



## II. FISCAL IMPACT ANALYSIS

### A. Five Year Summary of Fiscal Impact:

Fiscal Years	2025	2026	2027	2028	2029
Grant Expenditures	\$1,846,836				
Operating Costs					
External Revenues	(\$1,846,836)				
Program Income (County)					
In-Kind Match (County)					
NET FISCAL IMPACT	-0-				

# ADDITIONAL FTE POSITIONS (Cumulative)	-0-				
-----------------------------------------	-----	--	--	--	--

Is Item Included In Current Budget? Yes X No       
 Does this item include the use of Federal Funds? Yes X No       
 Does this item include the use of State Funds? Yes      No X

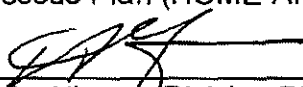
Budget Account No.:

Fund 1165 Dept 143 Unit 1601 Object 8201 Program Code/Period HM-ARP10B/GY22

### B. Recommended Sources of Funds/Summary of Fiscal Impact:

Funding source is HOME American Rescue Plan (HOME-ARP)

### C. Departmental Fiscal Review:

  
 Valerie Alleyne, Division Director II  
 Finance and Administrative Services, DHED

## III. REVIEW COMMENTS

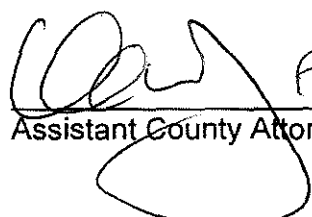
### A. OFMB Fiscal and/or Contract Development and Control Comments:

05/24/25

 Linda Marie 7/21/2025  
 OFMB DA 7/21

 Brenda Snatcho  
 Contract Development and Control 267.21.25

### B. Legal Sufficiency:

 For H. Falcon 7/24/25  
 Assistant County Attorney

### C. Other Department Review:

\_\_\_\_\_  
 Department Director

(THIS SUMMARY IS NOT TO BE USED AS A BASIS FOR PAYMENT)

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## **PALM BEACH COUNTY HOME-ARP PROGRAM LOAN AGREEMENT**

**THIS IS A LOAN AGREEMENT** (the “**Agreement**”), entered into on May 27, 2025 (the “**Effective Date**”) by and between **Palm Beach County**, a political subdivision of the State of Florida, (hereinafter referred to as the “**County**” or the “**Lender**”), and **Vita Nova, Inc.**, a Florida not for profit corporation (the “**Borrower**”), whose principal office is at 2724 N. Australian Avenue, West Palm Beach, FL 33407.

### **WITNESSETH:**

**WHEREAS**, the County has entered into agreements with the United States Department of Housing and Urban Development (HUD) for the use of HOME-ARP funds as identified by Grant Number M21-UP120215; and

**WHEREAS**, the County made \$7,891,211 in HOME-ARP funds available for affordable housing under Notice of Funding Availability HED.2023.1 (NOFA); and

**WHEREAS**, Vita Nova, Inc., (“Vita Nova”) applied to the County for HOME-ARP funding in connection with the NOFA; and

**WHEREAS**, on March 12, 2024, the County approved the award of HOME-ARP funds in the principal amount of \$1,550,000 to be made available to Vita Nova, Inc. subject to the execution of this Agreement; and

**WHEREAS**, On November 19, 2024 the County approved an additional award of HOME-ARP funds in the principal amount of \$296,836 for a total amount \$1,846,836 to be made available to Vita Nova, Inc. subject to the execution of this Agreement

**WHEREAS**, The Borrower wishes to use the HOME-ARP funds for certain costs associated with constructing twelve (12) rental apartment units on the Property, as defined herein, to be known as Omega Apartments; and

**WHEREAS**, the Borrower proposes to rent the HOME-ARP-Assisted Units, upon completion of their construction, to persons/households having certain income levels as more particularly described herein; and

**WHEREAS**, the Borrower and the County have negotiated the terms and conditions of, and wish to enter into this Agreement in order to set forth the terms and conditions for the disbursement of the Loan funds.

**NOW, THEREFORE**, in consideration of the premises, and of the mutual covenants and agreements set forth below, the receipt and sufficiency of which is hereby acknowledged, the Borrower and the County agree as follows:

### **Article I. Definitions**

“**Affordability Period**” means the number of years HOME-ARP Assisted Units must remain affordable. For purposes of this agreement, the affordability period shall be fifty (50) years from the date of issuance of the Certificate of Occupancy for the Project.

“**AMI**” shall mean the most current area median income published by HUD for the West

**“At Risk of Homelessness”** shall be as defined in 24 CFR 91.5.

**“Closing Date”, “Closing” or “Loan Closing”** means the date on which the Project's Loan Documents as defined herein are executed by the Borrower and the Loan is closed.

**“Construction Costs”** means the labor and material costs related to the rehabilitation and/or construction of the Project as evidenced by an American Institute of Architects (AIA) payment certificate or other evidence satisfactory to County.

**“DHED”** shall mean Palm Beach County's Department of Housing and Economic Development

**“Eligible Beneficiaries”** for purposes of this Agreement, means a person or persons who is/are the tenant(s) of the HOME-ARP Assisted Units as Qualified Populations as defined by HUD's CPD-21-10.

**“HOME-ARP”** means the Federal Home American Rescue Plan Program as administered by the US Department of Housing and Urban Development.

**“HOME-ARP-Assisted Units”** means one hundred percent (100%) of the twelve (12) residential units located in the Project that will be restricted to comply with HOME-ARP Program requirements for Homeless and At Risk of Homelessness Individuals or Families.

**“Homeless”** shall be as defined in 24 CFR 91.5 (1), (2), or (3).

**“HUD”** shall mean the United States Department of Housing and Urban Development

**“Loan”** means the Loan described in Article II hereof.

**“Loan Documents”** means this Agreement, the Mortgage, the Promissory Note, the Declaration of Restrictions, and all other documents evidencing or securing Borrower's obligations or performance.

**“Low-Income Persons and Households”**, for purposes of this Agreement, means persons or households whose annual incomes do not exceed 50 percent of the median income for the area, as determined by HUD, with adjustments for smaller and larger households, except that HUD may establish income ceilings higher or lower than 50 percent of the median for the area on the basis of HUD findings that such variations are necessary because of prevailing levels of construction costs or fair market rents, or unusually high or low household incomes.

**“Organization Documents”** means (i) for a corporation or non-profit corporation, its certificate of incorporation, articles of incorporation and bylaws; (ii) for a limited partnership, its certificate of limited partnership and limited partnership agreement and the Organization Documents of each general partner that is an entity; (iii) for a limited liability company, its certificate of organization and operating agreement and the Organization Documents of each member that is an entity; (iv) for a general partnership, its partnership agreement, the Organization Documents of each general partner that is an entity; and (v) for each of the foregoing, such resolutions of Borrower and each general partner or member as County may reasonably request.

**“Permitted Exceptions”** means those exceptions as identified in the title commitment and accepted by the County that will remain as exceptions on the issued title insurance policy.

**“Principal(s)”** means (i) with respect to a partnership or limited partnership, its general partners; (ii) with respect to a limited liability company, its managing members; and (iii) with respect to a corporation, its directors and any holder of more than ten percent (10%) of the voting power or value of all classes of the corporation’s stock.

**“Professional Services Costs”** means costs of architectural, engineering, or related professional services required to prepare plans, drawings, specifications, or work write-ups for the Project.

**“Project”** means the construction and development of the real property located at 1330 Alpha Street, West Palm Beach, FL, and as more fully described on Exhibit A hereto (the “Property”), on which Borrower shall construct a 12-unit, multifamily residential rental project, also referred to as Omega Apartments. The term “Project” includes the “Property.”

**“Project Completion”** means such time as Borrower has complied with the conditions of Sections 3.01 and 3.03 of this Agreement, and Borrower has obtained certificates of occupancy.

**“The Property”** shall mean the real property on which the Borrower will construct the Project and as described on Exhibit A.

**“Soft Costs”** means costs related to market studies, appraisals, environmental studies and cost certifications that are reasonable and necessary for acquisition, construction or rehabilitation of the Project, and other similar costs.

Any other capitalized terms used herein but not otherwise defined herein will have the meaning assigned to such terms in the Loan Document in which they are defined.

## **Article II. Agreement terms, conditions, and disbursements**

### **Section 2.01 Loan Details**

- (A) County hereby agrees to make a Loan to Borrower from federally-appropriated funds made available to County pursuant to the HOME-ARP program in an amount not to exceed One Million Eight Hundred Forty-Six Thousand Eight Hundred Thirty-Six Dollars and 00/100 (\$1,846,836) at an interest rate of Zero percent (0%) simple interest per year for a period of fifty (50) years at the terms and conditions set forth herein, and in the Promissory Note (the “Note”) and Mortgage and Security Agreement (the “Mortgage”) which are attached hereto and made a part hereof as Exhibit B and Exhibit C, respectively.
- (B) The Borrower agrees that as a condition of the Loan, the Borrower shall construct the Project for purposes of renting the HOME-ARP-Assisted Units to Eligible Beneficiaries. The HOME-ARP-Assisted Units shall be restricted to eligible households whose incomes, adjusted by family size, do not exceed fifty percent (50%) of AMI”) for the Affordability Period. These restrictions shall be secured by a Declaration of Restriction (DOR) attached hereto as Exhibit D.
- (C) The Borrower shall accept the Loan comprised of HOME-ARP funds and expressly agrees to comply with and to perform all of the terms and conditions of the Loan Documents.

Any HOME-ARP funds not drawn or expended by the date provided below shall remain with the County and not be eligible for disbursement to the Borrower and the County may reallocate such funds to other projects or needs, unless such date is extended by written amendment to this Agreement. Furthermore, the County shall not be obligated to replace unused or reallocated HOME-ARP funds with funds from another source, and the County's right to reallocate such HOME-ARP funds shall not be subject to the rights of any other lender or the terms of any subordination agreement.

- (D) This Agreement does not constitute a commitment of funds or site approval, and the commitment of funds or approval may occur only upon satisfactory completion of environmental review and receipt by County of an approval of the request for release of funds and certification from HUD under 24 CFR Part 58. The provision of any funds to the Project is conditioned on the County's determination to proceed with, modify or cancel the Project based on the results of the environmental review.
- (E) Nothing in this Agreement shall obligate the Palm Beach County Board of County Commissioners to provide funding from the County's annual budget and appropriations, or from any other funding source, for any reason.
- (F) The Borrower recognizes and understands that by entering into this Agreement, the County wishes to further its provision of affordable housing to income-qualified households in a timely manner. The Borrower also recognizes and understands that the Borrower's performance as established under this Agreement is critical to the County's efforts in the provision of affordable housing, compliance with HOME-ARP requirements, and requirements for the use of HOME-ARP funds.
- (G) The Borrower agrees that time is of the essence in regard to the Borrower's construction and rental of the twelve (12) HOME-ARP-Assisted Units and the continued occupancy of said housing units as more fully specified herein.
- (H) In recognition of the above, the Borrower shall implement the Project as follows:
  - 1) The Borrower shall have closed on the Loan as specified herein no later than **April 30, 2025**.
  - 2) The Borrower shall have drawn 100% of the Loan up to \$1,846,836 by **December 31, 2026**.
  - 3) The Borrower shall have completed the construction of all HOME-ARP-Assisted Units, received temporary certificates of occupancy, and have rented all HOME-ARP-Assisted Units to Eligible Beneficiaries by **May 31, 2027**.
  - 4) If unforeseen circumstances occur that impact the Borrower's ability to meet the performance dates and require revisions thereto, the Borrower shall request, in writing, that the dates used as performance requirements listed above be revised/amended. The County administrator, or the County's DHED Director, may, at his/her sole discretion, revise/amend the performance dates via written notification to the Borrower. The completion date for all activities may be revised only by an amendment to this Agreement.



## **Section 2.02 Additional Project Funding and Subordination**

- (A) The total funding of the Project includes one (1) additional loan.
- 1) A loan in favor of the City of West Palm Beach in the amount of Two Hundred Eighty-Five Thousand Seven Hundred Thirty-Four dollars and 00/100 (\$285,734), to be secured by a Mortgage and Security Agreement from the Borrower at closing (the "Subordinate Loan").
- (B) County hereby approves the Subordinate Loan and further agrees to any refinancing of the Subordinate Loan so long as the refinancing does not increase the amount of indebtedness originally secured by the Subordinate Loan mortgage plus applicable reasonable fees and costs associated with refinancing

## **Section 2.03 Conditions of Closing**

The conditions listed below are conditions of the County's Closing of the Loan and acceptance of the Mortgage and disbursement of funds and shall be complied with in form and substance satisfactory to the County prior to the Closing:

### **(A) Title Insurance**

- 1) Within thirty (30) days of the Effective Date, Borrower shall deliver to County a title commitment issued by a title insurance company qualified to do business in the State of Florida and acceptable to County, agreeing to issue to County upon recording of the Mortgage a Lender's Title Insurance Policy, including a Florida Form 9 endorsement, in the amount of the Note secured by said Mortgage, subject only to the Permitted Exceptions. Said commitment shall have attached to it legible copies of all exceptions referred to in the title commitment. The cost of said title commitment and policy and any premium therefor shall be borne by Borrower.
- 2) County shall have thirty (30) days after receipt of the title insurance commitment in which to review the same. In the event the title insurance commitment shall show as an exception any matter other than the Permitted Exceptions, County may notify Borrower of its objections thereto and Borrower shall act to remove such exceptions, which exception shall be deemed to constitute title defects. The Borrower shall be entitled to thirty (30) days from the day of notification within which to cure such defects or make arrangements with the title insurer for the removal of any such objections from the commitment. If the defect shall not have been so cured or removed from the commitment by endorsement thereto within said thirty (30) day period, the County shall have the option of accepting title, as it then exists or terminating this Agreement, by giving written notice thereof to Borrower, in which event the parties shall be relieved of all further obligations hereunder.
- 3) County may request, prior to the Closing, an endorsement of the title insurance commitment making it effective to within fifteen (15) days of the Closing Date. At Closing, Borrower shall cause the title insurance commitment to be endorsed to remove, without the inclusion of any additional exceptions to coverage, any and all requirements or preconditions to the issuance of an Mortgagee's title insurance policy, and to delete any exceptions for: (a) any rights or claims of parties in possession not shown by the public records; (b) encroachments, overlaps,

boundary line disputes and any other matters which would be disclosed by an accurate survey and inspection of the Property; (c) easements or claims of easement not shown by the public records; (d) any lien, or right to a lien, for services, labor or material heretofore or hereinafter furnished, imposed by law and not shown by the public records; (e) taxes for the year of Closing and all prior years, and taxes or special assessments which are not shown as existing liens by the public records; (f) matters arising or attaching subsequent to the effective date of the title insurance commitment but before the Mortgage is recorded in the Public Records; and (g) any general or specific title exceptions other than the Permitted Exceptions.

(B) Survey

Borrower shall, concurrent with the submission of the above mentioned title commitment, deliver to the County a current certified survey of the Project, prepared by a surveyor acceptable to the County, showing the following:

- 1) The location of the perimeter of the Project by courses and distances and perimeter footings in place, and by reference to Township, Range, Section unless platted, in which case, reference shall be to Tract, or Lot and Block per Plat.
- 2) The location of and the identification by reference to recording data of all easements, rights-of-way, conditions and restrictions on or appurtenant to the Property.
- 3) The location of all building setback lines.
- 4) The lines of the streets abutting the Property and the width thereof.
- 5) All encroachments upon the Property, and the extent thereof, in feet and inches.
- 6) Flood zone certification.
- 7) Any other notations required for the deletion of the survey exception from the Title Insurance Policy to be issued in accordance with Section 2.03(A) above and any other requirements requested by the County.
- 8) The survey shall be certified to Palm Beach County, a political subdivision of the State of Florida.

(C) Promissory Note

The Promissory Note, attached hereto as Exhibit "B" shall be duly authorized, executed and delivered to the County.

(D) Mortgage

The Mortgage, attached hereto as Exhibit C, shall be duly authorized, executed, acknowledged, recorded by the Borrower, and delivered to the County, shall be a valid first position mortgage lien on the Project and on all fixtures and personal property owned by Borrower to be used in connection with the improvements. The Mortgage shall include the following:

- 1) The Mortgage shall not be subject to any prepayment penalty.
- 2) The Mortgage shall become immediately due and payable upon an unpermitted sale, transfer, or refinancing of the Property (excluding liens bonded off or insured over and excluding an immaterial condemnation of the Property), or if fifty (50%) (aggregate) or more of the Borrower's ownership is transferred to a non-affiliated entity.
- 3) The Mortgage shall be non-assumable, unless the County has otherwise consented, which consent shall not be unreasonably withheld, conditioned or delayed, as more particularly set forth in the Mortgage.

(E) Mortgagor's Affidavit

An affidavit of Borrower shall be executed and delivered to the County as required by the title insurer as noted above, certifying to all such facts as are required to delete the Standard Exceptions from the Lender's Title Insurance Policy and certifying that no liens exist on the Property (except for liens bonded over or insured to the County's and title insurer's satisfaction allowing the removal of such liens from the title policy or any subsequent endorsement) except for taxes not yet due and payable, the Subordinate Mortgage, and such other items as may be identified as Permitted Exceptions that the County does not object to, and that no other parties are entitled to possession.

(F) Organization Documents

The Borrower shall deliver to the County the following documents:

- 1) The Articles of Organization of the Borrower and all amendments thereof, certified by the appropriate official of the State of Florida, together with certificates of such official to the effect that Borrower is in good standing therein.
- 2) Certified resolutions or equivalent of the Borrower authorizing the execution and delivery of this Agreement, the Mortgage, the Promissory Note, the Declaration of Restrictions and all other documents necessary or desirable, for the consummation of the transactions contemplated by this Agreement.

(G) Opinion of Borrowers Counsel

The Borrower shall deliver to the County an opinion of counsel for Borrower and addressed to the County, such counsel to be reasonably satisfactory to the County, to the effect that:

- 1) This Agreement and all Loan Documents and any other documents required to be delivered hereunder have been duly authorized, executed and delivered and are valid, binding and enforceable in accordance with their terms subject to applicable bankruptcy, insolvency, and similar laws affecting rights of creditors.
- 2) That Borrower is a Florida not-for-profit corporation in good standing under the laws of the State of Florida and has all the necessary power and authority to undertake its obligations hereunder and pursuant to the Loan Documents.

- 3) The execution and delivery of the Loan Documents, the performance by the Borrower of its obligations under the Loan Documents, and the exercise by the Borrower of the rights created by the Loan Documents do not violate any Federal, Florida, or local law, rule or regulation.
- 4) That the execution and delivery of the Loan Documents, the performance by the Borrower of its obligations under the Loan Documents, and the exercise by the Borrower of the rights created by the Loan Documents do not (1) violate the Borrower's Organization Documents, or (2) to counsel's knowledge, constitute a breach of or a default under any agreement or instrument to which the Borrower is a party or by which it or its assets are bound or result in the creation of a mortgage, security interest or other encumbrance upon the assets of the Borrower (except as set forth in the Loan Documents), or (3) to counsel's knowledge, violate a judgment, decree or order of any court or administrative tribunal, which judgment, decree or order is binding on the Borrower or its assets.
- 5) That to counsel's knowledge, and based on a certificate to be provided by Borrower, there are no proceedings pending or threatened before any court or administrative agency which will materially adversely affect the financial condition or operation of Borrower or the Property, including but not limited to bankruptcy, reorganization or insolvency proceeding or any other debtor-creditor proceedings under the Bankruptcy Code or any similar statute.
- 6) That the lien of the Mortgage is a valid first position lien on the Property and the security interest described in the Mortgage is a good and valid security interest.
- 7) Such other matters as the County may reasonably require.

(H) Budget and Schedule

The Borrower shall deliver to the County a current Project budget and a production schedule (Exhibit J).

(I) Designation of HOME-ARP-Assisted Units

The entire Project consists of twelve (12) one bedroom/one bathroom units, all of which will be designated as HOME-ARP-Assisted Units within the Project.

(J) Expenses

The Borrower shall pay all fees and charges incurred in the procuring and making of this Loan, if applicable, and other reasonable expenses incurred by the County related to the administration of the Loan, including but not limited to, Title Insurance Company's fees and premiums, charges for examination of title to the Property, expenses of surveys, recording expenses, any and all insurance premiums, taxes, assessments, water rates, sewer rates and other charges, liens and encumbrances upon the Property, annual Loan servicing, rental compliance monitoring fee, and administrative fee as applicable, and any other amounts necessary for the payment of the cost of improvements, or as otherwise enumerated in any other Loan Document.

