

**FIRST AMENDMENT
TO AGREEMENT NUMBER 401-2020**

THIS FIRST AMENDMENT (“Amendment”) to AGREEMENT NUMBER 401-2020 is entered into and effective as of the date the last party signs, (“Effective Date”) by and between FLORIDA HOUSING FINANCE CORPORATION, a public corporation and a public body corporate and politic (“Florida Housing”), and BERKSHIRE CLUB PARTNERS, LTD. (“Grantee”).

RECITALS

- A. Florida Housing and Grantee entered into Agreement Number 401-2020, dated October 06, 2020, (“Agreement”) wherein Grantee agreed to participate in the Coronavirus Relief Fund Program. As used herein, “Agreement” shall include within its meaning any modification or amendment to the Agreement.
- B. The term of the Agreement began on October 06, 2020 and ends December 30, 2020.
- C. Section C.1. of the Agreement provides for additional funds subject to funds availability, and by mutual consent of the parties.

AGREEMENT

NOW THEREFORE, in consideration of the terms and conditions contained in the Agreement and this Amendment, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

A. Effective Date; Recitals. Upon its execution by both parties, this Amendment shall be effective as of the Effective Date. The above recitals are true and correct and form a part of this Amendment.

B. Amendments. The Agreement is hereby amended to:

- 1. Delete Section C.1. in its entirety and replace with the following:

- 1. Amount of Funds Available to Grantee: The maximum amount of funding being made available to Grantee under this Agreement is: \$283,140.00. This amount may be amended, subject to funds availability, by mutual consent of the parties. Grant funds under this Agreement may be considered taxable income.

C. General Terms and Conditions.

- 1. This Amendment shall be construed and enforced according to the laws of the State of Florida and venue for any actions arising hereunder shall lie in Leon County, Florida.

2. This Amendment shall be binding upon and inure to the benefit of the parties hereto, and their respective heirs, successors and assigns.

3. This Amendment may be executed in counterpart originals, no one of which needs to contain the signatures of all parties hereto, but all of which together shall constitute one and the same instrument.

4. All rights, powers and remedies provided herein may be exercised only to the extent that the exercise thereof does not violate any applicable law and are intended to be limited to the extent necessary so that they will not render this Amendment invalid, illegal, or unenforceable under any applicable law. If any term of this Amendment shall be held to be invalid, illegal or unenforceable, the validity of the other terms of this Amendment shall in no way be affected thereby.

5. Except as specifically modified by this Amendment, the Agreement shall remain in full force and effect, and all of the terms and provisions thereof are hereby ratified and confirmed.

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IN WITNESS WHEREOF, the Parties have executed this FIRST AMENDMENT to Agreement Number 401-2020, by a duly authorized representative, effective on the Effective Date.

BERKSHIRE CLUB PARTNERS, LTD.
By: CED Capital Holdings 2000 EB, L.L.C.

By:  _____

Name/Title: Brian Spear, Manager

Date: 12/15/20

FEIN: 59-3691683

FLORIDA HOUSING FINANCE CORPORATION

By:  _____

Name/Title: Hugh R. Brown/General Counsel

Date: 12-15-20

CORONAVIRUS RELIEF FUND (CRF)
FUNDING AGREEMENT

THIS FUNDING AGREEMENT ("Agreement") is entered into by and among BERKSHIRE CLUB PARTNERS, LTD. ("Grantee"), a Florida limited partnership, who owns Berkshire Club Apartments ("Development"), a development financed by Florida Housing, and FLORIDA HOUSING FINANCE CORPORATION ("Florida Housing"), a public body corporate and politic duly created and existing under the laws of the State of Florida. Upon execution by both parties, this Agreement shall become effective as of the date the last party signs ("Effective Date").

