

FUNDING AGREEMENT

THIS FUNDING AGREEMENT (this “**Agreement**”) is made and entered into this _____ day of _____, 2020, (the “**Effective Date**”) by and between the Community Redevelopment Agency of the City of Orlando, an entity created pursuant to Part III of Chapter 163, Florida Statutes (“**CRA**”), and Amelia Court at Creative Village-Phase II Partners, Ltd. (“**Owner**”), a Florida Limited Partnership. City, CRA and Owner may together be referred to herein as the “**Parties**”, or individually as a “**Party**”.

W I T N E S S E T H:

WHEREAS, Owner has caused to be developed, Units 2-2, 2-3 & 2-4 of Amelia Court at Creative Village, A Condominium, located at 630 W Concord Street (the “**Property**”, as shown on **Exhibit “A”** attached hereto and incorporated herein by this reference) as a multi-family residential housing project including, but not limited to, affordable housing containing one hundred five (105) residential units and related parking and other amenities (collectively, the “**Project**”) in accordance with the Specific Parcel Master Plan (Case No. MPL2017-00009 and City of Orlando Documentary No. 170515C11) approved by the Orlando City Council on May 15, 2017; and

WHEREAS, the Florida Housing Finance Corporation (“**FHFC**”) issued Request for Application #2018-112 for the award of low income housing tax credits for affordable housing, allowing local governments to award a local government preference under such RFA;

WHEREAS, by action of City Council on August 8, 2018, the City of Orlando (“**City**”) established a review process for provision of a local government preference under FHFC Request for Application #2018-112; and

WHEREAS, pursuant to such process, on October 8, 2018, City Council granted the award of the City’s Local Government Preference pursuant to such RFA to the Project, Amelia Court at Creative Village Phase II; and

WHEREAS, the Owner was successful in obtaining low income housing tax credit financing for the Project pursuant to RFA #2018-112; and

WHEREAS, the Project will help to achieve the City and CRA’s shared goal of providing affordable housing within the Area; and

WHEREAS, the Project will fulfill a general goal of the Downtown Orlando Community Redevelopment Area Plan (the “**Plan**”) to improve the variety of housing options within the Downtown Orlando Community Redevelopment Area (the “**Area**”); and

WHEREAS, the City and the CRA have identified affordable housing such as that provided by the Project as a matter of importance to the community, and the CRA is willing to provide funding to assist Owner with development of Amelia Court-Phase II as described in this Agreement; and

WHEREAS, this Agreement provides for the CRA to provide such funding for the development of the Project in the amount equal to the Local Government Preference amount as established by FHFC for RFA 2018-112, Six Hundred Twenty-Five Thousand Seven Hundred Fifty and 00/100 (\$625,750.00), or approximately \$5,960 per unit, hereby committing CRA funds as the funding source of the Local Government Preference awarded by the City; and

WHEREAS, Section 143.400, Florida Statutes, encourages cooperation by public bodies in carrying out redevelopment within community redevelopment areas.

NOW, THEREFORE, in consideration of the covenants set forth herein below and the mutual promises contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

Article I **BACKGROUND**

1.1 Incorporation of Recitals. The recitals set forth above are true and correct and are incorporated herein as if fully set out below.

1.2 Benefits to CRA. Based upon the specific terms and conditions set forth in this Agreement, the CRA is willing to enter into this Agreement for the purpose of and to allow Owner to maintain, and operate the Project in accordance with the terms and conditions of this Agreement and all applicable ordinances, approvals and permits. The Owner agrees to undertake the Project with the objective of meeting the City and CRA's goals of establishing and maintaining a variety of high quality affordable housing options to City and Area residents. The construction and operation of the Project as affordable housing will assist the CRA in implementing the Plan by providing additional affordable housing in the Area, thereby enhancing the quality of life in the Area through the eradication of slum and blight in accordance with the Plan and the Community Redevelopment Act, Part III, Chapter 163, Florida Statutes.