(K) Other Documents

The Borrower shall deliver to the County such other documents and information as the County may reasonably require.

(L) Inability to Close Loan

Either party may terminate this Agreement upon written notice to the other party if the contingencies to close the Loan or conditions precedent to closing have not been met by the Closing Date set herein and the County does not agree, in its sole discretion, to extend the closing deadline.

**Section 2.04 Eligible Reimbursable Project Expenses**

(A) The disbursement of HOME-ARP funds provided by this Agreement shall be provided based on reimbursement of Eligible Project Costs, as defined in subsection 2.04(B) below

(B) Eligible uses of the County Loan funds are limited to Project development costs attributable to the twelve (12) HOME-ARP Assisted Units and shall include, but not be limited to, cost associated with the below:

1) Soft Costs

- Consultant and Professional Services, which includes Architectural, Engineering, Design, Project Management and Asbestos Survey.
- Demolition.
- Site improvement.
- Permits, Fees, etc.
- Utility Connection Fees and Utility Relocation.

2) Hard Cost

- Construction Materials.
- Labor.
- Utilities.
- HVAC.
- Painting.
- Paving sidewalks, parking lots, and driveways.
- Landscaping.

(C) Cost Eligibility Determination

Determination of cost eligibility and reasonableness shall be at the County's sole absolute discretion. Cost for off-site improvements, payment of delinquent taxes, legal fees and other fees, and costs related to other Project financing are ineligible for payment with County funds.

## **Section 2.05 Requirements for Disbursement of Loan Funds**

Any disbursement of Loan funds is subject to the satisfactory completion of an environmental review and County's receipt of approval from HUD to release funds.

The Borrower may request disbursement for Eligible Project Costs from the County for up to \$1,846,836 for payments made by the Borrower after March 12, 2024.

The Borrower may receive disbursement or payment for the below enumerated eligible cost categories provided the Borrower has complied with the requirements of this Agreement in connection with the following categories.

### **(A) Construction Costs**

The Borrower shall enter into one construction contract with a prime contractor covering all construction work associated with the Project (including site preparation, construction of on-site infrastructure, site improvements and amenities for the twelve (12) Home-ARP Assisted Units described herein). The construction contract may include the cost of general conditions, builder's profit and overhead, builder's risk insurance and bonding costs. The construction contract shall contain a schedule of values (G 703) or the equivalent and a detailed cost breakdown acceptable to the County for each HOME-ARP Assisted Unit in the Project.

The construction contract shall include the construction contract requirements associated with the use of HOME-ARP funds for this Project as more fully delineated herein.

- 1) Disbursements made hereunder shall be limited to on-site construction improvements and shall **exclude** the cost of off-site improvements and work associated with Non-HOME-ARP Assisted Units.
- 2) The County shall have received a copy of the executed construction contract (including all attachments such as plans/specifications). Subsequently, the Borrower shall provide the County a copy of all executed change orders to the construction contract bearing the approval of the Consultant (as defined in this Agreement).
- 3) The County shall have received consultant's plan and cost review either addressed to or certified to the County, or accompanied by a reliance letter in favor of the County, stating that the costs contained in the prime contractor's construction contract are reasonable.
- 4) Borrower shall submit to County a schedule of values for the construction of the Project. The schedule of values shall be submitted prior to or with the first draw request.
- 5) The Borrower shall withhold in accordance with Florida Statute 255.078, a maximum of five percent (5%) retainage on each payment requested by the prime contractor, which retainage shall only be released to the prime contractor with the final payment upon the prime contractor's (and subcontractors') full compliance with the terms and conditions of the

construction contract including compliance with the requirements associated with the use of HOME-ARP funds for the Project. The Borrower shall obtain the County's written approval prior to release of the accumulated retainage, which approval shall not be unreasonably withheld, provided the prime contractor has met the requirements set forth in the construction contract.

(B) Architectural, Engineering, and Other Consulting Fees

The Borrower shall enter into a contract with a professional engineer or an architectural consultant, which may be Borrower's engineer or architect of record for the Project. The architectural consultant shall be a Florida Registered Architect. Borrower shall designate the professional engineer or the architectural consultant, as the "Consultant" for this Project. The Consultant shall provide architectural, landscape architecture, surveying, planning, and engineering consultant services for the design and construction supervision of the Project. The Consultant shall also review all applicable construction costs and change orders, coordinate any asbestos abatement work with the construction work, review and approve all applicable construction contractor payments, and provide the DHED with written certification that the work has been completed acceptably in accordance with the plans and specifications.

The County shall have received a copy of a Consultant's contract for which the Borrower wishes to receive disbursement, including any amendment(s).

(C) Building Permits and Utility Connection Fees

Building permits and Utility Connection fees shall be limited to only those pertaining to the Project

(D) Other Costs Not Listed Above

The County, in its sole discretion, shall determine eligibility of other costs not listed above.

**Section 2.06 Submittal Request for Disbursement of Loan Funds**

Any request for a disbursement of loan funds shall include, not be limited to, the following documentation:

- (A) A letter from the Borrower on the Borrower's letterhead shall be provided to County for each disbursement request. The letter shall reference the Project, the date of this Agreement and its document reference number (if such number is available), and shall contain a statement requesting the payment of the amount needed for reimbursement, as well as the name and signature of a person authorized by the Borrower to make such a request.
- (B) A copy of the paid invoice supporting the Borrower's disbursement request shall accompany each disbursement request letter.
- (C) Proof of payment made by the Borrower shall accompany each disbursement request letter provided that such proof of payment demonstrate that payment was made after the Payment Eligibility Dates.

- (D) For reimbursement of permit and utility fees, a copy of the permit application (or similar document) issued by the entity levying the fee and showing the amount of the fee paid shall accompany each disbursement request letter.

## **Article III. Representations, Warranties and Covenants of Borrower**

### **Section 3.01 Covenants of Borrower**

(A) Development:

Borrower shall develop the Project substantially in accordance with the proposal submitted by Borrower in response to County's Notice of Funding Availability DHED 2023.1 (NOFA). In the event of a conflict between a HOME-ARP funding requirement, a specific term of this Agreement, and an element of Borrower's proposal, the more stringent requirement will prevail.

(B) Accessibility:

The Borrower shall make a minimum of five percent (5%) of Project units, or at least one (1) unit, whichever is greater, accessible to persons with mobility impairments (where such units are on an accessible route and adaptable and otherwise in compliance with standards set forth in 24 CFR Part 8 and 28 CFR Parts 35 and 36, as applicable). Furthermore, the Borrower shall make an additional two percent (2%) of Project units, or at least one (1) unit, whichever is greater, accessible to persons with hearing or vision impairments. In addition, the Borrower shall assure that Project units meet the design and construction requirements at 24 CFR 100.205, which implement the Fair Housing Act (42 U.S.C. 3601-3619).

(C) Standards:

Borrower shall construct all HOME-ARP Assisted Units in compliance with all applicable State and local codes, ordinances and zoning requirements. All demolition or construction must meet State or local residential building codes, as applicable, or in the absence of a State or local building code, the International Residential Code or International Building Code (as applicable to the type of housing) of the International Code Council. All HOME-ARP Assisted Units shall be constructed to mitigate the impact of potential disasters, such as hurricanes or flooding, in accordance with such governmental regulations. All HOME-ARP Assisted Units must meet the applicable requirements upon completion of construction and shall be maintained in compliance with all such State and local codes, ordinances and zoning requirements for the duration of the Affordability Period required by the Loan Documents. This requirement shall survive the expiration or earlier termination of this Agreement for five (5) years after the Affordability Period terminates.

(D) Asbestos:

The Borrower shall ensure that its bid and construction contract documents contain a prohibition against the use of any materials containing asbestos in connection with the construction of all HOME-ARP Assisted Units.



Said documents must clearly state that all materials to be used in connection with the construction of these units shall be asbestos-free.

1) Requirements for Asbestos Survey and Abatement:

- a) Asbestos Survey: The Borrower shall obtain a comprehensive asbestos survey of all building components and materials that will be disturbed during the construction work. The survey shall be performed by a Florida licensed asbestos consultant and shall comply with the requirements shown in Exhibit E attached hereto.

The Borrower shall provide the County with a copy of the comprehensive asbestos building survey report.

As an alternative, the Borrower may request that the County (DHED) obtain the asbestos survey, in which instance, the County shall deduct the associated cost of such asbestos survey from the funds made available through this Agreement and shall provide the Borrower with a copy of the comprehensive asbestos survey report.

- b) Asbestos Abatement: Should the above-mentioned asbestos survey of the Property reveal the presence of any asbestos-containing building materials (ACBM) that require abatement in the opinion of the County, then the Borrower shall include such abatement in the construction contract documents and shall comply with the directives from the County regarding such abatement.

All asbestos abatement work shall be performed by a Florida Licensed Asbestos Abatement Contractor, and when required by the County, shall be monitored by a Florida licensed asbestos consultant for Project oversight. The Borrower shall act in accordance with the County's Risk Management Department's asbestos abatement specification requirements.

Borrower shall include the asbestos abatement work in the construction contract. Otherwise, such work shall be procured separately by the Borrower, or by the County, in accordance with the requirements of Exhibit E and shall be performed prior to commencement of the construction work. If the County procures the asbestos abatement work, then the County shall deduct the cost of such abatement work from the funds made available through this Agreement.

(E) Energy Efficiency:

The Borrower is encouraged to construct all HOME-ARP Assisted Units such that they meet the current edition of the Model Energy Code published by the Council of American Building Officials, and, to the greatest extent possible, shall meet the standards established by the United States Environmental Protection Agency, in the publication titled *A Green Home Begins with ENERGY STAR Blue* or in the Version 6.0 Standard of the Florida Green Building Coalition ([www.floridagreenbuilding.org](http://www.floridagreenbuilding.org)).

- 1) The Borrower is encouraged to incorporate the following elements into its

development plan:

- a) Energy-efficient construction techniques and products.
- b) Improved indoor environments:
- c) Increased water efficiency:

(F) Civil Rights and Section 504 Compliance:

The Borrower shall ensure that no person shall, on the ground of race, color, religion, disability, sex, age, national origin, ancestry, marital status, familial status, sexual orientation, gender identity and expression, or genetic information, be excluded from the benefits of, or be subjected to discrimination under any activity carried out by the performance of this Agreement. Upon receipt of evidence of such discrimination, the County shall have the right to terminate this Agreement.

The Borrower shall also comply with 24 CFR 5.105(a) regarding discrimination.

The Borrower shall comply with all Federal regulations issued pursuant to Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), which prohibits discrimination against individuals with disabilities or handicaps in any Federally assisted program.

(G) Opportunities for Small and Minority/Women-owned Business Enterprises:

In connection with the procurement of all contracts for supplies, equipment, construction, or services funded, in part or in whole, with funds made available through this Agreement, the Borrower shall make a positive effort to utilize small business and minority/women-owned business enterprises, and provide these businesses with the maximum feasible opportunity in order to compete for contracts to be performed pursuant to this Agreement.

The provisions of this Subparagraph (G) do not apply, however, to contracts for supplies, equipment, construction, or services not funded, in part or in whole, with funds made available through this Agreement, such as contracts entered into by the Borrower for the operation and maintenance of the Project.

(H) Prohibition on Use of Excluded Parties

The Borrower agrees to comply with the requirements of 2 CFR Part 180, as supplemented by 2 CFR Part 2424 Subpart C, as it relates to the prohibition of excluded parties, including Federally debarred, suspended, and disqualified parties, from participation in any contract funded through this Agreement, regardless of tier, that is awarded by a contractor, subcontractor, supplier, consultant, or its agent or representative in any transaction, if the amount of the contract is expected to equal or exceed \$25,000.

(I) Build America, Buy America Act:

The Borrower must comply with the requirements of the Build America, Buy America (BABA) Act, 41 USC 8301 note, and all applicable rules and notices, as may be amended, if applicable to the Project. Pursuant to HUD's Notice, "Public Interest Phased Implementation Waiver for FY 2022 and 2023 of Build America, Buy America Provisions as Applied to Recipients of HUD Federal Financial

Assistance" (88 FR 17001), any funds obligated by HUD on or after the applicable listed effective dates as defined by HUD, are subject to BABA requirements, unless excepted by a waiver.

(J) HUD Section 3 Clause:

The Borrower agrees to comply with the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended 12 U.S.C. 1701u (Section 3) and 24 CFR Part 75, as they apply to Section 3 Covered Projects when funded, in part or in whole, through this Agreement and awarded for Section 3 Covered Projects. For the purposes of this Agreement, the requirements of Section 3 shall apply to the herein described construction contract with the prime contractor covering all construction work associated with the Project, all subcontracts arising from said construction contract, excluding licensed professional services contracts entered into on or after the execution of this Agreement.

Section 3 Reporting Requirements: All Labor hours for a Section 3 Covered Project; all labor hours for Section 3 Workers; and all labor hours for Section 3 Targeted Workers as defined in 24 CFR Part 75, shall to be reported to the County through the Labor Compliance Reporting System (LCRS) throughout the Section 3 Covered Project. See Section (O), Required Use of the Labor Compliance Reporting System (LCRS)

Additional Section 3 reporting requirements: In the event Section 3 benchmark goals identified in 24 CFR Part 75 are not met at completion of a Section 3 Covered Project, the Borrower must also submit a written report to the County on the qualitative nature of its activities and those of its contractors and subcontractors pursuant per 24 CFR Part 75.

Section 3 Clause: The Borrower shall include the following, referred to as the Section 3 Clause, in every solicitation and every contract and subcontract issued after execution of this Agreement:

The work to be performed under this contract is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended 12 U.S.C. 1701u (Section 3) and 24 CFR Part 75. The purpose of Section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by Section 3 are to the greatest extent feasible directed to low-and very low-income persons, particularly persons who are recipients of HUD assistance for housing. The Section 3 Clause provides that total labor hours for the Project are reported; labor hours for Section 3 Workers are reported; and labor hours for Section 3 Targeted Workers as defined in 24 CFR Part 75 are reported by the Borrower to the County for submittal to the Department of Housing and Urban Development.

The contractor agrees to include this Section 3 Clause in every subcontract on a Section 3 Project subject to compliance with regulations in 24 CFR Part 75.

Non-compliance with HUD's regulations in 24 CFR Part 75 may result in

sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted projects.

(K) Bonding Requirements:

Construction contracts exceeding \$200,000 shall require a performance bond and a separate payment bond each in the amount of one hundred percent (100%) of the construction contract price, executed by a corporate surety company acceptable to County, authorized to do business in the State of Florida, as security for the faithful performance and payment of all contractor's obligations under the construction contract. The County shall be added as an additional named obligee/beneficiary under each bond. During the construction periods, the surety company shall hold a current certificate of authority as an acceptable surety on Federal Bonds, in accordance with U. S. Department of Treasury Circular 570, Current Revision. A performance bond and a separate payment bond shall not be required for (i) subcontracts between the prime contractor and subcontractors and (ii) subcontracts between subcontractors and sub-subcontractors.

(L) Requirements Applicable to Construction Contract and Consultant Contracts:

The Borrower shall, in connection with the award of the construction contract to be funded, in part or in whole, through this Agreement, request from the County a document containing the Federal requirements applicable to the construction contract, and shall incorporate such document into its construction contract for the Project. Additionally, the Borrower shall impose the requirements contained therein on its prime contractor and all of the prime contractor's subcontractors. The Borrower shall also, in connection with the award of each consultant contract, if funded in part or in whole through this Agreement, request from the County a document containing the Federal requirements applicable to consultant contracts, and incorporate such document into each consultant contract for the Project, and shall impose the requirements contained therein on all affected consultants and their sub-consultants.

(M) Advertising/Marketing:

Borrower shall include the County logo in all marketing materials for the Project. During the period of the construction work contemplated herein, the County shall be identified on any signage present on the Property as one of the institutions financing the Project. Additionally, Borrower agrees to ensure that DHED is notified and invited to any ceremonies regarding the Project including, but not limited to, ribbon cutting, or grand opening ceremonies.

(N) Labor Compliance Reporting System (LCRS), as applicable:

As part of the County's commitment to assist the Borrower and its contractors/subcontractors to comply with legal and contractual requirements including Davis Bacon and Related Acts (DBRA) and Section 3 requirements at 24 CFR Part 75, the Department of Housing & Economic Development has established a Labor Compliance Reporting System ("LCRS") for this Project. The LCRS is available for use 24-hours a day, 7 days a week, at no cost for reporting weekly-certified payrolls, labor hours on Section 3 Covered Projects, and labor

compliance related documents. Utilization of this system should also prove helpful in expediting the process of reviewing payrolls, approving progress payments to contractors and disbursement payments to Borrowers/developers.

1) User Responsibilities:

- Borrower and its contractors/subs shall NOT create internet links to the service or frame or mirror any content on any other server or wireless or internet-based device.
- Borrower and its contractors/subs are responsible for all activity occurring under User account and shall abide by all applicable local, state, national laws, treaties and regulations in connection with the use of the service, including those related to data privacy, international communications and the transmission of technical data. The LCRS Web Address for contractors/subs use will be provided by DHED, along with Federal Requirements and Wage Decision(s).
- Borrower shall require its contractor and subs to register through the Labor Compliance Reporting System. This language shall be contained in the Borrower's Bid and Construction documents.
- Borrower shall require all fringe benefits statements, weekly-certified payroll reports to be submitted through the LCRS and this language shall be contained in the Borrower's Bid and Construction documents.

2) Disclaimer of Warranties for LCRS

County makes no representation, warranty, or guaranty as to the reliability, timeliness, quality, suitability, truth, availability, accuracy or completeness of the service or any content. County does not represent or warrant that:

- The use of the service will be secure, timely, uninterrupted or error-free or operate in combination with any other hardware, software, system or data.
- The service will meet Borrower's requirements or expectations.
- Any stored data will be accurate or reliable.
- The quality of any products, services, information or other material purchased or obtained by Borrower through the service will meet Borrower's requirements or expectations.
- Errors or defects will be corrected.
- The service or the servers that make the service available are free of viruses or other harmful components.

All content is provided to Borrower strictly on an "AS IS" basis. All conditions, representations and warranties, whether expressed or implied, statutory or otherwise, including, without limitation, any implied warranty of merchantability or fitness for a particular purpose are hereby disclaimed by County to the maximum extent permitted by applicable law by County.

(O) Natural Disaster or Act of God:

In the event of a natural disaster or act of god, vacant Project units that have not been leased, or have a pending lease, Borrower shall make such units available

to assist eligible individuals and families as determined by County, for a duration determined by County.

(P) Coordination of Availability for Community Services:

Borrower agrees to make a minimum of ten (10%) of all HOME-ARP Assisted Units, or at least one (1) unit, whichever is greater, available to individuals/households that have been referred by the Human Services and Community Action Division of the Palm Beach County Community Services Department (CSD). During lease-up, Borrower shall give priority to those referrals received from CSD. If requested by CSD, Borrower shall send notifications of all available vacant units to Wendy Tippet or her designated representative at [CSDCares@pbcgov.org](mailto:CSDCares@pbcgov.org) or through the Resource and Referral portal. CSD will provide occupancy training to all prospective individuals/households selected to occupy any unit.

(Q) Reporting Requirements

- 1) The Borrower shall submit to the County a **Performance Report** in the form attached as Exhibit F to this Agreement. The Performance Report shall be submitted to DHED upon request any time after the Effective Date of the agreement. After the Borrower provides a Report for the month during which the last Certificate of Occupancy is issued for the Project, the Borrower may cease submitting this Report.
- 2) The Borrower shall submit to the County a **Tenant Information Report** in the form provided as Exhibit G to this Agreement for each HOME-ARP Assisted Unit that is rented in the Project. During initial lease-up, the Borrower shall submit this Report monthly. Borrower will maintain this Report for subsequent leases, and lease renewals, which shall be submitted annually with the Annual Rent Roll, described below.
- 3) The Borrower shall submit to the County an **Annual Rent Roll** for all HOME-ARP Assisted Units in the form provided as Exhibit H to this Agreement. The Borrower shall first submit the Annual Rent Roll on the first anniversary of its submission of the first Tenant Information Report identified above.
- 4) The Borrower shall submit to the County a **Section 3 Report** to be provided on a monthly basis until Project Completion. The format and content of said report shall be determined by the County at a later date and promptly communicated to the Borrower.