WITNESSETH:

WHEREAS, the Coronavirus (COVID-19) emergency has caused disruption in Florida's economy leading to high rates of unemployment and business closures;

WHEREAS, Many Floridians are in need of assistance with rental payments, mortgage payments and deferred home repairs;

WHEREAS, the State of Florida has been awarded funds pursuant to, section 601(d) of the Social Security Act, as added by section 5001 of the Coronavirus Aid, Relief, and Economic Security (CARES) Act, Pub. L. No. 116-136, div. A, Title V (Mar. 27, 2020);

WHEREAS, a portion of the CARES Act Funds (designated the "Coronavirus Relief Funds or CRF funds") will be distributed by Florida Housing to Grantee and expended only for purposes authorized by this Agreement;

WHEREAS, the Grantee and Florida Housing wish to enter into this Agreement which will govern the disbursement and expenditure of CRF funds;

NOW, THEREFORE, in consideration of the foregoing, the parties hereto agree as follows:

A. Recitals: The recitals stated above are true and correct, are incorporated herein, and form an integral part of this Agreement.

B. Definitions:

1. "Eligible Persons" or "Households" means one or more natural persons or a family who pays 30 percent of their household income toward their monthly rent and is determined by Grantee to be eligible for rental assistance under this Agreement.
2. "Expended" means when the Grantee applies the funding to the affordable housing rental obligations incurred by Eligible Households during the eligible period of performance.
3. "Eviction Relief Period" means the term of this Agreement.
4. "Gross Rent" means the rent for a set-aside unit, including any applicable utility allowances, in compliance with the rent limits applicable to the property for 2020. Gross rent does include optional fees included in the household's lease, including but not limited to, washer/dryer,

cable, parking, etc., as long as they are included in the lease or addendums to the lease. In addition, when a utility that is purchased from or through a local utility company by the Development, who in turn bills residents for actual consumption of the utility will also be eligible when the applicable utility allowance for the Development includes a deduction for the utility and the household's lease specifies that the resident is responsible for the utility.

5. "Management Company" means the firm overseeing the operation and management of the Participating Property; and shall mean the Grantee in any event wherein the Management Company is required to perform any obligations under this Agreement.
6. "Participating Property" means Development.
7. "Rental Assistance" or "Subsidy" means Gross Rent minus the sum of the utility allowance and the Eligible Household's payment of 30% of their monthly net income.

C. Allocation and Use of Funds:

1. Amount of Funds Available to Grantee: The maximum amount of funding being made available to Grantee under this Agreement is: \$230,000. This amount may be amended, subject to funds availability, by mutual consent of the parties. Grant funds under this Agreement may be considered taxable income.
2. Disbursement of Funds to Eligible Grantees: Funds will be disbursed monthly, in arrears.
3. Expenditure of Funds by Grantee: CRF funds shall be Expended by Grantee for rental assistance for Eligible Households for July through December 30, 2020, as well as rent arrearages for the months of April, May, and June 2020. Grantee may not use these funds for rents that will be paid under any other federal program, such as the United States Department of Housing and Urban Development (HUD) Project Based Rental Assistance, HUD Housing Choice Voucher Program, United States Department of Agriculture Rural Development Rental Assistance, HUD-Veterans Affairs Supportive Housing (HUD-VASH) voucher, or any other rental assistance program.
4. Program Participation: By participating in the CRF Program, Grantee agrees to:
 - a. Not increase any Eligible Household's rent through January 2021;
 - b. Waive all costs, fees and charges incurred by Eligible Households as a result of non-payment or partial payment of rent during the impacted months;
 - c. Not consider non-payment or partial payment by Eligible Households during impacted months when considering renewal of an Eligible Household's lease, or, share this information with other rental properties, credit bureaus and tenant screening companies;
 - d. Not initiate new Eligible Household evictions for non-payment of rent and must suspend all pending evictions of Eligible Households for nonpayment of rent for the duration of the rental payment assistance;
 - e. Not issue a notice to vacate to Eligible Households for nonpayment of rent until the end of the Eviction Relief Period; and
 - f. Not require Eligible Households to vacate the unit until 30 days after such notice.

5. Term:
 - a. The period of performance for this grant is April 1, 2020 – December 30, 2020. In executing this Agreement, Grantee is certifying that all CRF funds will be Expended by December 30, 2020.
 - b. The term of this Agreement will be from the Effective Date through December 30, 2020.
 - c. If the United States Congress extends the deadline for the expenditure of funds under the CARES Act, Florida Housing may extend the term of this Agreement by written notice to the Grantee for a period of up to six months, provided Florida Housing gives the Grantee a preliminary written notice of its intent to extend at least 30 days before the Agreement expires. The preliminary notice does not commit Florida Housing to an extension.
 - d. The total duration of this Agreement, including the exercise of any options under this clause, shall not extend past June 30, 2021.
 - e. Any unexpended funds under this Agreement, including unexpended program income earned, must be returned to Florida Housing upon termination of this Agreement.

