

**LIMITED LIABILITY COMPANY OPERATING AGREEMENT
FOR
128th Street Development LLC**

THIS LIMITED LIABILITY COMPANY AGREEMENT ("Agreement") is made and 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, a Florida not for profit corporation ("OLCDC"). These two entities may be referred to herein collectively as "Members" and individually as a "Member."

WHEREAS, the entities executing this Operating Agreement desire to establish their respective rights and obligations pursuant to the Florida Revised Limited Liability Company Act ("Act") in connection with forming a limited liability company.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the parties agree as follows:

1. **EFFECTIVE DATE:** This Agreement shall become effective on the earliest date both of the two parties have executed this document below with the signatures of their duly authorized agents ("Effective Date").
2. **FORMATION.** The Members have formed a Florida limited liability company pursuant to Chapter 605 Florida Statutes with the name 128th Street Development LLC ("Company").
3. **TERM.** The Company shall have perpetual existence until it is dissolved and its affairs wound up in accordance with this Agreement or Chapter 605 Florida Statutes.
4. **PURPOSE.** The business purpose of the Company is to design, construct and operate six residential rental units ("Project") on the property located 1046 NE 128th Street in the City of North Miami Florida having a tax identification folio number of 06-2229-036-0220 ("Property"). The Company shall secure funding to pay for the development costs of the Project.
5. **MEMBERS.**
 - A. The two Members of the Company and their respective percentages of ownership in the Company ("Membership Interest") are as follows:
 - a. City of North Miami: 50%
 - b. Opa-locka Community Development Corporation, Inc.: 50%
 - B. The Members shall have no personal liability for the losses, debts, claims, expenses, judgments, penalties or encumbrances of or against the Company or its property.
6. **CAPITAL CONTRIBUTIONS.** The City shall convey the Property to the Company prior to (or simultaneously) with the closing on the construction financing needed for the Project. 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. No Member shall be obligated to make any additional contribution to the Company's capital. The City will make available to the Company for the development of the Property \$100,000.00 of the grant funds that it has received from TD Charitable Foundation. The City will also make available to the Company for the development of the Property approximately \$62,045.00 of funds from its

FY 2014/15 and FY 2015/16 HOME Investment Partnership Program.

7. PROFITS/LOSSES. For financial accounting and tax purposes the Company's net profits or net losses shall be determined on an annual basis and shall be allocated to the Members in proportion their respective Membership Interest.
8. DISTRIBUTIONS. The Members shall determine and distribute available profits (if any) annually or at more frequent intervals as they see fit.
9. MANAGEMENT
 - A. The Company shall be managed by a manager ("Manager") in accordance with the terms of this Agreement. The Manager shall have general responsibility for managing the business and internal affairs of the Company. The initial Manager of the Company shall be Opa-locka Community Development Corporation, Inc.
 - B. POWERS OF MANAGER. The Manager is authorized on the Company's behalf to make all decisions as and to bind the contractually Company when relevant to the implementation of the Project. Notwithstanding anything to the contrary in this Agreement, **the Manager may not obligate the Company with regard to any of the following matters without the consent of the Member who is not the Manager.**
 - a. Sell, lease, exchange, mortgage, pledge, or otherwise transfer or dispose of all or substantially all of the assets of the company;
 - b. Approve the design, plans, and specifications for the Project and any material changes thereto;
 - c. Merge the Company with any other entity;
 - d. Amend the Articles Of Organization of the Company or this Operating Agreement;
 - e. Incur indebtedness by the Company other than that needed for the Project;
 - f. Authorize a transaction involving an actual or potential conflict of interest between the Manager and the Company;
 - g. Change the nature of the Company's business;
 - h. Commence a voluntary bankruptcy case for the Company; and
 - i. In any matter not directly related to the Project
 - C. REIMBURSEMENT. The Company shall reimburse the Manager for all direct out-of-pocket expenses incurred by them in managing the Company.
10. BOOKKEEPING. he Manager shall maintain complete and accurate books of account of the Company's affairs at the Company's principal place of business. Such books shall be kept on such method of accounting as the Managers shall select. The company's accounting period shall be the calendar year.
11. MEMBER'S ACCOUNTS. The Managers shall maintain separate capital and distribution accounts for each member. Each member's capital account shall be determined and maintained in the manner set forth in Treasury Regulation 1.704-1(b)(2)(iv) and shall consist of his initial capital

contribution

A. increased by:

- a. any additional capital contribution made by him/her;
- b. credit balances transferred from his distribution account to his capital account;