The Borrower agrees to submit to DHED any other reports required by HUD and/or DHED in connection with activities undertaken through this Agreement.

(R) Insurance:

Borrower shall, at its sole expense, maintain in full force and effect at all times during the life of this Agreement, insurance coverages and limits (including endorsements), as described herein. BORROWER shall provide the COUNTY with at least ten (10) days prior notice of any cancellation, non-renewal or material change to the insurance coverages. The requirements contained herein, as well

as the COUNTY's review or acceptance of insurance maintained by BORROWER are not intended to and shall not in any manner limit or qualify the liabilities and obligations assumed by BORROWER under the Contract.

1) **Commercial General Liability**

BORROWER shall maintain Commercial General Liability at a limit of liability not less than \$1,000,000 each occurrence. Coverage shall not contain any endorsement excluding Contractual Liability or Cross Liability unless granted in writing by COUNTY's Risk Management Department. BORROWER shall provide this coverage on a primary basis.

2) **Worker's Compensation Insurance & Employers Liability**

BORROWER shall maintain Worker's Compensation in accordance with Florida Statute Chapter 440. Policy shall include Employer's Liability with not less than \$1,000,000 each accident. BORROWER shall provide this coverage on a primary basis.

3) **Additional Insured**

BORROWER SHALL ENDORSE THE COUNTY AS AN ADDITIONAL INSURED WITH A GC 2026 Additional Insured – Designated Person or Organization endorsement, or its equivalent, to the Commercial General Liability. The Additional Insured endorsement shall read "Palm Beach County Board of County Commissioners, a Political Subdivision of the State of Florida, its Officers, Employees and Agents." BORROWER shall provide the Additional Insured endorsements coverage on a primary basis.

4) **Waiver of Subrogation**

BORROWER hereby waives any and all rights of Subrogation against the COUNTY, its officers, employees and agents for each required policy. When required by the insurer, or should a policy condition not permit an insured to enter into a pre-loss agreement to waive subrogation without an endorsement to the policy, the BORROWER shall notify the insurer and request the policy be endorsed with a Waiver of Transfer of Rights of Recovery Against Others or its equivalent. This Waiver of Subrogation requirement shall not apply to any policy, which specifically prohibits such an endorsement, or which voids coverage should BORROWER enter into such an agreement on a pre-loss basis.

5) **Certificates of Insurance**

Prior to execution of this Agreement, BORROWER shall deliver to the COUNTY's representative a Certificate(s) of Insurance evidencing that all types and amounts of insurance coverages required by this Agreement have been obtained and are in full force and effect. Such Certificate(s) of Insurance shall include a minimum of ten (10) day endeavor to notify due to cancellation or non-renewal of coverage. The Certificate of Insurance shall be issued to:

**6) Umbrella or Excess Liability**

If necessary, BORROWER may satisfy the minimum limits required above for Commercial General Liability, Business Auto Liability, and Employer's Liability coverage under Umbrella or Excess Liability. The Umbrella or Excess Liability shall have an Aggregate limit not less than the highest "Each Occurrence" limit for either Commercial General Liability, Business Auto Liability, or Employer's Liability. The COUNTY shall be specifically endorsed as an "Additional Insured" on the Umbrella or Excess Liability, unless the Certificate of Insurance notes the Umbrella or Excess Liability provides coverage on a "Follow-Form" basis.

**7) Right to Review, Revise or Reject**

COUNTY, by and through its Risk Management Department, in cooperation with the Contracting/Monitoring Department, reserves the right to review, modify, reject or accept any herein required policies of insurance, including limits, coverages, or endorsements, from time to time throughout the term of this Contract. COUNTY reserves the right, but not the obligation, to review and reject any insurer providing coverage because of its poor financial condition or failure to operate legally.

**8) Builder's Risk Insurance (During Construction)**

- a) With respect to any of the work involving the construction on real property (buildings and improvements other than buildings) during the construction project the BORROWER shall maintain Builder's Risk insurance providing coverage for the entire work at the project site, and will also cover portions of work located away from the site but intended for use at the site, and will also cover portions of the work in transit. Coverage shall be written on an all-risk, replacement cost, and completed value from basis in an amount at least equal to the projected completed value of the Project as well as subsequent modifications of that sum. If a sublimit applies to the perils of wind or flood, the sublimit shall not be less than 25% of the projected completed value of the Project. The deductible shall not exceed \$50,000, without previous County approval, nor shall a wind percentage deductible, when applicable, exceed five percent (5%) of values at risk at time of loss subject to a \$250,000 minimum.
- b) Partial occupancy or use of the work shall not commence until insurance company or companies providing insurance as required have consented to such partial occupancy or use. BORROWER shall take reasonable steps to notify and obtain consent of the insurance company or companies, and agree to take no action, other than upon mutual consent, with respect to occupancy or use of the work that could lead to cancellation, lapse, or reduction of insurance.



- c) The coverage must be in effect prior to the Notice to Proceed and shall be kept in force until Substantial Completion has been obtained, or until the COUNTY no longer has any property interest in the Project or until BORROWER and COUNTY mutually consent to the termination, whichever comes first. BORROWER agrees and understands the COUNTY shall not provide any Builders Risk insurance on behalf of BORROWER for loss or damage to work, or to any other property owned or hired by the BORROWER. In the event of a claim, BORROWER shall be responsible for payment of the deductible amounts.
- d) Should any of the Work hereunder involve the hauling and/or rigging of property in excess of \$500,000 or \$250,000 in transit, BORROWER shall procure and maintain all-risk transit or motor truck cargo insurance or a similar form of coverage insuring against physical damage or loss of property being transported, stored, moved, or hauled by BORROWER, OR ANY Subcontractors, pursuant to the terms of this Contract, subject to the limits, terms and conditions set forth herein.
- e) The Contractor shall endorse the County as a Loss Payee on the Builder's Risk and Inland Marine/Transit insurance, when required to be maintained by the Contractor. The Loss-Payee endorsement shall read "Palm Beach County Board of County Commissioners." Endorsement shall be in accordance with all of the limits, terms, and conditions set forth herein. The Contractor shall agree the Loss/Payee endorsement provides coverage on a primary basis.

9) **Property Insurance (Upon Completion of Construction)**

In addition to the coverages mentioned as required earlier in the insurance provisions, upon completion of the initial project construction, the BORROWER shall maintain the following additional property insurance coverages:

- a) **Property Insurance** – in an amount not less than 100% of the total replacement cost of any building, additions, betterments and improvements of the Property, including those made by or on behalf of Tenant, as well as Tenant's personal property and contents located on the Property. The settlement clause shall be on a Replacement Cost basis.  
  
Coverage shall be written with a Special –Cause of Loss (All-Risk) form and include an endorsement for Ordinance & Law in an amount not less than 15% of the property insurance limit.
- b) **Flood Insurance** – regardless of the flood zone, in an amount not less than 100% of the total replacement cost of any buildings, additions, betterments, or improvements, including those made by or on behalf of; or the maximum amount available from the National Flood Insurance Program, whichever is less.
- c) **Windstorm Insurance** – unless included as a covered peril in the property insurance, in an amount not less than 100% of the total replacement cost of any buildings, additions, betterments or improvements, including those made by or on behalf of the BORROWER

as well as Tenant's personal property and contents located on the Property, or the maximum amount available under the Florida Windstorm Underwriting Association, whichever is less. BORROWER shall ensure such coverage is provided on a primary basis.

When the BORROWER delivers the signed Agreement to the COUNTY, the BORROWER shall also deliver to the COUNTY such insurance certificates or other documents as the BORROWER may be required to furnish in accordance with the Loan Documents.

### **Section 3.02 Representations and Warranties by Borrower**

#### **(A) Organization Status and Authority to Enter into Loan Documents:**

The Borrower is a Florida not for Profit Corporation duly organized and validly existing in good standing under the laws of the State of Florida with full power and authority to consummate the transactions contemplated herein. The Borrower is duly authorized to borrow from County the principal sum of \$1,846,836 and execute all the Loan Documents.

The Borrower has full power and authority to enter into the Loan Documents and consummate the transactions contemplated hereby.

#### **(B) Validity of Loan Documents:**

The Loan Documents have been approved by those persons having proper authority, and to the best of Borrower's knowledge, are in all respects legal, valid, and binding according to their terms subject to applicable bankruptcy, insolvency and similar laws affecting rights of creditors.

#### **(C) No Conflicting Transactions or Pending Litigation of Borrower:**

The consummation of the transaction hereby contemplated and the performance of the obligations of Borrower under and by virtue of the Loan Documents will not result in any breach of, or constitute a default under, any other Agreement to which Borrower is a party or by which it may be bound or affected.

There are no actions, suits or proceedings pending before any court of law or equity, or any Administrative Board, or, to the knowledge of the Borrower, threatened against or affecting it or the Property, or, involving the validity or enforceability of the Mortgage, or of any of the Loan Documents.

#### **(D) Availability of Utilities, Condition of Property, and Availability of Roads:**

All utility service necessary for the construction of the Improvements and the operation thereof for their intended purpose are or will be available at the boundaries of the Property, including water supply, storm and sanitary sewer facilities, and electric and telephone facilities, and Borrower has obtained or will obtain all necessary permits and permissions required from governmental authorities for unrestricted access to and use of such services in connection with the construction and use of the intended improvements.

The Project is not now damaged or injured as a result of any fire, explosion, accident, flood or other casualty, and to Borrower's knowledge, there are no soil

conditions, which would materially interfere with the construction of the improvements.

All roads necessary for the full utilization of the intended improvements for their intended purposes have either been completed or the necessary rights of way therefor have been acquired by the appropriate local authorities or have been dedicated to public use and accepted by such local authorities and all necessary steps have been taken by Borrower and such local authorities to assure the complete construction and installation thereof.

(E) No Default:

There is no default on the part of the Borrower under this Agreement, and no event has occurred and is continuing which with notice, or the passage of time, or either, would constitute a default under any provision hereof.

(F) Hazardous Waste:

Borrower is in compliance with all provisions of the federal Water Pollution Control Act, Comprehensive Environmental Response, Compensation and Liability ("Superfund") Act of 1980 and Solid Waste Disposal Act, Florida Statutes, Chapter 376, and other similar federal, state and local statute, ordinances or rules imposing liability on Borrower relating to the generation, storage, impoundment, disposal, discharge, treatment, release, seepage, emission, transportation or destruction of any sewage, garbage, effluent, asbestos or asbestos-containing materials, polychlorinated biphenyls (PCBs), toxic, hazardous or radioactive materials, petroleum products, pesticides, smoke, dust, or any other form of pollution as such laws are in effect as of the date of this Agreement and with any rules, regulations and order issued by any federal, state or local governmental body, agency or authority thereunder and with any orders or judgments of any courts of competent jurisdiction with respect thereto, and no assessment, notice of (primary or secondary) liability or notice of financial responsibility, or the amount thereof, or to impose civil penalties has been received by the Borrower. Borrower has paid any environmental excise taxes imposed pursuant to Sections 4611, 4661 or 4681 of the Internal Revenue Code of 1986, as from time to time amended.

(G) Filing and Payment of Taxes:

The Borrower has filed all Federal, State and local tax reports and returns required by any law or regulation to be filed by them, and have either duly paid all taxes, duties and charges indicated due on the basis of such returns and reports, or made adequate provisions for the payment thereof, and the assessment of any material amount of additional taxes in excess of those paid and reported is not reasonably expected.

**Section 3.03 Additional Covenants of Borrower**

(A) Construction Liens:

The Borrower shall (i) allow no work or construction to be commenced on the Property, or goods specially fabricated for incorporation therein, which has not been fully paid for prior to the recording of the Mortgage or which could constitute

a lien on the Property superior to the lien of the Mortgage, (ii) cause a certified copy of the Notice of Commencement to be posted as required by Chapter 713, Florida Statutes, as soon as possible after recording the Notice of Commencement, (iii) notify the County of any and all Notices to Borrower as Owner as that term is defined in Chapter 713, Florida Statutes, within five (5) days of receipt thereof, unless the County is designated as a party under the Notice of Commencement as a party to receive such Notice to Owner, and (iv) comply with all provisions of the Florida Construction Lien Law, including but not limited to, payment and notice provisions contained therein. The Borrower shall indemnify and hold the County harmless from the claims of any construction lien or equitable lien, and shall pay promptly upon demand any loss or losses which the County may incur as a result of the filing of any such lien, including the reasonable cost of defending same and the County's reasonable attorneys' fees in connection therewith.

The Borrower agrees, at its sole cost and expense, to have any construction lien or equitable lien which may be filed against the Property or undisbursed funds of this Loan released, bonded or insured over within sixty (60) days of the date of filing same, time being of the essence. The County shall be under no obligation to make further disbursements while any such lien remains outstanding against the Property. If Borrower fails, after demand, to cause said lien or liens to be released, bonded or insured over within the foregoing 60-day period, the County may take such steps as it deems necessary and any funds expended shall be charged to Borrower's Loan Account and shall bear interest at the maximum rate allowable by law.

The Borrower hereby authorizes the County to demand, on Borrower's behalf, following written notice to Borrower, the statement of account referred to in Section 713.16(2) of the Florida Statutes, of any potential lienor filing a Notice to Owner. It is specifically understood and agreed, however, that the County's right to request such statements of account will in no way impose any obligation on the County to use such authority, and the exercise of such authority on one or more occasion shall not create or imply any obligation on the County to exercise such authority on subsequent occasions.

(B) No Transfer of Property:

Except for the Senior Mortgage, if applicable, the Property, or any part thereof, shall not be sold, leased (except for tenant leases), conveyed, mortgaged or encumbered in any way without the prior written consent of the County which consent shall not be unreasonably withheld or delayed. Notwithstanding the foregoing, Borrower may enter into utility easements or licenses or leases for tenant services, such as laundry or concessions, and refinancing of the Senior Mortgage with an independent institutional lender shall be permitted without the prior written consent of the County so long as the refinancing does not increase the aggregate amount of indebtedness originally secured by the applicable Senior Mortgage plus applicable fees and costs associated with refinancing.

(C) Compliance with Laws

The Borrower will comply promptly with all federal, state and local laws, ordinances and regulations relating to the construction, use, and leasing of the

Property, and will obtain and keep in good standing all necessary licenses, permits and approvals required or desirable for construction and use of the improvements.

(D) Brokerage Commissions

The Borrower hereby represents and warrants that Borrower has not and will not knowingly engage in any activity or enter into any relationship which will give rise to any loan or brokerage commission with regard to the Loan, and Borrower will indemnify and hold County harmless from the claims of any broker(s) arising by reason of the execution hereof or the consummation of the transactions contemplated hereby.

(E) Financial Statements to be Furnished

The Borrower shall furnish to the County:

- 1) Upon the County's request, a complete and current financial statement of all assets and liabilities, contingent or otherwise, prepared in accordance with generally accepted accounting principles and verified by affidavit of Borrower and, at the request of the County, certified (in form satisfactory to the County) by an independent certified public accountant acceptable to the County.
- 2) Commencing with the report for the calendar year ending December 31, 2025, within one hundred eighty (180) days after the end of each fiscal year of Borrower, a balance sheet and statements of income, together with schedules, all compiled and presented by an independent accounting firm in accordance with standard and uniform accounting practices showing the financial condition of Borrower at the close of each year and the results of operations of Borrower during each year.
- 3) With the statements submitted under (2) above, a certificate signed by the principal financial officer of Borrower to the effect that no Event of Default specified herein or in the Mortgage, nor any event which upon notice or lapse of time or both, would constitute such an Event of Default has occurred which has not been cured or otherwise waived in writing by the County.
- 4) Other information regarding the operations, business, affairs, and financial condition of Borrower as the County may reasonably request.

(F) Borrower to Maintain Bookkeeping System

The Borrower shall, if required by the County, maintain a bookkeeping system for the Project in form and content sufficient for the County to conduct reviews, inspections, certifications and reports required by this Agreement. The County shall have full (but confidential) access to the extent allowed under the Public Records Law, at any reasonable time, subject to prior notice to the books, records and contracts pertaining to the Project and Borrower.

(G) Dashboard Updates

Borrower agrees to verify from time to time that the information regarding the Project as maintained by the County and reported online in Palm Beach County's Housing Dashboard informational website is current and accurate.

(H) Insurance Proceeds

The Borrower shall keep the Property continually insured in an amount not less than the insurable value of the Property, which coverage shall insure the Property against loss or damage by fire and by the perils covered by extended coverage and against such other hazards as the County, in its reasonable discretion, shall from time to time reasonably require, for the benefit of the County. All such insurance at all times will be with an insurance company or companies in such amounts and with terms acceptable to the County, payable to the County, as its interest may appear, pursuant to a non-contributory mortgagee clause which shall be reasonably satisfactory to the County. Upon the issuance of such policies, Borrower will deliver to the County copies of receipts for the premiums paid thereon, certificates of insurance, and copies of such policies. In the event of a foreclosure or other transfer of title to the Property in lieu of foreclosure, or by purchase at the foreclosure sale, all interest in any proceeds due in connection with any claims made under the policy(ies) (for events arising prior to the title transfer) shall pass to Lender, transferee or purchaser, as the case may be. Subject to the provisions of the Senior Mortgage (if applicable), should a loss be incurred, equal to or in excess of fifty percent (50%) of the full insurable value of the Property, then in such event, County and Borrower may jointly elect to use the proceeds for the reconstruction and repair of the Property or, in the alternative, to apply the net proceeds to the payment of the indebtedness hereby secured, whether then due or not. Notwithstanding anything to the contrary contained herein, if there is no Event of Default that is continuing, Borrower shall have the right to use the insurance proceeds for the reconstruction of the Property provided the Borrower can provide evidence to the County of sufficient funds from other sources available to effectively rebuild the Project in compliance with the terms of this Agreement and the herein described HOME-ARP funding. This section is subordinate and subject to the Senior Mortgage (if applicable).

(I) Indebtedness

With respect to the Property to be encumbered by the Borrower, the Borrower will not incur, create, assume or permit to exist any indebtedness superior to the Mortgage without the written approval of the County, which approval shall be granted or withheld, at the County's sole discretion, except the Senior Mortgage, if applicable.

(J) Further Assurances and Preservation of Security

Borrower shall take, or cause to be taken, all actions, and do, or cause to be done, all things, reasonably necessary, proper or advisable under applicable laws, regulations and agreements to consummate and make effective the transactions contemplated by this Agreement. From time to time, the County may require the Borrower to perform additional acts necessary to preserve and protect any collateral intended to secure the Promissory Note.

(K) No Assignment

The Borrower shall not assign this Agreement or any interest therein and any such assignment is void and of no effect.

(L) Records Responsibilities and Obligations

All reports, plans, surveys, information, documents, maps, and other data produced, developed, prepared, assembled, or completed by the Borrower for the purpose of this Agreement shall be available to the County at any time upon request by the County.

The Borrower shall maintain adequate records to justify all charges, expenses, and costs incurred for the construction of the Improvements for at least five (5) years after completion. Furthermore, the Borrower shall maintain ongoing records related to its tenants (such as their incomes, their household composition, their household characteristics, and their leases) for at least five (5) years after the end of each tenancy to enable the County to verify the Borrower's compliance with the occupancy, affordability, and all other requirements in this Agreement. In any event, the Borrower shall keep this Agreement, all amendments to this Agreement, and all documents and records in connection with this Agreement and make them available to the County for on-site monitoring for at least five (5) years after expiration of this Agreement, except that:

- 1) In connection with homes rented/leased by the Borrower, records of individual tenant income verifications, Project rents and Project inspections shall be retained by the Borrower for five (5) years after the affordability period terminates.
- 2) If any litigation, claim, negotiation, audit, monitoring, inspection or other action has been started before the expiration of the required retention period records in connection with the aforesaid shall be retained by the Borrower until completion of the action and resolution of all issues that arise from it, or until the end of the required period, whichever is later.

