



**Interoffice Memorandum**

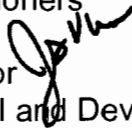
APPROVED BY ORANGE  
COUNTY BOARD OF COUNTY  
COMMISSIONERS

BCC Mtg. Date: September 13, 2016

**AGENDA ITEM**

August 22, 2016

**TO:** Mayor Teresa Jacobs  
–AND–  
Board of County Commissioners

**FROM:** Jon V. Weiss, P.E., Director   
Community, Environmental and Development  
Services Department

**CONTACT PERSON:** **Mitchell Glasser, Manager**  
**Housing and Community Development Division**  
**407-836-5190**

**SUBJECT:** September 13, 2016 – Consent Item  
Amendment to Multi-Family Affordable Housing  
Developer's Agreement

Valencia Trace of Orlando, LTD. is the owner of Valencia Trace Apartments, an affordable housing rental community located at 101 Grande Valencia Drive, Orlando, Florida, 32825. Valencia Trace of Orlando, LTD. is in the process of refinancing the project. The lender is requesting that Orange County subordinate its agreement to the new loan documents, which shall have a priority over the Restrictive Covenants contained in the Agreement, dated April 16, 2002.

The refinance of the existing mortgage will not alter the affordable housing restrictions originally placed on the property, which are in effect until July 2018. The County Attorney's Office and the Housing and Community Development Division have reviewed the subordination agreement and recommend approval.

**ACTION REQUESTED:** **Approval and execution of Amendment to Multi-Family Affordable Housing Developer's Agreement for Discounts of Impact Fees, Water Capital Charges and Wastewater Capital Charges by Valencia Trace of Orlando LTD. and Orange County, Florida to allow subordination of our Restrictive Covenants for the Valencia Trace Apartments. District 3**

JVW/MG:er  
Attachments

BCC Mtg. Date: September 13, 2016

**AMENDMENT TO MULTI-FAMILY AFFORDABLE HOUSING  
DEVELOPER'S AGREEMENT FOR DISCOUNTS OF IMPACT FEES, WATER  
CAPITAL CHARGES AND WASTEWATER CAPITAL CHARGES**

This AMENDMENT TO MULTI-FAMILY AFFORDABLE HOUSING DEVELOPER'S AGREEMENT FOR DISCOUNTS OF IMPACT FEES, WATER CAPITAL CHARGES AND WASTEWATER CAPITAL CHARGES ("Amendment"), is made as of the first day of July, 2016, by Valencia Trace of Orlando LTD., a Florida limited partnership ("Borrower") and Orange County, Florida, a political subdivision of the State of Florida (the "County").

WHEREAS, Borrower has obtained financing from Greystone Funding Corporation, a Virginia corporation ("Lender") for the benefit of the project known as Valencia Trace Apartments ("Project"), which loan is secured by a Multifamily Mortgage, Assignment of Leases and Rents and Security Agreement ("Security Instrument") dated as of \_\_\_\_\_, 2016 and to be recorded on even date herewith in the Official Records of Orange County, Florida (the "Records"), and is insured by the United States Department of Housing and Urban Development ("HUD");

WHEREAS, Borrower has received a discount from the County on impact fees, water capital charges and wastewater capital charges to facilitate the development of affordable housing, which County has required certain restrictions be recorded against the Project; and

WHEREAS, Borrower entered into that certain MULTI-FAMILY AFFORDABLE HOUSING DEVELOPER'S AGREEMENT FOR DISCOUNTS OF IMPACT FEES, WATER CAPITAL CHARGES AND WASTEWATER CAPITAL CHARGES ("Restrictive Covenants") with respect to the Project, as more particularly described in Exhibit A attached hereto, recorded on May 30, 2002, in the Records in Official Book 6534, page 6847; and

WHEREAS, HUD requires as a condition of its insuring Lender's financing for the Project, that the lien and covenants of the Restrictive Covenants be subordinated to the lien, covenants, and enforcement of the Security Instrument; and

WHEREAS, the County has agreed to subordinate the Restrictive Covenants to the lien of the Mortgage Loan, as defined herein, in accordance with the terms of this Amendment.

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

**(a) In the event of any conflict between any provision contained elsewhere in the Restrictive Covenants and any provision contained in this Amendment, the provision contained in this Amendment shall govern and be controlling in all respects as set forth more fully herein.**

(b) The following terms shall have the following definitions:

"Code" means the Internal Revenue Code of 1986, as amended.

"HUD" means the United States Department of Housing and Urban Development.

