

**Key Program Operating Assistance:  
Owner Agreement to Participate**

This Agreement to Participate (the "Agreement") is entered into on this the \_\_\_ day of \_\_\_\_\_, 2007, by the NORTH CAROLINA HOUSING FINANCE AGENCY (the "Agency"), a public agency of the State of North Carolina, and \_\_\_\_\_, a North Carolina limited liability company (the "Owner").

RECITALS

- A. The Owner has requested financial assistance under the Key Program; and
- B. The Agency is willing to provide financial assistance to the Owner (the "Operating Subsidy"), subject to the terms and conditions outlined in this Agreement;

NOW THEREFORE, in consideration of the payment of Ten Dollars (\$10.00) by the Owner to the Agency, the exchange of the mutual promises set forth herein and other good and valuable consideration, the Owner and the Agency agree as follows:

**Section 1: Operating Subsidy**

Subject to the terms and conditions of this Agreement, the Agency agrees to provide ongoing financial assistance to the Owner described in this Section and the attached document entitled "DHHS Targeting Plan and Key Program Operating Assistance: Procedures and Requirements", dated July 11, 2006 (the "Requirements"). This Agreement is subject to the terms of the Requirements, which are incorporated herein. In the event of a conflict between this Agreement and the Requirements, the Agreement will control.

- (a) The Operating Subsidy is made to provide assistance to a residential housing project known as \_\_\_\_\_ (the "Project") located in \_\_\_\_\_, \_\_\_\_\_ County.
- (b) The assistance will be for a maximum of \_\_\_\_\_ ( ) units occupied and leased pursuant to the Requirements and the Project's Targeting Plan ("Tenant Lease(s)").
- (c) The Operating Subsidy will end at the earlier of (i) ten (10) years, (ii) the termination of this Agreement, or (iii) the exhaustion of funds budgeted for the Key Program.
- (d) The Operating Subsidy will fund the difference between the tenant-paid amount and the payment standard, each as determined under the Requirements.
- (e) The Owner authorizes the management company responsible for the Project to submit requests for the Operating Subsidy.

**Section 2: Representations of the Owner**

The Owner represents, warrants and covenants that:

- (a) The Owner is duly organized and validly existing under the laws of the State of North Carolina with full power to undertake the obligations as contemplated by this Agreement. The execution and delivery of the Agreement have been duly authorized by all necessary corporate action on the part of the Owner, its partners, members, officers, and/or directors, as applicable.

- (b) There is no action, suit or proceeding at law or in equity, or by or before any governmental instrumentality or agency, or to the knowledge of the Owner, threatened against or affecting it, which, if adversely determined, would materially impair its right or ability to carry on business substantially as now conducted, or as contemplated to be conducted under this Agreement, or that would materially adversely affect the Owner's financial condition.
- (c) The Owner has not executed and will not execute any agreements with provisions contradictory to, or in opposition to, the provisions of this Agreement.

### **Section 3: Conditions Precedent to Disbursements**

As a condition to its obligation to make the disbursements of funds hereunder, the Agency shall require and receive:

- (a) each of the items listed on the attached document entitled "Key Program Operating Assistance: Checklist for Initial Funding and Move-Ins"; and
- (b) any other documentation the Agency may reasonably require.

### **Section 4: Direct Deposit**

The Owner authorizes the North Carolina State Treasurer, at the direction of the Agency, to initiate ACH credit entries for payments due under this Agreement, pursuant to the "Established Operational Procedures for State Treasurer's electronic payments system," which may be in effect from time to time. The Owner also authorizes any necessary ACH debit entries or adjustments for any ACH credit entries made in error to the account.

### **Section 5: Books and Records**

The Owner shall keep and maintain at all times complete and accurate books of accounts and records, all written contracts, leases and other instruments which may relate to the Operating Subsidy. Such books, records, contracts, leases and other instruments shall be subject to examination and inspection at any reasonable time by Agency.

### **Section 6: Defaults**

Each of the following shall be a default by the Owner of this Agreement:

- (a) the failure to return disbursed funds that are later determined to be not owed;
- (b) any representation by the Owner or its agents made in conjunction with this Agreement, or any other document relating to the Key Program, is false or misleading in any material respect when given;
- (c) the dissolution, merger, consolidation or termination of existence of the Owner or the transfer of Owner's interest in this Agreement without Agency's prior written consent;
- (d) the application for the appointment of a receiver for Owner; or the filing of a petition under any provisions of the Bankruptcy Code or Act by Owner; or the filing of a petition under any provisions of the Bankruptcy Code or Act against Owner which is not dismissed within 30 days; or the filing of an answer in an involuntary proceeding by Owner admitting insolvency or

inability to pay debts; or any assignment for the benefit of creditors by or against Owner; or the attachment, execution or other judicial seizure of any portion of Owner's assets which is not discharged within ten (10) days (for the purposes of this Section 6(d) the term Owner includes general partners, members and managers);

- (e) failure to maintain any part of the Project as decent, safe and sanitary as required under applicable local housing codes;
- (f) failure to comply with this Agreement or the Requirements, as either may be amended;
- (g) material noncompliance with the Project's Targeting Plan or Memorandum of Understanding; or
- (h) violation of the Declaration of Land Use Restrictive Covenants for Low-Income Housing Tax Credits.

