

RESOLUTION NO. 2013-178-1974

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MIAMI GARDENS, FLORIDA, AUTHORIZING THE CITY MANAGER TO EXECUTE THAT CERTAIN AMENDED DEVELOPMENT AGREEMENT AND RESTRICTED COVENANT WITH RUDG-THE COMMONS, LLC, IN SUBSTANTIAL FORM AS THAT AGREEMENT AND COVENANT ATTACHED HERETO AS EXHIBITS "A" AND "B"; PROVIDING FOR INSTRUCTIONS TO THE CITY CLERK; PROVIDING FOR THE ADOPTION OF REPRESENTATIONS; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City of Miami Gardens was awarded One Million, Nine Hundred Forty, Three Hundred Thirty-Seven Dollars (\$1,940,337.00) in NSP3 funds, and

WHEREAS, the funds will be used to acquire abandoned, foreclosed or vacant property and to demolish, rehabilitate or redeveloped them; once they are completed they are to be occupied by eligible households, and

WHEREAS, the City awarded One Million, One Hundred Fifty Thousand Dollars (\$1,150,000.00) to RUDG-The Commons, LLC, for the construction of one hundred eighty-nine (189) units for elderly residents, and

WHEREAS, the project was to be located on the West side of North West 27th Avenue south of 207th Street, and

WHEREAS, the City entered into a Development Agreement with RUDG-The Commons, LLC, on December 19, 2011 for this purpose, and

WHEREAS, RUDG-The Commons, LLC was unable to secure the gap funding necessary to completely finance the project and consequently defaulted on the Developer's Agreement with the City, and

WHEREAS, on December 12, 2012, the City Council authorized the City Attorney to terminate the Developer's Agreement and to proceed with a foreclosure action on the

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6.83 parcel of land, which was deeded to RUDG-The Commons, LLC, for the project, and

WHEREAS, since that time, City Staff has been negotiating with the developer for an alternate proposal on the property, and

WHEREAS, on February 13, 2013, City Council authorized City staff to continue negotiating with RUDG-The Commons, LLC, and authorized the City Attorney to cease any foreclosure action on the property, and

WHEREAS, City staff is requesting authorization from the City Council for the City Manager to execute an Amended Developer's Agreement with RUDG-The Commons, LLC, along with Amended Restrictive Covenant, and

WHEREAS, in addition to the development of the project, the City is also requiring the developer implement a local hiring emphasis during construction, which will meet the job creation activity function of the NSP3 funding, and

WHEREAS, it is anticipated the project will be developed in two (2) phases, Phase One will include a two-story, 24 unit condominium building to be reserved as elderly rental housing, and

WHEREAS, Phase Two will include the development of mixed use commercial component with not to exceed 36,000 square feet of retail/commercial space plus other amenities, and

WHEREAS, the developer has agreed to create no fewer than 25 permanent full-time equivalent jobs to be made available to low and moderate income residents, and

WHEREAS, in addition to Phase Two, the developer will build a two-story, 24 unit condominium for sale to households with annual income of no more than 120% of AMI, and,

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WHEREAS, the development requires new site plan and zoning approval, which will be presented separately to the City Council at a zoning hearing, and

WHEREAS, City staff is recommending that the City Council authorize the City Manager to execute that certain Amended Developer's Agreement and Restrictive Covenant with RUDG-The Commons, LLC, in substantial form as that Agreement and Restrictive Covenant attached hereto as Exhibit "A" and "B",

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MIAMI GARDENS, FLORIDA AS FOLLOWS:

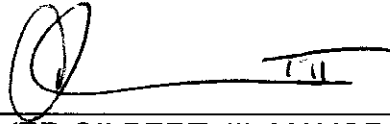
Section 1: ADOPTION OF REPRESENTATIONS: The foregoing Whereas paragraphs are hereby ratified and confirmed as being true, and the same are hereby made a specific part of this Resolution.

Section 2: AUTHORIZATION: The City Council of the City of Miami Gardens hereby authorizes the City Manager to execute that certain Amended Developer's Agreement and Restricted Covenant with RUDG-The Commons, LLC, in substantial form as that Agreement and Restrictive Covenant attached hereto as Exhibit "A" and "B".

Section 3: INSTRUCTIONS TO THE CITY CLERK: The City Clerk is hereby authorized to obtain two (2) fully executed copies of the subject Agreement with one to be maintained by the City, and one to be delivered to RUDG-The Commons, LLC.

Section 3: EFFECTIVE DATE: This Resolution shall take effect immediately upon its final passage.

PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF MIAMI GARDENS AT ITS REGULAR MEETING HELD ON JULY 24, 2013.



OLIVER GILBERT, III, MAYOR

ATTEST:



RONETTA TAYLOR, MMC, CITY CLERK

PREPARED BY: SONJA KNIGHTON DICKENS, ESQ., CITY ATTORNEY

SPONSORED BY: DR. DANNY CREW, CITY MANAGER

Moved by: Councilwoman Odom

Second by: Vice Mayor Davis

VOTE: 7-0

| | | |
|------------------------------------|----------------|-----------|
| Mayor Oliver Gilbert, III | <u>X</u> (Yes) | ____ (No) |
| Vice Mayor Lisa Davis | <u>X</u> (Yes) | ____ (No) |
| Councilwoman Lillie Q. Odom | <u>X</u> (Yes) | ____ (No) |
| Councilman David Williams Jr | <u>X</u> (Yes) | ____ (No) |
| Councilwoman Felicia Robinson | <u>X</u> (Yes) | ____ (No) |
| Councilman Rodney Harris | <u>X</u> (Yes) | ____ (No) |
| Councilman Erhabor Ighodaro, Ph.D. | <u>X</u> (Yes) | ____ (No) |



City of Miami Gardens Agenda Cover Memo

| | | | | | | | |
|---|--|-----------|--|---|------------------|-------------------------------|------------|
| Council Meeting Date: <i>(Enter X in box)</i> | July 24, 2013 | | Item Type: <i>(Enter X in box)</i> | Resolution | Ordinance | Other | |
| | | | | X | | | |
| Fiscal Impact: <i>(Enter X in box)</i> | Yes | No | Ordinance Reading: <i>(Enter X in box)</i> | 1st Reading | | 2nd Reading | |
| | | X | | Public Hearing: <i>(Enter X in box)</i> | Yes | No | Yes |
| | | | | | X | | |
| Funding Source: | Neighborhood Stabilization Program Funds 3 | | Advertising Requirement: <i>(Enter X in box)</i> | Yes | | No | |
| | | | | | | X | |
| Contract/P.O. Required: <i>(Enter X in box)</i> | Yes | No | RFP/RFQ/Bid #: | | | | |
| | X | | | | | | |
| Strategic Plan Related <i>(Enter X in box)</i> | Yes | No | Strategic Plan Priority Area: | Strategic Plan Obj./Strategy: <i>(list the specific objective/strategy this item will address)</i> | | | |
| | | X | | | | | |
| Sponsor Name | Dr. Danny Crew, City Manager | | Department: | Community Development | | | |

Short Title:

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MIAMI GARDENS, FLORIDA, AUTHORIZING THE CITY MANAGER TO EXECUTE THAT CERTAIN AMENDED DEVELOPMENT AGREEMENT AND RESTRICTED COVENANT WITH RUDG-THE COMMONS, LLC, IN SUBSTANTIAL FORM AS THAT AGREEMENT AND COVENANT ATTACHED HERETO AS EXHIBITS "A" AND "B"; PROVIDING FOR INSTRUCTIONS TO THE CITY CLERK; PROVIDING FOR THE ADOPTION OF REPRESENTATIONS; PROVIDING FOR AN EFFECTIVE DATE.

Staff Summary:

**ITEM K-4) CONSENT AGENDA
RESOLUTION
RUDG-The Commons, LLC**

Background:

As Council is aware, the City was allocated \$1,940,337 in NSP3 Funds. This specific grant required that the funds be leveraged and that the required housing units be developed in targeted areas. The two neighborhoods listed in the City's NSP3 Plan were Rainbow Park & Riverdale.

In order to seek leveraging of awarded funds, the City issued a formal Request for Proposals. Three (3) proposals were received. As a result, one of the applicants awarded funding was RUDG-The Commons, LLC. The City Council awarded \$1,150,000.00 to this developer for the acquisition of land and construction of 189 units for elderly residents. The parcels on which this housing project was to be constructed is located on the west side N.W. 27 Avenue, just south of 207 Street.

The City entered into a Developer's Agreement with RUDG – The Commons on December 19, 2011, for the acquisition of the lots on which the multi-family elderly housing was to be built. Unfortunately, RUDG-The Commons, LLC was not able to secure the gap funding necessary to completely finance the project. Consequently, they defaulted on the Developer's Agreement with the City.

In light of the agreement default, City Staff sent formal correspondence requesting repayment of the \$1,150,000.00. The developer sought an alternative remedy to proceed with the initially proposed site development. On November 15, 2012 City Staff met with the developer who requested a phasing of the total project and an additional time extension. However, the alternative proposal reflected a significant reduction in unit count of the elderly housing units. Upon review of the developer's proposal, City Staff did not feel that adequate assurances were in place to ensure a completion of the project within a reasonable time frame. Consequently, Staff rejected the developer's project phasing alternative.

On December 12, 2012, City Staff obtained Council approval to authorize the City Attorney to terminate the Developer's Agreement and to proceed with foreclosure action on the 6.83 parcel of land.

In an effort to avoid time consuming and costly litigation, the developer reached out to City Staff in late December in hopes that another alternative could be crafted in lieu of the originally proposed project. Staff advised the developer of its contractual obligation to HUD. Staff also shared that reducing the proposed number of new elderly housing units significantly lowered the value of the overall site development. Moreover, given the location of the site, the highest and best use for the land may very well be commercial development rather than multi-family housing.

The Developer met with City Staff on January 15, 2013 and expressed their interest in working with the City to bring an amicable solution forward for The Commons project. A new site plan was conceptually discussed. The new project would consist primarily of mixed-use commercial development on the 6.83 acres of land, but would also contain a housing component on the North West corner of the site. The housing component would be comprised of 24 condominium units that would be developed for elderly rental housing. The revised project proposal would require a new site plan from the one originally approved.

On February 13, 2013, City Staff recommended that the Council accept RUDG-The Commons, LLC's revised proposal, and approval of a resolution directing the City Attorney to cease foreclosure action on this property. The resolution further requested Council approval to authorize the City Manager and the City Attorney to develop and negotiate the specific technical terms of a new Developer's Agreement that would be brought back to City Council for its approval at a later time.

Current Situation:

City staff has negotiated and prepared an Amended Developer's Agreement to replace the previously executed document. In it, Staff has included new performance benchmarks, along with updated project timelines and budgets. A restrictive covenant will remain on the land as security for the City to ensure that the agreed upon development takes place. It should be noted that with the development of the mixed-use commercial

component, the City is requiring the developer to implement a local hiring emphasis during construction. This will aid the City in being able to report to HUD a job creation activity as part of the use of the NSP3 Funds.

The project will be developed in two phases: Phase one will concentrate on building a two-story, 24 unit condominium building to be reserved as Elderly Rental Housing. This will allow the City to fulfill its contractual requirements to HUD for the NSP3 program. It is noteworthy that in the development of the 24 units, RUDG-The Commons, LLC will be required to set aside 6 (or 25%) of the units for elderly households whose incomes are at or below 50% of the Area Median Income (AMI). The remaining 18 (or 75%) units will be occupied by elderly households with annual incomes at or below 60% of the AMI.

