

**South Carolina State Housing Finance and Development Authority
Neighborhood Stabilization Program -
Disposition Agreement for the Development of Land Banked Properties- RENTAL**

THIS AGREEMENT is made this _____ day of _____, 20____, by and between the South Carolina State Housing Finance and Development Authority (hereinafter referred to as the “Authority”), _____ (hereinafter referred to as the “Subrecipient”) and _____ (hereinafter referred to as the “Developer”).

RECITALS

WHEREAS, the United States Department of Housing and Urban Development (hereinafter referred to as “HUD”) has designated the Authority as the administering agency for the Neighborhood Stabilization Program (hereinafter referred to as “NSP”) for the State of South Carolina and has accordingly allocated NSP funds to the Authority for the purpose of stabilizing neighborhoods and preserving affordable housing opportunities for the citizens of South Carolina;

WHEREAS, the Subrecipient was selected by the Authority to receive NSP funds for the purpose of acquiring and maintaining properties in an NSP Land Bank until those properties could be developed to meet an NSP eligible end use;

WHEREAS, a portion of the NSP funds awarded to Subrecipient were used to acquire property located at _____ (hereinafter referred to as the “Property”) and further described in Exhibit A, evidenced by a title recorded in the _____ Office for _____ County in Book _____ at Page _____;

WHEREAS, the Subrecipient seeks to coordinate the transfer of title to the Property to the Developer for the purpose of developing the Property to meet an NSP eligible end use;

NOW THEREFORE, in consideration of the covenants and conditions set forth herein and for other good and valuable consideration which is hereby acknowledged, the parties understand and agree as follows:

AGREEMENT

I. General Responsibilities of the Parties

- A. The **Subrecipient** will coordinate the transfer of title to the Property to the Developer for the purpose of developing the Property to meet an NSP eligible end use. The Subrecipient is responsible for furnishing the Developer with all necessary information on NSP and its requirements.
- B. The **Developer** will develop the Property, in accordance with the Development Budget attached as Exhibit B, to be used to house individuals or families whose income is at or below 120% of area median income pursuant to the purposes described in Section 101(c) of 42 U.S.C. 5301(c).

- C. The **Authority** will conduct a final inspection of the Property to evaluate overall compliance with the general requirements of this Agreement, with all requirements of NSP as stated in Title III of the Housing and economic Recovery Act of 2008 (hereinafter the “NSP Notice”) and the CDBG regulations and with all the rules and regulations of the Authority’s NSP Program.
- D. The Subrecipient, the Authority and/or HUD may monitor all activities of the Developer to assure compliance with the terms of this Agreement.

II. Compliance with NSP Requirements

The Developer and the Subrecipient must comply with all NSP requirements as stated in the NSP Notice and the CDBG regulations, including but not limited to the following:

A. Program Income –

Program income is the gross income received by the Subrecipient or NSP recipient entities that are local governments or public housing authorities, which is directly generated from the use of NSP funds, including but not limited to the following:

- Proceeds received from the sale or long-term lease of real property;
- Proceeds from the disposition of equipment purchased with NSP funds;
- Gross income from real property that is used for rental less incidentals cost (Operating/replacement reserves, maintenance, debt, vacancy, management fees, utilities, etc.);
- Payments of principal and interest on loans made with NSP funds;
- Proceeds from the sale of loans made with NSP funds;
- Proceeds from the sale of obligations secured by loans made with NSP funds;
- Interest earned on program income pending its use; and
- Recaptures on sales of homes pursuant to enforcement of NSP affordability requirements.

The Subrecipient and recipient must maintain records of the receipt and expenditure of program income in accordance with 24 CFR 570.506(h) and with the standards for financial management systems of 24 CFR Part 85.20 or 24 570.504, as applicable.

Upon written request to the Authority, the Subrecipient or recipient (government entity or public housing authority) may be allowed to retain program income to use for Authority-approved NSP expenses necessary to maintain and operate the land bank. If allowed to retain program income, six percent (6%) of program income can be used for eligible administrative costs. The Subrecipient and recipient must comply with Program Income reporting requirements as identified in the NSP Grant Agreement. The Authority reserves the right to revoke its decision to allow a Subrecipient or recipient to retain program income at any time.

B. Non-Discrimination –

The Developer must comply with the following provisions:

1. The Developer may not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin(s) and must take affirmative action to ensure the applicants are employed and employees are treated during employment without regard to their race, color, religion, sex or national origin(s).
2. In all solicitations or advertisements for employees placed by or on behalf of the

Developer, the Developer must state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.