Article II **TERMS & CONDITIONS: PRE-CLOSING OBLIGATIONS**

2.1 Permits. At its sole cost and expense, Owner shall comply with all applicable laws, regulations, ordinances, permitting, planning, platting, building, engineering, stormwater and land development regulations or the like concerning the development of the Property and shall be responsible for securing or causing to secure all local, state, and federal permits required for all construction activities for the Project at its expense. The Project shall also be subject to all approvals issued by the City/CRA's Appearance Review Board and Municipal Planning Board, City Council and any other governmental authority having jurisdiction or authority over the Property. Any and all street dedications have been made to the public as required by the City.

2.2 Affordability Requirement. For a period of twenty (20) years from completion of construction as evidenced by a as evidenced by the Owner's receipt of a Certificate of Occupancy for the Project ("Construction Completion") the following restrictions shall apply:

- A. No less than fifteen percent (16 units) will be leased to households earning thirty percent (30%) or less of the average area median income as defined for the Orlando area by the U.S. Department of Housing and Urban Development (HUD) from time to time.
- B. No less than fifteen percent (16 units) will be leased to households earning forty percent (40%) or less of the average area median income as defined for the Orlando area by the U.S. Department of Housing and Urban Development (HUD) from time to time.
- C. No less than fifteen percent (12 units) will be leased to households earning sixty percent (60%) or less of the average area median income as defined for the Orlando area by the U.S. Department of Housing and Urban Development (HUD) from time to time.
- D. No less than thirty percent (40 units) will be leased to households earning eighty percent (80%) or less of the average area median income as defined for the Orlando area by the U.S. Department of Housing and Urban Development (HUD) from time to time.
- E. The Project shall contain a mix of units, with 30 units being 1 bedroom/1 bath units, 15 units being 2 bedroom/2 bath units, and 60 units being a minimum of 3 bedroom/2 bath units.

2.3 Funding. To assist with the development of the Project and to demonstrate the CRA's determination of the importance of the Project and provision of additional affordable housing in the Area, the CRA will provide funding for the Project (the "Funding") in an amount equal to Six Hundred Twenty Five Thousand Seven Hundred and Fifty Dollars and 00/100 (\$625,750.00). The Funding shall be distributed to Owner upon the CRA's receipt of an invoice at any time following Construction Completion as defined in §2.2 hereof.

Article III

CONSTRUCTION AND POST-CLOSING OBLIGATIONS

Owner agrees to comply with the requirements set forth in this Article III. Failure to do so may result in forfeiture of the Funding.

3.1 Timely Payment of Taxes. Owner shall pay the annual Orange County Real Property Tax Bill for ad valorem real property taxes levied in Orange County, Florida for the Property before such taxes become delinquent.

3.2 Audit. Owner shall keep good and accurate books and records demonstrating compliance or non-compliance with the requirements of this Agreement. At any time, beginning on the Effective Date, the CRA shall be entitled to audit Owner's books and records to the extent such books and records relate to Owner's performance of obligations under the Agreement. Furthermore, the CRA's audit may be conducted with advance notice at Owner's place of business or the CRA may require Owner to provide copies, electronically or otherwise, of any and all books and records to the CRA for review and Owner shall provide any and all such requested records

within seven (7) days after request. The right to audit set forth in this section shall expire three (3) years after Owner's obligations under this Agreement expire.

Article IV

COVENANTS AND REPRESENTATIONS OF OWNER

The Owner hereby covenants, represents, and acknowledges the following covenants and representations that the CRA has relied upon in agreeing to provide the Funding described herein:

4.1 Ownership. The Owner is the owner of Units 2-2, 2-3 & 2-4 of Amelia Court at Creative Village, a Condominium.

4.2 Approvals. The Owner has received Municipal Planning Board approval of all aspects necessary for development of the Project on the Property.

4.3 Licensed Contractor. The Owner has and shall continue to utilize the services of a licensed and qualified contractor(s) to construct and make repairs to the Project (the "Contractor") in a safe and professional manner and in compliance with the terms of this Agreement and in conformance with all applicable federal, state and local laws and regulations, including, but not limited to, the Florida Building Code and the Americans with Disabilities Act.