Phase two will concentrate on the development of the mixed use commercial component, that will include approximately 36,000 square feet of retail/commercial space, plus affiliated amenities including parking. As part of the negotiations, the developer has agreed to create no fewer than 25 permanent full-time equivalent jobs that will be made available to low- and moderate-income residents. Also as part of the 2nd phase, the developer will build an additional two-story, 24 unit condominium building for sale to households with annual incomes of no more than 120% of AMI.

The Development requires new site plan and zoning approval, which will be presented separately to the City Council at a Zoning Hearing.

The attached resolution requests Council's approval of the Amended Developer's Agreement and Restrictive Covenant and authorizes the City Manager to execute and record both in the public record of Miami Dade County.

Proposed Action:

That City Council approve the attached resolution.

Attachment:

- Amended Developer's Agreement
- Amended Mortgage Deed and Restrictive Covenant
- Proposed Conceptual Site Plan

AMENDED DEVELOPER'S AGREEMENT
for "The Commons":
An NSP3 Housing Project
And a Commercial Project

THIS AGREEMENT MADE this ____ day of _____, 2013, by and between **The City of Miami Gardens**, a Municipal Corporation, located at 1515 N.W. 167 Street, Bldg. 5, Suite 200, Miami Gardens, Florida 33169, hereinafter referred to as the "GRANTEE", and **RUDG-The Commons, LLC**, a Florida Limited Liability Company hereinafter referred to as the "DEVELOPER" and which is located at: 315 S. Biscayne Blvd, 3rd floor, Miami Florida, 33131.

WITNESSETH

WHEREAS, the GRANTEE is the recipient of Neighborhood Stabilization Program Funds (Round 3) from the U.S. Department of Housing and Urban Development (HUD); and

WHEREAS, the DEVELOPER has submitted a proposal for use of funds for an NSP3-eligible Housing Project; and

WHEREAS, the DEVELOPER has proposed a Commercial Project to be located on the same parcel of land as the NSP3 Housing Project, which Projects together are known as "The Commons";

WHEREAS, the GRANTEE and DEVELOPER previously entered into a Developer's Agreement relating to "The Commons", and this Agreement is intended to replace that Agreement.

NOW, THEREFORE in consideration of the mutual covenants and obligations herein contained, including the Exhibits, and subject to the terms and conditions hereinafter stated, the parties hereto understand and agree as follows:

I. Definitions

Unless specifically provided otherwise or the context otherwise requires, when used in this Agreement:

1. "Appraisal" means an appraisal which meets the criteria specified in the Uniform Relocation Assistance and Real Property Acquisition Policies Act ("URA"), as further defined in 49 CFR 24.103.
2. "Affordability Period" means the term in which the NSP3 Housing Project must remain affordable to low-to-moderate income households, and is based on the amount of NSP3 assistance provided. This period begins from the date of first occupancy, and will be enforced by a Mortgage Deed and Restrictive Covenant.
3. "The Commercial Project" means the construction of commercial facilities totaling not to exceed 36,000 square feet of leasable commercial space, and associated amenities including parking, with a budget and timeline for development described in Exhibit C.
4. "CDBG Act" means the Housing and Community Development Act of 1974, Pub. L. No. 93-383, as amended. Unless otherwise noted in, the Dodd-Frank Wall Street Reform and

- Consumer Protection Act of 2010 and the alternative requirements in the NSP 3 Notices, NSP 3 is governed by the CDBG regulations.
5. "Current market appraised value" means the value of a foreclosed property that is established through an appraisal made in conformity with the appraisal requirements of the URA at 49 CFR 24.103 and completed within 60 days prior to a final offer made for the property by the DEVELOPER.
 6. "The Development" means all development and construction activity to occur on the approximately 6.83 acres of vacant land on the S.W. Corner of N.W. 207 Street and N.W. 27 Avenue in the City of Miami Gardens: A.K.A. Folio No.'s 34-11330030110 & 34-11330030130. This includes an NSP3 funded affordable housing project ("The NSP3 Housing Project"), and a commercial project ("The Commercial Project") which collectively are known as "The Commons."
 7. "Dodd-Frank" means the Neighborhood Stabilization Program (NSP 3) found in Title XIV – Mortgage Reform and Anti-Predatory Lending Act of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, as amended.
 8. "Eligible Costs" means costs for the activities specified in Exhibit B of this Agreement for which NSP3 funds are budgeted, provided that such costs (i) are incurred in connection with any activity which is eligible under Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 and Section 105A of Title I of the CDBG Act, and (ii) conform to all NSP3 requirements.
 9. "Environmental Requirements" means the requirements described in 24 CFR Part 58.
 10. "Foreclosed" refers to a property that is at least 60 days delinquent on its mortgage and the owner has been notified; or the property owner is 90 days or more delinquent on tax payments; or under state or local law, foreclosure proceedings have been initiated or completed; or foreclosure proceedings have been completed and title has been transferred to an intermediary aggregator or servicer that is not an NSP3 grantee, sub-recipient, DEVELOPER, or end user.
 11. "HERA" means the Neighborhood Stabilization Program (NSP) found in Title III of Division B of the Housing and Economic Recovery Act of 2008, as amended.
 12. "HUD" means the United States Department of Housing and Urban Development.
 13. "LMMI" is a HUD-defined term incorporating households with eligible incomes (at or below 120% of area median, based on household size and county), including low-, moderate-, and middle-income, in referring to the national objective of the CDBG program.
 14. "Low-Income Set-Aside" refers to the HERA requirement that not less than 25 percent of the funds NSP3 funds to the GRANTEE shall be used for the purchase and redevelopment of abandoned or foreclosed upon homes or residential properties that will provide permanent housing to individuals or families whose incomes do not exceed 50 percent of area median income.
 15. "NSP Notice" refers to the alternative requirements for NSP1 issued by HUD in the Federal Register on October 6, 2008, NSP2 requirements issued on May 4, 2009, NSP2 requirements in Section 1497 of the Dodd Frank Wall Street Reform and Consumer Protection Act all as modified in the Unified NSP31 and NSP3 Notice issued on October 19, 2010, and as further amended.
 16. "NSP3 Funds" mean those funds to be provided by the GRANTEE pursuant to the terms of this Agreement, as specified in Section II of this Agreement.
 17. "NSP3 Housing Project" means the affordable housing activities described in the NSP3 Proposal and in this Agreement, which are to be carried out to meet the objectives of the NSP3 Program.

18. "Program Income" means the NSP3 portion of any proceeds received by the DEVELOPER and repaid to the GRANTEE.
19. "Proposal" means the DEVELOPER's response to the GRANTEE's NSP3 Request for Proposals or such other submittals as specified in this agreement.
20. "Purchase Discount" means the minimum discount percentage from the current market-appraised value under which a foreclosed property may be purchased. Under HUD Notice FR-5255-N-02, the purchase discount for NSP3 is "at least 1 percent from the current market-appraised value of the home or property."
21. "The Site" means vacant land on the S.W. Corner of N.W. 207 Street and N.W. 27 Avenue in the City of Miami Gardens: A.K.A. Folio No.'s 34-11330030110 & 34-11330030130.
22. "Vacant properties" includes both vacant land and properties with vacant structures on the land.

II. Terms and Conditions of the Funding

- A. Funding Amount – NSP3 Funds in the amount of \$1,150,000.00 are obligated for use in compliance with this agreement, as reflected in the budget in Exhibit B and C.
 1. These amounts represent an allocation of the GRANTEE's NSP3 funding for the Development contingent upon DEVELOPER performance and not an entitlement to a certain grant amount, and shall only be disbursed for the approved project.
 2. Approved budget – The approved budget is attached to this agreement as Exhibit B and C. It is understood and agreed that NSP3 funds will be used according to the approved budget.
- B. Use of Funds – NSP3 funds obligated under this agreement may be used as follows:
 1. No Commitment or Expenditure Prior to Environmental Clearance – This obligation of NSP3 funds is conditional upon satisfactory completion of environmental review under 24 CFR Part 58 as provided in Section X below. Notwithstanding any provision of this Agreement, the parties hereto agree and acknowledge that this Agreement does not constitute a commitment of funds or site approval, and that such commitment of funds or approval may occur only upon satisfactory completion of environmental review and receipt by GRANTEE of a release of funds from the U.S. Department of Housing and Urban Development under 24 CFR Part 58. The parties further agree that the provision of any funds to the project is conditioned on GRANTEE's determination to proceed with, modify or cancel the project based on the results of environmental review. Further, the DEVELOPER will not undertake or commit any funds to physical or choice-limiting actions, including property acquisition, demolition, movement, rehabilitation, conversion, repair or construction prior to the environmental clearance, and understands that violation of this provision may result in the denial of any funds under the agreement.
 2. Eligible Activity – Funds will be used for the NSP3 eligible activity of acquiring residential vacant land for the purpose of redevelopment.
 3. Eligible Properties – The DEVELOPER may only utilize NSP3 funds for properties approved by the GRANTEE. As per NSP3 guidelines, properties being acquired for redevelopment need not be abandoned or foreclosed. Approved properties are listed in Exhibit A. Eligible properties must meet the following conditions for approval by GRANTEE:
 - a. Must be located in an NSP3 Target Area as identified in Exhibit D.
 - b. Must have no substantial adverse environmental factors as determined by an environmental review.

- c. Must otherwise be in suitable locations for marketing and rental to low- and moderate-income households.
 - d. Must be unoccupied and have no personal possessions on site, unless GRANTEE approves acquisition of an occupied property and stipulates compliance with relocation requirements in Section X.
 - e. Must be eligible for acquisition under NSP3 as foreclosed or abandoned or vacant.
4. Activity Limitations – In implementing the Development, DEVELOPER shall undertake only those activities permitted by this agreement, and comply with all provisions of this agreement, including the project requirements in Section III and IV, as they may be modified by HUD. In particular:
- a. Acquisition – In order to ensure that only NSP3-eligible properties are acquired, only those properties listed in Exhibit A can be acquired. No acquisitions may occur without environmental clearance, and determination of the applicability of URA provisions.
 - b. Demolition – Primary structures on properties acquired or contributed may not be demolished unless they are declared as blighted by GRANTEE.
 - c. Construction/Rehabilitation/Reconstruction – DEVELOPER may use NSP3 funds for the construction, rehabilitation or reconstruction of properties as approved by the GRANTEE and permitted by this agreement, and shall implement the requirements in Section IX as applicable to all projects.
- C. Deadlines – The completion of the development as specified on the approved project construction schedule as outlined in Exhibit B for the NSP3 Housing Project and Exhibit C for the Commercial Project will be an integral and essential part of the DEVELOPER's performance. The NSP3 funds are subject to Federal deadlines and failure to comply with this agreement could result in the recapture of the NSP3 Federal funds. By the acceptance and execution of this agreement, it is understood and agreed by the DEVELOPER that the Development will be completed as expeditiously as possible and that the DEVELOPER will make every effort to ensure that both the housing and commercial components of the Development will proceed and will not be delayed. Failure to meet these deadlines can result in cancellation of this contract and the revocation and recapture of NSP3 funds.
- 1. The acquisition related to this agreement and all work required by this agreement are to be completed in accordance with the timetables set forth in Exhibit B and Exhibit C and as provided above.
 - a. If DEVELOPER fails to obligate or expend NSP3 funds as indicated in this agreement, GRANTEE in its sole discretion may recapture a portion or all of the DEVELOPER's total NSP3 funding allocation.
 - 2. Changes to the timetable may be approved by the GRANTEE, in the event the DEVELOPER is unable to meet the deadlines or complete the services because of delays resulting from Acts of God, untimely review and approval by the GRANTEE and other governmental authorities having jurisdiction over the Development, or other delays that are not caused by the DEVELOPER, the GRANTEE shall grant a reasonable extension of time for completion of the WORK. It shall be the responsibility of the DEVELOPER to notify the GRANTEE promptly in writing whenever a delay is anticipated or experienced, and to inform the GRANTEE of all facts and details related to the delay. However, GRANTEE may not provide extensions beyond deadlines imposed by HUD.