3. The Developer must comply with all provisions of Executive Order 11246 of September 24, 1965, and the rules, regulations, and relevant orders of the Secretary of Labor and must furnish all information and reports and will permit access to its books, records, and accounts for purposes of investigation to ascertain compliance with such rules, regulations, and order.
4. The Developer must comply with the non-discrimination in employment and contracting opportunities laws, regulations, and executive orders referenced in 24 CFR 570.607, as revised by Executive Order 13279.
5. The Developer must use its best efforts to afford small businesses, minority business enterprises and women's business enterprises the maximum practicable opportunity to participate in the performance of this Agreement.
6. If applicable, the Developer must comply with the provisions of the Davis-Bacon Act and regulations (29 CFR Part 5) as amended.
7. If the total amount of any HUD funds awarded with respect to the Property exceeds \$200,000, the Developer must comply with the provisions of Section 3 of the Housing and Urban Development Act of 1968 as amended and as implemented by the regulations set forth in 24 CFR Part 135 and all applicable rules and orders issued thereunder prior to the execution of this contract. The Developer certifies and agrees that no contractual or other disability exists that would prevent compliance with these requirements.

C. **Property Standards** –

The Developer must carry out all activities in accordance with applicable laws, codes and other requirements relating to housing safety, quality, and habitability, including but not limited to the following:

1. The Developer must carry out any rehabilitation of the Property in compliance with the rehabilitation standards in the Authority's substantial amendment and in accordance with applicable laws, codes, and other requirements relating to housing safety, quality, and habitability.
2. The Developer agrees that any housing on the Property must meet all applicable local codes, ordinances and zoning ordinances in effect at the time of project completion. In the absence of local code, housing must at a minimum meet the Council of American Building Officials (CABO) or one of the three model codes (Uniform Building Code (ICBO), National Building Code (BOCA), Standard Southern Building Code (SBCCI)).
3. The Developer must ensure that any housing on the Property is in compliance with all applicable State and local housing quality standards and code requirements. If there are no such standards, the housing must meet the housing quality standards in 24 CFR 982.401 for the entire length of the affordability period described in this Agreement.
4. The Developer agrees that any residential structures are subject to HUD Lead-Based Paint Regulations at 24 CFR 570.487 or 24 CFR 570.608, and 24 CFR Part 35, Subparts A, B, J, K, and R, and EPA's Renovation, Repair, and Painting Rule 40 CFR Part 745.
5. The Developer must work with any household that includes a person with disabilities to provide accessibility modifications required under the policy of reasonable accommodations and reasonable modifications. The housing must meet the accessibility requirements at 24 CFR part 8, which implements Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794). Covered multifamily dwellings, as defined at 24 CFR 100.201,

must also meet the design and construction requirements at 24 CFR 100.205, which implement the Fair Housing Act (42 U.S.C. 3601-3619). The Fair Housing Act requires that all multi-family dwellings must meet the design and construction requirements at 24 CFR 100.205. Refer to CABO/ANSI section A117.1 for specific requirements. Some of these requirements are described below.

- a. 504 Requirements for New Construction Projects:
Projects with (5) or more units will have at least (5%) of the units accessible to individuals with mobility impairments AND at least (2%) of the units accessible to individuals with sensory impairments.
- b. 504 Requirements for Rehabilitation/Conversion Projects:
Projects with (15) or more units and rehabilitation costs that are (75%) or more of the replacement cost will have at least (5%) of the units accessible to individuals with mobility impairments AND at least (2%) of the units accessible to individuals with sensory impairments.
- c. The Fair Housing Act requires seven basic requirements that must be met to comply with the access requirements which are:
 - 1. An accessible building entrance on an accessible route
 - 2. Accessible common and public use areas
 - 3. Usable doors (usable by a person in a wheelchair)
 - 4. Accessible route into and through the dwelling unit
 - 5. Light switches, electrical outlets, thermostats and other environmental controls in accessible locations
 - 6. Reinforced walls in bathrooms for later installation of grab bars
 - 7. Usable kitchen and bathrooms

D. Final Inspection and Completion Requirements –

Upon completion of the development, the Authority will conduct a final inspection of the Property for compliance with the general requirements of this Agreement, NSP regulations and all the rules and regulations of the Authority’s NSP Program.