4.4 Annual Status Reports. Owner shall submit to the CRA by no later than each April 1st, commencing the first April 1 after execution of this Agreement, annual status reports evidencing and certifying compliance with the terms and conditions of this Agreement. Such annual status reports to be in a form reasonably acceptable to the CRA.

4.5 Orlando Utilities Commission. The Owner agrees to use the Orlando Utilities Commission ("OUC") to provide electric utilities and water service for the Project pursuant to separate agreement(s) with OUC.

4.6 Indemnification. The Owner agrees to indemnify and hold harmless the City and CRA, their elected and appointed officials, from and against any and all liability, losses, claims, demands, damages, fines, fees, expenses, penalties, suits, proceedings, actions and cost of actions, including reasonable attorney's fees for trial and on appeal, of any kind and nature arising or growing out of or in any way connected with the design, construction, and operation of the Project by the Owner or its Contractor, architect and consultants ("Claims").

4.7 Owner's Breach. Subject to Force Majeure (as defined in this Agreement), the Owner's failure to comply at all times with its obligations contained herein shall be a material breach of this Agreement. Upon such breach, the CRA may seek repayment of all or a portion of the Funding until such breach is cured to the reasonable satisfaction of the CRA or seek other remedies available to it under law, including specific performance.

4.8 CRA Breach. In the event that the CRA materially breaches any of its obligations contained herein, including, but not limited to the obligation to provide the Funding, and fails to cure such breach within thirty (30) calendar days from the date of its receipt of written notice of such breach from the Owner, then the Owner shall have the right to require the CRA's specific performance under the terms and conditions of this Agreement.

Article V

MISCELLANEOUS

4.9 Binding Effect. This Agreement and the terms and conditions hereof shall be binding upon and inure to the benefit of the Parties and their respective successors and assigns, and their respective tenants, agents, licensees, guests and invitees and shall run with the Property. With or without specific reference thereto, the conveyance of any interest in all or a portion of the Property shall be subject to the benefits, burdens and other terms and conditions of this Agreement, to the same extent as if all of the terms and conditions of this Agreement were set forth in full in such conveyance. Notwithstanding the foregoing, the Parties acknowledge and agree that this Agreement: (i) is intended to govern and relate to the construction, use and operation of the Project on the Property; and (ii) shall not be transferable to any other real property.

4.10 Third-Party Beneficiary. This Agreement is solely for the benefit of the Parties signed hereto and no right, nor any cause of action, shall accrue to or for the benefit of any third party.

4.11 Controlling Laws.

4.11.1 This Agreement and the provisions contained herein shall be construed, controlled, and interpreted according to the laws of the State of Florida, and all duly adopted ordinances, regulations, and policies of the City now in effect and those hereinafter adopted which are not inconsistent with the specific terms and agreements set forth herein.

4.11.2 The location for settlement of any and all claims, controversies or disputes, arising out of or relating to any part of this Agreement, or any breach hereof, shall be Orange County, Florida.

4.12 Entire Agreement. This Agreement constitutes the entire agreement between the Parties with respect to the specific matters contained herein and supersedes all previous discussions, understandings, and agreements. Amendment to or waivers of the provisions herein must be made by all the Parties hereto, be in writing, and in recordable form.

4.13 Savings Clause. If any sentence, phrase, paragraph, provision or portion of this Agreement is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed an independent provision and such holding shall not affect the validity of the remaining portions hereto.

4.14 Cost of Recording. Owner, upon the execution of this Agreement, shall pay to CRA the cost of recording this Agreement in the Public Records of Orange County, Florida.

4.15 Estoppel. Upon the request of Owner, or Lender(s) for the Project, CRA hereby agrees to furnish a letter stating that (i) this Agreement is in full force and effect if true, (ii) there are no defaults under their Agreement or if any identify them, and (iii) such other information as reasonably requested. Such letter shall be furnished within thirty (30) days after request therefor.