6. Repayments:
 - a. The Grantee shall refund to Florida Housing any funds paid in excess of the amount to which the Grantee is entitled under the terms and conditions of this Agreement.
 - b. The Grantee shall refund to Florida Housing any funds not spent in accordance with the conditions of this Agreement or applicable law. Such reimbursement shall be sent to Florida Housing within 30 calendar days from Grantee's receipt of notification of such non-compliance.
 - c. The Grantee's obligations under this section will survive the termination of the Agreement.

7. Performance under this Agreement is subject to 2 C.F.R Part 200, entitled "Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards."

8. Single Audit Act: These funds are considered to be federal financial assistance subject to the Single Audit Act (31 U.S.C. §§ 7501-7507) and the related provisions of the Uniform Guidance. The Grantee shall conduct a single or program-specific audit in accordance with the provisions of 2 C.F.R. Part 200 and the related provisions of the Uniform Guidance, if it expends more than \$750,000 or more in Federal awards from all sources during its fiscal year. The Catalog of Federal Domestic Assistance (CFDA) number for these funds is 21.019.

- D. Coronavirus Relief Fund – Rental Assistance Application: The Coronavirus Relief Fund – Rental Assistance Application should contain all the necessary information to determine whether a Household is potentially eligible for CRF assistance. In accordance with the provisions of Sections 760.20-760.37, Fla. Stat., it is unlawful to discriminate on the basis of race, religion, color, sex, familial status, national origin, or handicap in the award application process for Eligible Housing.
 1. At a minimum, an application for program assistance should contain the following items for each household member:
 - a. The number of people residing in the household including name, age, relationship to head of household, current address and home phone number;
 - b. Name and address of employer(s), work phone number(s), and position title with employer;

- c. Sources of income and a statement signed by all of the adults who reside in the household consenting to the disclosure of information for the purpose of verifying income for determining eligibility for program assistance;
 - d. A signed statement indicating that the applicant understands that all information provided is subject to Florida's public records laws; and
 - e. A statement that it is a first-degree misdemeanor to falsify information for the purpose of obtaining assistance.
- E. Rental Assistance (Subsidy): Rental assistance will be provided to Eligible Households who pay 30% of their monthly net income, including Florida unemployment benefits, towards their monthly rent and have experienced a loss of job or income due to COVID-19.
- F. Subsidy Requests and Reporting Requirements:
 1. The Grantee or Management Company shall complete a CRF Subsidy Request Report - Recap of Tenant Income Certification, which provides a unit-by-unit listing of all units in the Development for whom assistance is being requested and gives detailed information including the occupants' eligibility, set-aside requirements, amount of household rent paid, utility allowance and amount of CRF Rental Subsidy requested.
 2. The CRF Subsidy Request Report - Recap of Tenant Income Certification shall be prepared as of the last day of each calendar month during the period of performance and shall be submitted to CRFReporting@FloridaHousing.org and Florida Housing's monitoring agent no later than the 15th day of the following month. The December 2020 request will be due on or before December 15th. The Grantee will submit executed Coronavirus Relief Fund Rental Assistance Applications and supporting documentation to Florida Housing's monitoring agent within 5 days upon the monitoring agent's request.
- G. Program Compliance
 1. W-9 Requirement: Alongside a signed copy of this Agreement, Grantee will provide Florida Housing with a properly completed Internal Revenue Service ("IRS") Form W-9. The purpose of the W-9 form is to document the SS# or FEIN# per the IRS. **Note:** W-9s submitted for any other entity name other than the Grantee's will not be accepted.
 2. System for Award Management (SAM) Requirement: Alongside a signed copy of this Agreement, Grantee will provide Florida Housing with a SAM.gov proof of registration and Commercial and Government Entity (CAGE) number. Grantee will continue to maintain an active SAM registration with current information at all times during which it has an active award under this Agreement.
 3. Data Universal Number System (DUNS) number Requirement: Grantee will provide their valid DUNS number contemporaneous with execution of this Agreement.
 4. Duplication of Benefits: Grantee shall not carry out any of the activities under this Agreement in a manner that results in a prohibited duplication of benefits as defined by Section 312 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5155) and in accordance with Section 1210 of the Disaster Recovery Reform Act of 2018 (division D of

Public Law 115-254; 132 Stat. 3442), which amended section 312 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5155).

