

Return To:

City of Palm Coast
Community Development Department
160 Cypress Point Parkway, Suite B-106
Palm Coast, FL 32164

DEFERRED PAYMENT MORTGAGE

THIS MORTGAGE ("Mortgage") is made this INSERT day of INSERT, 2010, between Mortgagor, Mid-Florida Housing Partnership, Inc., a Florida non-profit corporation with a business address of 1834 Mason Avenue, Daytona Beach, FL 32117 (hereinafter "Developer"), and the Mortgagee, the City of Palm Coast (hereinafter "Lender"), a political subdivision of the State of Florida, whose address is the Community Development Department, 160 Cypress Point Parkway, Suite B-106, Palm Coast, FL 32164.

WHEREAS, Developer is indebted to Lender in the principal sum of **INSERT DOLLARS and 0/100ths Dollars (\$INSERT)**, which indebtedness is evidenced by Developer's Mortgage Note of even date herewith, attached hereto as Exhibit "A" and incorporated by reference herein, as will be amended pursuant to Section 14 of this Mortgage (hereinafter "Note"); and

IN CONSIDERATION of the aggregate sum named in the Note, and the payment of all other sums advanced in accordance herewith to protect the security of this Mortgage, and the performance of the covenants and agreements of Developer herein contained, Developer does hereby grant, convey, and mortgage unto Lender, in fee simple, all those certain lands, situate, lying and being in the City of Palm Coast, Flagler County, Florida, described as follows:

INSERT LEGAL DESCRIPTION,

which has the address of **INSERT ADDRESS** ("Property Address"); and

TOGETHER with all the improvements now or hereafter erected on the property, and all easements, rights, appurtenances, rents, royalties, mineral, oil and gas rights and profits, water, water rights, and water stock, and all fixtures now or hereafter attached to the property, all of which, including replacements and additions thereto, shall be deemed to be and remain a part of the property covered by this Mortgage; and all of the foregoing, together with said property are herein referred to as the "Property," whether now owned or hereafter acquired by Developer; and

DEVELOPER covenants that Developer is lawfully seized of the Property hereby conveyed and has full power and lawful right to mortgage, grant, and convey the Property, and that Developer will warrant and defend generally the title to the Property against all claims and demands, subject to any declarations, easements, or restrictions listed in a schedule of exceptions to coverage in any title insurance policy insuring Lender's interest in the Property;

CONDITIONED, HOWEVER, that if Developer shall pay or cause to be paid to Lender, its successors or assigns, together with such interest as may be provided for in the Note or by this Mortgage, prior to maturity, the principal sum, as stated in that certain Note, and if Developer shall fully perform all the covenants, conditions and terms of this Mortgage, then this Mortgage shall be void, otherwise this Mortgage shall remain in full force and effect until the Note is paid in full.

NOW, THEREFORE, Developer and Lender covenant and agree as follows:

1. **Payment of Indebtedness.** Developer shall pay all principal and interest and other sums of money payable according to the terms of the Note and this Mortgage.
2. **Term.** The term of this Mortgage shall be for a period of 15 years, commencing on INSERT, 2010, and ending on INSERT, 2025.
3. **Loan Intended as a Neighborhood Stabilization Program Benefit.** The loan secured by this Mortgage, evidenced by the Note, was made by Lender to Developer pursuant to Lender's Affordable Housing Program. The loan, therefore, is made at an interest rate and upon terms generally more favorable to the Developer than would otherwise be available to the public at large. Accordingly, Developer understands that this loan is intended to be a Neighborhood Stabilization Program (NSP) benefit and not solely as an instrument to increase the value of this property, as outlined and required in the Developer Agreement dated May 11, 2010 (hereinafter Developer Agreement) with the Lender, recorded in the Public Records of Flagler County, Florida at ORB Book 1772, Page 717. Therefore, the Developer agrees to maintain and own the Property for the entire term of the Mortgage. As long as the Developer remains in compliance with all of the covenants, conditions, and terms of the Mortgage and the Developer Agreement, no repayment of the Note is required and the Mortgage will expire at the end of its term. However, should the Developer fail to be in compliance with any covenant, condition or term of the Mortgage, Note or Developer Agreement, or otherwise transfers, assigns, sells, refinances, mortgages, or in any manner disposes of all or a portion of the Property, or any interest therein in a manner inconsistent with the Developer Agreement then repayment of the Note secured by this Mortgage shall be required as set forth in Section 10 herein.
4. **Prohibition of Additional Financing; Liens.** An important component of the consideration for the extension of credit evidenced by the Note secured by this Mortgage is Developer's equity in the Property and the maintenance of such equity (as increased through future appreciation, if any) during the term of the Mortgage. Developer will not, without the written consent of the Lender, obtain additional financing of any kind relating to the Property encumbered by this Mortgage or cause or permit any other lien of any kind to be imposed on the Property. The Lender shall be the sole mortgagee at all times until the end of the term of the Mortgage.
5. **Restriction on Transfer and Assumption.** The obligation of the Developer under this Mortgage and the Note secured hereby shall not be transferred to, assumed by, or performed by any other person or entity, and any such transfer, assumption, or attempted performance, or any conveyance of the property encumbered by this Mortgage without the written consent of Lender shall, at the option of the Mortgagee, constitute a failure of performance under this Mortgage and the Note secured by this Mortgage. Acceptance of payments following a violation of such restriction shall not constitute a waiver of the option of the Lender to accelerate repayment of the entire aggregate balance.
6. **Taxes and Assessments.** Developer shall pay, before they become delinquent, all taxes and assessments of every nature affecting the Property, and all other charges and encumbrances which now or hereafter are a lien upon the Property or any part thereof. Notwithstanding the foregoing, Developer shall have the right to contest any tax or assessment made against the Property provided that Developer shall comply with the appropriate procedures for such contest established by law, ordinance or otherwise.
7. **No Waste.** Developer will permit, commit or suffer no waste, impairment or deterioration of the Property and will keep and maintain all improvements now or hereafter on the Property in sound condition and good repair.
8. **Insurance.** Developer shall keep the Property and all improvements insured for their full insurable value against loss by fire, flood if so required, and other losses normally covered by an extended coverage endorsement. All policies of insurance which insure against any loss or damage to the Property shall provide for loss payable to Lender, without contribution by Lender, pursuant to Lender clauses satisfactory to Lender.