3. Since it is mutually agreed that time is of the essence, the DEVELOPER shall cause appropriate provisions to be inserted in all contracts or subcontracts relative to the work tasks required by this agreement, in order to ensure that the Development will be completed according to the timetable set forth in this agreement.
 4. Rental to Eligible Households – At least twenty-five percent (25%) or 6 units of the 24 residential units developed on the properties being acquired and listed on Exhibit A must be occupied by households with annual incomes of less than 50% of the Area Median Income (AMI). Area Median Income is defined by HUD and published annually. The remaining units (18 units) must be occupied by households with annual incomes of less than 60% of the Area Median Income (AMI).
 5. Maximum Rental Rates – Rent rates must comply with the limits in Section III and are tied to Area Median Income (AMI). The AMI's are published annually. The maximum rents must be adjusted up or down annually in accordance with the new AMIs.
 6. Income Certification and Documentation – Every renter shall be determined to be income eligible prior to tenancy, according to the requirements at 24 CFR 570.5. Documentation supporting the certification must be provided to GRANTEE upon each change of occupancy.
- D. Affordability Period – The term of affordability shall be twenty (20) years from the date of first occupancy in the NSP3 Housing Project and is based on the amount of the NSP3 assistance in the Development. Affordability periods will be enforced utilizing a Mortgage Deed and Restrictive Covenant.
1. Subject to the terms of this section, 100% of the Indebtedness, including without limitation, payment of all principal and accrued and unpaid interest, is due upon sale or refinancing of the Development, absent GRANTEE's written waiver.
 2. GRANTEE may, in its sole discretion, accept less than 100% of the amounts then due, but such waiver will not constitute forgiveness of any Indebtedness.
 - a. Notwithstanding the foregoing to the contrary, in the case of a transfer of the NSP3 Housing Project, The Owner hereby covenants and agrees not to sell, transfer or otherwise dispose of the NSP3 Housing Project, or any portion thereof, without obtaining the prior written consent of GRANTEE, which consent shall be in GRANTEE's sole discretion. GRANTEE may, in its sole discretion, allow the transferee to assume the remaining Indebtedness and all conditions of the Agreements, including the terms of the Affordability Period. Any sale of the NSP3 Housing Project property shall be to a buyer approved by GRANTEE who will operate the property as affordable elderly rental housing in accordance with the provisions of this section.
 - b. If New Market Tax Credits are pursued and obtained for the Commercial Project, GRANTEE consents to consider reducing the Affordability Period on the Commercial Project to match that of the New Market Tax Credits.
- E. Zoning Approval – The terms and conditions of this Developer's Agreement are contingent upon DEVELOPER receiving zoning and site plan approval from the City Council.
- F. Buccaneer Park Improvements – Within fourteen (14) months of the issuance of the initial building permit for the Development, DEVELOPER shall make or cause to be made a contribution of the sum of \$200,000.00 to the City of Miami Gardens Special Revenue Fund, to be specifically designated to pay for the park improvements at Buccaneer Park; said improvements to be determined by the City. In the event of a force majeure event, which shall be defined as an act of

God, such as a hurricane or fire, which delays the development, the time period outlined in this paragraph shall be extended until the force majeure event is over. However, in no event shall a force majeure event negate DEVELOPER's responsibility to make the payment described herein.

III. NSP3 Housing Project Requirements

The DEVELOPER agrees to comply with all requirements of the NSP3 Program as stated in the NSP3 Notice and CDBG regulations, including but not limited to the following:

- A. NSP3 Eligible Use, CDBG National Objective and Eligible Activities – The DEVELOPER will ensure and document that its NSP3 activities meet LMMI national objective, eligible use, allowable cost, and eligible activity requirements of the NSP3 Notices & CDBG Regulations. The DEVELOPER will ensure that any expenditure of NSP3 funds will comply with the requirements.
- B. Property Acquisition – The properties described on Exhibit A are being acquired with NSP3 funds at a minimum discount of one percent from the current market appraised value as described in the NSP3 NOFA.
 - 1. Eligible properties – HERA and NSP3 limits the properties that are eligible for assistance to certain locations and types of properties (depending on the Eligible Use.) Eligible property types and locations are listed in Exhibit A. If the DEVELOPER has proposed to undertake any activities subject to the NSP3 Low-Income Set-Aside, these activities may only be undertaken on foreclosed or abandoned residential property.
 - 2. Appraisal – Appraisals funded with NSP3 funds are required for all foreclosed properties with anticipated values above \$25,000.
 - a. NSP3 requires appraisals to be performed on properties with anticipated values above \$25,000 with respect to the NSP3 funded acquisition of foreclosed upon homes and residential properties, even though they may be considered voluntary under the URA.
 - b. The URA appraisal requirements of 49 CFR 24.103 must be met. For acquisitions which meet the applicable voluntary acquisition requirements of 49 CFR 24.101(b), it must be ensured that the owner is informed in writing of what it believes to be the market value of the property, and that the property will not be acquired if negotiations fail to result in a an amicable agreement (see 49 CFR 24.101(b)(1) & (b)(2)).
 - c. The appraisal must have been completed within 60 days of the offer made for the property (an initial offer can be made, subject to the completion of the appraisal within 60 days of a final offer).
- C. Construction/rehabilitation – For any construction or rehabilitation in the NSP3 Housing Project, DEVELOPER will comply with the provisions of Section IX. If this project involves the construction or rehabilitation of properties with 8 or more units, the DEVELOPER shall comply with the provisions of the Davis-Bacon Act and regulations (29 CFR, Part 5), as amended. If the building has Eight (8) or more units, Davis-Bacon is applicable, even if NSP3 funds only treat one unit. Davis-Bacon does apply for the intended project.
- D. Property Standards – The DEVELOPER will carry out all NSP3-assisted activities in accordance with applicable laws, codes, and other requirements relating to housing safety, quality, and habitability, in order to sell, rent, or redevelop such homes and properties.
 - 1. Construction Standards – DEVELOPER will carry out all NSP3-assisted construction in

compliance with the standards in the GRANTEE's NSP3 substantial amendment, and in accordance with applicable laws, codes, and other requirements relating to housing safety, quality, and habitability.

2. **Energy Efficiency:** The NSP3 Housing Project will be expected to meet or exceed Energy Star standards for New Homes. These standards will be included as Exhibit E.
 3. **Lead-based paint** – The DEVELOPER agrees that any construction or rehabilitation of residential structures with assistance provided under this Agreement shall be subject to HUD Lead-Based Paint Regulations at 24 CFR 570.487 or 24 CFR 570.608, and 24 CFR Part 35, Subpart B. Such regulations pertain to all NSP3-assisted housing and require that all owners, prospective owners, and tenants of properties constructed prior to 1978 be properly notified that such properties may include lead-based paint. Such notification shall point out the hazards of lead-based paint and explain the symptoms, treatment and precautions that should be taken when dealing with lead-based paint poisoning and the advisability and availability of blood lead level screening for children under seven. The notice should also point out that if lead-based paint is found on the property, abatement measures may be undertaken. The regulations further require that, depending on the amount of Federal funds applied to a property, paint testing, risk assessment, treatment and/or abatement may be conducted.
 4. **Accessibility** – The DEVELOPER agrees to comply with all applicable requirements of Section 504 of the Rehabilitation Act of 1973 and its implementing regulations at 24CFR Part 8.
- E. **Maximum Rental Rates** – The initial approved rental rates for NSP3-assisted units may not exceed an amount affordable to a household at the percentage of area median income to which the unit is restricted. "Affordable" shall mean that the rental payment must not exceed 30% of targeted gross income level for any lease year. Notwithstanding the foregoing, the rent for the units restricted to households with annual incomes below 50% AMI cannot exceed the "Low-HOME market rent rate" published annually by HUD for the Miami-Miami Beach-Kendall HMFA areas. In no event shall the rental rates exceed the amount permitted by the HOME guidelines, Section 92.252. The DEVELOPER will be responsible for providing rent rolls to demonstrate that the monthly rent amounts do not exceed these limits. Currently the 2013 rental limit for the income level for the Housing Project is as follows:

| Unit Size | 50% AMI | 60% AMI |
|------------------|----------------|----------------|
| 1 bedroom | \$ 645 | \$ 819 |
| 2 bedroom | \$ 773 | \$ 984 |
| 3 bedroom | \$ 894 | \$ 1,128 |

Maximum rental amounts will be readjusted annually based on the income limits prevailing for the location of the rental housing, which are published by HUD for the Housing Choice Voucher Section 8 rental assistance program on HUD's website. DEVELOPER will adjust the maximum rental amount within 30 days of publication of new income limits and apply the maximum amount to all units and all new leases executed after that time. To determine the affordable rental amount, DEVELOPER will follow these procedures:

1. For each unit, a household size will be assumed based on the numbers of bedrooms in the unit, as follows: 1-bedroom, one to two person/s; 2-bedroom, two to three persons; and 3-bedroom, three to five persons.
2. DEVELOPER will identify the income limit for the appropriate household size and maximum allowed

- percentage of Area Median Income from the HUD income limits.
 - 3. The resulting gross income amount will be multiplied by 30% to represent an affordable housing payment.
 - 4. It is the responsibility of the DEVELOPER to provide copy of the income verification to the GRANTEE, every time there is a change of occupancy.
- F. Rental and Occupancy – The following is applicable to all the units being developed as a result of the NSP3 funds under this Agreement.
- 1. Marketing and Selection – In the marketing, intake and selection of tenants for the NSP3 Housing Project units, the DEVELOPER shall comply with non-discrimination and fair housing requirements listed in Section X.
 - 2. Resident Qualification – All residential units are income restricted. DEVELOPER shall verify and document income eligibility of all tenants prior to occupancy in compliance with 570.203(a) definition of “Income.”
 - 3. Low-Income Set-Aside – The DEVELOPER must reserve at least 25% (twenty-five percent) of the total number of units developed to create permanent housing for households with incomes at or below 50% of Area Median Income.
- G. NSP3 Housing Project Monitoring and Recordkeeping – The DEVELOPER will be monitored by the GRANTEE for compliance with the NSP3 requirements and the applicable CDBG regulations of 24 CFR Part 570. The DEVELOPER will provide income verification reports and access to tenant files as requested by the GRANTEE once rental units are occupied and for Five (5) years after completion and closeout of the AGREEMENT as required under Section XI of this Agreement.

IV. Commercial Project Requirements

- A. Commercial Project Description: DEVELOPER shall develop on the Site a commercial complex of not to exceed 36,000 square feet, plus affiliated amenities, including parking, as specified in the preliminary proposed site plan dated March 22, 2013.
- B. Job Creation: The Commercial project will create no fewer than 25 permanent full-time equivalent (FTE) jobs, of which at least fifty-one percent (51%) must be held by low-to-moderate income (LMI) individuals whose household incomes do not exceed 80% of AMI.
- C. Budget and Timeline: The budget and timeline for the Commercial Project are included as Exhibit C.
- D. Review of Tenants: DEVELOPER shall solicit GRANTEE’s review and approval of all tenants who shall lease/purchase space in the Commercial Project site.
- E. Commercial Project Monitoring and Recordkeeping – The DEVELOPER will be monitored by the GRANTEE for compliance with NSP3 requirements and the applicable CDBG regulations of 24 CFR Part 570.506(b) for job creation.