"HUD Regulatory Agreement" means the Regulatory Agreement between Borrower and HUD with respect to the Project, as the same may be supplemented, amended or modified from time to time.

"Lender" means Greystone Funding Corporation, a Virginia corporation, its successors and assigns.

"Mortgage Loan" means the mortgage loan made by Lender to the Borrower pursuant to the Mortgage Loan Documents with respect to the Project.

"Mortgage Loan Documents" means the Security Instrument, the HUD Regulatory Agreement and all other documents required by HUD or Lender in connection with the Mortgage Loan.

"National Housing Act" means the National Housing Act of 1934, as amended.

"Program Obligations" has the meaning set forth in the Security Instrument.

"Residual Receipts" has the meaning specified in the HUD Regulatory Agreement.

"Security Instrument" means the mortgage or deed of trust from Borrower in favor of Lender, as the same may be supplemented, amended or modified.

"Surplus Cash" has the meaning specified in the HUD Regulatory Agreement.

(c) Notwithstanding anything in the Restrictive Covenants to the contrary, the provisions hereof are expressly made subordinate to (i) the Mortgage Loan Documents, including without limitation, the Security Instrument, and (ii) Program Obligations (the Mortgage Loan Documents and Program Obligations are collectively referred to herein as the "HUD Requirements"). Borrower covenants that it will not take or permit any action that would result in a violation of the Code, HUD Requirements or Restrictive Covenants. In the event of any conflict between the provisions of the Restrictive Covenants and the provisions of the HUD Requirements, HUD shall be and remains entitled to enforce the HUD Requirements. Notwithstanding the foregoing, nothing herein limits the County's ability to enforce the terms of the Restrictive Covenants, provided such terms do not conflict with statutory provisions of the National Housing Act or the regulations related thereto. The Borrower represents and warrants that to the best of Borrower's knowledge the Restrictive Covenants impose no terms or requirements that conflict with the National Housing Act and related regulations.

(d) RESERVED.

(e) Borrower and the County acknowledge that Borrower's failure to comply with the covenants provided in the Restrictive Covenants does not and shall not serve as a basis for default under the HUD Requirements, unless a default also arises under the HUD Requirements.

(f) Except for the County's reporting requirement, in enforcing the Restrictive Covenants the County will not file any claim against the Project, the Mortgage Loan proceeds,

any reserve or deposit required by HUD in connection with the Security Instrument or HUD Regulatory Agreement, or the rents or other income from the property other than a claim against:

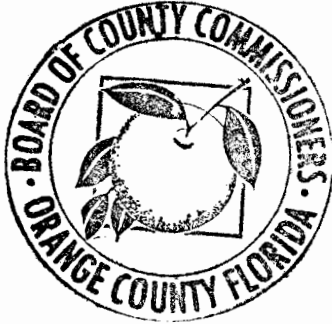
- i. Available surplus cash, if the Borrower is a for-profit entity;
- ii. Available distributions of surplus cash and residual receipts authorized for release by HUD, if the Borrower is a limited distribution entity; or
- iii. Available residual receipts authorized by HUD, if the Borrower is a non-profit entity.

(g) For so long as the Mortgage Loan is outstanding, Borrower and County shall not further amend the Restrictive Covenants, with the exception of clerical errors or administrative correction of non-substantive matters, without HUD's prior written consent.

(h) Subject to the HUD Regulatory Agreement, the County may require the Borrower to indemnify and hold the County harmless from all loss, cost, damage and expense arising from any claim or proceeding instituted against County relating to the subordination and covenants set forth in the Restrictive Covenants, provided, however, that Borrower's obligation to indemnify and hold the County harmless shall be limited to available surplus cash and/or residual receipts of the Borrower.

(i) RESERVED.

IN WITNESS WHEREOF, this Amendment has been fully executed on behalf of the parties hereto by their duly authorized representatives, as of the date first above written.



**ORANGE COUNTY, FLORIDA**  
By: Board of County Commissioners

By: *Teresa Jacobs*  
Teresa Jacobs  
Orange County Mayor

ATTEST: Martha O. Haynie, County Comptroller  
As Clerk of the Board of County Commissioners

By: *Katie Smith*  
Deputy Clerk

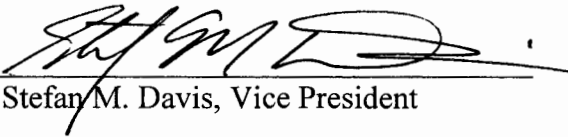
IN WITNESS WHEREOF, Borrower has signed and delivered this Amendment or has caused this Amendment to be signed and delivered by its duly authorized representative, as a sealed instrument.