9. **Protection of Lender's Security.** If Developer fails to perform the covenants and agreements contained in this Mortgage, or if any action or proceeding is commenced which materially affects Lender's interest in the Property, including but not limited to, eminent domain, insolvency, code enforcement, delinquent taxes, lack of or inadequate insurance, or arrangements or proceedings involving a bankruptcy or decedent, then Lender at Lender's option, after at least ten (10) days notice to Developer, may make such appearances, disburse such sums, and take such action as is necessary to protect Lender's interest, including, but not limited to, disbursement of reasonable attorney's fees and entry upon the Property to make repairs. Any amounts disbursed by Lender shall become additional indebtedness of Developer secured by this Mortgage and shall bear interest at the rate of five percent (5%) per annum.

10. **Acceleration.** The whole of the indebtedness hereby secured shall become due and payable, at the option of Lender, (i) after failure in the performance of any covenant herein, which nonperformance remains uncured for fifteen (15) days after notice to Developer of said nonperformance or noncompliance or (ii) upon institution of foreclosure proceedings of any other mortgage or lien affecting the Property which is not dismissed within fifteen (15) days thereafter, and this Mortgage may be foreclosed, and all costs and expenses of collection by foreclosure or otherwise, including attorney's fees, shall be paid by Developer and same are secured hereby.

11. **Transfer of Property.** In the event the Developer ceases to perform under the Developer Agreement, then at the Lender's option, the whole of the indebtedness secured hereby shall become immediately due and payable and such outstanding indebtedness shall bear interest at the rate of five percent (5%) per annum from the date of such cessation or transfer, assignment, sale, refinance, mortgage or other conveyance until paid in full. Should the outstanding indebtedness not be satisfied on the date of such transfer, assignment, sale, refinance, mortgage or other conveyance, this Mortgage may be foreclosed, and all costs and expenses of collections by foreclosure or otherwise, including attorneys' fees, shall be paid by Developer and secured hereby.

12. **Reversion.** In the event that the Property is not leased to an NSP Eligible Tenant, approved by the Lender in accordance with the NSP Program, by ninety days before the expiration of the Initial Term of the Development Agreement, (June 16, 2011), the Developer shall immediately transfer ownership to the Lender. If such event occurs, the Developer will not be eligible for a Developer Fee as defined in the Developer Agreement.

13. **Affordability Mechanisms.** Developer agrees that the deed conveyed at the closing contains a deed restriction ("the Deed Restriction") that states that the Property can only be leased to an NSP Eligible Tenant, approved by the Lender in accordance with the NSP Program and within the time frame provided in Section 12. In addition, the Developer agrees that the Deed Restriction also contains provisions related to requirements for a maintenance and repair reserve, a maintenance schedule, annual recheck of tenant income, annual reporting, commitment to maintain Fair Market Rent as determined annually by the U.S. Housing and Urban Development Department ("HUD"), requirements to maintain the property in accordance with local codes, and requirements to return of any program income as defined by HUD. Failure of the Developer to comply with the obligations herein may be deemed to be a default of this mortgage by the lender.

14. **Amended Mortgage Note.** Developer acknowledges that this Mortgage is placed on the Property in favor of the Lender for the amount of Lender funds used by the Developer to purchase the Property, and shall furthermore secure the amounts loaned to the developer for the cost of the repairs and rehabilitation of the Property when said repairs and rehabilitation are completed. Funds from Lender to Developer for repairs and rehabilitation will be made only upon receipt of the executed and recorded (by the Developer) amended mortgage note, which shall reflect not only the amount provided herein, but also the amounts for the repairs and rehabilitation of the property.