(M) Inspector General:

Palm Beach County has established the Office of Inspector General in Palm Beach County Code, Section 2-421 to 2-440, as may be amended. The Inspector General's authority includes but is not limited to, the power to review past, present and proposed County contracts, transactions, accounts and records, to require the production of records, and to audit, investigate, monitor, and inspect the activities of the Borrower, its officers, agents, employees, and lobbyists in order to ensure compliance with contract requirements and detect corruption and fraud. Failure to cooperate with Inspector General or interfering with or impeding any investigation shall be in violation of the above Code and punished pursuant to Section 125.69, Florida Statutes, in the same manner as a second-degree misdemeanor.

(N) Inspections

The Borrower will permit the County, or its representatives, to enter upon the Property during normal business hours, to inspect improvements and all materials to be used in the construction thereof, and to examine all details, plans and shop drawings that are kept at the construction site. Additionally, the Borrower shall cooperate and cause Borrower's general contractor and subcontractors to cooperate with the County's representative.

## **Article IV. HOME Requirements for Rental Developments**

### **Section 4.01 Income Requirements for Occupant Households**

The HOME Assisted Units shall initially be occupied by tenant households whose incomes, adjusted by family size, are at no more than fifty percent (50%) of AMI. Subsequent tenant households that occupy these units at any time thereafter, shall also have household incomes, adjusted by family size, that are at no more than fifty percent (50%) of AMI at the time these tenant households occupy these units.

**THE REQUIREMENTS AND RESTRICTIONS SET FORTH IN THIS SECTION INCOME REQUIREMENTS FOR OCCUPANT HOUSEHOLDS, SHALL SURVIVE THE EXPIRATION OR EARLIER TERMINATION OF THIS AGREEMENT AND SHALL BE COVENANTS RUNNING WITH THE LAND FOR A FIFTY (50) YEAR AFFORDABILITY PERIOD. NOTWITHSTANDING THE FOREGOING, THESE COVENANTS SHALL TERMINATE UPON FORECLOSURE OF THE SENIOR MORTGAGE, IF APPLICABLE, OR INSTRUMENT IN LIEU OF FORECLOSURE OF SUCH SENIOR MORTGAGE,**

### **Section 4.02 Affirmative Marketing**

- (A) In furtherance of the County's commitment to non-discrimination and equal opportunity in housing, the County's Department of Housing and Economic Development (DHED) has established policies and procedures to affirmatively market housing units produced through the use of these funds. These affirmative marketing procedures are implemented comprehensively for all housing programs through DHED and aim to effect greater participation of eligible persons without regard to race, color, religion, disability, sex, age, national origin, ancestry, marital status, familial status, sexual orientation, gender identity or expression or genetic information.
- (B) The Borrower, in order to carry out the requirements and procedures of DHED's Affirmative Marketing Program, shall comply with the following procedures:
- 1) Use the Equal Opportunity logo or slogan in advertisements;
  - 2) Solicit applications from persons in the housing market area who are not likely to apply for housing without special outreach. The Borrower may satisfy this requirement by posting a notice of vacancies in any or all of the following:
    - Community Organizations
    - Fair Housing Groups
    - Housing Counseling Agencies
    - Commercial Media
    - Employment Centers
    - Local Public Housing Authorities (PHAs) or Other Similar Agencies
    - Mobile Home Communities
    - Agencies for the disabled
    - Churches and other related organizations



- 3) Borrower shall keep records of its efforts to affirmatively market units and the Borrower shall provide DHED copies of its records, including advertisements, minutes of meetings, income documentation, and census tract information, as applicable, as evidence of the Borrower's efforts.

**The requirements of this Section shall survive the expiration of this Agreement.**

#### **Section 4.03 Rental of HOME-ARP Assisted Units to Tenants**

The following shall apply to all HOME-ARP Assisted Units

(A) Duration of Applicability

These requirements shall apply to each rental HOME-ARP Assisted Unit for the duration of fifty (50) years beginning with the date of Project Completion as defined in 24 CFR 92.

HOME-ARP Assisted Units that are rented by the Borrower shall be rented on a continuous basis without interruption in occupancy exceeding thirty (30) days while the Borrower performs maintenance and repairs or completes arrangements to enable occupancy by new tenants.

(B) Permanent Housing

All rental HOME-ARP Assisted Units shall be "permanent housing" meaning housing which is intended to be the tenant's home under the limits of a signed legal lease document. HOME-ARP Assisted Units may not be used for transitional housing or emergency shelters.

(C) Rental Rates, Utility Allowances and Rent Schedules

The following rental rates shall apply to all HOME-ARP Assisted Units to be rented by the Borrower.

- 1) HOME-ARP Assisted Units shall be rented by the Borrower to households whose incomes, adjusted by family size, are at no more than fifty percent (50%) of AMI and shall be rented at a rate such that the tenant's payment is no more than the Low HOME Rent Limit in effect at the time the lease is executed less any tenant paid utilities using the then current utility allowances from the HUD Utility Schedule Model. The Low HOME Rent Limit, by bedroom size, shall be as published by HUD, from time to time, for the West Palm Beach-Boca Raton HUD Metro FMR Area pursuant to 24 CFR 92.252. The above-specified rates shall apply to all initial leases with tenants, as well as all subsequent leases (with an existing tenant or another tenant) and lease renewals.
- 2) HOME-ARP Assisted Units to be rented by the Borrower to households whose incomes, adjusted by family size, are no more than fifty percent (50%) of AMI, shall be rented at a rate such that the tenant's payment is no more than the High HOME Rent Limit in effect at the time the lease is executed less any tenant paid utilities using the then current utility allowances from the HUD Utility Schedule Model. The High HOME Rent Limit, by bedroom size, shall

be as published by HUD, from time to time, for the West Palm Beach-Boca Raton HUD Metro FMR Area pursuant to 24 CFR 92.252. The above-specified rates shall apply to all initial leases with tenants, as well as all subsequent leases (with an existing tenant or another tenant) and lease renewals.

- 3) The County shall, for the duration of the Affordability Period, establish the monthly utility allowances applicable to HOME-ARP Assisted Units according to the HUD Utility Schedule Model. Such utility allowances shall be used by the Borrower as described above. The Borrower shall annually propose its rent schedule for HOME-ARP Assisted Units, and the County shall review and approve such rent schedule provided it complies with the above limitations. The Borrower shall only use rent schedules approved by the County. Changes in rent levels shall be subject to the provisions of outstanding leases. The Borrower shall provide tenants not less than thirty (30) days written notice before implementing any increase in rent. The rental rates in Affordable Rental Housing Units shall not be increased during the term of a tenant lease to adjust for changes in rent limits occurring subsequent to execution of the lease, but may only be increased upon lease renewal.

(D) Tenant Income

The Borrower shall, for all HOME-ARP Assisted Units to be rented, verify the tenant's household income at the time a unit is first occupied, and thereafter annually and at any time new tenants occupy the unit, to determine income eligibility according to the requirements herein.

In addition to the Borrower's verification of each tenant's household income at the time a new tenant occupies a HOME-ARP Assisted Unit, the Borrower shall re-verify the tenant's household income **annually** thereafter to ensure continued income eligibility.

Temporary non-compliance caused by increases in the income of existing tenants shall be addressed according to the requirements of 24 CFR 92.252(i).

(E) Tenant Records to be maintained

The Borrower shall, for each household that is rented a HOME-ARP Assisted Unit, comply with the below requirements and maintain a file that, at minimum, contains the following:

- 1) An application for lease, signed and dated by the applicant(s), identifying the household members that intend to occupy the apartment, the household characteristics, and the household income they have disclosed.
- 2) Source documentation evidencing the Borrower's verification of the Tenant's household income and a computation sheet demonstrating the Borrower's determination of the tenant's income eligibility to occupy the unit. Household income computation shall follow the HUD Section 8 method (24 CFR 5.609).
- 3) Documentation evidencing the Borrower's recertification of tenant's household income at the time of the first lease renewal to ensure continued income eligibility.

- 4) A copy of the HUD income levels in effect at the time the initial lease is signed and at the time of lease renewal.
- 5) A copy of each tenant's initial lease and all lease renewals and a computation sheet and supporting documentation for each demonstrating that the rent charged by the Borrower is an affordable rental rate as defined in section 4.03 (C) above.
- 6) Should the Borrower elect to utilize criminal background information in the screening of prospective tenants or the retention/termination of tenants, the Borrower must develop and implement tenant selection policies, which comply with HUD guidance on the use of criminal background information.

Tenant selection/retention/termination shall not:

- Exclude persons from housing based on records of arrests not resulting in conviction;
- Exclude persons from housing based solely on conviction of any type, with the exception of those identified by HUD (methamphetamine production and registered sex offender); and
- Be utilized to intentionally discriminate against protected classes of persons.

Tenant selection/retention/termination shall:

- Serve a substantial, legitimate, and non-discriminatory interest of the housing provider;
- Distinguish between criminal conduct which indicates a demonstrable risk to resident safety and/or property and that which does not;
- Consider the nature, severity, and recency of the criminal offense;
- Consider relevant individualized evidence such as: circumstances surrounding the criminal conduct; the age of the individual at the time of the conduct; tenant history before and/or after the criminal conduct; and rehabilitation efforts; and
- Be applied equally among all classes of protected persons.

The Borrower shall submit its written tenant selection/retention/termination policies to HED for review.

- 7) Any other documentation evidencing the Borrower's compliance with this Agreement.

**The requirements of this Section shall survive the expiration or earlier termination of this Agreement.**

## **Article V. Default**

### **Section 5.01 Events of Default**

#### **(A) Mortgage**

If there is a default or event of default under the Mortgage which is not cured within any applicable cure period.

#### **(B) Bankruptcy**

If there is filed by or against Borrower a petition in bankruptcy or a petition for the appointment of a receiver or trustee of the property of Borrower, and any such petition is not dismissed within ninety (90) days of the date of filing, or if Borrower files a petition for reorganization under any of the provisions of the Bankruptcy Code or makes any assignment for the benefit of creditors or makes any insolvency assignment or is adjusted insolvent by any court of competent jurisdiction.

#### **(C) Breach of Covenants, Warranties and Representations**

If any warranty or representation made by Borrower in this Agreement or in any other Loan Document shall at any time be false or misleading in any material respect when made, or if Borrower shall fail to keep, observe or perform any of the material terms, covenants, representations or warranties contained in this Agreement, the Promissory Note, the Mortgage, the Loan Documents, and any other document given in connection with the Loan or the Project or if Borrower is unwilling or fails to meet its obligations (provided, that with respect to non-monetary defaults, the County shall give written notice to Borrower, who shall have thirty (30) days to cure, with additional time as may be required if the cure is diligently commenced but cannot be completed within said thirty (30) days and the County concurs, and provided that, with respect to monetary defaults, the County shall give written notice to Borrower, who shall have fifteen (15) days to cure. County agrees to accept a cure tendered by the Senior Mortgagee, if applicable, provided such cure meets all of the requirements to fully cure the breach.

#### **(D) Failure to Close Loan**

If the Borrower fails to close on this Loan by the deadline set forth in Section 2.01(I)(1) of this Agreement, the County may terminate this Agreement immediately upon written notice to Borrower. In such instance, all remaining HOME-ARP funds shall revert to the County and the County may reallocate such remaining funds for other projects, unless such deadline is extended by written agreement between the parties. The County shall not be obligated to replace the HOME-ARP funds with funds from another source. The County's right to reallocate remaining HOME-ARP funds shall not be subject to the rights of any other lender or the terms of any subordination agreement.

(E) Failure to Use Funds

In the event Borrower fails to use all HOME-ARP funds by **December 31, 2026**, all remaining HOME-ARP funds shall revert to the County and the County may reallocate such remaining funds for other projects, unless extended by written agreement between the parties, and the County shall not be obligated to replace the HOME-ARP funds with funds from another source. The County's right to reallocate remaining HOME-ARP funds shall not be subject to the rights of any other lender or the terms of any subordination agreement.

(F) Failure to Complete Construction and Place Units into Service

If the Borrower fails to complete construction of the Improvements, secure a certificate of occupancy for the Improvements, and place all HOME Assisted Units for the Project into service by **May 31, 2027**, unless such deadline is extended by written agreement between the parties.

(G) Diligent Effort, Rental Occupancy, and Repayment of HOME-ARP Funds

The Borrower shall make a diligent effort to market and rent each rental HOME-ARP Assisted Unit. Each such unit must, within six (6) months following the date of Project Completion, be occupied by a household that has met the income requirements herein. The date of Project Completion shall be determined by DHED according to the HOME regulations at 24 CFR Part 92 and shall be communicated by DHED to the Borrower as soon as possible. If the Borrower is unable to meet this occupancy requirement within the aforesaid six-month period, then the Borrower shall, within ten (10) calendar days after the end of said period, provide DHED a report containing its marketing information to show its effort to date to rent the unit and shall also provide DHED its marketing plan to rent the HOME-ARP Assisted Unit after the date of the report. If the Borrower has not rented the HOME-ARP Assisted Unit to a household that has met the income requirements herein within eighteen (18) months following Project Completion, then the Borrower shall repay the County all HOME-ARP funds expended by the County on such unit.

**Section 5.02 Remedies of Lender**

Upon the happening of an Event of Default, which default is not cured within any applicable cure or grace period, then the County may, at its option, upon thirty (30) days written notice to Borrower, exercise any one or more of the following remedies:

(A) Cancellation of Agreement

Cancel this Agreement.

(B) Commencement of Legal or Equitable Action:

Commence an appropriate legal or equitable action to enforce performance of this Agreement.

(C) Acceleration of Payment

Accelerate the payment of the Promissory Note and any other sums secured by the Mortgage, and commence appropriate legal and equitable action to foreclose the Mortgage and collect all such amounts due the County.

(D) Rights and Remedies

Exercise any other rights or remedies the County may have under the Mortgage or other Loan Documents executed in connection with the Loan or which may be available under applicable law.

## **Article VI. General Terms**

### **Section 6.01 Rights of Third Parties**

No provision of this Agreement is intended to, or shall be construed to, create any third party beneficiary or to provide any rights to any person or entity not a party to this Agreement, including but not limited to any citizen or employees of the County and/or the Borrower, other than the Senior Mortgagees, if applicable, as to cure rights.

All conditions of the County hereunder are imposed solely and exclusively for the benefit of the County and its successors and assigns, and no other person shall have standing to require satisfaction of such conditions or be entitled to assume that the County will make disbursements in the absence of strict compliance with any or all such conditions, and no other person shall, under any circumstances, be deemed to be a beneficiary of this Agreement or the Loan Documents, any provisions of which may be freely waived in whole or in part by the County at any time if, in its sole discretion, it deems it desirable to do so. In particular, the County makes no representations and assumes no duties or obligations as to third parties concerning the quality of construction by Borrower of the Improvements, or the absence therefrom, of defects.

### **Section 6.02 Borrower is not the County's Agent**

Nothing in this Agreement, the Promissory Note, the Mortgage or any other Loan Document shall be construed to make the Borrower the County's agent for any purpose whatsoever, or the Borrower and the County partners, or joint or co-venturers, and the relationship of the parties shall, at all times, be that of debtor and creditor.

### **Section 6.03 Public Entity Crimes**

As provided in F.S. 287.133, by entering into this Agreement or performing any work in furtherance hereof, the Borrower certifies that it, its affiliates, suppliers, subcontractors and consultants who will perform hereunder, have not been placed on the convicted vendor list maintained by the State of Florida Department of Management Services within the thirty-six (36) months immediately preceding the date hereof. This notice is required by F.S. 287.133 (3)(a).

#### **Section 6.04 Conflict of Interest**

The Borrower covenants that no person (an employee, agent, consultant, officer, or elected or appointed official of the Borrower, or, to Borrower's actual knowledge, the County) who exercises or has exercised any functions or responsibilities with respect to activities assisted under this Agreement, or who is in a position to participate in a decision-making process or gain inside information with regard to activities assisted under this Agreement, may obtain a financial interest or benefit from an assisted activity, or have a financial interest in any contract, subcontract, or agreement with respect to an assisted activity; or the proceeds derived from an assisted activity, either for him or herself or for those with whom he or she has immediate family or business ties, during his or her tenure or during the one-year period following his or her tenure.

Immediate family ties include (whether by blood, marriage, or adoption) the spouse, parent (including a stepparent), child (including a stepchild), brother, sister (including a stepbrother or stepsister), grandparent, grandchild, and in-laws of a covered person.

Any possible conflict of interest on the part of the Borrower, or any person as described above, shall be disclosed in writing to the County upon Borrower's knowledge thereof. No owner, developer, or sponsor of the Project assisted through this Agreement (or officer, employee, agent, elected or appointed official or consultant of the Borrower, owner, developer or sponsor or immediate family member or immediate family member of an officer, employee, agent, elected or appointed official or consultant of the Borrower, owner, developer or sponsor) whether private, for-profit or non-profit (including a community housing development organization (CHDO) when acting as an owner, developer or sponsor) may occupy a HOME-ARP Assisted Unit (a HOME-ARP-assisted affordable housing unit) during the required period of affordability specified in 24 CFR 92.252(e) or 24 CFR 92.254(a)(4). This provision does not apply to an individual who receives HOME-ARP funds to acquire or rehabilitate his or her principal residence or to an employee or agent of the owner or developer of a rental housing project who occupies a housing unit as the property manager or maintenance worker. All written requests for exceptions to the above restriction regarding the occupancy of a HOME-ARP Assisted Unit shall be submitted to the County.

#### **Section 6.05 Nondiscrimination**

- (A) Pursuant to Palm Beach County Resolution R-2014-1421, as may be amended, it is the policy of the County that the County "shall not conduct business with nor appropriate any funds for any organization or entity that practices discrimination on the basis of race, color, national origin, religion, ancestry, sex, age, familial status, marital status, sexual orientation, gender identity and expression, disability, or genetic information."

The Borrower has submitted to County a copy of its non-discrimination policy which is consistent with the above paragraph, as contained in Resolution R2014-1421, as amended, or in the alternative, if the Borrower does not have a written non-discrimination policy or one that conforms to the County's policy, it has acknowledged through a signed statement provided to County that the Borrower

will conform to the County's non-discrimination policy as provided in Resolution R2014-1421, as amended.

Furthermore, Borrower shall not discriminate on the basis of race, color, religion, disability, sex, age, national origin, ancestry, marital status, familial status, sexual orientation, gender identity or expression, or genetic information, in the use, or occupancy of any housing unit constructed on the Property, nor shall any person on the basis of race, color, religion, disability, sex, age, national origin, ancestry, marital status, familial status, sexual orientation, gender identity or expression, or genetic information, be excluded from the benefits of, or be subjected to discrimination under any activity carried out by the performance of the terms contained herein.

#### **Section 6.06 Public Records**

Notwithstanding anything contained herein, as provided under Section 119.0701, F.S., if the Borrower: (i) provides a service; and (ii) acts on behalf of the County as provided under Section 119.011(2) F.S., the Borrower shall comply with the requirements of Section 119.0701, Florida Statutes, as it may be amended from time to time. The Borrower is specifically required to:

- (A) Keep and maintain public records required by the County to perform services as provided under this Agreement.
- (B) Upon request from the County's Custodian of Public Records, provide the County with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119 or as otherwise provided by law. The Borrower further agrees that all fees, charges and expenses shall be determined in accordance with Palm Beach County PPM CW-F-002, Fees Associated with Public Records Requests, as it may be amended or replaced from time to time.
- (C) Ensure that public records that are exempt, or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the Agreement, if the Borrower does not transfer the records to the public agency.
- (D) Upon completion of the Agreement, the Borrower shall transfer, at no cost to the County, all public records in possession of the Borrower, if any, unless notified by the County's representative/liaison, on behalf of the County's Custodian of Public Records, to keep and maintain public records required by the County to perform the service. If the Borrower transfers all public records to the County upon completion of the Agreement, the Borrower shall destroy any duplicate public records that are exempt, or confidential and exempt from public records disclosure requirements. If the Borrower keeps and maintains public records upon completion of the Agreement, the Borrower shall meet all applicable requirements for retaining public records. All records stored electronically by the Borrower must be provided to the County, upon request of the County's Custodian of Public Records, in a format that is compatible with the information technology systems of the County, at no cost to the County.

Failure of the Borrower to comply with the requirements of this article shall be a material breach of this Agreement. The County shall have the right to exercise



any and all remedies available to it, including but not limited to, the right to terminate for cause. The Borrower acknowledges that it has familiarized itself with the requirements of Chapter 119, F.S., and other requirements of state law applicable to public records not specifically set forth herein.