In consideration of Grantee's receipt or the commitment of CRF funds by Florida Housing, Grantee hereby assigns to Florida Housing all of Grantee's future rights to reimbursement and all payments received from any grant, subsidized loan or any other reimbursement or relief program related to the basis of the calculation of the portion of the funds committed to the Grantee under this Agreement and determined to be a Duplication of Benefits (DOB). Any such funds received by the Grantee shall be referred to herein as "additional funds."

Grantee agrees to immediately notify Florida Housing of the source and receipt of additional funds received by the Grantee that are determined to be a DOB. Grantee agrees to reimburse Florida Housing for any additional funds received by Grantee if such additional funds are determined to be a DOB by Florida Housing, the Federal awarding agency or an auditing agency.

5. File Management and Record Retention relating to CRF Eligible Persons or Households: Grantee must maintain a separate file for every applicant, Eligible Person, or Household, regardless of whether the request was approved or denied.
 - a. Contents of File: Each file must contain sufficient and legible documentation. Documents must be secured within the file and must be organized systematically.
 - b. Record and File Retention: Grantees are required to retain records and other relevant documentation for each applicant or Eligible Person for five fiscal years after funds have been expended and accounted for.
 - i. The minimum requirements for documentation of rental assistance depend upon the composition of the household and the income sources. Every file should contain a section of notes and a file checklist, which tracks the efforts and progress of obtaining necessary documents. The checklist is a useful tool for all persons who must have access to the file. However, the notes and checklist requirement may be modified to accommodate a Grantee's need for documentation.
 - ii. All other records that document the rental assistance or expenditure of CRF funds must be retained for five fiscal years after the funds have been expended, provided applicable audits have been released. This means that for Eligible Households that were assisted, Grantee must retain all records no less than five years after the funds have been Expended, provided audits have been released, whichever is later. Housing records of this type include, but are not limited to:
 - 1) applications;
 - 2) leases;
 - 3) income verifications and
 - 4) other records as required by Florida Housing or federal, state and local law or regulations.
 - c. Records must be retained in electronic form. The standards used must comply with the Florida Administrative Code. Local record retention requirements may be stricter than the State.
 - d. Access to Files: Florida Housing or any duly authorized representative shall be permitted to inspect any files relating to CRF Eligible Persons or Households including but not limited to applications, income verifications and certifications, financial records, tracking system records, CRF fund recipient lists, and any other applicable documents at any reasonable

time with or without notice. Such records shall be maintained at a place accessible to the Corporation staff or its designated monitoring agent.

6. Files Management and Record Retention relating to Grantee and Administration of this Agreement:

- a. The Grantee shall maintain books, records, and documents in accordance with generally accepted accounting procedures and practices which sufficiently and properly reflect all expenditures of funds provided by Florida Housing under this Agreement.
- b. Contents of the Files: Grantee must maintain files containing documentation to verify all funds awarded to Grantee in connection with this Agreement, as well as reports, records, documents, papers, letters, computer files, or other material received, generated, maintained or filed by Grantee in connection with this Agreement. Grantee must also keep files, records, computer files, and reports that reflect any compensation it receives or will receive in connection with this Agreement.
- c. Record and File Retention: Grantee must maintain these files for five years after the end of the applicable fiscal year, except that, if any litigation, claim or audit is commenced with respect to the transactions documented by such files before the end of the aforementioned five-year period and extends beyond the expiration of the five-year period, these files must be retained until all litigation, claims, or audit findings involving the files have been resolved.
- d. Access to the Files: As a condition of receiving state or federal financial assistance, and as required by sections 20.055(6) and 215.97(5), Fla. Stat., Florida Housing, the Chief Inspector General of the State of Florida, the Florida Auditor General, or any of their authorized representatives shall enjoy the right to access any documents, financial statements, papers, or other records of the Grantee that are pertinent to this Agreement, in order to make audits, examinations, excerpts, and transcripts. Upon reasonable notice, Grantee and its employees shall allow Florida Housing or its agent(s) access to its files and personnel for interview purposes during normal business hours, 9:00 a.m. to 5:00 p.m., Monday through Friday, provided such day is not a holiday.
- e. Return of the Files: In the event this Agreement is terminated, all finished or unfinished documents, data, studies, computer files, correspondence, and other products prepared by or for Grantee under this Agreement must be submitted to Florida Housing within 15 days of such termination at the expense of Grantee.