The Developer may not allow and must prohibit anyone from occupying the Property until receiving notification from the Authority that the Property has passed the final inspection.

The Developer must submit completion reports on or before 30 days after the initial lease agreement for the property has been executed. The Developer must also execute and record Restrictive Covenants within 45 days of the approval of the initial lease agreement using Authority approved Restrictive Covenant Documents.

E. Affordability –

The Developer must utilize and enforce the affordability requirements of the HOME Investment Partnerships Program as modified under the Authority’s NSP Action Plan. If the housing does not meet the affordability requirements for the specified time period, the Developer agrees to repay the NSP funds invested in the property.

The period of affordability is based upon the amount of NSP subsidy invested per unit and the type of assistance provided. The minimum affordability periods are as follows:

| NSP Assistance Per Unit | Period of Affordability |
|-------------------------------|-------------------------|
| Investment less than \$15,000 | 5 years |

| | |
|--|----------|
| Investment between \$15,000 - \$40,000 | 10 years |
| Investment over \$40,000 | 15 years |
| New Construction | 20 years |

The affordability period will be activated on the date the initial lease agreement for the property is executed.

F. **Income Restrictions**–

All beneficiaries served must be at or below 120% of area medium income, adjusted for family size. The Developer must perform income determinations using the Part 5 Definition as defined in 24 CFR Part 5 as explained in the “Technical Guide for Determining Income and Allowances for the HOME Program” published by HUD.

Rental units designated as very low income must be occupied by households with incomes at or below 50 percent (50%) of area median income.

The Developer must determine that each family or individual is income eligible on an annual basis using third party source documents to evidence annual income (e.g., wage statement, interest statement, and unemployment compensation statement) for the family or individual.

Over-income tenants are to be handled in the following manner:

1. NSP-assisted units will continue to qualify as affordable housing despite a temporary noncompliance caused by increases in the incomes of existing tenants if actions satisfactory to Authority are being taken to ensure that all vacancies are filled until the noncompliance is corrected.
2. Tenants residing in fixed units who no longer qualify as low-income families must pay as rent the lesser of the amount payable by the tenant under State or local law or 30 percent of the family’s adjusted income, except that tenants of NSP-assisted units that have been allocated low-income housing tax credits by a housing credit agency pursuant to Section 42 of the Internal Revenue Code of 1986 (26 U.S.C. 42) must pay rent governed by Section 42. In addition, tenants who no longer qualify as low-income in units designated as floating are not required to pay as rent an amount that exceeds the market rent for comparable, unassisted units in the neighborhood.

G. **Rent and Occupancy Requirements** –

The Developer agrees to enforce all federal and state rent and occupancy requirements (as applicable) in addition to the requirements as outlined below. Should any rent and occupancy requirements not be met, corrective action will be taken and the Developer and the Subrecipient will be suspended from participating in Authority programs until such time that the project is in compliance.

1. Rent and occupancy requirements will be enforced by a mortgage and recorded covenant running with the property. Covenants may be suspended upon transfer by foreclosure or deed in-lieu of foreclosure to be determined at the sole discretion of the Authority. Rent limitations, restrictions and income targeting requirements must be described in the recorded restrictive covenant
2. In general, 100% of all NSP-assisted rental units must be occupied by tenants who have annual incomes that are 120% or less of area median income adjusted for family

size. Rental units designated as very low income must be occupied by households with incomes at or below 50 percent (50%) of area median income.

3. Every NSP-assisted unit is subject to rent limits. The maximum rents are referred to as “NSP Rents” or “Affordable Rents”. NSP Rents are determined based on rent plus utility costs that do not exceed the Section 8 Fair Market Rent (FMR) for existing housing established by HUD under 24 CFR Part 888 for the jurisdiction in which the property is located. For units that receive a Federal or State project-based rental subsidy and the very low-income family pays as a contribution toward rent not more than 30 percent of the family’s adjusted income, then the maximum rent is the rent allowable under the Federal or State project based rental subsidy program.
 - a. The Authority will annually provide an updated list of maximum rents.
 - b. NSP rent limits may decrease, but rents do not have to decrease below the NSP rent limits in effect at the time of project commitment.
 - c. Tenants must be given 30 days written notice before increases are implemented. Any increases are also subject to other provisions of the lease agreements.
 - d. The Developer must establish and maintain maximum monthly allowances for utilities and services (excluding telephone) and must update the allowance annually to include source of allowance or method of how the allowance was derived for consistency in all units.
 - e. Changes in fair market rents and in median income over time should be sufficient to maintain the financial viability of a project within the NSP rent limits. However, the Authority may permit adjustments to the rent structure if the financial feasibility of the project is threatened. In these cases, the Developer must submit a written request for review of feasibility.