4.16 Assignment. This Agreement is personal to the Parties and Owner shall not be entitled to assign this Agreement, or rights pursuant to this Agreement, without prior written consent of the CRA. Subject to the restrictions on transfer set forth herein, this Agreement shall be binding upon and inure to the benefits of the successors and assigns of the Parties hereto. No assignment shall cause a release of Owner's obligations pursuant to this Agreement.

4.17 Force Majeure. The Parties shall use reasonable diligence to ultimately accomplish the purposes of this Agreement, but shall not be liable to each other, or their successors or assigns, for damages, for breach of contract or otherwise, for failure, suspension, diminution, or other variations of services occasioned for a delay or occasioned by a cause or causes beyond the control of the Party whose performance is so delayed. Such causes shall include, without limitation: moratoria; severe adverse weather conditions (such as tropical storms, tornados or hurricanes); war-like operations; terrorism; governmental or judicial action/inaction; legislation, or controls (including permitting or approval delays beyond the dates set forth in the Project schedule); acts of other government agencies (regulatory entities or courts) in their sovereign or contractual capacity; fires; floods; epidemics; quarantines; restrictions; strikes or failure or breakdown of transmission or other facilities; material shortages; or acts of God. The Parties acknowledge and agree that either Party's incompetence, failure to deploy adequate resources, failure to commence its duties hereunder within a reasonable time frame in accordance with the time frames stated herein or the applicable construction contracts, failure to make payments, or failure to exercise commercially reasonable diligence in the performance of its obligations hereunder shall not be deemed to constitute a force majeure event.

4.18 Disputes. Prior to the institution of any judicial proceedings, the Parties agree to attempt to settle the dispute through mediation, and shall follow the procedure set forth below. Any time periods set forth in this Agreement for cure of default shall be extended to the end of the time periods set forth below to permit the Parties to attempt to resolve any disputes.

4.18.1 The Party believing a dispute to exist will give the other party written notice thereof, setting forth in reasonable detail the facts alleged to give rise to such dispute, the relevant contractual provisions, the nature of any claimed default or breach and a statement of the manner in which such Party believes the dispute should be resolved.

4.18.2 Within twenty (20) days after receipt of such notice, each Party against whom relief is sought in connection with such dispute will deliver a written response, setting forth in reasonable detail its view of the facts alleged to give rise to such dispute, the relevant contractual provisions, the nature of the claimed default or breach and a statement of the manner in which such Party believes the dispute should be resolved.

4.18.3 If the Parties do not agree on the manner in which the dispute should be resolved, they will arrange to hold a meeting within twenty (20) days after delivery of the response. Each Party will have in attendance at such meeting a representative with authority to bind the represented Party to any agreement resolving the dispute. At the meeting (and any adjournments thereof), the Parties will negotiate in good faith in an attempt to agree as to whether a dispute exists, the exact nature of the dispute and the manner in which the dispute should be resolved. If deemed appropriate by any Party, a professional mediator may be engaged to assist in resolving the dispute with mediation costs borne equally by the Parties. Any resolution of the

dispute will be evidenced by a written agreement setting forth in reasonable detail the actions to be taken by each Party. If no such written agreement is reached within 30 days after the first meeting, the Parties may pursue any legal remedies available to them with respect to such dispute.

4.18.4 Notwithstanding the provisions of this Article, nothing herein shall prevent or hinder any Party from pursuing and obtaining injunctive relief in a court of law as to matters appropriate for such relief.

4.18.5 Any and all remedies identified in this Agreement are cumulative and not exclusive and shall be in addition to any other remedy which the Parties may have.

4.18.6 City and CRA are Florida municipal entities whose limits of liability are set forth in section 768.28, Florida Statutes, and nothing herein shall be construed to extend the liabilities of City or CRA beyond that provided in section 768.28, Florida Statutes. Further, nothing herein is intended as a waiver of City's or CRA's sovereign immunity under section 768.28, Florida Statutes. Nothing hereby shall inure to the benefit of any third party for any purpose, including but not limited to, anything which might allow claims otherwise barred by sovereign immunity or operation of law.

