer nor other third persons shall be entitled to claim any loss or damage against NLP or the County or against its agents or employees for failure to properly discharge their duties.

1.2 The Developer shall indemnify NLP and the County, its directors, officers, members, officials, employees, and agents, from any liability, claims, or actual losses resulting from the disbursement of the proceeds of the Project Loan to the Developer or the general contractor for the Project or from the condition of the Project, whether related to the quality of construction or otherwise, and whether arising during or after the term of the Project Loan excluding losses arising from the misconduct, bad faith, or negligence of NLP or the County, and their respective directors, officers, members, officials, employees, and agents. This provision shall survive the repayment of the Project Loan and shall continue in full force and effect so long as the possibility of such liability, claims, or losses exists. NLP and the County shall provide Developer with written notice of any matter subject to this indemnity provision and an opportunity to defend any third-party claim which may result in an indemnification obligation under this Agreement and NLP and the County shall not settle any such indemnification claim without the consent of the Developer.

1.3 The headings of the sections, paragraphs and subdivisions of this Agreement are for the convenience of reference only and shall not limit or otherwise affect any of the terms hereof.

1.4 If performance of any provision hereof or any transaction related hereto is limited by law, then the obligation to be performed shall be reduced accordingly; and if any clause or provision herein contained operates or would prospectively operate to invalidate this Agreement in part, then the invalid part of said clause or provision only shall be held for naught, as though not contained herein, and the remainder of this Agreement shall remain operative and in full force and effect.

1.5 The laws of the State of Florida shall govern the interpretation and enforcement of this Agreement. Any and all legal action necessary to enforce the provisions of this Agreement will be held in Polk County, Florida. Venue for any litigation involving this Agreement shall be the Circuit Court in and for Polk County, Florida.

1.6 If NLP or the County shall waive any provisions of this Agreement or the Project Loan documents or shall fail to enforce any of the conditions or provisions of this Agreement, such waiver shall not be deemed to be a continuing waiver and shall never be construed as such; and NLP or the County shall thereafter have the right to insist upon the enforcement of such

conditions or provisions. Furthermore, no provision of this Agreement shall be amended, waived, modified, discharged, or terminated, except by instrument in writing signed by the parties hereto.

1.7 All notices and other communications to be made or permitted to be made hereunder shall be in writing and shall be delivered to the addresses shown below or to such other addresses that the parties may provide to one another in accordance herewith. Such notices and other communications shall be given by any of the following means: (a) personal service; (b) national express air courier, provided such courier maintains written verification of actual delivery; or (c) U.S. Mail, Certified, Return Receipt requested. Any notice or other communication given by the means described in this section shall be deemed effective upon the date of receipt or upon the date of refusal to accept delivery by the Party to whom such notice or other communication has been sent. Any party may change said address by giving the other parties hereto Notice of such change of address in accordance with the foregoing provisions.

As to Polk County: Polk County Housing and  
Neighborhood Development Office  
1290 Golfview Ave.  
Bartow, Florida 33831-9005

Copy to: Polk County Attorney's Office  
Polk County Administration Building  
330 W. Church Street, Drawer AT01  
Bartow, Florida 33831-9005

As to the Developer Grove Manor Phase II, LLC  
1100 NW 4th Avenue  
Delray Beach, FL 33444  
Attn: Darren Smith

Copy to: LWHA:  
Al Kirkland, Jr.  
Executive Director  
Lake Wales Housing Authority  
P.O. Box 426  
Lake Wales, FL 33859-0426

Copy to: Robert Cheng  
Shutts & Bowen LLP  
Tel: (305) 415-9083  
200 South Biscayne Blvd., Ste. 4100,  
Miami, FL 33131

Copy to: Bernice Saxon  
Saxon Gilmore & Carraway, P.A.  
201 E. Kennedy Blvd., Suite 600  
Tampa, FL 33602

As to NLP: Neighborhood Lending Partners of Florida, Inc.  
3615 W Spruce Street

Tampa, FL 33607  
Attn: George Romagnoli

1.8 This Agreement shall inure to the benefit of and be binding on the parties hereto and their heirs, legal representatives, successors, and assigns; but nothing herein shall authorize the assignment hereof by the Developer.

1.9 This Agreement may be executed in one or more counterparts, all of which shall constitute collectively but one and the same instrument.

1.10 Notwithstanding any other provision herein, all rights, title, interests, covenants, and Agreements herein are subject to the rights, title, interests, covenants, and Agreements of the First Mortgagee under its respective loan documents.