7. Compliance Monitoring: Grantee must be subject to compliance monitoring during the period of performance in which funds are Expended and up to three years following the closeout of all funds. In order to assure that the program can be adequately monitored, the following is required of Grantee:

- a. Grantee must maintain a financial tracking system provided by Florida Housing that ensures that CRF funds are Expended in accordance with the requirements in this Agreement.
- b. Grantee must maintain records on all awards to Eligible Persons or Households. These records must include, but are not limited to:
 - i. Proof of income compliance (documentation from submission month, including but not limited to paystub, Florida unemployment statement, social security and/or disability statement, etc.);
 - ii. Lease; and
 - iii. Documentation of rental assistance payments made.

8. Cooperation with Inspector General: Grantee understands its duty, pursuant to Section 20.055(5), Fla. Stat., to cooperate with Florida Housing's Inspector General in any investigation, audit, inspection, review, or hearing. Grantee will comply with this duty and ensure that any contracts issued under this Agreement impose this requirement, in writing, on its subcontractors.
9. Technical Bulletins: A Technical Bulletin (TB) will be used to explain updated processes, provisions or monitoring requirements as Florida Housing receives updates, clarification and additional guidance with respect to the CRF funds. TBs will also be used to clarify, discuss, interpret, and provide guidance for contract administration issues related to this Agreement. TBs will be posted at <https://www.floridahousing.org/about-florida-housing/florida-housing's-coronavirus-relief-fund>, and Grantee is encouraged to regularly check for TBs.

H. Contacts

1. Florida Housing's contract administrator for this Agreement is:
Contract Administrator
Florida Housing Finance Corporation
227 North Bronough St., Suite 5000
Tallahassee, Florida 32301-1329
Phone: 850.488.4197
E-mail: Contract.Admin@floridahousing.org
 2. The Florida Housing program contact for this Agreement is:
Laura J. Cox, Director of Asset Management & Guarantee Program
Florida Housing Finance Corporation
227 North Bronough St., Suite 5000
Tallahassee, Florida 32301-1329
Phone: 850.488.4197
E-mail: Laura.Cox@floridahousing.org
or the designated successor.
 3. The Grantee's contract administrator for this Agreement is:
Brian Spear, Manager
2605 Maitland Center Parkway, Ste. A
Maitland, FL 32751
Phone: (407) 691-5608
E-mail: Brian.spear@cedcapital.com
or the designated successor.
 4. All written approvals referenced in this Agreement shall be obtained from the parties' contract administrator or their respective designees.
 5. All notices shall be given to the parties' contract administrator.
- I. 2 CFR Appendix II to Part 200 - Contract Provisions for Non-Federal Entity Contracts Under Federal Awards - In addition to other provisions required by the Federal agency or non-Federal entity, all

contracts made by the non-Federal entity under the Federal award must contain provisions covering the following, as applicable.

(A) Contracts for more than the simplified acquisition threshold currently set at \$150,000, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by [41 U.S.C. 1908](#), must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.

(B) All contracts in excess of \$10,000 must address termination for cause and for convenience by the non-Federal entity including the manner by which it will be effected and the basis for settlement.

(C) Equal Employment Opportunity. Except as otherwise provided under [41 CFR Part 60](#), all contracts that meet the definition of “federally assisted construction contract” in [41 CFR Part 60-1.3](#) must include the equal opportunity clause provided under [41 CFR 60-1.4\(b\)](#), in accordance with [Executive Order 11246](#), “Equal Employment Opportunity” ([30 FR 12319](#), [12935](#), [3 CFR Part, 1964-1965 Comp.](#), p. 339), as amended by [Executive Order 11375](#), “Amending [Executive Order 11246](#) Relating to Equal Employment Opportunity,” and implementing regulations at [41 CFR part 60](#), “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.”

