

# Memorandum of Understanding

THIS MEMORANDUM OF UNDERSTANDING ("MOU") is entered into by and between the City of North Miami, a municipal corporation of the State of Florida ("City") and Opa-locka Community Development Corporation, Inc., a Florida not for profit corporation ("OLCDC"), collectively referred to hereinafter as the "Venturers".

## WITNESSETH:

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WHEREAS, the Venturers are determined to establish a close working relationship to implement the proposed project ("Project") that is described in section 4, below, and

WHEREAS, the Venturers are desirous of fixing and defining between themselves their respective responsibilities, interests, and liabilities in connection with the performance of the before purpose,

NOW, THEREFORE, in consideration of the foregoing, the Venturers herein agree as follows:

1. This MOU sets forth the current intentions of the Venturers with respect to the activities described herein.
2. The Venturers agree to make good faith and reasonable efforts to plan and implement the Project.
3. Binding Effect. Except for the obligation of the Venturers to act in good faith towards one another and to maintain confidentiality subject to the applicable provisions of Chapter 119, Florida Statutes. Only one or more definitive subsequently negotiated and drafted written agreements executed by the Venturers with regard to the Project will be enforceable (specifically to include an operating agreement for the LLC ownership entity described in Section 6 below). If after making reasonable and good faith efforts the Venturers are not able to negotiate the terms of the mutually acceptable agreement(s) needed for the Project then either party may terminate this MOU upon written notice to the other without penalty.
4. Description of the Project: The Project involves the design, construction and operation of 6 rental units on the property ("Property") currently owned by the City located at 1046 NE 128th Street (Miami Dade County folio number 06-2229-036-0220).
5. Ownership Entity. The Property is currently owned by the City. Prior to the closing of the construction and grant financing for the Project, the City will convey ownership of the Property to 128th Street Development LLC which is a newly created Florida limited liability company ("LLC") jointly owned by the City and OLCDC. The duty of the City to convey the Property in accordance with the provisions of this paragraph shall be subject to full compliance with all requirements specified in the City's Code of Ordinances.
  - A. The LLC will be governed by an operating agreement ("LLC Operating Agreement") that specifies the rights and obligations of each party.
  - B. The LLC Operating Agreement shall be substantially identical to the specimen attached to this MOU and labeled "Exhibit A".
  - C. The duty of the City to convey the Property to the LLC is contingent upon both the City and OLCDC executing the LLC Operating Agreement



6. Project Financing. The Project will be financed as follows:
- A. The City will contribute to the LLC for use in the Project \$100,000.00 of the grant funds that it has received from TD Charitable Foundation.
  - B. The City will contribute to the LLC for use in the Project approximately \$62,045.00 of funds from its FY 2014/15 and FY 2015/16 HOME Investment Partnership Program.
  - C. The remainder of the funds needed for development of the Project will be obtained by the LLC from one or more financial lending institutions.
- 
7. Project Management. The LLC Operating Agreement shall designate OLCDC as the "Manager" of the LLC. As such, OLCDC shall control the management of the LLC subject to certain consent and approval rights of the City. Such consent and approval rights shall include the following:
- A. The right to approve the development/construction budget and any changes which are equal to or greater than \$10,000 individually, or which are equal to or greater than \$25,000 in the aggregate;
  - B. The right to approve the design, plans, and specifications for the Project and any material changes thereto;
  - C. The right to approve all loans or financing for the business of the LLC or the Project;
  - D. The right to approve or disapprove the sale of any real property owned by the LLC;
  - E. The right to approve the admission of any person or entity as a member of LLC or selling or issuing any additional membership interests, or the grant of any option or right to acquire any of the foregoing;
    - a. Right to approve the merger, consolidation, conversion, dissolution, transfer or winding up of the LLC or the entering into any contractual obligation with respect to any of the foregoing.
    - b. Right to approve the formation or acquisition of any subsidiary of the LLC or entering into any joint venture, partnership, strategic alliance or other similar enterprise.
8. Confidentiality.
- A. Subject to Chapter 119, Florida Statutes, each party shall hold in confidence any information obtained from the other party during the course of this MOU. The recipient party's obligation shall not apply to information that:
    - a. is already in the recipient party's possession at the time of disclosure;
    - b. is or later becomes part of the public domain through no fault of the recipient party;
    - c. is received from a third party having no obligations of confidentiality to the disclosing party;
    - d. is independently developed by the recipient party;
    - e. or is required by law or regulation to be disclosed.
  - B. In the event that information is required to be disclosed pursuant to subsection (e), the party required to make disclosure shall notify the other to allow that party to assert whatever exclusions or exemptions may be available to it under such law or regulation.