1.11 The "Effective Date" of this Agreement shall be the 1st day of October 2023, with the signature date being the date that all Parties have executed this Agreement. Immediately upon signing the counterparts, that party shall notify the other parties and provide them a copy or counterpart, as applicable, of the fully executed Agreement.

This portion of the agreement intentionally left blank



IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized officials.

ATTEST  
STACY M. BUTTERFIELD, CLERK

Alison Brown  
Deputy Clerk

Date: 9/16/25

Reviewed as to form and legal sufficiency:

\_\_\_\_\_  
County Attorney's Office

ATTEST

\_\_\_\_\_

Print Name

\_\_\_\_\_  
Title

ATTEST

\_\_\_\_\_

Print Name

\_\_\_\_\_  
Title

POLK COUNTY, a political subdivision of the  
State of Florida

T.R. Wilson  
T.R. Wilson, Chairman  
Board of County Commissioners

Date: 9/16/25  
G.I



Grove Manor Phase II, LLC,  
a Florida limited liability company  
1100 NW 4th Avenue  
Delray Beach, FL 33444

By: SHAG Grove Manor Phase II, LLC, a  
Florida limited liability company, its Manager

By: \_\_\_\_\_  
Darren Smith, Manager

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

Neighborhood Lending Partners of Florida,  
Inc., a Florida not-for-profit corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

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

## EXHIBIT A

### LEGAL DESCRIPTION

The land referred to herein below is situated in the County of POLK, State of Florida, and described as follows:

A parcel of land lying within...

INSERT WHEN AVAILABLE

**EXHIBIT B**

BLANKET ADDITIONAL INSURED ENDORSEMENT [Please provide]

## EXHIBIT C

### Florida Housing Finance Corporation SHIP and HHRP Programs

**HUD release: 4/1/2025**

**Effective: 4/1/2025**

| County (Metro)              | Percentage | Income Limit by Number of Persons in Household |          |           |           |           |           |           |           |              |           |
|-----------------------------|------------|------------------------------------------------|----------|-----------|-----------|-----------|-----------|-----------|-----------|--------------|-----------|
|                             | Category   | 1                                              | 2        | 3         | 4         | 5         | 6         | 7         | 8         | 9            | 10        |
| <b>Polk County</b>          | 30%        | \$17,500                                       | \$21,150 | \$26,650  | \$32,150  | \$37,650  | \$43,150  | \$48,650  | \$54,150  | Refer to HUD |           |
| (Lakeland-Winter Haven MSA) | 50%        | \$29,200                                       | \$33,350 | \$37,500  | \$41,650  | \$45,000  | \$48,350  | \$51,650  | \$55,000  | \$58,310     | \$61,642  |
|                             | 80%        | \$46,700                                       | \$53,350 | \$60,000  | \$66,650  | \$72,000  | \$77,350  | \$82,650  | \$88,000  | \$93,296     | \$98,627  |
| Median: 83,300              | 120%       | \$70,080                                       | \$80,040 | \$90,000  | \$99,960  | \$108,000 | \$116,040 | \$123,960 | \$132,000 | \$139,944    | \$147,941 |
|                             | 140%       | \$81,760                                       | \$93,380 | \$105,000 | \$116,620 | \$126,000 | \$135,380 | \$144,620 | \$154,000 | \$163,268    | \$172,598 |

Florida Housing Finance Corporation (FHFC) income and rent limits are based upon figures provided by the United States Department of Housing and Urban Development (HUD) and are subject to change. Updated schedules will be provided when changes occur.

| County (Metro)              | Percentage | Rent Limit by Number of Bedrooms in Unit |         |         |         |         |         |
|-----------------------------|------------|------------------------------------------|---------|---------|---------|---------|---------|
|                             | Category   | 0                                        | 1       | 2       | 3       | 4       | 5       |
| <b>Polk County</b>          | 30%        | \$437                                    | \$483   | \$666   | \$872   | \$1,078 | \$1,285 |
| (Lakeland-Winter Haven MSA) | 50%        | \$730                                    | \$781   | \$937   | \$1,083 | \$1,208 | \$1,333 |
|                             | 80%        | \$1,167                                  | \$1,250 | \$1,500 | \$1,733 | \$1,933 | \$2,133 |
| Median: 83,300              | 120%       | \$1,752                                  | \$1,876 | \$2,250 | \$2,599 | \$2,901 | \$3,199 |
|                             | 140%       | \$2,044                                  | \$2,189 | \$2,625 | \$3,032 | \$3,384 | \$3,732 |