V. Additional Development Possibilities

DEVELOPER and GRANTEE explicitly acknowledge the possibility that additional housing units may be developed on the Site upon completion of both the NSP3 Housing and Commercial Projects, including up to 24 condominium units. These units will be for sale to households with annual incomes of no more than 120% of Area Median Income (AMI); unless a market analysis demonstrates no demand, then these units will be reserved as rental housing for elderly households with annual incomes of no more than 60% of AMI. Any such additions to the Development will require all normal permitting approvals.

VI. GRANTEE Responsibilities

GRANTEE is responsible for the following tasks and deliverables.

- A. The GRANTEE shall furnish the DEVELOPER with information regarding requirements for the Development, including any changes in NSP3 regulations or program limits that affect the NSP3 Housing Project, including but not limited to income limits.
- B. Environmental Review – GRANTEE will complete environmental assessments and provide clearances for all NSP3 target areas, as well as approvals of site-specific environmental reviews. DEVELOPER will provide all information required by GRANTEE.
- C. Property Approval – GRANTEE will provide prompt review of any property selected by DEVELOPER and submitted on the form with all required documentation for approval. Failure to provide all required information will result in a delay. Approval can only be provided on completion of environmental review.
- D. Inspections – The GRANTEE will conduct progress inspections of work completed and review of NSP3 Housing Project files and information to protect its interests as the funding source of the NSP3 funds. The GRANTEE's review of the NSP3 Project will relate to compliance with the requirements of this Agreement and NSP3 requirements, and all GRANTEE regulations and ordinances.
- E. Releases – The GRANTEE will consider release of all or any portion of the Property from the provisions of the Restrictive Covenant which is not to be used for the building containing or to contain the 24 Affordable Elderly Housing Rental Units. The City acknowledges that such release will be needed for the remainder of the Property to be developed for The Commercial Project and other uses of the Property as may be agreed to in the future between the City and the Developer which may not be described herein.
- F. Disbursements –The GRANTEE will disburse funds as provided in Section V of this Agreement. Reporting – GRANTEE will report to HUD via the Disaster Reporting Government Assistance (DRGR) system and on www.FederalReporting.gov in a timely manner as required by HUD.
- G. Monitoring – GRANTEE will monitor all program activities of DEVELOPER to assure compliance with the terms of this Agreement including all NSP3 development schedules and requirements.
- H. Nothing contained herein shall relieve the DEVELOPER of any responsibility as provided under this Agreement.

VII. Disbursement of Funds

A. GRANTEE will proceed to disburse the funds on the day of the closing of the properties described on Exhibit A. The title company, in charge of this closing, will provide the NSP3 Grant Administrator with wiring instructions and a W-9 form so that the wire can be sent once the settlement statement has been executed by seller and buyer with copy to the GRANTEE.

B. Funds will be drawn through the Disaster Recovery Grant Reporting (DRGR) system, which generally provides access to grant funds within 3 working days of an electronically submitted request by the GRANTEE. To ensure expeditious implementation of activities, GRANTEE will draw funds from DRGR and make payment to the DEVELOPER promptly on receipt of the DEVELOPER's complete and properly submitted requests for payment for activities under this agreement, if feasible.

C. The NSP3 funds advanced to the Development will be secured by a Restrictive Covenant recorded with the Deed, which will include a recapture provision

VIII. Repayment of Funds

- A. All NSP3 funds are subject to repayment/recapture in the event the Development does not meet the Requirements of this Agreement, specifically:
 - 1. The NSP3 Housing Project:
 - a. the development of 1, 2, or 3 bedroom Elderly Housing rental units and
 - b. the operation of these units as affordable housing for the 20 year term of affordability, with twenty-five percent (25%) of the total units must be rented to and affordable to households earning no more than 50% of AMI and the remainder of the units rented to and affordable to households earning no more than 60% of AMI,
 - 2. The Commercial Project: the construction of not to exceed 36,000 square feet of leasable commercial space, and affiliated amenities; and
 - 3. Other requirements as outlined in this Agreement, including deadlines.
- B. In the event of the sale of the Development, within the Affordability Period, all funds will be due and payable unless otherwise approved in writing by GRANTEE. If only part of the Development is sold within the Affordability Period, then only the amount of funds allocated to that Project will be due and payable to the GRANTEE. The final amount allocated to each of either the NSP3 Housing and Commercial Projects will be determined upon final site plan approval.

IX. Contracting, Labor & Hiring Provisions

During the performance of this contract, the DEVELOPER agrees as follows:

- A. The DEVELOPER will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin(s). The DEVELOPER will take affirmative action to ensure the applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex or national origin(s). Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer, recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The DEVELOPER agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer of the GRANTEE setting forth the provisions of this nondiscrimination clause.
- B. The DEVELOPER will, in all solicitations or advertisements for employees placed by or on behalf of the DEVELOPER, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.
- C. The DEVELOPER will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- D. The DEVELOPER will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to its books, records, and accounts by the GRANTEE and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and order.
 - 1. In the event the DEVELOPER is found to be in noncompliance with the nondiscrimination clauses of this contract or with any of such rules, regulations or orders, this contract may be

canceled, terminated or suspended in whole or in part and the DEVELOPER may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965 or by rule, regulations, or order of the Secretary of Labor or as otherwise provided by law.

- E. The DEVELOPER will include the provisions of this Section in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The DEVELOPER will take such action with respect to any subcontract or purchase order as the AGENCY may direct as a means of enforcing such provisions, including sanctions for noncompliance; provided, however, that in the event the DEVELOPER becomes involved in, or is threatened with litigation with a subcontractor or vendor as a result of such direction by the GRANTEE, the DEVELOPER may request the United States to enter into such litigation to protect the interest of the United States.
- F. The DEVELOPER agrees to comply with the non-discrimination in employment and contracting opportunities laws, regulations, and executive orders referenced in 24 CFR 570.607, as revised by Executive Order 13279. The applicable non-discrimination provisions in Section 109 of the HCDA are still applicable.
- G. The DEVELOPER agrees to comply with the requirements of the Secretary of Labor in accordance with the Davis-Bacon Act, as amended, the provisions of Contract Work Hours and Safety Standards Act (40 U.S.C. 327 et seq.) and all other applicable Federal, state and local laws and regulations pertaining to labor standards insofar as those acts apply to the performance of this Agreement.
- H. The DEVELOPER agrees to comply with the Copeland Anti-Kick Back Act (18 U.S.C. 874 et seq.) and its implementing regulations of the U.S. Department of Labor at 29 CFR Part 5. The DEVELOPER shall maintain documentation that demonstrates compliance with hour and wage requirements of this part. Such documentation shall be made available to the GRANTEE for review upon request.
- I. The DEVELOPER will use its best efforts to afford small businesses, minority business enterprises, and women's business enterprises the maximum practicable opportunity to participate in the performance of this contract. As used in this contract, the terms "small business" means a business that meets the criteria set forth in Section 3(a) of the Small Business Act, as amended (15 U.S.C. 632), and "minority and women's business enterprise" means a business at least fifty-one (51) percent owned and controlled by minority group DEVELOPERS or women. The DEVELOPER may rely on written representations by businesses regarding their status as minority and women-owned business enterprises in lieu of an independent investigation.
- J. The DEVELOPER agrees that, except with respect to the rehabilitation or construction of residential property containing less than eight (8) units, all contractors engaged under contracts in excess of \$2,000.00 for construction, renovation or repair work financed in whole or in part with assistance provided under this contract, shall comply with Federal requirements adopted by the GRANTEE pertaining to such contracts and with the applicable requirements of the regulations of the Department of Labor, under 29 CFR Parts 1, 3, 5 and 7 governing the payment of wages and ratio of apprentices and trainees to journey workers; provided that, if wage rates higher than those required under the regulations are imposed by state or local law, nothing hereunder is intended to relieve the DEVELOPER of its obligation, if any, to require payment of the higher wage. The DEVELOPER shall

cause or require to be inserted in full, in all such contracts subject to such regulations, provisions meeting the requirements of this paragraph. The DEVELOPER shall comply with the provisions of the Copeland Anti-Kick-Back Act (18 U.S.C. 874) as supplemented in the Department of Labor Regulations (29 CFR Part 3), as amended.

1. "Section 3" and "Vicinity Hiring" Compliance with the provisions of Section 3 of the Housing and Urban Development Act of 1968, as amended, and as implemented by the regulations set forth in 24 CFR 135, and all applicable rules and orders issued hereunder prior to the execution of this contract, shall be a condition of the Federal financial assistance provided under this contract and binding upon the GRANTEE, the DEVELOPER and any of the DEVELOPER's contractors and subcontractors. The DEVELOPER certifies and agrees that no contractual or other disability exists that would prevent compliance with these requirements. The DEVELOPER further agrees to comply with the Section 3 requirements and to include the following language in all the agreements signed hereafter for the funding of the development of the Development: "The work to be performed under this Agreement is a project assisted under a program providing direct Federal financial assistance from HUD and is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended (12 U.S.C. 1701). Section 3 requires that to the greatest extent feasible opportunities for training and employment be given to low- and very low-income residents of the project area, and that contracts for work in connection with the project be awarded to business concerns that provide economic opportunities for low- and very low-income persons residing in the metropolitan area in which the project is located." The DEVELOPER agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of the Section 3 clause.
2. The DEVELOPER further agrees to ensure that opportunities for training and employment arising in connection with housing construction, or other construction work affiliated with the Development are given to low- and very low-income persons residing within the metropolitan area in which the NSP3-funded project is located; where feasible, priority should be given to low- and very low-income persons within the service area of the project or the neighborhood in which the project is located, and to low- and very low-income participants in other HUD programs; and award contracts for work undertaken in connection with housing construction, or other construction projects to business concerns that provide economic opportunities for low- and very low-income persons residing within the metropolitan area in which the NSP3-funded project is located; where feasible, priority should be given to business concerns that provide economic opportunities to low- and very low-income residents within the service area or the neighborhood in which the project is located, and to low- and very low-income participants in other HUD programs.
3. The DEVELOPER further warrants and agrees to include or cause to be included the criteria and requirements of this Section in every non-exempt subcontract in excess of \$100,000. The DEVELOPER also agrees to take such action as the federal, state or local government may direct to enforce aforesaid provisions.
4. Vicinity Hiring Plan: Vicinity Hiring **does** apply to the Development. The DEVELOPER shall, to the maximum extent feasible, hire employees who reside in the vicinity of NSP3 areas of greatest need and shall contract with small businesses that are owned and operated by persons residing in the areas of greatest need. Maps indicating eligible areas are attached in Exhibit D. The DEVELOPER further warrants and agrees to include or cause to be included the criteria and requirements of this Section in every non-exempt contract and subcontract in

excess of \$100,000. The DEVELOPER also agrees to take such action as the federal, state or local government may direct to enforce aforesaid provisions.

- L. Restrictions on Identity of Interest. DEVELOPER shall be required to notify GRANTEE in writing prior to contracting with any Identity of Interest entity, and shall include in its audited financial statements a disclosure of all amounts paid to any Identity of Interest entity. GRANTEE will have the right, in its sole discretion, to require the cancellation of any contract between DEVELOPER and any Identity of Interest entity at any time during the term of the contract, and all such contracts shall permit such cancellation. In evaluating such contracts, GRANTEE will consider: a) the reasonableness of the total return to DEVELOPER and related entities, b) the relationship of contract fees to arms length fees for similar services in the local market, c) the impact of the fees on the total cost of the Development, and d) other criteria as deemed relevant in the sole discretion of GRANTEE. An "Identity of Interest" relationship exists if any officer, director, board member, or authorized agent of any Development team member (including any consultant, general contractor, supplier, vendor, vendee, attorney, management agent, seller of the land, etc.):
1. is also an officer, director, board member or authorized agent of any other Development team member;
 2. has any financial interest in any other Development team member's firm or corporation;
 3. is a business partner of an officer, director, board member, or authorized agent of any other Development team member;
 4. has a family relationship through blood, marriage or adoption with an officer, director, board member, or authorized agent of any Development team member; or
 5. advances any funds or items of value to the DEVELOPER.