4.18.7 NEITHER CITY OR CRA NOR OWNER OR THEIR AFFILIATES, SUBCONTRACTORS, AGENTS, ELECTED OR APPOINTED OFFICIALS, AND/OR EMPLOYEES SHALL BE LIABLE FOR ANY SPECIAL, INDIRECT, PUNITIVE, EXEMPLARY, INCIDENTAL OR CONSEQUENTIAL LOSS OR DAMAGES OF ANY NATURE HOWSOEVER CAUSED; AND WHETHER BASED ON CONTRACT, TORT (INCLUDING NEGLIGENCE), INDEMNITY, STRICT LIABILITY OR ANY OTHER THEORY OF THE LAW.

4.19 Time. In computing any period of time pursuant to this Agreement, the day of the act, event, or default from which the designated period of time begins to run shall not be included, but the time shall begin to run on the next succeeding day. The last day of the period so computed shall be included, unless it is a Saturday, Sunday or legal holiday, in which event the period shall run until the end of the next day which is not a Saturday, Sunday or legal holiday. Time is of the essence.

4.20 Headings. Section and other headings contained in this Agreement are for reference purposes only and are not intended to describe, interpret, define, or limit the scope, extent, or intent of this Agreement or any provision hereof.

4.21 No Liability or Monetary Remedy. The Owner hereby acknowledges and agrees that it is sophisticated and prudent in business transactions and proceeds at its own risk under advice of its own counsel and advisors and without reliance on the CRA, and that the CRA bears no liability for direct, indirect or consequential damages. The only remedy available to the Owner for any breach by the CRA is to require the CRA's specific performance under the terms and conditions of this Agreement.

4.22 Effective Date and Term. This Agreement shall become effective on the Effective Date first written above, and end, subject to the termination and severability provisions set forth herein, upon satisfaction in full of all of the obligations of the Parties.

4.23 Relationship. This Agreement does not evidence the creation of, nor shall it be construed as creating, a partnership or joint venture between the CRA, and the Owner. The Owner cannot create any obligation or responsibility on behalf of the CRA or bind the CRA in any manner. Each party is acting for its own account, and it has made its own independent decisions to enter into this Agreement and as to whether the same is appropriate or proper for it based upon its own judgment and upon advice from such advisers as it has deemed necessary. Each party acknowledges that none of the other parties hereto is acting as a fiduciary for or an adviser to it in respect of this Agreement or any responsibility or obligation contemplated herein. The Owner further represents and acknowledges that no one was paid a fee, commission, gift or other consideration by the Owner as an inducement to entering into this Agreement.

4.24 Extensions. The CRA and nominates Thomas C. Chatmon, Jr., as Executive Director of the Community Redevelopment Agency of the City Of Orlando who may in his absolute discretion, act on behalf of the CRA to extend each and every deadline or any timeframe set forth in this Agreement for performance by the Owner for a period of up to ninety (90) days.

4.25 Amendment. Except as to the release of the Phase II Property from this Agreement by the CRA as described herein, this Agreement may not be amended, unless evidenced in writing and executed by all parties hereto.

4.26 Notices. Any notices required to be given hereunder shall be effective upon receipt and sent by either facsimile, hand-delivery, U.S. mail, first class, postage prepaid, or by certified or registered mail (return receipt requested) to the following addresses:

CRA:

Community Redevelopment Agency of
the City of Orlando, Florida
400 South Orange Avenue
P.O. Box 4990
Orlando, Florida 32802-3370
Attn: Thomas C. Chatmon, Jr.,
Executive Director
email: thomas.chatmon@cityoforlando.net

and

Stacey Y. Adams, Assistant City Attorney
City Attorney's Office
400 South Orange Avenue
Orlando, Florida 32801
email: Stacey.adams@cityoforlando.net

Owner:

Amelia Court at Creative Village-Phase II
Partners, Ltd.
c/o Southern Affordable Services, Inc.
335 Knowles Avenue, Suite 101
Winter Park, Florida 32789
Attn: Jay Brock, Executive Vice president
Email: jbrock@sashousing.org

and a copy to

Lowndes, Drosdick, Doster, Kantor & Reed,
P.A.
215 N. Eola Drive
Orlando, Florida 32801
Attn: M. Rebecca Wilson, Esq.
Email: Rebecca.wilson@lowndes-law.com

4.27 Captions. The captions and headings of sections or paragraphs used in this Agreement are for convenient reference only and shall not limit, define or otherwise affect the substance or construction of provisions of this Agreement.

4.28 No CRA Security. This Agreement shall be construed in such manner that in no event shall the CRA be required to provide security for repayment of any portion of any outstanding loans to the Owner with respect to the Property nor shall the CRA be obligated under any mortgage or promissory note as the same relate to the Property.

4.29 Permits. The Owner shall obtain all state and local permits or other governmental authorizations and approvals required by law in order to construct Project on the Property.

4.30 Compliance with Laws. The Owner shall at all times be in compliance with all applicable federal, state and local laws, statutes, rules and regulations, including, but not limited to the Orlando City Code and City Code sections pertaining specifically to planning, zoning and permitting. This paragraph is not intended to preclude the City from granting the Owner certain waivers, exemptions or variances under the Orlando City Code as allowed therein.

4.31 Counterpart Execution. This Agreement may be executed in counterparts, each of which shall constitute an original, but all taken together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the CRA and Owner have executed this Agreement as of the Effective Date.

SIGNATURES BEGIN ON NEXT PAGE

IN WITNESS WHEREOF, the Parties have caused these presents to be executed on the day and year indicated above.

“CRA”

**COMMUNITY REDEVELOPMENT
AGENCY OF THE CITY OF ORLANDO,
FLORIDA,**

an agency organized pursuant to Chapter 163,
Part III, Florida Statutes

By: _____
Buddy Dyer
Chairman

Attest:

Thomas C. Chatmon, Jr.

Executive Director

STATE OF FLORIDA

COUNTY OF ORANGE

The foregoing instrument was acknowledged before me by means of ☐ physical presence or ☐ online notarization, this ____ day of _____, 2020, by Buddy Dyer and Thomas Chatmon, the Chariman and Executive Director, respectively, of the Community Redevelopment Agnecy of City of Orlando, Florida, who are both personally known to me.

Notary Public Signature

My Commission Expires: _____

(Affix Notary Stamp or Seal)

OWNER Execution Page

IN WITNESS WHEREOF, the Parties have caused these presents to be executed on the day and year indicated above.

Witness

“OWNER”

**AMELIA COURT AT CREATIVE
VILLAGE–PHASE II PARTNERS, LTD.**, a
Florida limited partnership

By: SAS Amelia Court at Creative Village
–Phase II Managers, L.L.C., a Florida
limited liability company, General
Partner

By: _____

Print Name: _____

By: Southern Affordable Services, Inc.,
a Florida limited liability company,
Authorized Member

By: _____

Print Name: _____

By: _____
Jay Brock
Executive Vice President

STATE OF FLORIDA

COUNTY OF ORANGE

The foregoing instrument was acknowledged before me by means of ☐ physical presence or ☐ online notarization, this ____ day of _____, 2020, by Jay Brock , as Executive Vice President of Southern Affordable Services, Inc, a Florida limited liability company, as Authorized Member of SAS Amelia Court at Creative Village-Phase II Managers, L.L.C., a Florida limited liability company, as General Partner of Amelia Court at Creative Village-Phase II Partners, Ltd., a Florida limited partnership on behalf of the partnership.

Notary Public Signature

My Commission Expires: _____

(Affix Notary Stamp or Seal)

EXHIBIT A

Property

Lot 1, Creative Village - Phase 1, according to the Plat thereof as recorded in Plat Book 93, Page 60, of the Public Records of Orange County, Florida, Section 26, Township 22 South, Range 29 East.