9. Effective Date. This MOU shall become effective immediately upon the signature of both Venturers and shall remain in effect until modified or terminated as provided for herein. In the event that any of the parties desire to modify the MOU, the parties may do so only by mutual consent in writing.
10. Independent Contractor. OLCDC is engaged by the City as an independent contractor, and not as an agent or employee of the City. Accordingly, OLCDC shall not attain, nor be entitled to, any rights or benefits under the Civil Service or Pension Ordinances of the City, nor any rights generally afforded classified or unclassified employees of the City. OLCDC further understands that Florida workers' compensation benefits available to employees of the City, are not available to OLCDC. Therefore, OLCDC agrees to provide workers' compensation insurance, as required by Florida law, for any employee or agent of OLCDC.
11. Tests and Inspections. OLCDC, as Manager of the LLC, shall be responsible for having the LLC initiate, maintain and supervise all safety precautions and programs in connection with the performance of this Project. OLCDC, as LLC Manager, shall insure that all reasonable precautions for the safety of, and shall provide all reasonable protection to prevent damage, injury or loss to:
  - A. Employees, subcontractors, agents, invitees, attendees, and members of the public on or about the worksite and all other persons who may be affected thereby.
  - B. The worksite premises and surrounding areas.
  - C. Other public or private property at the worksite and adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement.
12. Compliance with Laws. OLCDC, as LLC Manager, shall insure that the LLC gives notices and complies with applicable laws, ordinances, rules, regulations and lawful orders of permitting authorities and public authorities bearing on the safety of persons or property, their protection from damage, injury or loss.
13. Insurance. OLCDC, as Manager of the LLC, shall require that the LLC submits certificate(s) of insurance evidencing the required coverage and specifically providing that the City is an additional named insured or additional insured with respect to the required coverage and the operations of the OLCDC under this MOU. OLCDC shall not commence work under this MOU until after OLCDC has obtained all of the minimum insurance approved by the City.
14. Conflict of Interest. OLCDC represents and warrants to the City that it has not employed or retained any person or company employed by the City to solicit or secure this MOU and that it has not offered to pay, paid, or agreed to pay any person any fee, commission, percentage, brokerage fee, or gift of any kind contingent upon or in connection with this MOU.
15. Default. In the event the OLCDC fails to comply with any provision of this MOU, the City may declare the OLCDC in default by written notification. The City shall have the right to terminate this MOU if the OLCDC fails to cure the default within seven (7) days after receiving notice of default from the City. OLCDC understands and agrees that termination of this MOU this section shall not release OLCDC from any obligations accruing prior to the effective date of termination.
16. Indemnification. OLCDC agrees to indemnify, defend, save and hold harmless the City its officers, agents and employees, from and against any and all claims, liabilities, suits, losses, claims, fines, and/or causes of action that may be brought against the City, its officers, agents and employees, on account of any negligent act or omission of OLCDC, its agents, servants, or employees in the



performance of this MOU and resulting in personal injury, loss of life or damage to property sustained by any person or entity, to the extent caused by OLCDC's negligence within the scope of this MOU, including all costs, reasonable attorney's fees, expenses, including any appeal, and including the investigations and defense of any action or proceeding and any order, judgment, or decree which may be entered in any such action or proceeding, except for damages specifically caused by or arising out of the negligence, strict liability, intentional torts or criminal acts of the City, its officer, agents, employees or contractors, which claims are lodged by any person, firm, or corporation

A. Nothing contained in this MOU is any way intended to be a waiver of the limitation placed upon the City's liability as set forth in Chapter 768, Florida Statutes (2016). In addition, the City does not waive sovereign immunity, and no claim or award against the City shall include attorney's fees, investigative costs or pre-judgment interest.