X. Compliance with Other Federal, State & Local Laws

- A. The DEVELOPER covenants and warrants that it will comply with all applicable laws, ordinances, codes, rules and regulations of the state, local and federal governments, and all amendments thereto.
- B. Environmental review – All NSP3 assistance is subject to the National Environmental Policy Act of 1969 and related federal environmental authorities and regulations at 24 CFR Part 58.
1. No NSP3 project funds will be advanced, and no costs can be incurred, until the GRANTEE has conducted an environmental review of the proposed site as required under 24 CFR Part 58. The environmental review may result in a decision to proceed with, modify or cancel the Development. Notwithstanding any provision of this Agreement, the parties hereto agree and acknowledge that this Agreement does not constitute a commitment of funds or site approval, and that such commitment of funds or approval may occur only upon satisfactory completion of environmental review and receipt by the GRANTEE of a release of funds from the U.S. Department of Housing and Urban Development under 24 CFR Part 58.
 2. Further, the DEVELOPER will not undertake or commit any funds to physical or choice-limiting actions, including property acquisition, demolition, movement, rehabilitation, conversion, repair or construction prior to the environmental clearance, and must indicate that the violation of this provision may result in the denial of any funds under the agreement.
 3. A copy of the Environmental Review Record shall be maintained by both the DEVELOPER

and the GRANTEE.

- C. Flood Disaster Protection – In accordance with the requirements of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4001), the DEVELOPER shall assure that for activities located in an area identified by the Federal Emergency Management Agency (FEMA) as having special flood hazards, flood insurance under the National Flood Insurance Program is obtained and maintained as a condition of financial assistance for acquisition or construction purposes (including rehabilitation.)
- D. Historic Preservation – The DEVELOPER agrees to comply with the Historic Preservation requirements set forth in the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470) and the procedures set forth in 36 CFR Part 800, Advisory Council on Historic Preservation Procedures for Protection of Historic Properties, insofar as they apply to the performance of this agreement.

The following special conditions apply to the proposed ground disturbing activities:

- If prehistoric artifacts such as pottery or ceramics, stone tools or metal implements, or any other physical remains that could be associated with Native American cultures, or early colonial or American settlement are encountered at any time, the DEVELOPER should cease all activities involving subsurface disturbance in the immediate vicinity of such discoveries. The applicant, or other designee, should contact the Florida Department of State, Division of Historical Resources, Compliance and Review Section at (850)245-6333, as well as the appropriate funding agency office. Development activities should not resume without verbal and/or written authorization from the Division of Historical Resources.
 - In the event that unmarked human remains are encountered during permitted activities, all work must stop immediately and the proper authorities notified in accordance with Section 872.05, Florida Statute.
- E. Relocation – The DEVELOPER agrees to comply with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (URA), and implementing regulations at 49 CFR Part 24; 24 CFR Part 42 – Displacement, Relocation Assistance and Real Property Acquisition for HUD and HUD Assisted Programs; and 24 CFR 570.606 – Displacement, relocation acquisition, and replacement of housing, as may be amended by the NSP3 NOFA. The DEVELOPER also agrees to comply with applicable GRANTEE or local ordinances, resolutions and policies concerning the displacement of persons.
1. To meet these requirements, the owner of record must be notified in writing that Federal financial assistance will be used in the transaction and that if agreement cannot be reached through negotiation, that the acquisition will not take place. There are specific URA voluntary acquisition requirements that must be met depending on whether or not the buyer has the power of eminent domain and will not use it (see 49 CFR 24.101(b)(1)(i)-(iv)) or if the buyer does not have the power of eminent domain (see 49 CFR 24.101(b)(2)). Any acquisition under possible threat of eminent domain cannot be considered a “voluntary acquisition” (even if the seller is willing to negotiate).
- F. The relocation provisions of the Uniform Relocation Act apply to NSP3. The DEVELOPER agrees to comply with applicable state and local civil rights ordinances and with Title VI of the Civil Rights Act of 1964 as amended, Title VIII of the Civil Rights Act of 1968 as amended, Section 104(b) and Section 109 of Title I of the Housing and Community Development Act of 1974 as amended (the HCDA), Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990, the Age Discrimination Act of 1975, Executive Order 11063, and Executive Order 11246 as

amended by Executive Orders 11375, 11478, 12107 and 12086, and will include the provisions in every subcontract or purchase order, specifically or by reference, so that such provisions will be binding upon each of its contractors and subcontractors.

- G. The DEVELOPER agrees to comply with all applicable standards, orders, or requirements issued under Section 306 of the Clean Air Act (42 U.S.C. 1857(h)), Section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR part 15).
- H. The DEVELOPER agrees that no funds provided, nor personnel employed under this Agreement, shall be in any way or to any extent engaged in the conduct of political activities in violation of Chapter 15 of Title V of the United States Code. The DEVELOPER is prohibited from using funds provided herein or personnel employed in the administration of the program for inherently religious activities, lobbying, political patronage, and nepotism activities.
- I. Conflict of Interest – The provisions of 24 CFR 570.611, apply to the award of any contracts under the agreement and the selection of tenants of NSP3-assisted units. No member or Delegate to the Congress of the United States shall be permitted to any share or part of this contract or any benefit herefrom. No member, officer or employee of the GRANTEE; or its designees, or agents; or member of the GRANTEE Council of the GRANTEE; and no other public official of the GRANTEE who exercises any functions or responsibilities with respect to the program during his tenure or for one (1) year thereafter, shall have any interest direct or indirect, in any contract or subcontract, or the proceeds thereof, for work to be performed under this agreement. Exceptions must be requested by the DEVELOPER and the GRANTEE may grant exceptions as permitted by Regulation.

XI. Reporting, Monitoring & Access to Records

- A. The DEVELOPER agrees to submit any and all reports required by HUD or the GRANTEE.
- B. The DEVELOPER shall collect and maintain NSP3 Housing Project beneficiary information pertaining to household size, income levels, racial characteristics, and the presence of Female Headed Households in order to determine low and moderate-income benefit in a cumulative and individual manner. Income documentation shall be in a form consistent with NSP3 requirements.
- C. The DEVELOPER agrees to provide the GRANTEE access to records and the Development site at any time during the development process or for five years after NSP3 Housing Project closeout for purposes of verifying compliance with NSP3 requirements and this agreement. Access shall be immediately granted to the GRANTEE, HUD, the Comptroller General of the United States, or any of their duly authorized representatives to any books, documents, papers, and records of the DEVELOPER or its contractors, which are directly pertinent to that specific contract for the purpose of making audit, examination, excerpts, and transcriptions.
- D. The GRANTEE reserves the right to audit the records of the DEVELOPER any time during the performance of this Agreement and for a period of five years after final payment is made under this Agreement. If required by A-133, the DEVELOPER will provide the AGENCY with a certified audit of the DEVELOPER's records representing the Fiscal Year during which the NSP3 Housing Project becomes complete.
- E. NSP3 Housing Project Closeout – The DEVELOPER's obligation to the GRANTEE shall not end until all close-out requirements are completed. Activities during this close-out period shall include, but are not limited to: making final payments, accounting for use of funds, and provision of all reports

and records required by the GRANTEE. Records provided must be sufficient for GRANTEE to perform an analysis of reasonableness of costs, after which adjustments may be made in funding. DEVELOPER acknowledges and agrees that the principal amount of the funding set forth in this Agreement were calculated based upon estimated costs for the development, restoration, rehabilitation, and construction of the NSP3 Housing Project provided by the DEVELOPER.

1. A cost certification by an independent auditor is NOT required. If Cost Certification is required, DEVELOPER agrees to provide GRANTEE with a cost certification audit acceptable to GRANTEE (the "Cost Certification Audit") prepared by an independent third party consulting or accounting firm ("Audit Firm") acceptable to GRANTEE, certifying the costs incurred and paid by DEVELOPER in the development, restoration, replacement, rehabilitation, and construction of the NSP3 Housing Project, and including such other information as GRANTEE may require. DEVELOPER agrees to cooperate with GRANTEE and to provide any documentation deemed necessary to GRANTEE for a complete audit.
2. Adjustment for Excess Proceeds: Notwithstanding anything to the contrary contained herein, GRANTEE may reduce the amount of the funding in the event the Cost Certification Audit or the final subsidy layering analysis of the NSP3 Housing Project completed by GRANTEE discloses that the actual costs incurred by DEVELOPER in the development, restoration, replacement, rehabilitation, and/or construction of the NSP3 Housing Project were less than the estimated costs for the development, restoration, replacements, rehabilitation, and/or construction of the Project upon which the calculation of the principal amount of the funding was based. The funding may be reduced based on the actual NSP3 Housing Project costs incurred by DEVELOPER and the terms and conditions of any of the DEVELOPER's other financing. If the amount of the funding advanced to DEVELOPER, prior to completion of the Cost Certification Audit and/or final subsidy layering analysis, exceeds the amount supported by the Cost Certification Audit and/or final subsidy layering analysis ("Excess Proceeds"), GRANTEE may reduce the amount of the final disbursement, and DEVELOPER shall pay GRANTEE the amount of any remaining Excess Proceeds in one lump sum payment within thirty (30) days of receiving written notice from GRANTEE that the Excess Proceeds are due and payable.

XII. Suspension & Termination

In accordance with 24 CFR 85.43, suspension or termination may occur if the DEVELOPER materially fails to comply with any term of the award, and that the award may be terminated for convenience in accordance with 24 CFR 85.44.

A. Events of Default -- If the DEVELOPER:

1. fails in any manner to fully perform and carry out any of the terms, covenants, and conditions of the agreement, or
2. the DEVELOPER refuses or fails to proceed with the work with such diligence as will insure its completion within the time fixed by the schedule set forth in this agreement, or
3. DEVELOPER has improperly used NSP3 funds, or
4. DEVELOPER refuses to accept conditions imposed by HUD pertaining to activities covered by this Agreement, or

5. DEVELOPER submits to City of documentation which is incorrect or incomplete in any material respect, or
6. there are changes in Federal or State law or the availability of grant funds which render the Development impossible or infeasible;

then the DEVELOPER shall be in default and notice in writing shall be given to the DEVELOPER of such default by the GRANTEE or an agent of the GRANTEE.

B. Actions in Event of Default:

If the DEVELOPER fails to cure a default within such time as may be required by written notice, which shall not be less than 60 days, the GRANTEE may at its option exercise corrective or remedial actions, to include, but not be limited to:

1. requesting additional information from DEVELOPER to determine reasons for or extent of noncompliance or lack of performance;
2. issue a written warning advising DEVELOPER of deficiency and advising DEVELOPER that more serious sanctions, up to and including foreclosure action, may be taken if situation is not remedied;
3. require DEVELOPER to suspend, discontinue or not incur costs for activities in question;
4. withhold payment for services provided;
5. require DEVELOPER to reimburse City for amount of costs incurred for any items determined ineligible; and/ or
6. terminate and cancel the contract.