Upon request, the Developer must provide an “Annual Occupancy Report” to the Authority containing information on the rents and occupancy of NSP-assisted units to demonstrate compliance with rent and occupancy requirements.

H. **Tenant Selection and Protections** –

The Developer must adopt written tenant selection policies and criteria that:

- are consistent with the purpose of providing affordable housing
- address NSP program eligibility and acceptance requirements
- address how tenants are selected and their ability to perform the obligations of the lease
- provide for the selection of tenants from a written waiting list in the chronological order of their application (in so far as practical)
- give prompt written notification to any rejected applicant of the grounds of any rejection
- give consideration to housing needs of families with federal preferences for admission to Section 8 and public housing
- address Affirmative Marketing, Equal Opportunity, and Fair Housing

The Developer agrees to ensure that the management plan will be available for the duration of the affordability period and accessible to the Authority and tenants.

The Developer may not refuse to lease NSP-assisted units to a certificate or voucher holder under 24 CFR part 982— Section 8 Tenant-Based Assistance: Unified Rule for Tenant-Based Assistance under the Section 8 Rental Certificate Program and the Section 8 Rental Voucher Program or to the holder of a comparable document evidencing participation in a HOME

tenant-based rental assistance program because of the status of the prospective tenant as a holder of such certificate, voucher, or comparable HOME tenant-based assistance document.

The Developer agrees to establish a lease between the tenant and an owner for not less than one year, unless by mutual agreement between the tenant and the owner. The Authority will have to approve all leases that are not for the one year period prior to execution by the owner.

The lease may not contain any of the following provisions:

1. An agreement by the tenant to be sued, to admit guilt, or to a judgment in favor of the owner in a lawsuit brought in connection with the lease.
2. An agreement by the tenant that the owner may take, hold, or sell personal property of household members without notice to the tenant and a court decision on the rights of the parties, except where permitted in accordance with State law.
3. An agreement by the tenant not to hold the owner or the owner's agents legally responsible for any action or failure to act, whether intentional or negligent.
4. An agreement of the tenant that the owner may institute a lawsuit without notice to the tenant.
5. An agreement by the tenant that the owner may evict the tenant or household members without instituting a civil court proceeding in which the tenant has the opportunity to present a defense, or before a court decision on the rights of the parties.
6. An agreement by the tenant to waive any right to a trial by jury or to waive the tenant's right to appeal, or to otherwise challenge in court, a court decision in connection with the lease.
7. An agreement by the tenant to pay attorney's fees or other legal costs even if the tenant wins in a court proceeding by the owner against the tenant.
8. The tenancy may not be terminated and may not be refused renewal except for serious or repeated lease violations, for violation of applicable law, for completion of the tenancy period for transitional housing or for other good cause. The tenancy may be terminated or refused renewal only upon 30 days written notice to the tenant specifying the grounds for the action.

III. Compliance with Other Federal, State & Local Laws

The Developer covenants and warrants that it will comply with **all** applicable laws, ordinances, codes, rules and regulations of the state local and federal governments and all amendments thereto, including but not limited to the following:

A. **Environmental and Historic Preservation Requirements** –

All NSP assistance is subject to the National Environmental Policy Act of 1969 and related federal environmental authorities and regulations at 24 CFR Part 58.

Ownership of NSP land banked properties may not be transferred to the Developer until the Authority has conducted an environmental review of the project site as required under 24 CFR Part 58. The Developer may not undertake any action prior to the environmental clearance.

The Developer agrees to comply with all applicable standards, orders or requirements issued under Section 306 of the Clean Air Act (42 U.S.C. 1857(h)), Section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency

regulations (40 CFR part 15).

The Developer must also comply with the requirements set forth in the National Historic Preservation Act of 1966 (16 U.S.C. 470) as amended and the procedures set forth in 36 CFR Part 800, Advisory Council on Historic Preservation Procedures for Protection of Historic Properties, insofar as they apply to the performance of this agreement.

