

**AMENDMENT #1 TO
LAND USE RESTRICTION AGREEMENT
BETWEEN CHARLOTTE COUNTY
and
LEE COUNTY HOUSING DEVELOPMENT CORPORATION
for
Development and Preservation of County Conveyed Property**

THIS AMENDMENT # 1 to the Land Use Restriction Agreement is made by and between CHARLOTTE COUNTY, a political subdivision of the State of Florida, 18500 Murdock Circle, Port Charlotte, Florida 33948-1094 (hereinafter the "COUNTY") and LEE COUNTY HOUSING DEVELOPMENT CORPORATION (hereinafter the "NONPROFIT"), 3677 Central Avenue, Suite F, Ft. Myers, Florida 33901.

WHEREAS, on September 8, 2020, the COUNTY adopted Resolution 2020-128, approving certain conveyances of surplus County property, subject to Land Use Restriction Agreements (hereinafter "LURA"), to NONPROFIT; and

WHEREAS, per the LURA, the NONPROFIT obligated itself to commence development of the subject property within twenty-four (24) months and obtain a Certificate of Occupancy within thirty-six (36) months of the date of execution of the LURA; and

WHEREAS, development has been delayed due to COVID related labor and supply chain shortages and the diversion of resources to Hurricane Ian recovery related projects; and

WHEREAS, the NONPROFIT has requested a modification of the LURA as to allow additional time for development of the parcel; and

WHEREAS, the COUNTY desires to afford the NONPROFIT additional time to comply with the LURA covenants.

NOW, THEREFORE, in consideration of the mutual terms and conditions, promises, and covenants hereinafter set forth, COUNTY and NONPROFIT agree to amend the LURA as follows.

COVENANTS

1.1. The following provisions of this Amendment are specifically incorporated into and made a part of the LURA, attached hereto as **Exhibit A**.

1.2. The NONPROFIT shall be provided and additional 12 (twelve) months to commence development of the subject property identified as **20294 Kenilworth Boulevard, Port Charlotte, Florida 33901.**

1.3. The NONPROFIT shall also be provided an additional 12 (twelve) months, to obtain a Certificate of Occupancy of the subject property as identified above.

1.4. The effective date of this Amendment is the date on which it is approved by the Board of County Commissioners.

1.5. Any terms used in this Amendment shall have the same meanings and definitions as they have in the LURA, attached hereto as **Exhibit A**.

1.6. All other provisions of the LURA not in conflict with this Amendment shall remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have executed this instrument, in Charlotte County, Florida, for the purpose herein expressed, the day and year signed by the County.

**LEE COUNTY HOUSING
DEVELOPMENT CORPORATION**

Signed by: _____

Print Name: _____

Title: _____

Date: _____

**BOARD OF COUNTY COMMISSIONERS
OF CHARLOTTE COUNTY, FLORIDA:**

ATTEST:

Roger D. Eaton, Clerk of Circuit
Court and Ex-officio Clerk to the
Board of County Commissioners

By: _____
William G. Truex, Chairman

By: _____
Deputy Clerk

Date: _____

**APPROVED AS TO FORM
AND LEGAL SUFFICIENCY:**

By: Janette S. Knowlton
Janette S. Knowlton, County Attorney
LR 23-0257 SEP

Exhibits:

Exhibit A – Land Use Restriction Agreement

EXHIBIT "A"

LAND USE RESTRICTION AGREEMENT (AFFORDABLE HOUSING)

THIS Land Use Restriction Agreement ("Agreement") made at Port Charlotte, Florida, this 22nd day of September, 2020, between Charlotte County, a political subdivision of the state of Florida ("COUNTY"), whose address is 18500 Murdock Circle, Port Charlotte, FL, and LEE COUNTY HOUSING DEVELOPMENT CORPORATION ("NONPROFIT"), whose address is 3677 Central Ave. Suite F, Ft. Myers, FL 33901, its successors and/or assigns.