C. Termination

1. In the event of such termination, all funds awarded to the DEVELOPER pursuant to this agreement shall be immediately revoked and any approvals related to the Development (pertaining to either the NSP3 Housing Project or the Commercial Project) shall immediately be deemed revoked and canceled. In such event, the DEVELOPER will no longer be entitled to receive any compensation for work undertaken after the date of the termination of this agreement, as the grant funds will no longer be available for the NSP3 Housing Project.
2. Notwithstanding the above, the DEVELOPER shall not be relieved of liability to the GRANTEE for damages sustained by the GRANTEE by virtue of any breach of the contract by the DEVELOPER and the GRANTEE may withhold any payments to the DEVELOPER for the purpose of setoff until such time as the exact amount of damages due the GRANTEE from the DEVELOPER is determined whether by court of competent jurisdiction or otherwise.
3. Such termination shall not effect or terminate any of the rights of the GRANTEE as against the DEVELOPER then existing, or which may thereafter accrue because of such default, and the foregoing provision shall be in addition to all other rights and remedies available to the GRANTEE under the law and the note and mortgage (if in effect), including but not limited to compelling the DEVELOPER to complete the Development in accordance with the terms of this agreement, in a court of equity.
4. In the event that the DEVELOPER is determined to be in breach of the Amended Developer's Agreement and/or Mortgage Deed and Restrictive Covenant, and the GRANTEE forecloses on the property; all approved plans, site plan, design, engineering and architectural drawings, etc. will become the property of the GRANTEE, and GRANTEE is given the authority to complete the project with said plans.

5. The waiver of a breach of any term, covenant or condition hereof shall not operate as a waiver of any subsequent breach of the same or any other term, covenant, or condition hereof.
- D. The GRANTEE may terminate for its convenience this contract at any time by giving at least thirty (30) days notice in writing to the DEVELOPER. Claims and disputes between the parties will be submitted to the American Arbitration Association for resolution. Award or judgment may be entered in any court having jurisdiction thereof.

XIII. General Conditions

- A. All notices or other communication which shall or may be given pursuant to this Agreement shall be in writing and shall be delivered by personal service, or by registered mail addressed to the other party at the address indicated herein or as the same may be changed from time to time. Such notice shall be deemed given on the day on which personally served; or, if by mail, on the fifth day after being posted or the date of actual receipt, whichever is earlier.
- B. Title and paragraph headings are for convenient reference and are not a part of this Agreement.
- C. In the event of conflict between the terms of this Agreement and any terms or conditions contained in any attached documents, the terms in this Agreement shall rule.
- D. No waiver or breach of any provision of this Agreement shall constitute a waiver of a subsequent breach of the same or any other provision hereof, and no waiver shall be effective unless made in writing.
- E. The GRANTEE's failure to act with respect to a breach by the DEVELOPER does not waive its right to act with respect to subsequent or similar breaches. The failure of the GRANTEE to exercise or enforce any right or provision shall not constitute a waiver of such right or provision.
- F. The parties hereto agree that this Agreement shall be construed and enforced according to the laws of the State of Florida.
- G. Should any provisions, paragraphs, sentences, words or phrases contained in this Agreement be determined by a court of competent jurisdiction to be invalid, illegal or otherwise unenforceable under the laws of the State of Florida or the GRANTEE, such provisions, paragraphs, sentences, words or phrases shall be deemed modified to the extent necessary in order to conform with such laws, or if not modifiable to conform with such laws, then same shall be deemed severable, and in either event, the remaining terms and provisions of this Agreement shall remain unmodified and in full force and effect.
- H. The obligations undertaken by DEVELOPER pursuant to this Agreement shall not be delegated or assigned to any other person or agency unless GRANTEE shall first consent to the performance or assignment of such service or any part thereof by another person or agency.
- I. The Agreement shall be binding upon the parties hereto, their heirs, executors, legal representative, and successors and assigns.
- J. DEVELOPER shall indemnify and save GRANTEE harmless from and against any negligent claims, liabilities, losses and causes of action which may arise out of DEVELOPER's activities under this Agreement, including all other acts or omissions to act on the part of DEVELOPER, including any person acting for or on its behalf, and, from and against any orders, judgments, or decrees which

may be entered and from and against all costs, attorneys fees, expenses and liabilities incurred in the defense of any such claims, or in the investigation thereof.

- K. DEVELOPER and its employees and agents shall be deemed to be independent contractors, and not agents or employees of the GRANTEE, and shall not attain any rights or benefits under the civil service or pension ordinances of the GRANTEE, or any rights generally afforded classified or unclassified employee; further they shall not be deemed entitled to state Compensation benefits as an employee of the GRANTEE.
- L. Funding for this Agreement is contingent on the availability of funds and continued authorization for program activities and is subject to amendment or termination due to lack of funds, or authorization, reduction of funds, and/or change in regulations.
- M. This Agreement is not assignable by the parties.
- N. Should any dispute arise hereunder, the prevailing party shall be entitled to recover against the non-prevailing party all costs, expenses and attorney's fees incurred by the prevailing party in such dispute, whether or not suit be brought, and such right shall include all of such costs, expenses and attorney's fees through all appeals or other actions.
- O. No statements, representations, warranties, either written or oral, from whatever source arising, except as expressly stated in this Agreement, shall have any legal validity between the parties or be binding upon any of them. The parties acknowledge that this Agreement contains the entire understanding and agreement of the parties. No modifications hereof shall be effective unless made in writing and executed by the parties hereto with the same formalities as this Agreement is executed.
- P. The preparation of this Agreement has been a joint effort of the parties, and the resulting document shall not, solely as a matter of judicial construction, be construed more severely against one of the parties than the other. It is the parties' further intention that this Agreement be construed liberally to achieve its intent.
- Q. All exhibits attached hereto or mentioned herein which contain additional terms shall be deemed incorporated herein by reference. Typewritten or handwritten provisions inserted in this form or attached hereto shall control all printed provisions in conflict therewith.
- R. This Agreement may be executed in any number of counterparts and by the different parties on separate counterparts, each of which when so executed, will be deemed an original, but all such counterparts will constitute one and the same Agreement. Any signature delivered by a party by facsimile transmission or by electronic mail will be deemed to be an original signature.

IN WITNESS WHEREOF,

the GRANTEE and the DEVELOPER have caused their signatures to be hereunto affixed and duly attested.

The City of Miami Gardens

By: The City Manager

RUDG-The Commons, LLC, a Florida limited liability company

By: RUDG-The Commons Manager, LLC, a Florida limited liability company, Manager

GRANTEE: Dr. Danny O. Crew

DEVELOPER: Alberto Milo, Jr., Vice President

Approved as to form and legal sufficiency

Sonja K. Dickens, City Attorney

Exhibit A. NSP3 Housing Project Descriptions & Requirements

Name: The Commons

Type: Eligible Use E

National Objective: LH25, LMMI

NSP3 Funds: \$1,150,000.00

Target Area: Riverdale Neighborhood, Census Block 10001.1

Approved Properties: Approximately 6.83 acres of vacant land on the S.W. Corner of N.W. 207 Street and N.W. 27 Avenue in the City of Miami Gardens: A.K.A. Folio No.'s 34-11330030110 & 34-11330030130.

NSP3 Housing Project Description: 24 units of elderly rental housing; one (1), two (2) or three (3) bedroom units. No fewer than 25% of the units (6 units) will be restricted to households with incomes at or below 50% of Area Median Income. The remaining units (18 units) will be restricted to households with incomes at or below 60% of Area Median Income.

Affordability Period: 20 years

Davis Bacon: DOES or does NOT apply (check one)

Energy Star Standards DOES or does NOT apply (check one)

Vicinity Hiring: DOES or does NOT apply (check one).

Cost Certification: IS or is NOT required (check one).

The NSP3 Housing Project shall contain the number of units, by type, for each of the following Area Median Income ("AMI") levels and Market Rates, and the current maximum rent per unit type:

| Unit Size | 50% AMI | | 60% AMI | | 120% AMI | | Market Rate | |
|-----------|---------|-------------------|---------|-------------------|----------|--------------|-------------|--------------|
| | # units | 2013 Maximum rent | # units | 2013 Maximum rent | # units | Maximum rent | # units | Maximum rent |
| 0 bedroom | N/A | N/A | N/A | N/A | N/A | N/A | N/A | NA |
| 1 bedroom | T.B.D. | \$645 | T.B.D. | \$819 | N/A | N/A | N/A | NA |
| 2 bedroom | T.B.D. | \$773 | T.B.D. | \$984 | N/A | N/A | N/A | NA |
| 3 bedroom | T.B.D. | \$894 | T.B.D. | \$1,128 | N/A | N/A | N/A | NA |
| 4 bedroom | N/A | N/A | N/A | N/A | N/A | N/A | N/A | NA |

Exhibit B: NSP3 Housing Project Budget & Schedule

The COMMONS
 Miami Gardens, FL
 NSP3 Housing Project Construction Budget

rev. 6/11/2013

**The Commons
 EXECUTIVE SUMMARY**

Address: 20700 NW 27th Ave. Miami Gardens, FL 33056
 Total Units 24
 Rentable Sqft 16,128
 Buildable Sqft 17,741
 Avg. Size 672

| SOURCES | Construction Source of Funds | Per Unit |
|-----------------------------|-------------------------------------|-----------------|
| First Mortgage | 1,200,000 | 50,000 |
| City of Miami Gardens NSP 3 | 279,450 | 11,644 |
| Deferred Developer Fee | 573,754 | 23,906 |
| Financing Gap | 1,987,520 | 82,813 |
| TOTAL | 4,040,724 | 168,364 |

| USES | Total | Per Unit |
|---|------------------|-----------------|
| Acquisition | | |
| Acquisition Costs | 279,450 | 11,644 |
| Construction | | |
| Construction | 2,032,580 | 84,691 |
| GC Fees | 248,371 | 10,349 |
| Total Construction | 2,280,951 | 95,040 |
| Soft Costs | 400,579 | 16,691 |
| Legal Costs | 150,000 | 6,250 |
| Financing Costs | 48,000 | 2,000 |
| Reserves and Escrows | 176,432 | 7,351 |
| Total Soft Costs | 775,011 | 32,292 |
| Contingency | 131,558 | 5,482 |
| TOTAL COSTS before Developer Fee | 3,466,970 | 144,457 |
| DEVELOPER FEE | 573,754 | 23,906 |
| TOTAL COSTS | 4,040,724 | 168,364 |

| Notes | Task | Date |
|-------|--------------------------------|----------------|
| | Developer's Agreement Approval | July 2013 |
| | Complete Site Plan | August 2013 |
| | Commence Site Design | September 2013 |
| | Rezoning Approval Submission | December 2013 |
| | Site Plan Approval Submission | December 2013 |
| | Plans and Specs Completion | February 2014 |
| | Permit Submission | March 2014 |
| | Permit Approval | April 2014 |
| | Commence Construction | June 2014 |
| | Construction – 50% completion | August 2014 |
| | Construction – 75% completion | November 2014 |
| 1 | Construction C.O. | January 2015 |
| 2 | Leasing & Marketing start | September 2014 |
| 3 | 50% Occupancy | March 2015 |
| 4 | Stabilization | May 2015 |

Construction
Lease-up

8 months
6 months

- 1 CO in January 2015 with initial occupancy to start that month as well.
- 2 Leasing and marketing to start 4 months prior to anticipated CO.
- 3 Lease-up assumes 3-4 move-ins per month.
- 4 Stabilization assumed at 95% occupancy.