**IF THE BORROWER HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE BORROWER'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, PLEASE CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT RECORDS REQUEST, PALM BEACH COUNTY PUBLIC AFFAIRS DEPARTMENT, 301 NORTH OLIVE AVENUE, WEST PALM BEACH, FL 33401, BY E-MAIL AT [RECORDSREQUEST@PBC.GOV](mailto:RECORDSREQUEST@PBC.GOV) OR BY TELEPHONE AT (561) 355-6680.**

#### **Section 6.07 County Not Liable for Damage or Loss**

All inspections and other services rendered by or on behalf of the County pursuant to this Agreement shall be rendered solely for the protection and benefit of the County. Neither Borrower nor other third persons shall be entitled to claim any loss or damage against the County or against its agents or employees for failure to properly conduct inspections and other such services contemplated by this Agreement

#### **Section 6.08 Disbursement of Funds to Third Parties**

Nothing contained in this Agreement, or any Loan Documents, shall impose upon the County any obligation to oversee the proper use or application of any disbursements and disbursements of funds made hereunder so long as disbursements are made to Borrower

#### **Section 6.09 Indemnification from Third Party Claims**

The Borrower shall indemnify and hold County harmless from any liability, claims or losses resulting from the disbursement of the Loan proceeds to Borrower or from the condition of the Property, whether related to the quality of construction or otherwise, and whether arising during or after the term of the Loan, except any liability due to the gross negligence or willful misconduct of County. This provision shall survive the repayment of the Loan and shall continue in a full force and effect so long as the possibility of such liability, claims, or losses exists.

#### **Section 6.10 Rights of Subcontractors, Laborers, and Materialmen**

In no event shall this Agreement be construed to make the County, title company or agent of the County liable to Borrower's Contractor or any subcontractors, labor men, materialmen, craftsmen, or others for labor, materials, or services delivered to the Property or goods specially fabricated for incorporation therein, or for debts or liens accruing or arising to such persons or parties against Borrower or Borrower's Contractor. It is understood and agreed that there is no relation of any type whatsoever, contractual or otherwise, whether express or implied, between the County and Borrower's Contractor, any materialman, subcontractor, craftsman, laborer or any other person or entity supplying any labor, materials or services to the Property or specially fabricating goods to be incorporated therein.

Except as otherwise specifically provided herein, no such person or entities are intended to be third party beneficiaries of this Agreement or any document or instrument related to the Loan, or to have any claim or claims in or to any undisbursed or retained Loan proceeds.

#### **Section 6.11 Evidence of Satisfaction of Conditions**

The County shall, at all times, be free to independently establish in good faith and to its satisfaction, and in its absolute discretion, the existence or nonexistence of a fact or facts which are disclosed in documents or other evidence required by the terms of this Agreement.

#### **Section 6.12 Headings**

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

#### **Section 6.13 Invalid Provisions to Affect No Others**

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

#### **Section 6.14 Application of Interest to Reduce Principal Sums Due**

In the event that any charge, interest or fee is above the maximum rate provided by law, then any excess amount over the lawful rate shall be applied by the County to reduce the principal sum of the Loan or any other amounts due the County hereunder.

#### **Section 6.15 Governing Law and Remedies**

This Agreement shall be governed by the laws of the State of Florida. Any legal action necessary to enforce the Agreement will be held in a state court of competent jurisdiction located in Palm Beach County, Florida. No remedy herein conferred upon any party is intended to be exclusive of any other remedy, and each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity, by statute or otherwise. No single or partial exercise by any party of any right, power, or remedy hereunder shall preclude any other or further exercise thereof.

#### **Section 6.16 Number and Gender**

Whenever the singular or plural number, masculine or feminine or neuter gender is used herein, it shall equally include the others and shall apply jointly and severally.

**Section 6.17 Agreement**

The Borrower agrees to comply with all provisions of the following: (i) the Fair Credit Reporting Act, as amended, 15 U.S.C. §§ 1681-1681x; (ii) the Housing and Community Development Act of 1974, as amended; (iii) the HOME Investment Partnerships Program Regulations (24 CFR Part 92); (iv) 2 C.F.R. Part 184 which establishes the Administration of Federal financial assistance, Administrative practice and procedure, Federal assistance programs; and (v) 2 C.F.R Parts 200 which establishes the uniform administrative requirements, cost principals and audit requirements for Federal awards, that are applicable to a recipient of funds through the HOME Program and that are required to be adhered to for this Loan, and such provisions are incorporated herein by reference and are made a part hereof.

The Loan Documents constitute the entire understanding and agreement between the parties with respect the subject matter hereof, supersede all prior agreements, including commitment letters, and may not be modified or amended, except in writing and signed by all parties hereto.

**Section 6.18 Waiver**

If the County shall waive any provisions of the Loan Documents, or shall fail to enforce any of the conditions or provisions of this Agreement, such waiver shall not be deemed to be a continuing waiver and shall never be construed as such; and the County shall thereafter have the right to insist upon the enforcement of such conditions or provisions. Furthermore, no provision of this Agreement shall be amended, waived, modified, discharged or terminated, except by instrument in writing signed by the parties hereto.

**Section 6.19 Notices**

All notice from the Borrower to the County and the County to Borrower required or permitted by any provision of this Agreement shall be in writing and sent by registered or certified mail or overnight mail service (such as Federal Express)and addressed as follows:

- TO LENDER:

Palm Beach County  
Department of Housing & Economic Development  
100 Australian Avenue – Suite 500  
West Palm Beach, FL 33406  
Attn: Jonathan B. Brown, Director
- WITH A COPY TO

Palm Beach County Attorney's Office  
301 N. Olive Avenue, Suite 601  
West Palm Beach, FL 33401  
Attn: Howard J. Falcon III, Chief Assistant County Attorney
- TO BORROWER:

Vita Nova, Inc.  
2724 N. Australian Avenue  
West Palm Beach, FL 33407  
Attn: Jeff DeMario, CEO

AND

Vita Nova  
2724 N. Australian Avenue  
West Palm Beach, FL 33407  
Attn: Steve Erjavec, CFO

Notice given as hereinabove provided shall be deemed given on the date of its deposit in the United States Mail and, unless sooner received, shall be deemed received by the party to whom it is addressed on the third calendar day following the date on which said notice is deposited in the mail, or if an overnight mail service is used, on the date of delivery of the notice.

If either party changes its mailing address, such change shall be communicated in writing to the other party within ten (10) days of such change.

**Section 6.20 Submittals**

All information required to be submitted to the County shall be submitted to the County's Department of Housing and Economic Development, Attn: Director, 100 Australian Avenue, Suite 500, West Palm Beach, FL 33406.

**Section 6.21 Successors and Assigns**

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

**Section 6.22 Counterparts**

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

**Section 6.23 Incorporation by Reference**

Exhibits attached hereto and referenced herein shall be deemed to be incorporated into this Agreement by reference.

**Section 6.24 Waiver of Jury Trail**

THE BORROWER AND COUNTY WAIVE THEIR RIGHT TO A TRIAL BY JURY IN ANY ACTION, WHETHER ARISING IN CONTRACT OR TORT, BY STATUTE OR OTHERWISE, IN ANY WAY RELATED TO THIS LOAN OR GRANT. THIS PROVISION IS A MATERIAL INDUCEMENT FOR THE COUNTY'S EXTENDING CREDIT TO BORROWER AND NO WAIVER OR LIMITATION OF THE COUNTY'S RIGHTS UNDER THIS PARAGRAPH SHALL BE EFFECTIVE UNLESS IN WRITING AND MANUALLY SIGNED ON THE COUNTY'S BEHALF.

**Section 6.25 Effective Date of Agreement**

This Agreement shall become effective only when signed by all parties and approved by the Palm Beach County Board of County Commissioners or its designee. The Effective Date shall be the date on which this Agreement is executed by Palm Beach County.

**Section 6.26 Force Majeure**

Notwithstanding anything contained in this Agreement or the other Loan Documents to the contrary, no conduct or act or failure to act on the part of either Borrower or Lender or failure to perform any covenant, condition or provision of this Agreement on the part of either Borrower or Lender to be performed will constitute a default hereunder if such conduct or act or failure to act or perform was due to causes beyond the reasonable control of Borrower or Lender, as the case may be, and including any conduct or act or failure to act or perform caused by or resulting from an act of God or the public enemy, labor or material shortage, strike, lockout, other labor disputes or disturbances, riot or civil commotion, government action or inaction (including but not limited to full or partial governmental shutdowns or moratoria), fire or other casualty, or such other similar event including but not limited to, any of the foregoing resulting from a pandemic, epidemic, or public health emergency, including but not limited to the coronavirus commonly known and referred to as "COVID-19" ("Force Majeure"). Events of Force Majeure shall extend the period for the performance of the obligations for the period equal to the period(s) of any such delay(s).

**Section 6.27 Nongovernmental Human Trafficking Affidavit:**

The Borrower shall complete and execute the affidavit, attached hereto as Exhibit "I", attesting that the Borrower does not use coercion for labor or services when contracting with the County in accordance with section 787.06 (13) of the Florida Statutes.

REMAINDER OF THIS PAGE LEFT BLANK INTENTIONALLY

IN WITNESS WHEREOF, Borrower and the County have caused this Agreement to be executed on the dates set forth herein.

Signed, sealed and delivered  
in the presence of:

**BORROWER:**

**VITA NOVA, INC.**  
a Florida not-for-profit corporation

Witnesses:

Steven Erjavec  
Witness Signature

By: [Signature]

Date: 4/10/2025

STEVEN ERJAVEC  
Print Witness Name  
2724 N. AUSTRALIAN AVE  
WEST PALM BEACH, FL 33407  
Witness address

[Signature]  
Witness Signature

Kelly Landrum  
Print Witness Name  
2724 N. Australian Ave  
West Palm Beach, FL 33407  
Witness address

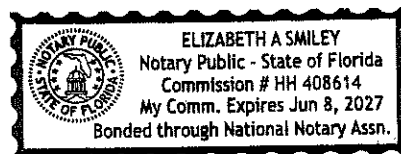
**STATE OF FLORIDA**  
**COUNTY OF PALM BEACH**

The foregoing instrument was acknowledged before me by means of [☒] physical presence or [☐] online notarization, on April 10, 2025, by JEFF DEMARID as CEO of Vita Nova, Inc., who is personally known to me, or who has produced \_\_\_\_\_ as identification and who did/did not take an oath.

Signature: Elizabeth A. Smiley

Notary Name: Elizabeth A. Smiley  
Notary Public - State of Florida

(NOTARY SEAL ABOVE)



FOR ITS BOARD OF COUNTY  
COMMISSIONERS

Jonathan B. Brown, Director  
Department of Housing and  
Economic Development

5 27 2025

By: **Howard J. Falcon III**  
**Chief Assistant County Attorney**

**Carlos R. Serrano, Deputy Director**

## **EXHIBIT A**

### **LEGAL DESCRIPTION**

**Legal Description: Lot 9, Block 1 of Re-plat of MERCER PARK, according to the Plat thereof recorded in Plat Book 12, Page 33, of the Public Records of Palm Beach County, Florida.**

**A/K/A – 1330 ALPHA STREET, WEST PALM BEACH**



**EXHIBIT B**  
**PROMISSORY NOTE**

**SEE ATTACHED**

## PROMISSORY NOTE

**\$1,846,836**

West Palm Beach, Florida

Date: May 9, 2025

**FOR VALUE RECEIVED** the undersigned, **Vita Nova, Inc.**, a Florida not-for-profit corporation duly organized and existing by virtue of the laws of the State of Florida ("Maker"), promises to pay to the order of **PALM BEACH COUNTY**, a political subdivision of the State of Florida, together with any other holder hereof ("Holder"), at 301 North Olive Avenue, West Palm Beach, Florida 33401, or such other place as Holder may from time to time designate in writing, the principal sum of **One Million Eight Hundred Forty Six Thousand Eight Hundred Thirty Six Dollars (\$1,846,836)** (the "Loan"), plus accrued interest, to be paid in lawful money of the United States of America, as follows:

- 1) The entire Loan is non-amortizing and this Note shall bear interest at the stated rate of **zero percent (0%) simple interest per annum**. Annual principal payments of \$31,000 to be made during years 1 through 50. Loan term is fifty (50) years commencing 180 days following receipt of a Certificate of Occupancy
- 2) From the date hereof through November 20, 2077 ("**Maturity Date**"), annual principal payments of \$31,000 will be made by the Borrower.
3. Full payment due to Palm Beach County if the property is sold during the term of the Loan or if 50% (aggregate) or more of ownership changes to a non-affiliated entity.
- 4) Upon acceleration, this Note shall bear interest at the maximum interest rate allowed by applicable law until paid in full.
- 5) This Note may be prepaid in whole or in part at any time, without penalty or premium. Any prepayment hereunder shall be applied first to unpaid costs of collection, servicing fees, and late charges, if any, and the balance, if any, to the principal balance.
- 6) Maker shall also pay Holder an annual Monitoring Fee. The Fee shall be in the amount of \$2,500 and shall be due commencing on November 27, 2027, and on or prior to every January 1 annually thereafter through the Maturity Date.

This Note is executed pursuant to the terms and conditions of that certain Loan Agreement dated May 27, 2025, between Maker, as Borrower, and Holder, as Lender, and is secured by a Mortgage and Security Agreement (the "Mortgage"), encumbering certain real property located in Palm Beach County, Florida. The foregoing and all other agreements, instruments and documents delivered in connection therewith and herewith are collectively referred to as the "Loan Documents".

This Note has been executed and delivered in, and is to be governed by and construed under the laws of the State of Florida, as amended, except as modified by the laws and regulations of the United States of America.

Nothing herein contained, nor any transaction related thereto, shall be construed or so operate as to require the Maker to pay interest at a greater rate than is now lawful, or to make any payment, or to do any act contrary to law. Should any interest or other charges paid by the Maker, or parties liable for the payment of this Note, in connection with the Loan Documents result in the computation or earning of interest in excess of the maximum rate of interest that is legally permitted under applicable law, any and all such excess shall be and the same is hereby waived by the Holder, and any and all such excess shall be automatically credited against and in reduction of the balance due under this indebtedness, and the portion of said excess which exceeds the balance due under this indebtedness shall be paid by the Holder to the Maker.

Holder shall have the right to declare the total unpaid balance hereof to be immediately due and payable in advance of the Maturity Date upon the failure of Maker to pay when due any payment due hereunder; or upon the occurrence of an Event of Default pursuant to any other Loan Documents now or hereafter evidencing, securing or guarantying payment of this Note. Notwithstanding the foregoing, Holder shall not exercise any remedies hereunder prior to the expiration of any notice and cure period in the Loan Documents.

Any payment hereunder not paid when due (upon acceleration or otherwise) shall bear interest at the highest rate allowed by applicable law from the due date until paid.

Maker shall pay holder a late charge of five percent (5%) of any required payment, which is not received by Holder when said payment is due pursuant to this Note. The parties agree that said charge is a fair and reasonable charge for the late payment and shall not be deemed a penalty.

**Time is of the essence hereunder.** In the event that this Note is collected through attorneys at law, or under advice therefrom, Maker agrees to pay all costs of collection including reasonable attorneys' fees, whether or not suit is brought, and whether incurred in connection with collection, trial, appeal, bankruptcy or other creditors proceedings or otherwise.

Acceptance of partial payments or payments marked "payment in full" or "in satisfaction" or words to similar effect shall not affect the duty of Maker to pay all obligations due hereunder, and shall not affect the right of Holder to pursue all remedies available to it under any Loan Documents.

The remedies of Holder shall be cumulative and concurrent, and may be pursued singularly, successively or together, at the sole discretion of Holder. Any failure to exercise or forbearance in the exercise of any remedy shall not be deemed to be a waiver or release of the same, such waiver or release to be effected only through a written document executed by Holder and then only to the extent specifically recited therein. A waiver or release with reference to any one event shall not be construed as continuing or as constituting a course of dealing, nor shall it be construed as a bar to, or as a waiver or release of, any subsequent remedy as to a subsequent event.

Any notice to be given or to be served upon any party hereto in connection with this Note, whether required or otherwise, may be given in any manner permitted under the Loan Documents.

The term "other person liable for payment hereof" shall include any endorser, guarantor, surety or other person now or hereafter primarily or secondarily liable for the payment of this Note, whether by signing this or another loan document.

Whenever the context so requires, the neutral gender includes the feminine and/or masculine, as the case may be, the singular number includes the plural, and the plural number includes the singular.

Maker and any other person liable for the payment hereof respectively, hereby (a) expressly waive any valuation and appraisal, presentment, notice of dishonor, protest, and diligence in collection; (b) consent that Holder may, from time to time and without notice to any of them or demand, (i) extend, rearrange, renew or postpone any or all payments, (ii) release, exchange, add to or substitute all or any part of the collateral for this Note, and/or (iii) release Maker (or any co-maker) or any other person liable for payment hereof, without in any way modifying, altering, releasing, affecting or limiting their respective liability or the lien of any security instrument; and (c) agree that Holder, in order to enforce payment of this Note against any of them, shall not be required first to institute any suit or to exhaust any of its remedies against Maker (or any co-maker) or against any other person liable for payment hereof or to attempt to realize on any collateral for this Note.

MAKER AND HOLDER WAIVE THEIR RIGHTS TO A TRIAL BY JURY IN ANY ACTION, WHETHER ARISING IN CONTRACT OR TORT, BY STATUTE OR OTHERWISE, IN ANY WAY RELATED TO THIS NOTE. THIS PROVISION IS A MATERIAL INDUCEMENT FOR HOLDER EXTENDING CREDIT TO MAKER AND NO WAIVER OR LIMITATION OF HOLDER'S RIGHTS UNDER THIS PARAGRAPH SHALL BE EFFECTIVE UNLESS IN WRITING AND MANUALLY SIGNED ON HOLDER'S BEHALF.

I

**IN WITNESS WHEREOF**, Maker has executed this Note on the day and year first above written.

Signed, sealed and delivered  
in the presence of:

**MAKER:**  
Vita Nova, Inc.  
a Florida not-for-profit corporation

Witnesses:

By: \_\_\_\_\_

\_\_\_\_\_  
Print Witness Name

\_\_\_\_\_  
Witness Signature

\_\_\_\_\_  
Print Witness Address

\_\_\_\_\_  
Print Witness Name

\_\_\_\_\_  
Witness Signature

\_\_\_\_\_  
Print Witness Address

STATE OF FLORIDA  
COUNTY OF PALM BEACH

The foregoing instrument was acknowledged before me by means of [ ] physical presence or [ ] online notarization, on \_\_\_\_\_, by \_\_\_\_\_, \_\_\_\_\_ (title) of Vita Nova, Inc., a Florida not for profit corporation, who is personally known to me, or who has produced \_\_\_\_\_ as identification.

Signature: \_\_\_\_\_

(NOTARY SEAL ABOVE)

Notary Name: \_\_\_\_\_  
Notary Public - State of Florida

**EXHIBIT C**

**MORTGAGE & SECURITY AGREEMENT**

**SEE ATTACHED**

Prepared by and return to:  
Department of Housing and Economic Development  
Palm Beach County  
100 Australian Avenue, Suite 500  
West Palm Beach, FL 33406  
Attn: Jeffrey Bolton, Division Director

**NOTE TO CLERK OF CIRCUIT COURT: THIS MORTGAGE IS GIVEN TO SECURE THE FINANCING OF HOUSING UNDER PART V OF CHAPTER 420 OF THE FLORIDA STATUTES AND IS EXEMPT FROM TAXATION PURSUANT TO SECTION 420.513, FLORIDA STATUTES.**

### **MORTGAGE AND SECURITY AGREEMENT**

**THIS IS A MORTGAGE AND SECURITY AGREEMENT** (this "Mortgage"), granted and executed on \_\_\_\_\_, by **Vita Nova, Inc.**, a Florida not-for-profit corporation duly organized and existing by virtue of the laws of the State of Florida (the "Mortgagor"), in favor of **PALM BEACH COUNTY**, a political subdivision of the State of Florida (the "Mortgagee") (which term as used in every instance shall include the Mortgagee's successors and assigns);

### **WITNESSETH:**

The Mortgagor is the fee simple owner of the Mortgaged Property s described in Exhibit A attached hereto (hereinafter the "Mortgaged Property") and made a part hereof.. Mortgagee has this date loaned **One Million Eight Hundred Forty Six Thousand Eight Hundred Thirty Six Dollars (\$1,846,836)** to Mortgagor and in connection therewith Mortgagor has this date executed and delivered to Mortgagee a Promissory Note, in the amount of \$1,846,836 (the "Note"). A true copy of the Note is annexed hereto as Exhibit B which forms a part hereof.