RECITALS:

WHEREAS, COUNTY owns **20294 Kenilworth Boulevard, Port Charlotte, FL 33954** the land and improvements described in Exhibit "A" attached hereto (the "Property"); and

WHEREAS, COUNTY agrees to convey ownership of Property to NONPROFIT, with certain restrictions and requirements pertaining to the development and maintenance of affordable housing on the Property; and

WHEREAS, in order to satisfy such restrictions and requirements, and as a precondition to the conveyance of the Property, NONPROFIT agrees to the restrictive covenants and commitments outlined in this Agreement.

NOW, THEREFORE, in consideration of the premises and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. RECITALS. The recitals set forth above are true and correct and are incorporated into these restrictive covenants.
2. COVENANTS. COUNTY hereby declares that the Property shall be held, maintained, transferred, sold, conveyed, and owned subject to the following designations and restrictive covenants:
 - a. **NONPROFIT shall develop and maintain the Property as affordable housing, in perpetuity.**

- b. **NONPROFIT shall not discriminate based on race, creed, religion, color, sex, familial status, national origin, or handicap in the sale of the property. Age discrimination and discrimination against minor dependents, except when units are specifically being held for Elderly Households in accordance with applicable State and Federal law, are also not permitted.**
 - c. **NONPROFIT shall commence development of the property within 24 months from the date of this Agreement.**
 - d. **NONPROFIT shall obtain a Certificate of Occupancy within 36 months from the date of this Agreement.**
- 3. RECORDATION. This Agreement shall be recorded in the Public Records of Charlotte COUNTY, FL, shall run with Property, and shall become effective upon recordation.
- 4. ENFORCEMENT. COUNTY, through its Board of County Commissioners, its successors and assigns, is the beneficiary of this Agreement and as such, COUNTY may enforce these restrictive covenants by an action at law or in equity against any person or persons, entity or entities, violating, or attempting to violate the terms of these restrictions.
- 5. WAIVER. Any failure of COUNTY to enforce these restrictive covenants shall not be deemed a waiver of the right to do so thereafter.
- 6. DEFAULT. In the event of any default, failure, violation, or any other action or inaction by NONPROFIT, COUNTY may institute such actions or proceedings at law or in equity as it may deem desirable for effectuating the provisions of this Declaration, including without limitation actions for specific performance, damages, and injunctive relief, and including also any remedy allowed under the terms of any other Documents. In any successful action or proceeding to enforce its rights under this Declaration, COUNTY shall be entitled to the recovery from Owner of reasonable attorneys' fees.
- 7. INDEMNIFICATION. NONPROFIT agrees to indemnify, defend (with counsel reasonably approved by the COUNTY) and hold harmless COUNTY and its authorized officers, employees, agents and volunteers from any and all claims, actions, losses, damages, and/or liability arising out of this contract from any cause whatsoever, including the acts, errors or omissions of any person and for any costs or expenses incurred by the COUNTY on account of any claim except where such indemnification is prohibited by law. This indemnification provision shall apply regardless of the existence or degree of fault of indemnitees. NONPROFIT's

indemnification obligation applies to the COUNTY's "active" as well as "passive" negligence but does not apply to the COUNTY's "sole negligence" or "willful misconduct" as defined by Florida Statute 768.28 of any nature whatsoever arising out of, because of, or due to any act or occurrence of omission or commission of the indemnifying party, its consultants, contractors, officers, agents or employees in the performance of this Agreement.