Exhibit C: Commercial Project Budget and Schedule

The COMMONS
Miami Gardens, FL
Commercial Project Construction Budget

rev. 6/11/2013

The Commons

COST ALLOCATION REPORT

Applicant and Project Name: RUDG - The Commons , Commercial/ Retail Budget - 36,400 SF

| | Total Project | Financing Sources: Specify Name | | | |
|---------------------------------------|------------------|---------------------------------|-------------------|----------------------------|-------|
| | | % | Private Financing | City of Miami Gardens NSP3 | Other |
| Land Acquisition | 870,550 | 10% | | 870,550 | - |
| Hard Costs | | | | | |
| Construction (incl. Site work) | 4,560,000 | 50% | 4,560,000 | - | - |
| Construction Contingency (10%) | 456,000 | 5% | 456,000 | - | - |
| Construction: Concrete / Soil Test | 15,000 | 0% | 15,000 | - | - |
| Construction of Pad | 100,000 | 1% | 100,000 | - | - |
| Construction Pad Contingency | 10,000 | 0% | 10,000 | - | - |
| Site Work | 600,000 | 7% | 600,000 | - | - |
| Total Hard Costs | 5,741,000 | 63% | 5,741,000 | - | - |
| Soft Costs | | | | | |
| Architect & Engineering Fees | 150,000 | 2% | 150,000 | - | - |
| Impact & School Fees | 290,889 | 3% | 290,889 | - | - |
| Permits / Fees / Licenses / Utilities | 77,115 | 1% | 77,115 | - | - |
| Legal Fees | 100,000 | 1% | 100,000 | - | - |
| Construction Engineering Reviews | 15,000 | 0% | 15,000 | - | - |
| Appraisal / Surveys / Environmental | 20,000 | 0% | 20,000 | - | - |
| Insurance: Construction Period | 50,000 | 1% | 50,000 | - | - |
| Marketing / Advertising Fees | 40,000 | 0% | 40,000 | - | - |
| Loan Closing / Financing Fees | 83,369 | 1% | 83,369 | - | - |
| Interest / Carrying Costs | 253,946 | 3% | 253,946 | - | - |
| Administrative Overhead | - | 0% | - | - | - |
| Title Insurance & Recording | 42,500 | 0% | 42,500 | - | - |
| P&P BOND (1%) | 51,410 | 1% | 51,410 | - | - |
| Taxes | 198,000 | 2% | 198,000 | - | - |
| Municipal Liens | - | 0% | - | - | - |
| Construction Accounting / Audits | 20,000 | 0% | 20,000 | - | - |
| Misc. | - | 0% | - | - | - |
| Operating Reserves | 90,000 | 1% | 90,000 | - | - |
| Soft Cost Contingency | 97,003 | 1% | 97,003 | - | - |
| Developer Fees | 878,428 | 12% | 878,428 | - | - |
| Total Soft Costs | 2,457,660 | 27% | 2,457,660 | - | - |
| Total Project Cost | 9,069,210 | 100% | 8,198,660 | 870,550 | - |

| Notes | Task | Date |
|-------|-------------------------------------|---------------|
| | Developer's Agreement Approval | July 2013 |
| | Engage Broker – Leasing & Marketing | July 2013 |
| | Complete Site Plan | October 2013 |
| | Identify Retail Tenant | October 2013 |
| | Commence Site Design | November 2013 |
| | Rezoning Approval Submission | December 2013 |
| | Site Plan Approval Submission | December 2013 |
| | Plans & Specs Completion | February 2014 |
| | Permits Submission | March 2014 |
| | Permits Approved | April 2014 |
| | Commence Construction | June 2014 |
| | Construction – 50% completion | October 2014 |
| | Construction – 75% completion | January 2015 |
| | Construction C.O. | March 2015 |

Exhibit D: Vicinity Hiring Eligible Areas

Census Blocks Comprising Target Neighborhood (Riverdale Area)

120860100011000, 120860100011001, 120860100011035, 120860100011034,
120860100011033, 120860100011032, 120860100011031, 120860100011030,
120860100011029, 120860100011028, 120860100011027, 120860100011066,
120860100011065, 120860100011064, 120860100011058, 120860100011047,
120860100011046, 120860100011045, 120860100011044, 120860100011043,
120860100011042, 120860100011041, 120860100011040, 120860100011039,
120860100011038, 120860100011037, 120860100011036, 120860100011026,
120860100011025, 120860100011024, 120860100011023, 120860100011022,
120860100011021, 120860100011020, 120860100011010, 120860100011009,
120860100011008, 120860100011007, 120860100011006, 120860100011005,
120860100011004, 120860100011003, 120860100011002, 120860100011019,
120860100011018, 120860100011017, 120860100011016, 120860100011015,
120860100011014, 120860100011013, 120860100011012, 120860100011011,

Census Blocks Comprising Target Neighborhood (Rainbow Park Area)

120860004031001, 120860004031002, 120860004031004, 120860004031006,
120860004031008, 120860004031010, 120860004031019, 120860004031018,
120860004031017, 120860004031016, 120860004031015, 120860004031014,
120860004031013, 120860004031012, 120860004031011, 120860004031009,
120860004031007, 120860004031005, 120860004031003, 120860004032004,
120860004032005, 120860004032003, 120860004032002, 120860004035001,
120860004035002, 120860004035004, 120860004035006, 120860004035008,
120860004035010, 120860004035009, 120860004035007, 120860004035005,
120860004035003, 120860004036003, 120860004036005, 120860004036007,
120860004036010, 120860004036009, 120860004036008, 120860004036006,
120860004036004, 120860004036002, 120860004036001,

Exhibit E: Energy Star Standards

The COMMONS
Miami Gardens, FL

Green Building Features

rev. 12/14/2011

- 1 Programmable Thermostats
- 2 Water Sense dual flush toilets
- 3 Eco-friendly cabinets
- 4 Eco-friendly flooring
- 5 Daylight sensors, timers or motion detectors on outdoor lighting
- 6 EnergyStar appliances
- 7 High efficiency HVAC

MORTGAGE DEED and RESTRICTIVE COVENANT

THESE COVENANTS are entered into this ____ day of _____, 2013, by **RUDG-The Commons, LLC**, 315 South Biscayne Blvd., Miami, FL, 33131, hereinafter referred to as “the Owner” and shall be effective for a Period of Twenty (20) years from the date of first occupancy as further described in the Amended Developer’s Agreement associated with this covenant, a copy of which is attached hereto as Exhibit “B”.

WHEREAS, the Owner is the fee simple title holder of the Property which is approximately 6.83 acres of vacant land on the S.W. Corner of N.W. 207 Street and N.W. 27 Avenue in the City of Miami Gardens, Florida, AKA Folio No.’s: 34-1133-003-0110 and 34-1133-003-0130 and further described in **Exhibit A**, attached to and made a part hereof, and

WHEREAS, the Owner is to receive Neighborhood Stabilization Program 3 (NSP3) funds administered by the **City of Miami Gardens**, 1515 N.W. 167 Street, Bldg. 5, Suite 200, Miami Gardens, Florida, 33169, hereinafter referred to as “the City,” in the amount of **ONE MILLION ONE HUNDRED AND FIFTY THOUSAND DOLLARS (\$1,150,000.00)**, to be used for the acquisition of the property as described on **Exhibit A (the “Property”)**, and

THEREFORE, as part of the consideration for the City grant, the Owner hereby makes and declares the following restrictive covenants which shall run with the title of the said Property and be binding on the Owner and its successors in interest, if any, for the period stated in the preamble above:

1. The Owner agrees to develop and maintain the Property for the intended project known as “The Commons” further described as a development consisting of two projects: an NSP3 funded housing project of 24 newly constructed Affordable Elderly Housing Rental Units (the “Residential Units”) and a commercial project of not to exceed 36,000 square feet.
2. The Owner agrees that any additional housing units that may be developed on the Site, including the additional 24 unit condominium building, will be reserved for sale to households with annual incomes of no more than 120% of the Area Median Income; unless a market analysis demonstrates no demand, these units will be reserved as rental housing for elderly households with annual incomes of no more than 60% of AMI.
3. The Owner agrees to reserve and rent 25% (or 6 units) of the total Residential Units to households whose incomes do not exceed 50% of the Area Median Income; remaining Residential Units must be rented to households whose incomes do not exceed 60% of the Area Median Income. For determining income levels, the applicable area is the Miami-Miami Beach-Kendall HMFA area. The income levels are subject to change annually as published by the U.S. Department of Housing and Urban Development (HUD).

This mortgage is issued by a municipality and is therefore exempt from paying intangible taxes as per F.S. 199.183(1).

4. The Owner agrees to not exceed the “Low-HOME market rent rate” per unit size for the Miami-Miami Beach-Kendall HMFA area for 25% or 6 of the total Units reserved for the households whose incomes do not exceed 50% of the Area Median Income. The rate is subject to change annually as published by HUD.
5. The Owner agrees to not exceed the “High-HOME market rent rate” per unit size for the Miami-Miami Beach-Kendall HMFA area for 75% or 18 of the total Units reserved for the households whose incomes do not exceed 60% of the Area Median Income. The rate is subject to change annually as published by HUD.
6. The Owner agrees to not discriminate on the basis of race, religion, color, sex, familial status, national origin or disability in the rental, use or occupancy of the Project.
7. The Owner agrees that the City of Miami Gardens, its agents and its designees shall have the right to inspect the Property at all reasonable times in order to ascertain whether the conditions of the Amended Developer’s Agreement and these covenants are being observed.
8. The Owner acknowledges that the City will only consider release of any portion of the Property from the provisions of this Restrictive Covenant provided such portion is not to be used for the building containing or to contain the 24 Affordable Elderly Housing Rental Units, or provided that such release does not reduce the number of units to be developed. Such release will be considered provided that the proposed uses serve to further the development, such as the construction of the commercial space.
9. The Owner agrees that these restrictions shall encumber the Property for a period of TWENTY (20) years from the date of first occupancy into one of the 24 Affordable Elderly Housing Rental Units to be built on the Property, and that if the restrictions or the terms of the Amended Developer’s Agreement are violated as to the buildings containing those 24 newly constructed Affordable Elderly Housing Rental Units within such twenty year period and such violation is not corrected on or before thirty (30) days, or such longer period as is required under the circumstances, after notice from the City of Miami Gardens, the City of Miami Gardens shall be entitled to foreclose on the property encumbered by the terms hereof, the same as if this were a Mortgage document.
10. The Owner agrees to not sell, convey, transfer or alter in any other way title to the Property described above and further described in Exhibit A without obtaining prior written approval from the City. Failure to do so will be considered a default and trigger a recapture of the grant amount in its entirety. The City may, in its sole discretion, allow a transferee to assume the remaining Indebtedness and all conditions of the Agreements, including the terms of the Affordability Period. Any sale of the NSP3 Housing Project property shall be to a buyer approved by the City who will operate the property as affordable elderly rental housing in accordance with the provisions of this section and abide by income and rental limits as set forth in the Amended Developer’s Agreement.
11. The Owner agrees to make or cause to be made within fourteen (14) months of the issuance of the initial building permit for the Development, a contribution in the sum of \$200,000.00 to the City of Miami Gardens Special Revenue Fund, to be specifically designated to pay for the park improvements at Buccaneer Park; said improvements to be determined by the City. In the event of a force majeure event, which shall be defined as an act of God, such as a hurricane or fire, which delays the development, the time period outlined in this paragraph shall be extended until the force majeure event is over. However, in no event shall a force majeure event negate the Owner’s responsibility to make the payment described herein.
12. The Owner is liable to the City of Miami Gardens for the amount of the grant. If the Owner breaches these Restrictive Covenants and/or the Amended Developer’s Agreement dated _____, the City will be entitled to foreclose on the property encumbered by the terms hereof, the same as if this were a Mortgage document.