B. Debarred, Suspended, or Ineligible Contractors and Participants -

The prohibitions at 2 CFR Part 24 on the use of debarred, suspended, or ineligible contractors and participants state that NSP funded projects may not employ any contractors or subcontractors that have been debarred or suspended from participating in federally funded programs. A listing of debarred contractors can be found on the Excluded Parties Listing System's (EPLS) web-site at www.epls.arnet.gov/index.

All procured contractors and subcontractors awarded contracts in excess of \$100,000 and all non-procured transactions in excess of \$25,000 must submit the "Debarment Certification Form" certifying that they are not included on the Excluded Parties Listing System and are eligible to participate in federally assisted projects.

C. Drug-Free Workplace -

The Developer must ensure compliance with the Drug-Free Workplace Act of 1988, found at 41 U.S.C. 701, et seq. The Developer must provide a drug-free workplace by taking the following steps:

1. Publish and give a policy statement to all covered employees informing them that the unlawful manufacture, distribution, dispensation, possession or use of a controlled substance is prohibited in the covered workplace and specifying the actions that will be taken against employees who violate the policy.
2. Establish a drug-free awareness program to make employees aware of: a) the dangers of drug abuse in the workplace; b) the policy of maintaining a drug-free workplace; c) any available drug counseling, rehabilitation, and employee assistance programs; and d) the penalties that may be imposed upon employees for drug abuse violations.
3. Notify employees that as a condition of employment on a Federal contract or grant, the employee must: a) abide by the terms of the policy statement; and b) notify the employer, within five calendar days, if he or she is convicted of a criminal drug violation in the workplace.
4. Notify the contracting or granting agency within 10 days after receiving notice that a covered employee has been convicted of a criminal drug violation in the workplace.
5. Impose a penalty on or require satisfactory participation in a drug abuse assistance or rehabilitation program by any employee who is convicted of a reportable workplace drug conviction.
6. Make an ongoing, good faith effort to maintain a drug-free workplace by meeting the requirements of the Act.

D. Labor Standards -

The Developer agrees to ensure compliance with all federal and state labor requirements regarding laborers and contracts, including but not limited to those found in 24 CFR 570.603 and the NSP Program Management Manual.

E. Affirmative Marketing and Minority Outreach -

The Developer agrees to conform to the Affirmative Marketing plan submitted to the Authority by the Subrecipient, thereby to provide information and otherwise attract eligible persons in the housing market area to the available housing without regard to race, color, national origin, sex, religion, familial status or disability.

The Developer must take necessary affirmative steps to assure that minority firms and women's business enterprises (hereinafter referred to as "MBE/WBE") are used whenever possible. Procurement regulations specify that MBE/WBE outreach activities apply to all contracting opportunities facilitated by NSP-funded activities, including contracts related to construction and program administration. There are no monetary thresholds that trigger MBE/WBE outreach requirements. They apply to all contracts awarded in conjunction with NSP-assisted projects. The NSP Program Management Manual provides complete details of requirements that will be followed.

NSP regulations require the following minimum affirmative steps are taken to ensure that MBE/WBE are afforded every opportunity to participate in NSP generated contracts.

1. Placing minorities and women on solicitation lists;
2. Assuring that MBE and WBE firms are solicited whenever they are potential sources;
3. Dividing the total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority business enterprises, and women business enterprises;
4. Where the requirement permits, establishing delivery schedules that encourage participation by small and minority business enterprises, and women business enterprises;
5. Using the services and assistance of the Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and
6. Requiring the prime contractor, if subcontractors are to be let, to take all the same.

F. **Flood Disaster Protection** –

In accordance with the requirements of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4001), the Developer must assure that flood insurance under the National Flood Insurance Program is obtained and maintained for properties located in an area identified by the Federal Emergency Management Agency (FEMA) as having special flood hazards.

G. **Relocation** –

The Developer agrees to comply with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA) as amended and implementing regulations at 49 CFR Part 24 and 24 CFR Part 42 – Displacement, Relocation Assistance and Real Property Acquisition for HUD and HUD Assisted Programs and 24 CFR 570.606 – Displacement, relocation acquisition, and replacement of housing.

The Developer also agrees to comply with applicable local ordinances, resolutions and policies concerning the displacement of persons.