This Mortgage is given in accordance with that certain Loan Agreement between Mortgagor and Mortgagee executed on \_\_\_\_\_. This Mortgage and Security Agreement, the Note, and the Loan Agreement, including any amendments thereto, and any other documents evidencing and securing the loan evidenced by the Note, shall hereinafter collectively be referred to as the "Loan Documents".

### **GRANTING CLAUSE**

**NOW, THEREFORE**, the Mortgagor, in consideration of the Mortgaged Property and in order to secure payment of both the principal of, and the interest and any other sums payable on the Note or this Mortgage, and the performance and observance of all the provisions hereof, and of the Loan Documents, hereby gives, leases, bargains, sells, warrants, aliens, remises, releases, conveys, assigns, transfers, mortgages, hypothecates, deposits, pledges, sets over and confirms unto the Mortgagee, all of the Mortgagor's estate, right, title and interest in, to and under any and all of the Mortgaged Property , improvements (including improvements to be made hereafter), and fixtures located on the Mortgaged Property , all of which are collectively referred to hereinafter as the "Mortgaged Property".

**TOGETHER** with all and singular the rights, interests and appurtenances whatsoever, in any way belonging, relating or appertaining to any of the Mortgaged Property hereinabove mentioned or which hereafter shall in any way belong, relate or be appurtenant thereto, whether now owned or hereafter acquired by the Mortgagor including but not limited to all of Mortgagor's sewer capacity rights, and Mortgagor's rights under contracts, permits, licenses and all other documents and payments affecting the Mortgaged Property, reserving only the right to the Mortgagor to collect the same so long as the Mortgagor is not in Default hereunder subject to applicable notice and cure provisions and so long as the same are not subjected to garnishment, levy, attachment, or lien.

**TO HAVE AND TO HOLD** the Mortgaged Property and all parts, rights, and appurtenances thereof, to the use, benefit and behalf of the Mortgagee, its successors and assigns in fee simple forever, and the Mortgagor covenants that the Mortgagor is lawfully seized and possessed of the Mortgaged Property in fee simple and has good right to convey the same, that the same are unencumbered excepting taxes accruing subsequent to 2024, and those certain exceptions appearing on the Mortgagee's Title Insurance Policy given in connection herewith and specifically approved by Mortgagee, and that the Mortgagor will warrant and defend the title thereto against the claims of all persons whomsoever, except as hereinafter expressly provided.

**PROVIDED ALWAYS** that if the Mortgagor shall pay unto the Mortgagee all sums required under the terms of the Note, which Note is in the original principal amount of **\$1,846,836** and has a maturity date of                     2075                    , unless such maturity is accelerated as set forth in the Note, or this Mortgage, and shall comply with and abide by each and every one of the stipulations, agreements, conditions and covenants of the Loan Documents, then in such event this Mortgage and Security Agreement and the estate hereby created shall cease and be null and void.

The Mortgagor covenants with the Mortgagee as follows:

**ARTICLE 1**

**1.1     Payments of Indebtedness:**

The Mortgagor shall punctually pay the principal and interest and all other sums that become due pursuant to the Note at the time and place and in the manner specified in the Note, according to the true intent and meaning thereof, all in currency of the United States of America which at the time of such payment shall be legal tender for the payment of public and private debts.

**1.2     Taxes, Liens and Other Charges.**

(a) The Mortgagor, from time to time when the same shall become due and payable but in any event prior to delinquency, will pay and discharge all taxes of every kind and nature, all general and special assessments, levies, permits, inspection and license fees, all water and sewer rents and charges and all other charges, whether of a like or different nature, imposed upon or assessed against the Mortgaged Property or any part



thereof or upon the revenues, rents, issues, income and profits of the Mortgaged Property or arising in respect of the occupancy, use or possession thereof. This requirement does not in any way preclude Mortgagor from contesting real or personal property taxes when appropriate. The Mortgagor will, upon the request of the Mortgagee, deliver to the Mortgagee copies of receipts evidencing the payment of all such taxes, assessments, levies, fees, rents and other charges imposed upon or assessed against the Mortgaged Property or the revenues, rents, issues, income or profits thereof.

(b) The Mortgagor shall pay or cause to be bonded off or insured over, from time to time when the same shall become due, all lawful claims and demands of contractors, mechanics, materialmen, laborers, and other persons or entities which, if unpaid, might result in or permit the creation of, a lien on Mortgaged Property or any part hereof, or on the revenues, rents, issues, income and profits arising therefrom whether such lien is or may become prior or remain inferior to the Mortgage and also, irrespective of the priority of such other lien(s). Mortgagor in general will do or cause to be done everything necessary so that the lien hereof shall be fully preserved, at the cost of the Mortgagor, without expense to the Mortgagee.

(c) The Mortgagor shall pay any taxes except income taxes imposed on the Mortgagee by reason of the Mortgagee's ownership of the Note or this Mortgage.

### 1.3 Insurance:

At any time while the Mortgaged Property is in the possession of the Mortgagor, the Mortgagor shall comply with the following requirements:

The Mortgagor will keep the Mortgaged Property continuously insured in an amount no less than its full insurable value which coverage shall insure the Mortgaged Property against loss or damage by fire and by the perils covered by extended coverage and against such other hazards, including flood if applicable, as the Mortgagee, in its sole discretion, shall from time to time require, for the benefit of the Mortgagee. All such insurance at all times will be in an insurance company or companies in such amounts and with terms reasonably acceptable to the Mortgagee, with loss, if any, payable to the Mortgagee as its interest may appear, pursuant to a non-contributory mortgagee clause which shall be satisfactory to the Mortgagee; and forthwith upon the issuance of such policies they will deliver to the Mortgagee copies of receipts for the premiums paid thereon and certificates of insurance and copies of such policies. In the event of a foreclosure or other transfer of title to the Mortgaged Property in lieu of foreclosure, or by purchase at the foreclosure sale, all interest in any proceeds due in connection with any claims made under the policy(ies) (for events arising prior to the title transfer) shall pass to Mortgagee, transferee or purchaser, as the case may be. Subject to the rights of the Senior Lenders pursuant to the Senior Mortgages, the Mortgagee is hereby authorized and empowered, at its option, to adjust or compromise any loss under any insurance policies on the Mortgaged Property jointly with the Mortgagor. Each insurance company is hereby authorized and directed to make payment for all such losses to the Mortgagor and the Mortgagee jointly. Unless Mortgagor and Mortgagee

otherwise agree in writing, insurance proceeds shall be applied to restoration or repair, provided such restoration or repair is economically feasible and the security of this Mortgage is not thereby materially impaired. In order to determine whether restoration is economically feasible, Mortgagor must provide evidence to the Mortgagee that the Mortgagor has sufficient funds to completely restore or repair the Mortgaged Property in accordance with the Loan Agreement and the HOME-ARP requirements described therein. If such restoration or repair is not economically feasible or if the security of this Mortgage would be materially impaired, the insurance proceeds shall be applied to the sums secured by this Mortgage with the excess, if any, paid to Mortgagor. The provisions of this Section 1.3 are expressly subject to the rights of the Senior Lenders under the Senior Mortgages, if applicable, to which the rights of the Mortgagee are subordinate.

#### 1.4 Care of Mortgaged Property:

At all times while the Mortgaged Property are in the possession of the Mortgagor, the Mortgagor shall comply with the following requirements:

(a) The Mortgagor will keep the improvements now or hereafter erected on the Mortgaged Property in good condition and repair, will not commit or suffer any waste and will not do or suffer to be done anything which will increase the risk of fire or other hazard to the Mortgaged Property or any part thereof.

(b) If the Mortgaged Property or any part thereof is damaged by fire or any other cause, which damage exceeds Two Hundred Thousand Dollars (\$200,000), the Mortgagor will give immediate written notice of the same to the Mortgagee.

(c) The Mortgagee or its representative is hereby authorized to enter upon and inspect the Mortgaged Property at any time during normal business hours upon reasonable advance notice to Mortgagor.

(d) The Mortgagor will promptly comply with all present and future laws, ordinances, rules and regulations of any governmental authority affecting the Mortgaged Property or any part thereof. Mortgagee shall have the right to monitor the project and enforce the terms of all present and future laws, ordinances, rules and regulations of any governmental authority affecting the Mortgaged Property or any part thereof.

(e) If all or any part of the Mortgaged Property shall be damaged by fire or other casualty, the Mortgagor will, upon request of the Mortgagee, promptly restore the Mortgaged Property to the substantial equivalent of its condition immediately prior to such damage, and if a part of the Mortgaged Property shall be damaged through condemnation, the Mortgagor will, upon request of Mortgagee, promptly restore, repair or alter the remaining part of the Mortgaged Property in a manner reasonably satisfactory to the Mortgagee.

1.5 Right to Enter Mortgaged Property:

The Mortgagee, by any of its agents or representatives, shall have the right to inspect the Mortgaged Property from time to time at any reasonable hour of the day. Should the Mortgaged Property, or any part thereof, at any time require inspection, repair, care or attention of any kind or nature as determined by the Mortgagee in its sole discretion, the Mortgagee may, after notice to the Mortgagor and Mortgagor's failure to remedy such issue within a reasonable period of time, enter or cause entry to be made upon the Mortgaged Property and inspect, repair, protect, care for or maintain such property, as the Mortgagee may in its sole discretion deem necessary, and may pay all amounts of money therefor, as the Mortgagee may in its sole discretion deem necessary, all of which amounts so paid by the Mortgagee, with interest thereon from the date of each such payment, at the maximum rate provided by law, shall be payable by the Mortgagor to the Mortgagee on demand and shall be secured by this Mortgage.

1.6 Covenants Running With the Land:

The Mortgagor expressly agrees to the following terms and conditions:

(a) Use of Loan Funds, Units to be Constructed and Related Dates:

The Mortgagor shall use the loan proceeds in the amount of **\$1,846,836** for eligible project costs specified in the Loan Agreement in order to construct twelve (12) apartment units (the "HOME-ARP Assisted Units") located on the Mortgaged Property as is more fully described in the Loan Agreement.

The Mortgagor shall be required to have drawn 100% of the loan by **December 31, 2026**.

The Mortgagor shall be required to have completed construction of, and secured final certificates of occupancy for, the HOME –ARP Assisted Units by **May 31, 2027**.

The Mortgagor shall be required to have rented all such HOME-ARP Assisted Units to Eligible Beneficiaries (as defined in the Loan Agreement) and placed such units into service by **May 31, 2027**.

(b) Income Requirements for Occupants of HOME-ARP Assisted Units:

The Mortgagor shall cause all HOME-ARP Assisted Units to be occupied for a period of fifty (50) years (the "Affordability Period"), following receipt of Certificate of Occupancy by the building department with jurisdiction over the Project. The HOME-ARP Assisted Units shall be occupied by households whose incomes do not exceed fifty percent (50%) of the applicable area median income published by the U.S. Department of Housing and Urban Development for the West Palm Beach-Boca Raton Metropolitan Statistical Area.

1.7 Further Assurances; Modifications:

At any time, and from time to time, upon request by the Mortgagee, the Mortgagor will make, execute and deliver or cause to be made, executed and delivered, to the Mortgagee, any and all other further instruments, certificates and other documents as

may, in the reasonable opinion of the Mortgagee, be necessary or desirable in order to effectuate, complete, or perfect or to continue and preserve (i) the obligations of the Mortgagor under the Note, (ii) the security interest of this Mortgage, and (iii) the mortgage lien hereunder. Upon any Default, as defined below, by the Mortgagor pursuant to this Section or any other Section of this Mortgage, the Mortgagee may make, execute and record any and all such instruments, certificates and documents for and in the name of the Mortgagor and the Mortgagor hereby irrevocably appoints the Mortgagee the agent and the attorney in fact of the Mortgagor so to do.

1.8 Expenses.

In addition to the expenses described in Section 2.6(b) hereof, the Mortgagor will pay or reimburse the Mortgagee for all reasonable attorney's fees, costs and expenses, including those in connection with appellate proceedings, incurred by the Mortgagee in any proceedings or in any action, legal proceeding or dispute of any kind which relate to or arise from the Mortgage or the interest created herein, or the Mortgaged Property, including but not limited to foreclosure of this Mortgage, any condemnation action involving the Mortgaged Property or any action to protect the security hereof; and any such amounts paid by the Mortgagee shall be secured by this Mortgage.

1.9 Estoppel Affidavits:

The Mortgagee, upon ten (10) days' prior written notice, shall furnish the Mortgagor a written statement, duly acknowledged, setting forth the unpaid principal of, and interest on, the indebtedness secured hereby and whether or not any off-sets or defenses exist against such principal and interest. The written statement as referenced herein shall be provided by the County's Department of Housing and Economic Development's Director or his designee.

1.10 Subrogation:

The Mortgagee shall be subrogated to the claims and liens of all parties whose claims or liens are discharged or paid with the proceeds of the indebtedness secured hereby.

1.11 Performance by Mortgagee of Defaults by Mortgagor:

If the Mortgagor shall default in the payment of any tax, lien, assessment or charge levied or assessed against the Mortgaged Property; in the payment of any utility charge, whether public or private; in the payment of any insurance premium; in the procurement of insurance coverage and the delivery of the insurance policies required hereunder; in the performance of any covenant, term or condition of any leases affecting all or any part of the Mortgaged Property; or in the performance or observance of any covenant, condition or term of this Mortgage; then the Mortgagee, at its option, following written notice to Mortgagor and Mortgagor's failure to perform or observe the same within the time set forth in Section 2.2, may perform or observe the same, and all payments made or costs incurred by the Mortgagee in connection therewith, shall be secured hereby and shall be, upon demand, immediately repaid by the Mortgagor to the Mortgagee with

interest thereon at the maximum rate provided by law. The Mortgagee is hereby empowered to enter and to authorize others to enter upon the Mortgage Property or any part thereof for the purpose of performing or observing any such defaulted covenant, condition or term, without thereby becoming liable to the Mortgagor or any other person in possession holding under the Mortgagor.

1.12 Condemnation:

In the event of a condemnation (which term when used in the Mortgage shall include any damage or taking by any governmental authority and any transfer by private sale in lieu thereof), unless Mortgagor and Mortgagee otherwise agree in writing, condemnation awards shall be applied to restoration or repair of the Mortgage Property, provided such restoration or repair is economically feasible and the security of this Mortgage is not thereby materially impaired. If such restoration or repair is not economically feasible or if the security of this Mortgage would be materially impaired, the condemnation award shall be applied to the sums secured by this Mortgage with the excess, if any, paid to Mortgagor. In the event of a condemnation, if an Event of Default shall exist hereunder, the Mortgagee shall be entitled to all compensation, awards, and other payments or relief thereof, and is hereby authorized at its option, to commence, appear in, and prosecute, in its own, or the Mortgagor's name, any action or proceeding relating to any condemnation, either to settle or compromise any claim in connection therewith; and all such compensation, awards, damages, claims, rights of action and proceeds, and the right thereto from any condemnation are hereby assigned by the Mortgagor to the Mortgagee. The Mortgagor agrees to execute such further assignment of any compensation, awards, damages, claims, rights of action and proceeds from a condemnation as the Mortgagee may require. The provisions of this Section are subject to the rights under the Senior Mortgages, if any to which the rights of the Mortgagee are subordinate.

1.13 Environmental Representations:

(a) The Mortgagor covenants with the Mortgagee that to the best of Mortgagor's knowledge the Mortgaged Property have not been used and will not be used in whole or in part for the storage of hazardous waste other than typical cleaning and maintenance supplies kept in accordance with all laws and regulations.

No violation of any Federal, State or local environmental regulations now exists regarding the Mortgaged Property.

(b) Mortgagor shall comply with all Federal, State and local environmental regulations during the construction of the improvements on the Mortgaged Property.

(c) Mortgagor shall give written notice to Mortgagee immediately upon Mortgagor's acquiring knowledge of the presence of any hazardous substances on the Mortgaged Property or of any hazardous substances contamination thereon, or of any notices received by Mortgagor that there are violations or potential violations of any environmental regulation laws, ordinances, rules or regulations existing on the Mortgaged Property.

## **ARTICLE 2**

### **2.1 Due on Sale or Further Encumbrance Clause:**

In determining whether or not to make the loan secured hereby, Mortgagee examined the credit-worthiness of Mortgagor, found it acceptable and continues to rely upon the same as the means of repayment of the Loan. Mortgagee also evaluated the background and experience of Mortgagor in owning and operating property such as the Mortgaged Property, found it acceptable and continues to rely upon same as the means of maintaining the value of the Mortgaged Property.

Mortgagor was ably represented by a licensed attorney at law in the negotiation and documentation of the Loan secured hereby and bargained at arm's length and without duress of any kind for all of the terms and conditions of the loan, including this provision. Mortgagor further recognizes that any secondary or junior financing placed upon the Mortgaged Property (a) may divert funds which would otherwise be used to pay the Note secured hereby; (b) could result in acceleration and foreclosure by any such junior encumbrance which would force Mortgagee to take measures and incur expenses to protect its security; and (c) could detract from the value of the Mortgaged Property should Mortgagee exercise Mortgagee's right to accept a deed in lieu of foreclosure, as a foreclosure by Mortgagee would be necessary to clear the title to the Mortgaged Property .

In accordance with the foregoing and for the purposes of (i) protecting Mortgagee's security both of repayment of the Loan by Mortgagor and the value of the Mortgaged Property; (ii) giving Mortgagee the full benefit of its bargain and contract with Mortgagor; (iii) allowing Mortgagee to charge default rate interest in the case of an uncured Event of Default; and (iv) keeping the Mortgaged Property free of unapproved subordinate financing liens, Mortgagor agrees that any sale, conveyance, assignment, further encumbrance or other transfer of title to the Mortgaged Property or any interest therein except as permitted under the Loan Agreement (whether voluntarily or by operation of law), and except as permitted under Section 2.3 herein, without the Mortgagee's prior written consent, which consent shall not be unreasonably withheld, conditioned or delayed, shall be an Event of Default hereunder. For the purpose of and without limiting the generality of the preceding sentence, the occurrence at any time of any of the following events shall be deemed to be an unpermitted transfer of title to the Mortgaged Property and therefore an Event of default hereunder:

- (a) unless otherwise permitted by the Mortgagee as provided herein, any sale, conveyance, assignment or other transfer of or the grant of a mortgage or security interest in, all or any part of the title to the Mortgaged Property, other than easements or licenses necessary for the development and use of the improvements on the Mortgaged Property which shall include tenant services or benefits; or
- (b) any new or additional liabilities secured by the Mortgaged Property without the prior written consent of Mortgagee.

Mortgagor agrees that if this Section 2.1 is deemed a restraint on alienation, that it is a reasonable one and that any consent by the Mortgagee, or any waiver of an Event of Default, under this Section 2.1 shall not constitute a consent to, or waiver of any right, remedy or power of the Mortgagee upon a subsequent Event of Default under this Section 2.1.

## 2.2 Events of Default:

An Event of Default ("Default") shall have occurred hereunder if:

- (a) The Mortgagor shall fail to pay in full within fifteen (15) days from the date due and payable any installment of principal, interest, loan servicing and administrative fee, monitoring fee, late charges or escrow deposits as required by the Note, this Mortgage and otherwise; or
- (b) The Mortgagor shall fail to duly observe on time any other covenant, condition or agreement of this Mortgage, the Note, the Loan Documents or of any other instrument evidencing, securing or executed in connection with the indebtedness secured hereby, and such failure continues for a period of thirty (30) days following written notice by the Mortgagee; or
- (c) Any warranties or representations made or agreed to be made in any of the Loan Documents shall be breached in any material manner by the Mortgagor or shall prove to be false or misleading in any material manner when made, and such breach is not cured within thirty (30) days following notice from Mortgagee; or
- (d) Any lien for labor or material or otherwise shall be filed against the Mortgaged Property, and such lien is not canceled, removed, bonded over, insured against or transferred within sixty (60) days after notice of such lien; or
- (e) A levy shall be made under any process on, or a receiver is appointed for, the Mortgaged Property; or
- (f) The Mortgagor shall file a voluntary petition in bankruptcy, or any other petition or answer seeking or acquiescing in any reorganization, arrangement, composition, readjustment, liquidation or similar relief for the Mortgagor under any present or future federal, state or other statute, law or regulation relating to bankruptcy, insolvency or other relief for debtor; or
- (g) The Mortgagor shall seek or consent to or acquiesce in the appointment of any trustee, receiver or liquidator of the Mortgagor or of all or any part of the Mortgaged Property or of any or all of the rents, revenues, issues, earnings, profits or income thereof; or
- (h) The Mortgagor shall make any general assignment for the benefit of creditors; or
- (i) In any legal proceeding the Mortgagor shall be alleged to be insolvent or unable to pay the Mortgagor's debts as they become due and such legal proceeding is not dismissed within ninety (90) days of filing; or

(j) The Mortgagor breaches any covenant, representation, or warranty set forth in the Loan Agreement and remains uncured after the expiration of any applicable grace period, or an Event of Default occurs under the terms of the Loan Agreement or any of the other Loan Documents pertaining to the Note and Mortgage and remains uncured after the expiration of any applicable cure or grace period; or

(k) The Mortgagor shall default under any mortgage encumbering the Mortgaged Property which default remains uncured after expiration of any applicable cure or grace period.