13. The Owner agrees to file these covenants with the Clerk of the Circuit Court of Miami-Dade County, Florida, and shall pay any and all expenses associated with their filings and recording.
14. The Owner agrees that the City of Miami Gardens shall incur no real estate tax liability as a result of these restrictive covenants.
15. Each and every covenant and agreement contained herein shall be for any and all purposes hereof construed as separate and independent and the breach of any covenant by any party shall not release or discharge such party from its obligations hereunder. No delay or omission by any party to exercise its rights accruing upon any noncompliance or failure of performance by any party shall impair any such right or be construed to be a waiver thereof. A waiver by any party hereto of any of the covenants, conditions or agreements to be performed by any other party shall not be construed to be a waiver of any succeeding breach or of any other covenants, conditions or agreements contained herein.
16. All rights, powers and remedies provided herein may be exercised only to the extent that the exercise thereof does not violate any then applicable law and shall be limited to the extent necessary to render the real covenants herein valid and enforceable. If any term, provision, covenant or agreement contained herein or the application thereof to any person, entity or circumstance shall be held to be invalid, illegal or unenforceable, the validity of the remaining terms, provisions, covenants or agreements or the application of such term, provision, covenant or agreement to persons, entities or circumstances other than those to which it is held invalid or unenforceable shall not be affected thereby.
17. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, and all of which, when taken together, shall constitute one and the same document.

(SIGNATURE PAGE TO FOLLOW)

IN WITNESS WHEREOF, the Owner and Grant Recipient have read these Restrictive Covenants and have hereto affixed their signatures in acknowledgment and acceptance of the same.

WITNESS:

OWNER: RUDG-The Commons, LLC, a Florida limited liability company

By: RUDG-The Commons Manager, LLC, a Florida limited liability company, Manager

By: _____

Printed Name: _____

Printed Name: Alberto Milo, Jr.

Title: Vice-President

WITNESS:

Printed Name: _____

STATE OF FLORIDA, COUNTY OF MIAMI-DADE

SWORN TO and subscribed before me this _____ day of _____, 2013

Alberto Milo, Jr. as Vice President of RUDG-The Commons Manager, LLC, a Florida limited liability company by and on behalf of said company as Manager of RUDG-The Commons, LLC, a Florida limited liability company, by and on behalf of such company. Such person(s) (Notary Public must check applicable box):

is/are personally known to me.

produced a current driver license(s).

produced _____ as identification.

(NOTARY PUBLIC SEAL)

Notary Public

(Printed Name of Notary Public)

Commission No: _____

My Commission Expires: _____

ACCEPTANCE

The City of Miami Gardens, hereby accepts this Declaration of Restrictions hereby made by RUDG-The Commons ,LLC.

CITY OF MIAMI GARDENS, FLORIDA

Attest:

Mrs. Ronetta Taylor, City Clerk

By: _____
Dr. Danny O. Crew, City Manager

Date: _____

EXHIBIT A

Legal Description:

The West 450 feet of the East 625 feet of Tracts 33, 34, and 35; as measured at right angles to the East boundary of said Tracts, lying in Section 33, Township 51 South, Range 41 East, of the Everglades Sugar and Land Company Subdivision, as recorded in Plat Book 2, Page 75, of the Public Records of Miami-Dade County, Florida, LESS the North 35 feet of said Tract 33 dedicated for road purposes and LESS that portion of said Tract 35 lying Southerly of the North right-of-way boundary of Snake Creek Canal (C-9).

LESS AND EXCEPT:

A portion of Tract 33 of Everglades Sugar and Land Company's Subdivision, of Section 33, Township 51 South, Range 41 East, Miami-Dade County, Florida, according to the Plat thereof, recorded in Plat Book 2, Page 75, of the Public Records of Miami-Dade County, Florida, being more particularly described as follows:

Begin at the point of intersection of the South line of the North 35.00 feet of said Tract 33 with the West line of the East 175.00 feet of said Tract 33; thence run South $87^{\circ}49'27''$ West along the South line of the North 35.00 feet of said Tract 33 for a distance of 312.47 feet to the point of cusp, said point of cusp also being the point of curvature of a circular curve concave to the Southwest; thence run Southeasterly, along the arc of said circular curve concave to the Southwest, having a radius of 545.00 feet, through a central angle of $23^{\circ}49'03''$, for an arc distance of 226.55 feet to a point of reverse curvature with the arc of a circular curve to the left; thence run Southeasterly along the arc of said circular curve to the left, having a radius of 614.80 feet, through a central angle of $05^{\circ}42'21''$, for an arc distance of 61.23 feet to a point of reverse curvature with the arc of a circular curve to the right; thence run Southeasterly, along the arc of said circular curve to the right, having a radius of 50.00 feet, through a central angle of $72^{\circ}16'26''$, for an arc distance of 63.07 feet to a point of tangency with the West line of the East 175.00 feet of said Tract 33; thence run North $01^{\circ}47'25''$ West, along the West line of the East 175.00 feet of said Tract 33 for a distance of 53.53 feet; thence run North $01^{\circ}47'34''$ West, continuing along the West line of the East 175.00 feet of said Tract 33 for a distance of 62.64 feet to a point on the South line of the North 35.00 feet of said Tract 33 and the Point of Beginning. Subject to that portion thereof previously dedicated to the public, which lies within the external area formed by a 25.00 foot radius arc, concave to the Southwest, tangent to a line which is 175.00 feet West of and parallel to the East line of the Southeast Quarter of said Section 33, and tangent to a line which is 35.00 feet South of and parallel to the North line of said Tract 33.

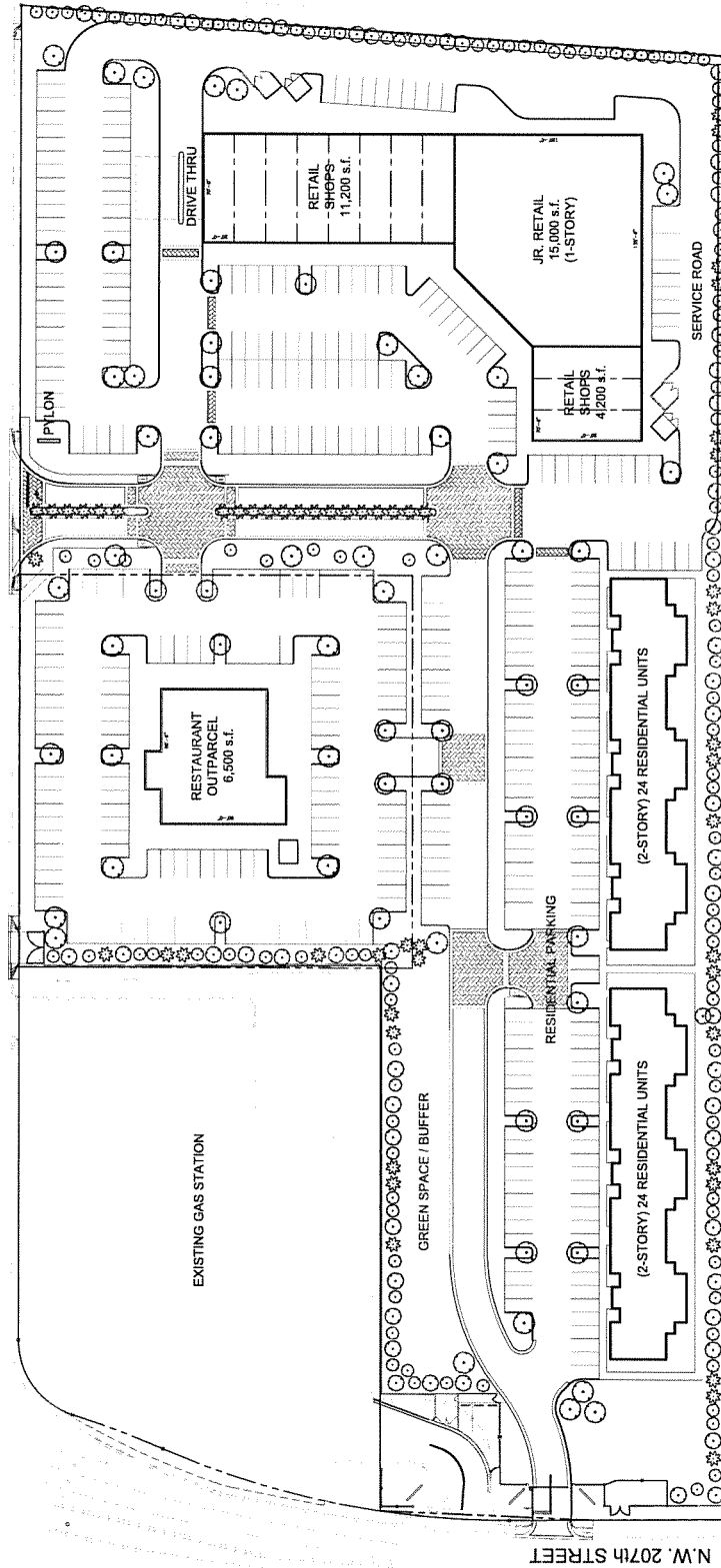
LESS AND EXCEPT:

A portion of Tract 33 and 34, Everglades Sugar and Land Company's Subdivision, of Section 33, Township 51 South, Range 41 East, according to the Plat thereof as recorded in Plat Book 2, Page 75, of the Public Records of Miami-Dade County, Florida, being more particularly described as follows:

Commence at the East Quarter corner of said Section 33; thence run South $87^{\circ}49'27''$ West along the North line or the Southeast Quarter of said Section 33 and the North line of said Tract 33 for a distance of 405.00 feet; thence run South $01^{\circ}47'25''$ East for a distance of 41.27 feet to the Point of Beginning and a point on the South right-of-way line of N.W. 207th Street as recorded in Official Records Book 17813, Page 4115 and Official Records Book 15868, Page 2851, Miami-Dade County records, said point being on the arc of a curve concave to the South (a radial line through said point bears South $06^{\circ}31'24''$ West) having a radius of 545.00 feet and a central angle of $15^{\circ}07'06''$; thence Easterly along the arc of said curve, also being the South right-of-way line of N.W. 207th Street, a distance of 143.81 feet to the beginning of a reverse curve concave Northerly, having a radius of 614.80 feet and a central angle of $05^{\circ}42'21''$; thence continue along the arc of said curve, a distance of 61.23 feet to the beginning of a reverse curve concave to the Southwest having a radius of 50.00 feet and a central angle of $72^{\circ}16'26''$; thence continue along the arc of said curve a distance of 63.07 feet to a point on the West right of way

line of N.W. 27th Avenue; thence run South $01^{\circ}47'25''$ East along the West right-of-way line of N.W. 27th Avenue for a distance of 237.70 feet; thence run South $87^{\circ}49'27''$ West along a line that is 388.87 feet South of and parallel to the North line of the Southeast Quarter of said Section 33 for a distance of 230.00 feet; thence run North $01^{\circ}47'25''$ West, along a line that is 405.00 feet West of and parallel to the East line of the Southeast Quarter of said Section 33 for a distance of 347.61 feet to the Point of Beginning.

N.W. 27th AVENUE



ADJACENT RESIDENTIAL

SITE AREA TABULATION

| | |
|-----------------|-----------|
| New Retail | 30,400 SF |
| New Residential | 48 UNITS |
| New Restaurant | 6,500 SF |
| (Outparcel) | |

PARKING PROVIDED

| | |
|-----------------------------|-------------------|
| New Retail | 169 Spaces |
| New Residential | 108 Spaces |
| New Restaurant | 127 Spaces |
| Total Parking Prov'd | 404 Spaces |