The relocation provisions of the URA apply to NSP funds. An unlawful occupant who is displaced for an NSP-funded acquisition will not be entitled to relocation assistance and payments. However, a lawful occupant displaced for an NSP-funded acquisition will generally be eligible for relocation assistance and payments under URA. The Developer must provide appropriate relocation assistance to eligible displaced persons as defined by applicable HUD and/or URA regulations that are displaced as a direct result of acquisition,

rehabilitation, demolition or conversion for an NSP-assisted project.

H. **Civil Rights** –

The Developer agrees to comply with applicable state and local civil rights ordinances and with Title VI of the Civil Rights Act of 1964 as amended, Title VIII of the Civil Rights Act of 1968 as amended, Section 104(b) and Section 109 of Title I of the Housing and Community Development Act of 1974 (the HCDA) as amended, Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990, the Age Discrimination Act of 1975, Executive Order 11063 and Executive Order 11246 as amended by Executive Orders 11375, 11478, 12107 and 12086, and will include the provisions in every subcontract or purchase order, specifically or by reference, so that such provisions will be binding upon each of its contractors and subcontractors.

I. **Political Activities** –

The Developer agrees that no funds provided or persons employed under this Agreement shall be in any way or to any extent engaged in the conduct of political activities in violation of Chapter 15 of Title V of the United States Code.

The Developer is prohibited from using funds provided herein or persons employed in the administration of the program for inherently religious activities, lobbying, political patronage, and nepotism activities.

J. **Conflict of Interest** –

All of the provisions of 24 CFR 570.611 and 92.356 apply to any contracts or assistance provided related to this Agreement, including but not limited to the following:

1. No member, officer or employee of the Developer or its designees or agents who exercises any functions or responsibilities with respect to NSP during his/her tenure or for one (1) year thereafter shall have any interest in any contract or subcontract related to this Agreement, or the proceeds thereof.
2. No member or Delegate to the Congress of the United States shall be permitted to any share or part of this Agreement or any benefit therefrom.
3. No owner, developer or sponsor of a project assisted with NSP funds (or officer, employee, family member, agent or consultant of the owner, developer, or sponsor may occupy an NSP assisted unit in a project.

IV. Monitoring, Recordkeeping and Reporting

A. **Monitoring**

The Developer will be monitored by Subrecipient, the Authority and/or HUD for compliance with the NSP requirements and the applicable CDBG regulations of 24 CFR Part 570.

The Developer may be audited at any time during the performance of this Agreement and for a period of five years after the final affordability period expires under this Agreement. If requested, the Developer will provide a certified audit of its records.

Access shall be immediately granted to Subrecipient, the Authority, HUD and/or the Comptroller General of the United States or any of their duly authorized representatives to any books, documents, papers, and records of the Developer or its contractors for the purpose of making audit, examination, excerpts, and transcriptions.

B. Recordkeeping

The Developer must establish and maintain sufficient records to enable the Authority to determine whether the Developer has complied with all NSP requirements, CDBG regulations of 24 CFR Part 570 and with this Agreement.

C. Reporting

The Developer must provide reports and access to records as requested by Subrecipient, the Authority and/or HUD or any of their duly authorized representatives at any time during project implementation and for a period of five years after the final affordability period expires under this Agreement for purposes of verifying compliance with NSP requirements and this agreement.

V. Deadlines

Timely completion of the development of the Property to meet an NSP eligible end use is an integral and essential part of performance under this Agreement. The failure to comply with Federal completion deadlines will result in the requirement to repay the NSP funds invested in the property.

The Developer understands and agrees that the development of the Property must meet an NSP eligible end use and must be completed as expeditiously as possible. Further, the Developer agrees to make every effort to ensure that there are no delays.

The Developer must complete all work required by this agreement by the project completion deadline outlined below and must cause appropriate provisions to be inserted in all contracts or subcontracts required by this Agreement in order to ensure that all work is completed by the project completion deadline.

1. **Program Schedule** – The Developer must attach as Exhibit C to this Agreement a Program Schedule, which is a timetable that the Developer must follow in developing the property to meet an NSP eligible end use.

The Developer must submit performance reports as required by the Authority to demonstrate compliance with the Program Schedule.

Changes to the schedule may be approved by the Authority only because of delays resulting from Acts of God or other delays that are not caused in any way by the Developer. It is the responsibility of the Developer to notify the Authority promptly in writing whenever a delay is anticipated or experienced.

2. **Project Completion Deadline** – All activities, including the development of the property and the sale of the property to an NSP income eligible buyer, must be completed by_____.