The Agency will be in default if it does not make payment(s) within thirty (30) days of being due, so long as the Owner has met all requirements for disbursement and is not itself in default of this Agreement. The Owner's sole remedy for the Agency's default will be to bring legal action to enforce this Agreement. No action, omission or breach by the Agency will waive, diminish or otherwise alter the Owner's obligations under the Tenant Lease(s).

#### **Section 7: Agency Remedies**

Upon occurrence of any default by the Owner, the Agency may, at its option, take any one or more of the following actions or remedies:

- (a) terminate Key Program assistance;
- (b) reduce the amount of Key Program assistance;
- (c) obtain against the Owner a mandatory injunction or other equitable relief requiring performance by the Owner of any of its obligations under this Agreement or the Requirements;
- (d) require the Owner to take corrective actions to correct the problem(s) and prevent any reoccurrence.

The Agency will provide the Owner thirty (30) days notice (as determined in Section 11) and opportunity to cure prior to implementing any of the above.

The taking of any action or exercise of any remedy shall not constitute an election of remedies or preclude Agency from taking any other action or exercising another remedy available at law or in equity. No failure to exercise any remedy or take any action enumerated shall constitute a waiver of such right or preclude a subsequent exercise by the Agency of any such remedy. No actions or remedies taken by the Agency under this Section 7 will waive, diminish or otherwise alter the Owner's obligations under the Tenant Lease(s).

### **Section 8: Prohibited Activities**

- (a) None of the funds provided under the Program shall be used for any partisan political activity, or to further the election or defeat of any candidate for public office.
- (b) There shall be no religious instruction conducted in connection with the performance of the Agreement.
- (c) The Owner will not discriminate against any person employed in the performance of this Agreement, or against any applicant for housing assisted under this Agreement, because of race, sex, age, creed, color, disability, family status, or national origin.
- (d) No employee, officer or agent of the Owner shall create a conflict of interest, real or apparent, in administering the funds covered by this Agreement. Notwithstanding the foregoing, the Agency acknowledges that Owner has entered into a development and/or management Agreement with affiliates of and/or related parties to Owner, and fees paid pursuant thereto may be funded in part by the funds covered by this Agreement.

### **Section 9: Amendments**

Any proposed changes in this Agreement will be in writing, submitted to, approved and executed by the Agency before the performance of any work involved in the proposed change.

### **Section 10: Termination of Agreement**

In the event of termination, the Owner shall not be relieved of liability to the Agency for damages sustained by the Agency by virtue of any breach of this Agreement. The Agency may withhold any disbursement to the Owner until such time as the exact amount of damages due the Agency from the Owner is determined. Termination of this Agreement will not waive, diminish or otherwise alter the Owner's obligations under the Tenant Lease(s). In the event of either:

- (a) voluntary termination by the Owner or
- (b) termination due to a breach by the Owner under Section 6,

the Owner will renew all Tenant Lease(s) at the contract amount for a period of three (3) additional years. During this time the Owner may only elect to not renew a Tenant Lease for good cause, and may only increase the contract rent based on what would have been allowed under the Key Program for that year.

### **Section 11: Notice**

Delivery to the parties at the following addresses will satisfy the requirement to provide notice under this Agreement:

Agency: North Carolina Housing Finance Agency  
Attn: Rental Investment  
3508 Bush Street  
Raleigh, NC 27609 (street address)

P.O. Box 28066  
Raleigh, NC 27611-8066 (mailing address)

Owner:

Notice shall be effective upon the earliest of the following to occur: (a) actual receipt; (b) if mailed, three business days after deposited in the United States Mail; (c) the next business day if sent to the street address by recognized overnight courier (such as Federal Express) for next day or next business day delivery; or (d) upon refusal of the party being so notified to accept delivery. Either party may change their address for notice upon at least ten (10) days' prior written notice to the other.

**Section 12: Survival**

The terms of this Agreement shall bind and inure to the respective successors and assigns of the parties. Whenever used herein, the singular number shall include the plural, and the plural the singular.

IN WITNESS WHEREOF, the Owner has hereunto set its hand and seal, or if corporate, have caused this instrument to be signed in its corporate name by its duly authorized officers and its seal to be affixed by its board of directors, the day and date first above written.

**Owner:**

\_\_\_\_\_, a North Carolina limited liability company

By \_\_\_\_\_, its managing member

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_, 2007

**Agency:**

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

Name: A. Robert Kucab

Title: Executive Director

Date: \_\_\_\_\_, 2007