If any one or more of the defaults enumerated in paragraphs (a) through (k) occurs or appears likely to occur, then the Mortgagee may notify the Mortgagor of the specific facts which create the reasonable basis for its belief and may request the Mortgagor to provide satisfactory evidence to the Mortgagee that such default is not likely to occur or that Mortgagor has taken appropriate steps to cure the default if it should occur.

### 2.3 Assumption of Note and Special Conditions:

(a) The Note can be assumed upon sale or transfer of the Mortgaged Property , provided: (i) the Mortgagor has obtained the consent of Mortgagee to such sale or transfer (which Mortgagee agrees shall not be unreasonably withheld or delayed), (ii) all County Assisted Units as defined under the Loan Agreement shall remain affordable to households whose incomes, adjusted by family size, are not more than fifty percent (50%) of AMI, for the remaining duration of the Affordability Period (iii) and the sale or transfer is permitted under the terms of the Loan Agreement.

In the event the Note will not be assumed upon sale or transfer of the Mortgaged Property, all available proceeds of the sale or transfer shall be applied to pay the following items in order of priority:

- (1) Expenses of the sale;
- (2) Senior Mortgage(s) debt in full, including fees;
- (3) All accrued but unpaid interest on the Note;
- (4) The outstanding principal under the Note;
- (5) This Mortgage debt in full, including fees.

(b) Except as set forth in Section 2.3(a) above, all of the principal and interest of the indebtedness secured hereby shall be due and payable upon sale or transfer of the Mortgaged Property.

(c) The indebtedness secured hereby may be serviced by the Mortgagee or by a lending institution selected by Mortgagee.



(d) The discrimination provision of §420.516, Florida Statutes, shall apply to the loan secured hereby.

A violation of any of the above stated Special Conditions related to any assumptions as contained in this Section 2.3 by Mortgagor shall constitute a default hereunder.

2.4 Acceleration of Maturity:

If a Default shall have occurred hereunder and is not cured within applicable cure periods, then the whole unpaid principal sum of the indebtedness secured hereby with interest accrued thereon shall, at the option of the Mortgagee, become due and payable without notice or demand, and may, at any time thereafter be collected by suit at law, foreclosure of or other proceeding upon this Mortgage or by any other proper, real or equitable procedure without declaration of such option and without notice, time being of the essence of this Mortgage and of the Note secured hereby; and no omission on the part of the Mortgagee to exercise such option when entitled to do so shall be considered as a waiver of such right.

2.5 Right of Lender to Enter and Take Possession:

(a) If any Default shall have occurred and be continuing beyond expiration of any applicable cure or grace period, the Mortgagor, upon demand of the Mortgagee, shall forthwith surrender to the Mortgagee the actual possession of the Mortgaged Property and to the extent permitted by law, the Mortgagee may enter and take possession of the Mortgaged Property and may exclude the Mortgagor and the Mortgagor's agents and employees wholly therefrom. In the event Mortgagee exercises its rights pursuant to this Section 2.5(a), the Mortgagee shall be deemed to be acting as agent of Mortgagor and not as owner of the Mortgaged Property.

(b) For the purpose of carrying out the provisions of this Section 2.5, if any Default shall have occurred and be continuing beyond expiration of any applicable cure or grace period, the Mortgagor hereby constitutes and appoints the Mortgagee the true and lawful attorney in fact of the Mortgagor to do and perform, from time to time, any and all actions necessary and incidental to such purpose and does, by these presents, ratify and confirm any and all actions of said attorney in fact in the Mortgaged Property.

(c) If Mortgagor cures all such Defaults, the Mortgagee shall surrender possession of the Mortgaged Property to the Mortgagor, provided that the right of the Mortgagee to take possession, from time to time, pursuant to Section 2.5(a) shall exist if any subsequent default shall occur and be continuing.

(d) The provisions of this Section 2.5 are subject to the rights under the senior mortgages, to which the rights of the Mortgagee are subordinate.

2.6 Foreclosure and Appointment of a Receiver:

(a) In any suit to foreclose the lien hereof, there shall be allowed and included as additional indebtedness in the decree for sale all expenditures and expenses which may

be paid or incurred by or on behalf of the Mortgagee for reasonable attorneys' fees, appraisers' fees, outlays for documentary and expert evidence, stenographers' charges, publication cost and costs (which may be estimated as to items to be expended after entry of the decree) of procuring all such abstract of title, title searches and examinations, title insurance policies, and similar data and assurances with respect to title as Mortgagee may deem to be reasonably necessary either to prosecute such suit or to evidence to bidders at any sale which may be had pursuant to such decree the true condition of the title to or the value of the Mortgaged Property . All expenditures and expenses of the nature in this section shall become additional debt secured hereby and shall be immediately due and payable with interest thereon at the maximum rate provided by law, when paid or incurred by Mortgagee in connection with (i) any proceeding, including foreclosure, receivership, probate and bankruptcy proceedings, to which it shall be a party, either as plaintiff, claimant, or defendant, by reason of this Mortgage, or any indebtedness hereby secured, (ii) preparations for the commencement of any suit for the foreclosure hereof after accrual of such right to foreclose whether or not actually commenced, or (iii) preparations for the defense of any threatened suit or proceeding which might affect the Mortgaged Property or the security hereof, whether or not actually commenced.

(b) Upon, or at any time after, the filing of a complaint to foreclose this Mortgage, the court in which such complaint is filed may appoint a receiver of the Mortgaged Property. Such appointment, pursuant to applicable law, may be made either before or after sale, without notice, without regard to the solvency or insolvency of Mortgagor at the time of application for such receiver and without regard to the then value of the Mortgaged Property . Such receiver shall have power to collect the rents, issues and profits of the Mortgage Property during the pendency of such foreclosure suit, and in case of a sale and a deficiency, during the full statutory period of redemption, if any, whether there be redemption or not, as well as during any further times when Mortgagor except for the intervention of such receiver, would be entitled to collect such rents, issues and profits, and all other powers which may be necessary or are usual in such cases for the protection, possession, control, management and operation of the Mortgaged Property during the whole of said period.

(c) If a Default shall have occurred hereunder and is not cured within applicable cure periods, Mortgagor shall deliver to Mortgagee at any time on its request, all agreements for deed, contracts, leases, abstracts, title insurance policies, muniments of title, surveys and other papers relating to the Mortgaged Property , and in case of foreclosure thereof and failure to redeem, the same shall be delivered to and become the property of the person obtaining title to the Mortgage Property by reason of such foreclosure.

(d) The provisions of this Section 2.6 are subject to the rights under the senior mortgages, to which the rights of the Mortgagee are subordinate.

## 2.7 Discontinuance of Proceedings and Restoration of the Parties:

In case the Mortgagee shall have proceeded to enforce any right or remedy under this Mortgage by receiver, entry or otherwise, and such proceedings shall have been discontinued

or abandoned for any reason or shall have been determined adverse to the Mortgagee, then in every such case the Mortgagor and the Mortgagee shall be restored to their former positions and rights hereunder, and all rights, powers and remedies of the Mortgagee shall continue as if no such proceeding had been taken.

#### 2.8 Remedies Cumulative:

No right, power or remedy conferred upon or reserved by the Mortgagee by this Mortgage is intended to be exclusive of any other right, power or remedy, but each and every such right, power and remedy shall be cumulative and concurrent and shall be in addition to any other right, power and remedy given hereunder or now or hereafter existing at law or in equity or by statute.

#### 2.9 Stamp and Excise Tax:

If any additional documentary stamp or excise tax shall become applicable with respect to this Mortgage, the Note, any loan or credit extended hereunder, any security agreement, guaranty, the Loan Agreement or other document, the Mortgagor shall promptly pay such tax in full (including interest and penalties, if any) and shall indemnify and hold the Mortgagee harmless with respect thereto. The Mortgagor's liability under this Section will survive the repayment of indebtedness under the Note.

### **ARTICLE 3**

#### 3.1 Successors and Assigns Included in Parties:

Whenever in this Mortgage one of the parties hereto is named or referred to, the heirs, legal representatives, permitted successors and permitted assigns of such parties shall be included and all covenants and agreements contained in this indenture by or on behalf of the Mortgagor and by or on behalf of the Mortgagee shall bind and inure to the benefit of their respective heirs, legal representatives, successors and assigns, whether so expressed or not.

Provided, however, that the Mortgagor shall have no right to assign its obligations hereunder without the prior written consent of the Mortgagee as provided herein and in the Loan Documents.

#### 3.2 Headings:

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

#### 3.3 Invalid Provisions to Affect No Others:

If fulfillment of any provision hereof or any transaction related hereto or to the Note, at the time performance of such provisions shall be due, shall involve transcending the limit of validity prescribed by law, then ipso facto, the obligation to be fulfilled shall be reduced to the limit of such validity; and if any clause or provision herein contained operates or would prospectively

operate to invalidate this Mortgage in whole or in part, then such clause or provision only shall be held for naught, as though not herein contained, and the remainder of this Mortgage shall remain operative and in full force and effect. Notwithstanding any provision contained herein, the total liability of Mortgagor for payment of interest, including service charges, penalties or any other fees shall not exceed the maximum amount of such interest permitted by applicable law to be charged, and if any payments by Mortgagor include interest in excess of the maximum amount permitted by applicable law to be charged, all excess amounts so paid shall be used to reduce the unpaid principal amount due pursuant hereto.

3.4 Number and Gender:

Whenever the singular or plural number, masculine or feminine or neuter gender is used herein, it shall equally include the other.

**ARTICLE 4**

4.1 Notices to Mortgagor and Mortgagee:

Any notice or other communication required or permitted to be given hereunder shall be sufficient if in writing and delivered in person, sent by United States Certified Mail, postage prepaid, or sent by an overnight mail service, (such as Federal Express) to the parties being given such notice at the following addresses:

TO MORTGAGOR: Vita Nova, Inc.  
2427 N. Australian Ave  
West Palm Beach, FL 33407  
Attn:

WITH COPIES TO:

TO MORTGAGEE: Department of Housing and Economic Development  
Palm Beach County  
100 Australian Avenue, Suite 500  
West Palm Beach, FL 33406  
Attn: Jonathan B. Brown, Director

With copy to:  
County Attorney's Office  
Palm Beach County  
301 North Olive Avenue, Suite 601  
West Palm Beach, FL 33401  
Attn: Howard J. Falcon III, Chief Assistant County Attorney

Any party may change said address by giving the other parties hereto notice of such change of address. Notice given as hereinabove provided shall be deemed given on the date of its

deposit in the United States Mail and, unless sooner received, shall be deemed received by the party to whom it is addressed on the third calendar day following the date on which said notice is deposited in the mail, or if a courier system or overnight mail service is used, on the date of delivery of the notice.

## **ARTICLE 5**

### **5.1 Future Advances:**

It is agreed that this Mortgage shall also secure such future or additional advances as may be made by the Mortgagee at its option to the Mortgagor, or its successor in title, for any purpose, provided that all those advances are to be made within three (3) years from the date of this Mortgage, or within such lesser period of time as may be provided hereafter by law as a prerequisite for the sufficiency of actual notice or record notice of the optional future or additional advances as against the rights of creditors or subsequent purchasers for valuable consideration. The total amount of indebtedness secured by this Mortgage may decrease or increase from time to time, but the total unpaid balance so secured at any one time shall not exceed twice the principal amount of the Note, plus interest, and any disbursements made for the payment of taxes, levies or insurance on the Mortgaged Property with interest on those disbursements.

If, pursuant to Florida Statutes Section 697.04, Mortgagor files a notice specifying the dollar limit beyond which future advances made pursuant to this Mortgage will not be secured by this Mortgage, then Mortgagor shall, within fifteen (15) days of day of filing such notice, notify Mortgagee and its counsel by certified mail pursuant to Section 4.1 of this Mortgage. In addition, such a filing shall constitute a default hereunder.

**5.2 Subordination:** Mortgagee has approved a subordinate mortgage with the City of West Palm Beach in the amount of \$285,734. Mortgagor shall be entitled to refinance such subordinate mortgage provided that the refinancing of the subordinate mortgage loan does not increase the amount of indebtedness originally secured by the subordinate mortgage plus applicable reasonable fees and cost associated with refinancing.

### **5.3 Lien Priority:**

The lien priority of this Mortgage shall not be affected by any changes in the Note or other Loan Documents including, but not limited to, an increase in the interest rate charged pursuant to the Note. Any parties acquiring an interest in the Mortgage Property subsequent to the date this Mortgage is recorded shall acquire such interest in the Mortgage Property with notice that Mortgagee may charge a default rate of interest in the event of an uncured Default, or with the consent of the Mortgagor, otherwise modify the Loan Documents and the Loan Documents, as modified, shall remain superior to the interest of any party in the Mortgaged Property acquired subsequent to the date this Mortgage is recorded.

5.4 Security Agreement:

This instrument also creates a security interest in any and all equipment and furnishings as are considered or determined to be personal property located at the Mortgage Property , together with all replacements, substitutions, additions, products and proceeds thereof, in favor of the Mortgagee under the Florida Uniform Commercial Code to secure payment of principal, interest and other amounts due Mortgagee now or hereafter secured hereby, and Mortgagee shall also have all the rights and remedies of a secured party under the Florida Uniform Commercial Code which shall be cumulative and in addition to all other rights and remedies of Mortgagee arising under the common law or any other laws of the State of Florida or any other jurisdiction.

5.5 Choice of Law:

This Mortgage is to be construed in all respects and enforced according to the laws of the State of Florida and venue shall be in a state court of competent jurisdiction in Palm Beach County, Florida.

5.6 Binding Effect:

This Mortgage shall be binding upon and insure to the benefit of the Mortgagor and Mortgagee hereto, and their respective heirs, permitted successors and permitted assigns.

**IN WITNESS WHEREOF**, the Mortgagor has executed and sealed this Mortgage, the day and year first above written.

Signed, sealed and delivered  
in the presence of:

**MORTGAGOR:**

Witnesses:

**Vita Nova, Inc.**  
a Florida not-for profit corporation

\_\_\_\_\_  
Priny Witness Name

By: \_\_\_\_\_  
(Title)

\_\_\_\_\_  
Witness Signature

\_\_\_\_\_  
Print Witness Address

\_\_\_\_\_  
Print Witness Name

\_\_\_\_\_  
Witness Signature

\_\_\_\_\_  
Print itness Address

STATE OF FLORIDA  
COUNTY OF PALM BEACH

The foregoing instrument was acknowledged before me by means of [ ] physical presence or [ ] online notarization, on \_\_\_\_\_, by \_\_\_\_\_, \_\_\_\_\_ of Vita Nova, Inc., a Florida not for profit corporation, who is personally known to me, or who has produced \_\_\_\_\_ as identification.

Signature: \_\_\_\_\_

(NOTARY SEAL ABOVE)

Notary Name: \_\_\_\_\_  
Notary Public - State of Florida

Vita Nova Mortgage & Securitiy Agreement  
Omega Apartments Project

**EXHIBIT A**

**THE MORTGAGED PROPERTY  
LEGAL DESCRIPTION**

**Legal Description: Lot 9, Block 1 of Re-plat of MERCER PARK, according to the Plat thereof recorded in Plat Book 12, Page 33, of the Public Records of Palm Beach County, Florida.**

**PCN: 74-43-43-28-13-001-0090**



**EXHIBIT D**

**DECLARATION OF RESTRICTIONS**

**SEE ATTACHED**

**Prepared By:**

**Return to:**

Palm Beach County  
Department of Economic Development  
100 Australian Avenue, Suite 500  
West Palm Beach, Florida 33406  
Attn:

**DECLARATION OF RESTRICTIONS**

The undersigned, **Vita Nova, Inc.**, having its principal address at 2724 N. Australian Avenue, (hereinafter referred to as "Owner"), for the property described below, in consideration of funding received from **Palm Beach County**, a political subdivision of the State of Florida (the "County"), does hereby grant to the County and impose, the following restrictions against the subject property, hereinafter referred to as the "Property", and described as:

**Legal Description  
(See attached Exhibit "A")**

1. These restrictions (the "Declaration") shall be deemed a covenant running with the land for a period of fifty (50) years, following receipt of a Certificate of Occupancy ("Declaration Period") and are binding upon the undersigned, their heirs, executors, successors, and assigns. These restrictions apply to both the land described herein and to all improvements built upon such land. These restrictions can only be terminated or released by the Palm Beach County Board of County Commissioners, and/or those persons to whom such authority is formally delegated, and executed with the same formalities as this document.
2. In consideration of that certain Promissory Note date \_\_\_\_\_, 202\_, and secured be that certain Mortgage dated \_\_\_\_\_, 202\_, and which mortgage was recorded on \_\_\_\_\_, 202\_, in Official Records Book \_\_\_\_\_, Page \_\_\_\_\_, of the Public Records of Palm Beach County, Florida, Owner hereby covenants and agrees that the Property shall be subject to the terms, conditions, and restrictions contained in this Declaration.
3. The Property is hereby restricted to use as residential homes occupied by, and affordable to, a households whose annual gross incomes, adjusted for family size is no more than fifty percent (50%) of the "Area Median Income" for Palm Beach County as defined by the United States Department of Housing and Urban Development, or any successor agency responsible for such definition (the "Low Income Household").
4. Written approval of any intended grantee's qualification as a Low Income Household shall be obtained from the County through its Department of Housing and Economic Development prior to conveyance of the Property.
5. The Property shall be maintained in a state of repair pursuant to applicable housing and building codes, and all property taxes and assessments shall be paid prior to becoming delinquent.
6. Any sale of the Property shall comply with all federal, state and local Fair Housing laws.
7. No lien superior to this Declaration of Restrictions shall be voluntarily created by the

owner of record except with County's written prior consent and which consent shall be granted at County's sole discretion.

8. The County, as an intended beneficiary of this Declaration, may enforce the provisions of this Declaration by any remedy available by law or equity. The failure or omission by the County to enforce any of its rights or remedies upon breach of any of the covenants, terms or conditions of this Declaration of Restrictions shall not bar or waive any of the County's rights or remedies on any subsequent default.
9. The conditions and restrictions imposed by this Declaration shall constitute covenants running with the land for the Declaration Period and shall be binding upon and burden the Owner and any party having or hereafter acquiring any right, title, or interest in or to all or any portions of the Property described in this Declaration.
10. The Owner shall cause this Declaration or Restrictions to be recorded in the Public Records of Palm Beach County, Florida, and thereafter the Owner shall provide it to the Director of Department of Housing and Economic Development, 100 Australian Avenue, Suite 500, West Palm Beach, Florida, 33406.

THE REMAINDER OF THIS PAGE LEFT BLANK INTENTIONALLY

Executed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

**SIGNED, SEALED, AND DELIVERED IN  
THE PRESENCE OF:**

**Vita Nova, Inc.** a Florida  
not for profit corporation

\_\_\_\_\_  
Witness signature

By: \_\_\_\_\_

\_\_\_\_\_  
Print witness name

\_\_\_\_\_  
Witness address

\_\_\_\_\_  
Witness signature

\_\_\_\_\_  
Print witness name

\_\_\_\_\_  
Witness address

STATE OF FLORIDA  
COUNTY OF PALM BEACH

The foregoing instrument was acknowledged before me by means of [ ☐ ] physical presence or  
[ ☐ ] online notarization on \_\_\_\_\_ by \_\_\_\_\_, who is personally  
known to me, or who has produced \_\_\_\_\_ as identification.