**BORROWER**

Valencia Trace of Orlando LTD.,  
a Florida limited partnership,

By: Davis Heritage LTD., a Florida limited partnership  
its managing general partner

By: EarthArt, Incorporated, a Florida corporation  
its sole general partner

By:   
Stefan M. Davis, Vice President

STATE OF FLORIDA  
COUNTY OF Alachua

I HEREBY CERTIFY that on this day, before me, an officer duly authorized in the State aforesaid and in the County aforesaid to take acknowledgments, the foregoing instrument was acknowledged before me by Stefan M. Davis, as Vice President of EarthArt, Incorporated, a Florida limited partnership, the sole general partner of Davis Heritage LTD., a Florida limited partnership, the managing general partner of Valencia Trace of Orlando LTD., a Florida limited partnership. He is personally known to me or has produced \_\_\_\_\_ as identification.

WITNESS my hand and official seal in the County and State last aforesaid this 4th day of August, 2016.

*(Signatures continue on following page)*

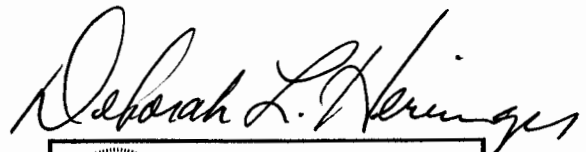


Exhibit "A"  
Valencia Trace – Legal Description

Parcel 1:

That part of the South 1/2 of the Southeast 1/4 of the Northwest 1/4, Section 30, Township 22 South, Range 31 East, Orange County, Florida, being more particularly described as follows:

Commence at the Southwest corner of the South 1/2 of the Southeast 1/4 of the Northwest 1/4, Section 30, Township 22 South, Range 31 East, Orange County, Florida; thence run North 88 deg. 50 min. 12 sec. East along the South line of said South 1/2 for a distance of 1229.88 feet to the Point of Beginning; thence run North 02 deg. 31 min. 01 sec. West for a distance of 146.97 feet; thence run South 89 deg. 42 min. 19 sec. West for a distance of 209.21 feet; thence run South 77 deg. 18 min. 39 sec. West for a distance of 238.63 feet; thence run South 58 deg. 18 min. 23 sec. West for a distance of 96.38 feet; thence run South 35 deg. 48 min. 11 sec. West for a distance of 66.91 feet to the South line of the aforementioned South 1/2; thence run North 88 deg. 50 min. 12 sec. East along said South line for a distance of 569.72 feet to the Point of Beginning.

Parcel 2:

That part of the East 1/2 of the Southwest 1/4 of Section 30, Township 22 South, Range 31 East, Orange County, Florida, being more particularly described as follows:

Commence at the Northwest corner of the East 1/2 of the Southwest 1/4 of Section 30, Township 22 South, Range 31 East, Orange County, Florida; thence run N 88 deg. 50 min. 12 sec. E along the North line of said East 1/2 for a distance of 634.28 feet to the Point of Beginning; thence run S 35 deg. 48 min. 11 sec. W for a distance of 127.54 feet; thence run S 18 deg. 28 min. 54 sec. W for a distance of 78.62 feet; thence run S 00 deg. 50 min. 49 sec. E for a distance of 196.98 feet; thence run S 23 deg. 50 min. 04 sec. E for a distance of 199.06 feet; thence run S 43 deg. 19 min. 50 sec. E for a distance of 457.69 feet to the beginning of a tangent curve concave to the Southwest and having a radius of 3969.72 feet; thence run Southeasterly along the arc of said curve for a distance of 563.62 feet through a central angle of 08 deg. 08 min. 05 sec. to the North line of the East 1/2 of the Southeast 1/4 of aforesaid Southwest 1/4 of Section 30; thence run N 89 deg. 08 min. 55 sec. E along said North line of the East 1/2 of the Southeast 1/4 of the said Southwest 1/4 of Section 30 for a distance of 11.12 feet to the west right of way line of Econlockhatchee Trail; thence run N 00 deg. 28 min. 24 sec. W along said West right of way line for a distance of 414.64 feet; thence run N 45 deg. 28 min. 24 sec. W for a distance of 70.71 feet; thence run N 01 deg. 54 min. 20 sec. W for a distance of 200.06 feet; thence run N 03 deg. 20 min. 09 sec. W for a distance of 400.50 feet; thence run N 02 deg. 31 min. 01 sec. W for a distance of 273.67 feet to aforementioned North line of the East 1/2; thence run S 88 deg. 50 min. 12 sec. W along said North line 569.72 feet to the Point of Beginning.