(D) [Davis-Bacon Act](#), as amended ([40 U.S.C. 3141-3148](#)). When required by Federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-Federal entities must include a provision for compliance with the [Davis-Bacon Act \(40 U.S.C. 3141-3144, and 3146-3148\)](#) as supplemented by Department of Labor regulations ([29 CFR Part 5](#), “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction”). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency. The contracts must also include a provision for compliance with the Copeland “Anti-Kickback” Act ([40 U.S.C. 3145](#)), as supplemented by Department of Labor regulations ([29 CFR Part 3](#), “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States”). The Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.

(E) [Contract Work Hours and Safety Standards Act \(40 U.S.C. 3701-3708\)](#). Where applicable, all contracts awarded by the non-Federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with [40 U.S.C. 3702](#) and [3704](#), as supplemented by Department of Labor regulations ([29 CFR Part 5](#)). Under [40 U.S.C. 3702](#) of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of [40 U.S.C. 3704](#) are applicable to construction work and provide that no laborer

or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

(F) Rights to Inventions Made Under a Contract or Agreement. If the Federal award meets the definition of “funding agreement” under [37 CFR § 401.2](#) (a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the recipient or subrecipient must comply with the requirements of [37 CFR Part 401](#), “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency.

(G) Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended - Contracts and subgrants of amounts in excess of \$150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the [Clean Air Act \(42 U.S.C. 7401-7671q\)](#) and the [Federal Water Pollution Control Act as amended \(33 U.S.C. 1251-1387\)](#). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

(H) Debarment and Suspension (Executive Orders 12549 and 12689) - A contract award (see [2 CFR 180.220](#)) must not be made to parties listed on the governmentwide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 ([3 CFR part 1986 Comp.](#), p. 189) and 12689 ([3 CFR part 1989 Comp.](#), p. 235), “Debarment and Suspension.” SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than [Executive Order 12549](#).

(I) Byrd Anti-Lobbying Amendment (31 U.S.C. 1352) - Contractors that apply or bid for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by [31 U.S.C. 1352](#). Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.

(J) See § 200.322 Procurement of recovered materials.

[[78 FR 78608](#), Dec. 26, 2013, as amended at [79 FR 75888](#), Dec. 19, 2014]

J. Default and Remedies

1. If any of the events listed in subparagraph 2. of this section occur, all obligations on the part of Florida Housing to continue doing business with Grantee or assign any future transaction to Grantee shall, if Florida Housing so elects, terminate and Florida Housing may, at its option, exercise any of its remedies set forth herein, or as otherwise provided by law. However, Florida Housing may continue doing business with the Grantee as a participant after the happening of any event listed in subparagraph 2. of this section without waiving the right to exercise such remedies, without constituting a course of dealing, and without becoming liable to include the Grantee in the transaction or any future transaction.

2. The Events of Default shall include, but not be limited to, the following:
 - a. If any report, information or representation provided by Grantee in this Agreement is inaccurate, false or misleading in any respect;
 - b. If any warranty or representation made by Grantee in this Agreement or any other outstanding agreement with Florida Housing is deemed by Florida Housing to be inaccurate, false or misleading in any respect;
 - c. If Grantee fails to keep, observe, or perform any of the terms or covenants contained in this Agreement, or is unable or unwilling to meet its obligations as defined in this Agreement;
 - d. If, in the sole discretion of Florida Housing, Grantee has failed to perform or complete any of the services identified in the attachments;
 - e. If Grantee has not complied with all Florida laws, federal laws, Florida Housing rules or Florida Housing policies applicable to the work;
 - f. If Grantee has discriminated on the grounds of race, color, religion, sex, national origin, or disability in violation of this Agreement;
 - g. If Grantee does not comply with the terms and conditions set forth in Section 420.512(5), Fla. Stat.;
 - h. If Grantee commits fraud in the performance of its obligations under this Agreement; or
 - i. If Grantee refuses to permit public access to any document, paper, letter, computer files, or other material subject to disclosure under Florida's Public Records Law.

Upon the occurrence of any Event of Default listed in subparagraph 2. above, Florida Housing will provide written notice of the Default detailing the grounds that constitute the Event of Default.