Signature: \_\_\_\_\_

(NOTARY SEAL ABOVE)

Notary Name: \_\_\_\_\_  
Notary Public - State of Florida

**EXHIBIT “A”  
to Declaration of Restrictions**

**Legal Description**

LOT 9, 10, 11, 12, 13 AND THE WEST 40 FEET OF LOT 14, BLOCK 1, RE-PLAT OF  
MERCER PARK, ACCORDING TO THE PLAT THEREOF ON FILE IN THE OFFICE OF THE  
CLERK OF THE CIRCUIT COURT IN AND FOR PALM BEACH COUNTY, FLORIDA,  
RECORDED IN PLAT BOOK 12, PAGE 33, SAID LANDS SITUATE, LYING AND BEING IN  
PALM BEACH COUNTY, FLORIDA.

CONTAINING 0.765 ACRES, MORE OR LESS

PROPERTY ADDRESS:  
1316 ALPHA STREET, WEST PALM BEACH, FLORIDA  
1320 ALPHA STREET, WEST PALM BAECH, FLORIDA  
1330 ALPHA STREET, WEST PALM BEACH, FLORIDA

**EXHIBIT E**

**ASBESTOS REQUIREMENTS**

**SEE ATTACHED**

# EXHIBIT E

## ASBESTOS REQUIREMENTS

### ASBESTOS REQUIREMENTS SPECIAL CONDITIONS FOR DEMOLITION AND RENOVATION OF BUILDINGS

The provisions of this part apply to all demolition and renovation work contemplated in this Agreement.

#### **I. DEFINITIONS**

ACM:	Asbestos Containing Materials
AHERA:	Asbestos Hazard Emergency Response Act
EPA:	Environmental Protection Agency
FLAC:	Florida Licensed Asbestos Consultant
DHED:	Palm Beach County Department of Housing and Economic Development
NESHAP:	National Emission Standards for Hazardous Air Pollutants
NRCA:	National Roofing Contractors Association
NVLAP:	National Voluntary Laboratory Accreditation Program
OSHA:	Occupational Safety & Health Administration
PBCAC:	Palm Beach County Asbestos Coordinator (in Risk Management)
PLM:	Polarized Light Microscopy
RACM:	Regulated Asbestos Containing Materials
TEM:	Transmission Electron Microscopy

#### **II. ASBESTOS SURVEYS**

All properties scheduled for renovation or demolition are required to have a comprehensive asbestos survey conducted by a Florida Licensed Asbestos Consultant (FLAC). The survey shall be conducted in accordance with AHERA guidelines. Analysis must be performed by a NVLAP accredited laboratory.

##### **For Renovation Projects (Projects that will be reoccupied):**

- Point counting should be conducted on all RACM indicating 1% - 10% asbestos by PLM analysis. If the asbestos content by PLM is less than 10%, the building owner/operator can elect to:
  - 1. Assume the material is greater than 1% and treat it as RACM, or
  - 2. Require verification by point counting
- Samples of resilient vinyl floor tile indicating asbestos not detected must be confirmed by transmission electron microscopy (TEM).
- Drywall and the associated Joint compound shall be analyzed as separate layers.
- Roofing material shall be sampled only if a renovation requires the roof to be disturbed. In lieu of sampling the roof, it will be presumed to contain asbestos

## **For Demolition Projects:**

- Point counting should be conducted on all RACM indicating 1% - 10% asbestos by PLM analysis. If the asbestos content by PLM is less than 10%, the building owner/operator can elect to:
  1. Assume the material is greater than 1% and treat it as RACM, or
  2. Require verification by point counting
- Composite sample analysis is permitted for drywall systems (combining the drywall and joint compound constituents).
- All Category I and II non-friable materials, as defined in EPA/NESHAP, shall be sampled to determine asbestos content.

If the Borrower has a recent asbestos survey report prepared by a Florida Licensed Asbestos Consultant, a copy may be provided to DHED for review by the Palm Beach County Asbestos Coordinator (PBCAC) to determine if the survey is adequate to proceed with renovation/demolition work. If no survey is available, a comprehensive survey may be initiated by the Borrower or requested by DHED. If the survey is through DHED, a copy of the completed survey will be forwarded to the Borrower.

## **III. ASBESTOS ABATEMENT**

### **A. RENOVATION**

- (a) Prior to any renovation activity, all identified asbestos containing materials that are scheduled to be disturbed during the renovation activities, must be removed by a Florida Licensed Asbestos Contractor under the direction of a Florida Licensed Asbestos Consultant (FLAC). Exceptions may be granted by DHED prior to the removal. The Borrower must obtain approval for all exceptions from DHED. DHED will request the PBCAC to review and approve all exceptions.
- (b) Asbestos abatement work may be contracted by the Borrower or by DHED upon request.
- (c) If the Borrower contracts the asbestos abatement, the following documents are required to be provided to the DHED.
  1. An Asbestos Abatement Specification (Work Plan)
  2. Post Job submittals, reviewed and signed by the FLAC
- (d) If the Borrower requests DHED to contract the asbestos abatement, DHED will initiate the request through the PBCAC who will contract the asbestos abatement. DHED will provide a copy of all contractor and consultant documents to the Borrower.
- (e) Materials containing less than <1% asbestos are not regulated by EPA/NESHAPS. However, OSHA compliance is mandatory. OSHA



requirements include training, wet methods, prompt cleanup in leak tight containers, etc.

The renovation contractor must comply with US Dept. of Labor, OSHA Standard Interpretation, "Compliance requirements for renovation work involving material containing <1% asbestos", dated 11/24/2003. The renovation contractor must submit a work plan to DHED prior to removal of the materials.

## B. DEMOLITION

All RACM must be removed by a Florida Licensed Asbestos Contractor as per specification plan and under the direction of an FLAC prior to any demolition activities. Examples of RACM include: popcorn ceiling finish, drywall systems, felt or paper-backed linoleum, resilient floor tile which is not intact, asbestos cement panels/pipes/shingles ("transite").

NESHAP Category I non-friable materials, such as intact resilient floor tile & mastic and intact roofing materials, may be demolished with the structure by implementing the proper engineering controls. The demolition contractor shall be familiarized with the work plan and made aware of the asbestos-containing materials and shall exercise adequate control techniques (wet methods, etc.). Any exceptions to these guidelines shall be requested through and approved by DHED prior to the disturbance and/or removal of regulated asbestos materials. Demolition work should be monitored by a FLAC to ensure proper engineer control measures and waste disposal practices are in place. This is the responsibility of the Borrower.

- (a) Asbestos Abatement work may be contracted by the Borrower or by DHED upon request.
- (b) If the Borrower contracts the asbestos abatement, the following documents must be provided to the DHED and reviewed by the PBCAC.
  - 1. An Asbestos Abatement Specification Plan (Work Plan).
  - 2. Post Job submittals, reviewed and signed by the FLAC.
- (c) If the Borrower requests DHED to contract the asbestos abatement, DHED will initiate the request through the PBCAC who will contract the asbestos abatement. DHED will provide a copy of all contractor and consultant documents to the Borrower.
- (d) Recycling, salvage or compacting of any asbestos containing materials or the substrate are strictly prohibited.
- (e) In all cases, compliance with OSHA Regulation "Requirements for demolition operations involving material containing less than <1% asbestos" is mandatory.
- (f) If any suspect materials are discovered that were not previously sampled and/or identified in the survey report, stop all the renovation/demolition

activity that will have the potential to disturb the suspect materials and immediately notify DHED.

#### **IV. NESHAP NOTIFICATION**

##### **A. RENOVATION**

A NESHAP notification form must be prepared by the Borrower or its Contractor and submitted to the Palm Beach County Health Department at least ten (10) working days prior to any asbestos activity that involves removal of regulated asbestos containing material, including linoleum, greater than 160 square feet or 260 linear feet or 35 cubic feet. For floor tile removal greater than 160 square feet, the Borrower or its Contractor shall provide a courtesy NESHAP notification to the Palm Beach County Health Department at least three (3) working days prior to removal.

The Borrower shall provide a copy of the asbestos survey report to the renovation contractor to keep onsite during the work activity.

##### **B. DEMOLITION**

A NESHAP notification form must be prepared by the Borrower or its Contractor and submitted to the Palm Beach County Health Department at least ten (10) working days prior to any projects scheduled to be demolished by the Borrower.

##### **C. NESHAP FORM**

The NESHAP notification form is available online through the Florida Department of Environmental Regulations. The notification shall be sent to the address shown below. A copy shall be included in the Borrower post job documentation submitted to DHED. The Borrower shall pay all the fees.

Palm Beach County Department of Health  
Asbestos Coordinator  
800 Clematis Street  
Post Office Box 29  
West Palm Beach, Florida 33402

#### **V. APPLICABLE ASBESTOS REGULATIONS/GUIDELINES**

The Borrower, through its demolition or renovation contractor, shall comply with the following asbestos regulations/guidelines. This list is *not* all inclusive:

- (a) Environmental Protection Agency (EPA), NESHAP, 40 CFR Parts 61 Subpart M National Emission Standard for Asbestos, revised July 1991
- (b) Occupational Safety & Health Administration (OSHA) Construction Industry Standard, 29 CFR 1926.1101

- (c) EPA: A Guide to Normal Demolition Practices under the Asbestos NESHAP, September 1992
- (d) Demolition practices under the Asbestos NESHAP, EPA Region IV
- (e) Asbestos NESHAP Adequately Wet Guidance
- (f) Florida State Licensing and Asbestos Laws
  - 1. Title XVIII, Chapter 255, Public property and publicly owned buildings.
  - 2. Department of Business and Professional Regulations, Chapter 469 Florida Statute, Licensure of Asbestos Consultants and Contractors
- (g) Resilient Floor Covering Institute (RFCI), Updated Recommended Work Practices and Asbestos Regulatory Requirements, current version.
- (h) Florida Roofing Sheet Metal and Air Conditioning Contractors Association, NRCA, June 1995, or current version.
- (i) US Department of Labor, OSHA Standard Interpretation
  - 1. Application of the asbestos standard to demolition of buildings with ACM in Place, dated 8/26/2002.
  - 2. Requirements for demolition operations involving material containing <1% asbestos, dated 8/13/1999.
  - 3. Compliance requirements for renovation work involving material containing <1% asbestos, dated 11/24/2003.

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**EXHIBIT F**  
**PERFORMANCE REPORT**

**SEE ATTACHED**

## PERFORMANCE REPORT

Reporting Period:	Month		Year	
Subrecipient Name:				
Agreement/ MOU/ Amendments include Start Date, End Date				
Project Name:				

<b>A. Reimbursement Request Requirements Per Agreement (Cumulative)</b>	
	\$0.00
50% reimb date	\$0.00
100% reimb date	\$0.00 <i>Total Funding Amount</i>

[illegible]



Submit 100% Reimbursement Request				
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<b>F. Describe your project progress during this reporting period.</b>

<b>G. Report prepared by:</b>		
Fill in the name, phone no. and date of signing. Double-click on the X line to save a copy of this file and digitally sign this report.		
Name		Signature
Phone No.		
Date		

**EXHIBIT G**

**TENANT INFORMATION REPORT**

**SEE ATTACHED**



EXHIBIT G

TENANT INFORMATION REPORT

Project Name:	Roseland Gardens		
Report Period:	From _____, 20__ to _____, 20__		
Prepared By:			
Report Date:	_____, 20__	Page ____ of ____ Pages	

Fill in the required information for each housing unit or place a check mark where applicable.

ADDRESS:	
Tenant Name:	
Head of Household No. 1 - Age:	
Head of Household No.2 – Age:	
Number of occupants:	
Annual Household Income:	\$
Monthly Rent:	\$
Lease start date:	/ /
No. of bedrooms:	
Household Income at or below 50% of AMI	[ ]
Household Income Above 50% of AMI up to and including 80% of AMI	[ ]
Female Head of Household	[ ]
Disabled Head of Household	[ ]
Farm worker	[ ]
Homeless	[ ]
White	[ ]
African American	[ ]
Hispanic Ethnicity	[ ]
Asian	[ ]
American Indian or Alaskan Native	[ ]
Native Hawaiian or Pacific Islander	[ ]
American Indian or Alaskan Native and White	[ ]
Asian and White	[ ]
African American and White	[ ]
American Indian/Alaskan Native and African American	[ ]
Other Multi-racial	[ ]

**EXHIBIT H**

**ANNUAL RENT ROLL**

**SEE ATTACHED**

EXHIBIT H

ANNUAL RENT ROLL

Project Name:	Autumn Ridge Apartments		
Report Period:	From _____, 20__ to _____, 20__		
Prepared By:			
Report Date:	_____, 20__	Page ____ of ____ Pages	

Fill in the required information for each apartment or place a check mark where applicable.

Building Address:				
	Apt. No. ____	Apt. No. ____	Apt. No. ____	Apt. No. ____
Tenant Name:				
Lease start date:	/ /	/ /	/ /	/ /
Contract Rent:	\$	\$	\$	\$
Tenant Rent:	\$	\$	\$	\$
No. of bedrooms:				
No. of occupants:				
Date last income certified:	/ /	/ /	/ /	/ /
Annual income:	\$	\$	\$	\$
Household Income at 50% or <AMI	[ ]	[ ]	[ ]	[ ]
Household Income at 80% or < AMI	[ ]	[ ]	[ ]	[ ]
	Apt. No. ____	Apt. No. ____	Apt. No. ____	Apt. No. ____
Tenant Name:				
Lease start date:	/ /	/ /	/ /	/ /
Contract Rent:	\$	\$	\$	\$
Tenant Rent:	\$	\$	\$	\$
No. of bedrooms:				
No. of occupants:				
Date last income certified:	/ /	/ /	/ /	/ /
Annual income:	\$	\$	\$	\$
Household Income at 50% or < AMI	[ ]	[ ]	[ ]	[ ]
Household Income at 80% or <AMI	[ ]	[ ]	[ ]	[ ]

**EXHIBIT I**

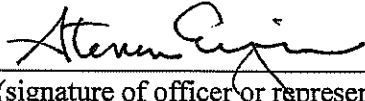
**NONGOVERNMENTAL HUMAN TRAFFICKING AFFIDAVIT**

**SEE ATTACHED**

**NONGOVERNMENTAL ENTITY HUMAN  
TRAFFICKING AFFIDAVIT (§ 787.06(13), Fla. Stat.)  
THIS AFFIDAVIT MUST BE SIGNED AND NOTARIZED**

I, the undersigned, am an officer or representative of VITA NOVA INC  
(CONTRACTOR) and attest that CONTRACTOR does not use coercion for labor or services as  
defined in section 787.06, Florida Statutes.

**Under penalty of perjury, I hereby declare and affirm that the above stated facts are true  
and correct.**

  
(signature of officer or representative)

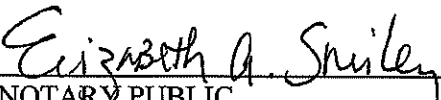
STEVEN ERJAVEC, CFO  
(printed name of officer or representative)

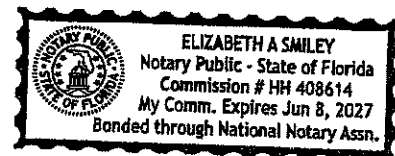
**State of Florida, County of Palm Beach**

Sworn to and subscribed before me by means of ☒ physical presence or ☐ online notarization  
this, 17<sup>th</sup> day of June, 2025, by STEVEN ERJAVEC.

Personally known ☒ OR produced identification ☐.

Type of identification produced \_\_\_\_\_.

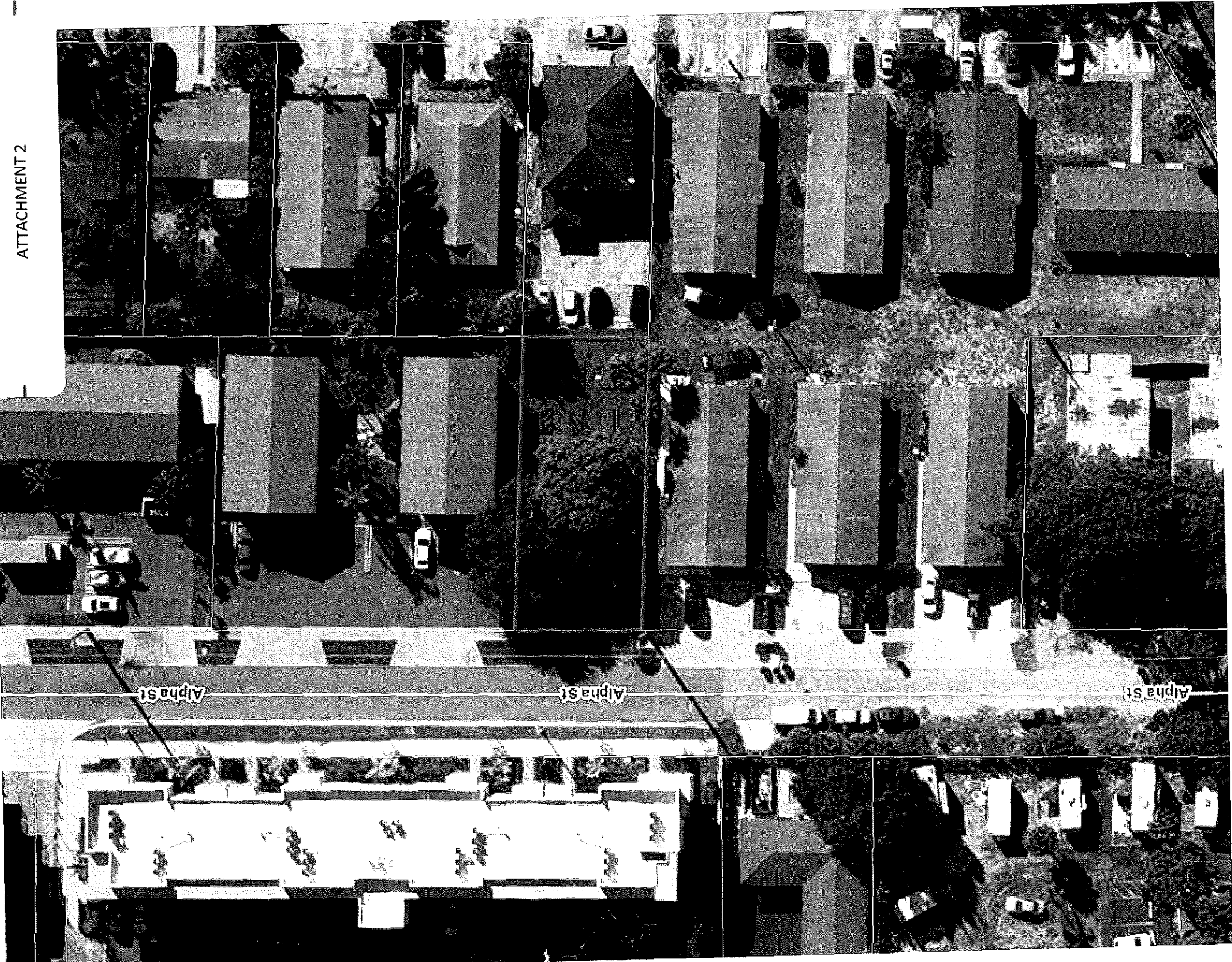
  
NOTARY PUBLIC  
My Commission Expires: June 8, 2027  
State of Florida at large



(Notary Seal)

**EXHIBIT J**

**BUDGET & SCHEDULE**



HOME Program 2025 Income Limits for Palm Beach County, Florida

Income Category	2025 Income Limit by Number of Persons in Household							
	1	2	3	4	5	6	7	8
30%	\$ 24,550	\$ 28,050	\$ 31,550	\$ 35,050	\$ 37,900	\$ 40,700	\$ 43,500	\$ 46,300
50%	\$ 40,950	\$ 46,800	\$ 52,600	\$ 58,450	\$ 63,150	\$ 67,850	\$ 72,500	\$ 77,200
80%	\$ 65,450	\$ 74,800	\$ 84,150	\$ 93,500	\$ 101,000	\$ 108,500	\$ 115,950	\$ 123,450

2025 Median Income: \$111,800  
Based on U.S. Department of HUD FY2025 Adjusted HOME Program Income Limits.