VI. Default, Termination and Repayment of Funds

If the Developer fails in any manner to fully perform and carry out any of the terms, covenants and conditions of this Agreement, the Developer shall be in default and notice in writing shall be given by the Authority. If the Developer fails to cure such default within such time as may be required by such notice, the Authority may terminate this Agreement.

Such termination shall not effect or terminate any of the rights of the Authority against the

Developer then existing or which may thereafter accrue because of such default and the termination shall be in addition to all other rights and remedies available, including but not limited to compelling the Developer to complete the project in accordance with the terms of this Agreement in a court of equity.

All NSP funds invested in the property are subject to repayment in the event the requirements outlined in this Agreement are not met. In such event, the Authority may require repayment of the NSP funds invested in the property or for ownership of the property to be transferred to a designee of the Authority's choice.

The waiver of a breach of any term, covenant or condition hereof shall not operate as a waiver of any subsequent breach of the same or any other term, covenant, or condition hereof.

VII. Other Terms and Conditions

A. **Notices** –

All notices or other communication which shall or may be given pursuant to this Agreement shall be in writing addressed to the other party at the address indicated herein or as the same may be changed from time to time. Such notice shall be deemed given on the day on which personally served or, if by mail, on the fifth day after being posted or the date of actual receipt, whichever is earlier.

Authority:
300-C Outlet Pointe Blvd.
Columbia, SC 29210
Attn: Awards MGMT

Subrecipient:

Developer:

B. **No Waiver** –

The failure to exercise any power given under this Agreement shall not be interpreted as a waiver of the right to subsequently exercise such power.

C. **Amendment and Assignment** –

This Agreement shall not be amended except by written instrument signed by all parties hereto. The Developer may not assign this Agreement to any other person or agency without the written consent of the Authority. When permitted by consent, any such assignment must be made subject to the terms of this Agreement.

D. **Severability** –

Should any provisions, paragraphs, sentences, words or phrases contained in this Agreement be determined by a court of competent jurisdiction to be invalid, illegal or otherwise unenforceable, then such provisions, paragraphs, sentences, words or phrases shall be severed and the remaining terms and provisions of this Agreement shall remain unmodified and in full force and effect.

E. **Binding Effect** –

The Agreement shall be binding upon the parties hereto, their heirs, executors, legal representative, successors and assigns.

F. **Governing Law** –

This Agreement shall be construed, enforced and governed according to the laws of the State of South Carolina.

G. **Obligations with Respect to Third Party Relationships:**

The Developer is fully obligated under the provisions of the Agreement notwithstanding its designation of any third party or parties for the undertaking of all or any part of its

obligations under this Agreement.

H. **Financial Responsibility** –

The Developer agrees to be financially responsible for any claims, liabilities, losses and causes of action, orders, judgments or decrees which may be entered and for any and all costs, attorney fees, expenses and liabilities incurred in the investigation or defense of any claims or causes of action which arise out of or under this Agreement, including but not limited to those caused by the acts or omissions on the part of the Developer or any person acting for or on its behalf and from and against.

[SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF, the parties have caused their signatures to be hereunto affixed and duly attested

AUTHORITY:

Signature of Authorized Official

Date

Printed Name & Title of Authorized Official

SUBRECIPIENT:

Signature of Authorized Official

Date

Printed Name & Title of Authorized Official

DEVELOPER:

Signature of Authorized Official

Date

Printed Name & Title of Authorized Official

EXHIBIT A – Property Description

EXHIBIT B – Development Budget

(Insert Excel Document)

EXHIBIT C – Program Schedule

| | |
|---|----------------------------|
| Developer Type: (non-profit or for-profit) | |
| Developer Tax ID Number: | |
| Number of units to be developed: | |
| Unit Type: (single or multi-family) | |
| End Use: (Homeownership or Rental) | |
| Property Address: | |
| Length of NSP Affordability Period: (five or ten years) | (enter start and end date) |
| <i>Project Schedule:</i> | |
| Financial Commitments: | (enter date) |
| Deadline to Begin Construction: | (enter date) |
| Deadline to Complete Construction: | (enter date) |
| Deadline to Sell Property: (property converts to rental if not sold within 12 months of being on the market) | (enter date) |
| Copies of Executed/Recorded Closing Documents | 45 days from Closing |
| <i>Reporting Requirements:</i> | |
| HUD 2516 Report | October 15 (enter year) |
| Activity Completion Report 3-3c | 45 days from Closing |