8. MODIFICATION. This Agreement may not be amended or modified except by written instrument signed by each party hereto and approved by the Charlotte County Board of County Commissioners.
9. NOTICES. Notices required to be given by this Agreement shall be in writing, certified mail through the United States Postmaster. Notice shall be forwarded to the following:

COUNTY:

Charlotte County Human Services
1050 Loveland Boulevard
Port Charlotte, FL 33980

and

Charlotte County Administrator
18500 Murdock Circle
Port Charlotte, FL 33948

NONPROFIT:

Lee County Housing Development Corporation
PO Box 2854
Fort Myers, FL 33902

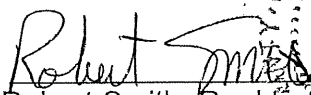
10. SEVERABILITY. In the event any term or provision of this Agreement shall be held invalid, such invalid term or provisions shall not affect the validity of any other term or provision hereof and all such other terms and provisions hereof shall be enforceable to the fullest extent permitted by law as if such invalid term or provision had never been a part of this Agreement; provided, however, if any term or provision of this agreement is held to be invalid due to the scope or extent hereof, such term or provision shall automatically be deemed modified in order that it may be enforced to the maximum scope and extent permitted by law.
11. GOVERNING LAW; VENUE. This Agreement shall be construed, and the rights and obligations of the COUNTY and Owner hereunder shall be determined, in

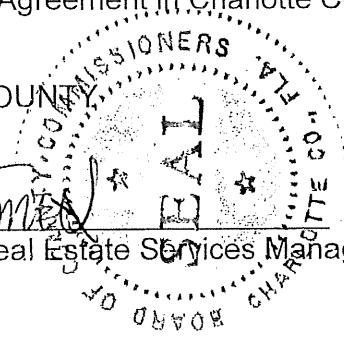
accordance with the laws of the State of Florida. Venue for any litigation pertaining to the subject matter hereof shall be in Charlotte COUNTY, Florida.

12. FEES AND COSTS. In any litigation between the parties hereto arising out of this Agreement, each party shall be responsible for paying its own attorneys' fees and costs.
13. ENTIRE AGREEMENT. This Agreement incorporates and includes all prior negotiations, correspondence, conversations, agreements, or understandings applicable to the matters contained herein, and the parties agree that there are no commitments, agreements, or understandings concerning the subject matter of this Agreement that are not contained herein.

IN WITNESS WHEREOF, the parties have executed this Agreement in Charlotte County on this the 22nd day of September 2020.

CHARLOTTE COUNTY


Robert Smith, Real Estate Services Manager

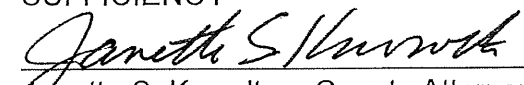
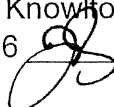


ATTEST:

Roger D. Eaton, Clerk of the Circuit
Court and Ex-Officio Clerk of the
Board of County Commissioners


Deputy Clerk A622020-089

APPROVED AS TO FORM AND LEGAL
SUFFICIENCY


Janette S. Knowlton, County Attorney
LR 20-0196 

WITNESSES:

Cathy Peterson
Travis Jackson

NONPROFIT:

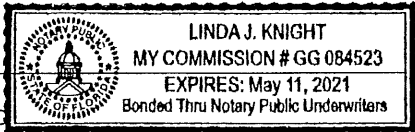
LEE COUNTY HOUSING DEVELOPMENT
CORPORATION

By: Erika Cooks
As its: Director

STATE OF FLORIDA

COUNTY OF CHARLOTTE

The foregoing instrument was acknowledged before me this 20th day of October, 2020, by Erika Cooks, who attests that he/she is the Director of LEE COUNTY HOUSING DEVELOPMENT CORPORATION, (X) who is personally known to me, or () who has produced as identification and who () did () did not take an oath.

Notary Public  LINDA J. KNIGHT
MY COMMISSION # GG 084523
EXPIRES: May 11, 2021
Bonded Thru Notary Public Underwriters

(Type/Print Name) Linda Knight
My Commission Expires: May 11, 2021
Commission Number: 88 084523

Exhibit "A"

20294 Kenilworth Boulevard, Port Charlotte, FL 33954

Lot 16, Block 896, Port Charlotte Subdivision Section 19, a Subdivision according to the plat thereof, recorded in Plat Book 5, Pages 9A-9C, of the Public Records of Charlotte County, Florida, and identified by the Property Appraiser's Records as Parcel ID: 402204257010.