17. City's Limitation of Liability. The City desires to enter into this MOU only if in so doing the City can place a limit on the City's liability for any cause of action arising out of the MOU, so that its liability will never exceed the agreed sum of One Thousand Dollars (\$1,000.00). OLCDC expresses its willingness to enter into this MOU with OLCDC's recovery from the City for any action or claim arising from this MOU to be limited to a maximum amount of One Thousand Dollars (\$1,000.00).

18. Force Majeure. A "Force Majeure Event" shall mean an act of God, act of governmental body or military authority, fire, explosion, power failure, flood, storm, hurricane, sink hole, other natural disasters, epidemic, riot or civil disturbance, war or terrorism, sabotage, insurrection, blockade, or embargo. In the event that either party is delayed in the performance of any act or obligation pursuant to or required by the MOU by reason of a Force Majeure Event, the time for required completion of such act or obligation shall be extended by the number of days equal to the total number of days, if any, that such party is actually delayed by such Force Majeure Event. The party seeking delay in performance shall give notice to the other party specifying the anticipated duration of the delay, and if such delay shall extend beyond the duration specified in such notice, additional notice shall be repeated no less than monthly so long as such delay due to a Force Majeure Event continues. Any party seeking delay in performance due to a Force Majeure Event shall use its best efforts to rectify any condition causing such delay and shall cooperate with the other party to overcome any delay that has resulted.

19. Miscellaneous Provisions:

A. No waiver or breach of any provision of this MOU shall constitute a waiver of any subsequent breach of the same or any other provision hereof, and no waiver shall be effective unless made in writing.

B. Should any provision, paragraph, sentence, word or phrase contained in this MOU be determined by a court of competent jurisdiction to be invalid, illegal or otherwise unenforceable under the laws of the State of Florida, such provision, paragraph, sentence, word or phrase shall be deemed modified to the extent necessary in order to conform with such laws, or if not modifiable, then same shall be deemed severable, and in either event, the remaining terms and provisions of this MOU shall remain unmodified and in full force and effect or limitation of its use.

C. This MOU constitutes the sole and entire agreement between the Parties. No modification or amendments to this MOU shall be binding on either Party unless in writing and signed by both Parties.



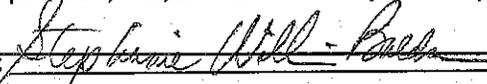
- D. This MOU shall be construed and enforced according to the laws of the State of Florida. Venue in any proceedings between the Parties shall be in Miami Dade County, Florida.
  - E. The City reserves the right to audit the records of the OLCDC covered by this MOU at any time during the provision of services and for a period of three years after final payment is made under this MOU.
  - F. The OLCDC agrees to comply with and observe all applicable federal, state, and local laws, rules, regulations, codes and ordinances, as they may be amended from time to time.
- 
- G. Obligations shall not be subcontracted, transferred, conveyed, or assigned under this MOU in whole or in part to any other person, firm or corporation without the prior written consent of the City.
  - H. The City is exempt from Federal Excise and State taxes. The applicable tax exemption number or certificate shall be made available upon request.
  - I. The services to be provided by OLCDC pursuant to this MOU shall be nonexclusive, and nothing herein shall preclude the City from engaging other firms to perform services.
  - J. This MOU shall be binding upon the Parties herein, their heirs, executors, legal representatives, successors and assigns.
  - K. The OLCDC agrees that it shall not discriminate as to race, sex, color, creed, national origin, or disability, in connection with its performance under this MOU.
  - L. In the event of any dispute arising under or related to this MOU, the prevailing Party shall be entitled to recover all actual attorney fees, costs and expenses incurred by it in connection with that dispute and/or the enforcement of this MOU, including all such actual attorney fees, costs and expenses at all judicial levels, including appeal, until such dispute is resolved with finality.
  - M. This MOU may be executed in two or more counterparts, each of which shall constitute an original but all of which, when taken together, shall constitute one and the same MOU.