15. **Receiver.** In the event suit is instituted to foreclose this Mortgage or to enforce payment of the Note, or the performance of any covenant or obligation hereunder, Lender shall be entitled to the appointment of a receiver to take charge of the Property, to collect the rents, issues and profits therefrom, and to complete

any construction and care of the jurisdiction thereof as a matter of right to the Lender and all rents, profits, incomes, issues and revenues of the Property are hereby assigned and pledged as further security for payment of the indebtedness hereby secured with the right on the part of Lender at any time after nonperformance or noncompliance hereunder, which nonperformance/noncompliance remains uncured upon the expiration of any applicable curative period, to demand and receive the same and apply the same on the indebtedness hereby secured.

16. **Maintenance of Properties.** The Property must be maintained and operated in a Code compliant and safe, healthy manner throughout the life of the Deed Restriction and this Mortgage. The Property shall be repaired to Code standards and the Property shall be maintained in good condition, including but not limited to lawn maintenance, removal of debris and nuisances in the yard, noise management and other appropriate measures to keep the Property compliant with all Code requirements as a part of a stable, attractive neighborhood. Default on this requirement may mean forfeiture of Developer Fees as determined by the Lender.

17. **Condemnation.** In the event the Property, or any part thereof, shall be condemned or taken for public use under powers of eminent domain, Lender shall have the right to demand that all money awarded for the appropriation thereof, or damage to the Property, whether by reason of such condemnation or by agreement of the parties in lieu thereof shall be paid to Lender up to the amount of the outstanding indebtedness of the obligation secured hereby. Such condemnation or application shall not otherwise affect or vary the obligation of Developer to pay the indebtedness.

18. **Notice.** Except for any notice required under applicable law to be given in another manner: a) any notice to Developer provided for in this Mortgage shall be given by mailing such notice by certified mail addressed to Developer at the Property Address, or address shown herein, or at such other address as Developer may designate by notice to Lender as provided herein; and b) any notice to Lender shall be given by certified mail, return receipt requested, to Lender's address state herein or to such other address as Lender may designate by notice to Developer as provided herein.

19. **Persons Bound.** All covenants and stipulations in these presents contained shall bind the heirs, executors and administrators, successors and assigns of Developer and Lender, and shall inure to the benefit of and be available to the successors and assigns of Developer and Lender, as appropriate.

20. **Usage.** The use of any gender herein shall include all genders, and the word "Developer," if it appears that there is more than one, shall, whenever herein used, be construed in the plural; and all the covenants, agreements and undertakings herein set forth shall be joint and several.

21. **Severability.** If any provision of this Mortgage shall, for any reason and to any extent, be invalid or unenforceable, neither the remainder of the instrument in which such provision is contained, nor the application of the provision to other persons, entities or circumstances, shall be affected thereby, but instead shall be enforceable to the maximum extent permitted by law.

22. **Headings.** Descriptive headings are for convenience only and shall not control or affect the meaning or construction of any provision of this Mortgage.

23. **Time of Essence.** It is specifically agreed that time is of the essence of this Mortgage.

24. **Insolvency.** Should a receiver be appointed for Developer or should Developer become unable to pay its debts as they mature, then this Mortgage and the Note shall become immediately due and payable and Lender shall have the right at its option to immediately foreclose this Mortgage without notice.

25. **Applicable Law.** This Mortgage shall be governed by, and construed in accordance with, the laws of the State of Florida.

26. **Compliance with Laws.** Developer warrants and represents that Developer has complied, and shall hereafter comply, with all valid laws, rules, ordinances and regulations of the Federal, state and local government, and all agencies and subdivisions thereof which laws, rules, ordinances and regulations apply or relate to the Property.

27. **Remedies Cumulative.** In the event Developer fails to make payments due under the Note which failure remains uncured for fifteen (15) days after the due date, or in the event of any other nonperformance or noncompliance hereunder which remains uncured for fifteen (15) days after notice from Developer to Lender, Lender shall have, in addition to the rights and remedies specified herein, all other rights and remedies provided by law, in equity, or in the Note. The remedies of Lender, as provided herein or in the Note, shall be cumulative and concurrent, and may be pursued singularly, successively or together, at the sole discretion of Lender, and may be exercised as often as occasion therefore may arise. A waiver or release with reference to any one event shall not be construed as continuing, as a bar to, or as a waiver or release of any subsequent right, remedy or recourse as to a subsequent event.

28. **Release.** Upon payment of all sums secured by this Mortgage, or upon expiration of the term of this Mortgage with all covenants, conditions and terms having been met by the Developer, the Lender shall release this Mortgage without charge to Developer and a Satisfaction of Mortgage shall be filed in the Public Records of Flagler County. Developer shall pay all costs of recordation, if any.

IN WITNESS WHEREOF, this Note has been duly executed by the undersigned, as of the above date.

Witness Signature

Developer Signature

Witness Name Printed

Developer Name Printed

Witness Signature

Witness Name Printed

STATE OF FLORIDA
COUNTY OF FLAGLER

The foregoing instrument was acknowledged before me this _____ day of _____, 2009, by _____, who is/are personally known to me or produced _____ as identification and who did (did not) take an oath.

Signature Notary Public
Print Name: _____
My Commission Expires: _____