B. and decreased by:

- a. distributions to him/her in reduction of Company capital;
- b. the Member's share of Company losses if charged to his/her capital account.

12. REPORTS. The Manager shall close the books of account after the close of each calendar year, and shall prepare and send to each member a statement of such Member's distributive share of income and expense for income tax reporting purposes.

13. MISCELLANEOUS PROVISIONS

A. 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.

B. Tests and Inspections. OLCDC, as Manager of the Company, shall be responsible for having the Company initiating, maintaining and supervising all safety precautions and programs in connection with the performance of this Project. Agreement. OLCDC, as Manager, shall insure that take 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. he 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.

C. COMPLIANCE WITH LAWS. OLCDC, as Manager, shall insure that the Company 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.

D. INSURANCE. OLCDC, as Manager of the Company, shall require that the Company submit 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 Agreement. OLCDC shall not commence work under this Agreement until after OLCDC has obtained all of the minimum

insurance approved by the City.

- E. 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 Agreement 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 Agreement.
- F. DEFAULT. In the event the OLCDC fails to comply with any provision of this Agreement, the City may declare the OLCDC in default by written notification. The City shall have the right to terminate this Agreement 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 Agreement this section shall not release OLCDC from any obligations accruing prior to the effective date of termination.
- G. 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 Agreement 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 Agreement, 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
- H. LIMITATION OF CITY'S LIABILITY.
 - a. Nothing contained in this Agreement 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.
 - b. The City desires to enter into this Agreement 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 Agreement, 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 Agreement with OLCDC's recovery from the City for any action or claim arising from this Agreement to be limited to a maximum amount of One Thousand Dollars (\$1,000.00).
 - c. 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 Agreement 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.

14. OTHER PROVISIONS:

- A. No waiver or breach of any provision of this Agreement 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 Agreement 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 Agreement shall remain unmodified and in full force and effect or limitation of its use.
- C. No modification or amendments to this Agreement shall be binding on either Party unless in writing and signed by both Parties.
- D. This Agreement 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 Agreement at any time during the provision of services and for a period of three years after final payment is made under this Agreement.
- F. 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 Agreement 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 Agreement shall be nonexclusive, and nothing herein shall preclude the City from engaging other firms to perform services.
- J. This Agreement shall be binding upon the Parties herein, their heirs, executors, legal representatives, successors and assigns.
- K. OLCDC agrees that it shall not discriminate as to race, sex, color, creed, national origin, or disability, in connection with its performance under this Agreement .

L. In the event of any dispute arising under or related to this Agreement, 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 Agreement, including all such actual attorney fees, costs and expenses at all judicial levels, including appeal, until such dispute is resolved with finality.

M. M. This Agreement 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 Agreement.

IN WITNESS WHEREOF, the parties hereto agree to the above terms and have caused this Operating Agreement 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: Stephanie Williams-Baldwin

Date: 9/20/2016

signature

Stephanie Williams-Baldwin

print name and title Senior Vice President

The City of North Miami

a municipal corporation of the State of Florida

by: [Signature]
Larry M. Spring, Jr., City Manager

Date: 9/20/16

ATTEST:

by: [Signature]
Michael A. Etienne, Esq., City Clerk

APPROVED AS TO FORM AND

LEGAL SUFFICIENCY:

by: [Signature]
Jeff P. H. Cazeau, Esq., City Attorney *JPC*