*Signatures on the next page*

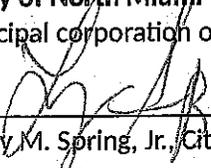


IN WITNESS WHEREOF, the parties hereto agree to the above terms and have caused this MOU to be executed in their names by the signatures of their duly authorized agents .

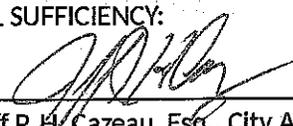
**Opa-locka Community Development Corporation, Inc.,** a Florida not for profit corporation

by:  Date: 9/20/2016  
signature  
print name and title Stephanie Williams - Baldwin Senior Vice President

**The City of North Miami**  
a municipal corporation of the State of Florida

by:  Date: 10/3/16  
Larry M. Spring, Jr., City Manager

ATTEST:   
by: \_\_\_\_\_  
Michael A. Etienne, Esq., City Clerk

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:  
by:   
Jeff P. H. Cazeau, Esq., City Attorney 



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16. Indemnification. OLCDC agrees to indemnify, defend, save and hold harmless the City its officers, agents and employees, from and against any and all claims, liabilities, suits, losses, claims, fines, and/or causes of action that may be brought against the City, its officers, agents and employees, on account of any negligent act or omission of OLCDC, its agents, servants, or employees in the

performance of this MOU and resulting in personal injury, loss of life or damage to property sustained by any person or entity, to the extent caused by OLCDC 's negligence within the scope of this MOU, including all costs, reasonable attorney's fees, expenses, including any appeal, and including the investigations and defense of any action or proceeding and any order, judgment, or decree which may be entered in any such action or proceeding, except for damages specifically caused by or arising out of the negligence, strict liability, intentional torts or criminal acts of the City, its officer, agents, employees or contractors, which claims are lodged by any person, firm, or corporation

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- D. This MOU shall be construed and enforced according to the laws of the State of Florida. Venue in any proceedings between the Parties shall be in Miami Dade County, Florida.
- E. The City reserves the right to audit the records of the OLCDC covered by this MOU at any time during the provision of services and for a period of three years after final payment is made under this MOU.
- F. The OLCDC agrees to comply with and observe all applicable federal, state, and local laws, rules, regulations, codes and ordinances, as they may be amended from time to time.
- G. Obligations shall not be subcontracted, transferred, conveyed, or assigned under this MOU in whole or in part to any other person, firm or corporation without the prior written consent of the City.
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- K. The OLCDC agrees that it shall not discriminate as to race, sex, color, creed, national origin, or disability, in connection with its performance under this MOU.
- L. In the event of any dispute arising under or related to this MOU, the prevailing Party shall be entitled to recover all actual attorney fees, costs and expenses incurred by it in connection with that dispute and/or the enforcement of this MOU, including all such actual attorney fees, costs and expenses at all judicial levels, including appeal, until such dispute is resolved with finality.
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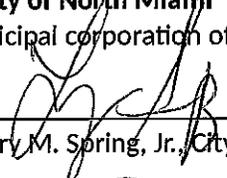
*Signatures on the next page*

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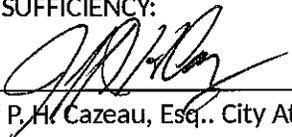
**Opa-locka Community Development Corporation, Inc.**, a Florida not for profit corporation

by:  Date: 9/20/2016  
signature  
print name and title Stephanie Williams - Baldwin Senior Vice President

**The City of North Miami**  
a municipal corporation of the State of Florida

by:  Date: 10/3/16  
Larry M. Spring, Jr., City Manager

ATTEST:   
by: \_\_\_\_\_  
Michael A. Etienne, Esq., City Clerk

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:  
by:   
Jeff P. H. Cazeau, Esq., City Attorney *ms*