3. Upon the occurrence of any Event of Default listed in subparagraph 2. above, Florida Housing may provide Grantee a reasonable period of time to cure the Event of Default (Cure Period). If Florida Housing provides a Cure Period, Florida Housing will notify the Grantee of the length of the Cure Period in the Notice of Default.
4. If Florida Housing provides a Cure Period and if the Grantee is unable or unwilling to cure the Event of Default within the Cure Period, Florida Housing may exercise any remedy permitted by law. The pursuit of any one of the following remedies shall not preclude Florida Housing from pursuing any other remedies contained herein or otherwise provided at law or in equity. The remedies include, but are not limited to the following:
 - a. Florida Housing may terminate the Agreement on the 10th day after Grantee receives the Notice of Default or upon the conclusion of any applicable Cure Period, whichever is later;
 - b. Florida Housing may commence an appropriate legal or equitable action to enforce performance of the terms and conditions of this Agreement;
 - c. Florida Housing may exercise any corrective or remedial actions including, but not limited to, requesting additional information from Grantee to determine the reasons for or the extent of non-compliance or lack of performance, issuing a written warning to advise that more serious measures may be taken if the situation is not corrected, advising the Grantee to suspend, discontinue or refrain from incurring fees or costs for any activities in question or requiring the Grantee to reimburse Florida Housing for the amount of costs incurred; or
 - d. Florida Housing may exercise any other rights or remedies that may be otherwise available under law.

K. Termination

1. Florida Housing may terminate the Agreement, without cause, at any time upon 24-hour written notice delivered by courier service or electronic mail to the Grantee, from the date sent from Florida Housing.
2. The Grantee may terminate this Agreement, without cause, at any time upon 10 days written notice delivered by courier service or electronic mail to Florida Housing at the physical or electronic address, as applicable, of Florida Housing's Contract Administrator, Contract.Admin@floridahousing.org. The Grantee shall be responsible for all costs arising from the resignation of the Grantee.
3. Upon expiration or termination of this Agreement, the Grantee shall transfer to Florida Housing any CRF funds on hand at the time of expiration or termination.

L. General Provisions

1. Compliance with all Applicable Laws and Regulations: Grantee must comply with all applicable federal, state and local laws, rules, regulations, and ordinances in administering CRF under this Agreement. Grantee acknowledges that this requirement includes, but is not limited to, compliance with all applicable federal, state, and local health and safety rules and regulations. Grantee's failure to comply with any part of this provision is material and must be grounds for termination of this Agreement for cause by Florida Housing.
2. Indemnification: Nothing contained in this Agreement shall be construed to be a waiver by either party of any protections under sovereign immunity, Section 768.28 Florida Statutes, or any other similar provision of law. Nothing contained herein must be construed to be a consent by either party to be sued by third parties in any matter arising out of this Agreement or any other contract.
3. Insurance: Grantee agrees to carry liability and other appropriate forms of insurance. Florida Housing shall have no liability except as specifically provided in this Agreement.
4. Severability: If a court deems any provision of this Agreement void or unenforceable, that provision shall be enforced only to the extent that it is not in violation of law or is not otherwise unenforceable and all other provisions shall remain in full force and effect.
5. Entire Agreement: This Agreement, and all exhibits annexed hereto which are incorporated herein by reference, collectively represent the entire agreement of the parties and the same supersedes any and all previous agreements of any kind. Any alterations, variations, changes, modifications, or waivers of provisions of this Agreement shall be valid only if reduced to writing, duly signed by all of the parties hereto, and attached to the original of this Agreement.
6. Lobbying: In accordance with Section 216.347, Fla. Stat., Grantee is hereby prohibited from using funds provided by this Agreement for the purpose of lobbying the Legislature, the judicial branch or a state agency. Further, in accordance with Section 11.062, Fla. Stat., no state funds, exclusive of salaries, travel expenses, and per diem, appropriated to, or otherwise available for use by, any executive, judicial, or quasi-judicial department shall be used by any

state employee or other person for lobbying purposes.

7. Files Subject to Florida's Public Records Law: Any file, report, record, document, paper, letter, or other material received, generated, maintained or sent by Grantee to Florida Housing or its agent(s) in connection with this agreement is subject to the provisions of Section 119.01-.15, Fla. Stat., as may be amended from time to time (Florida's Public Records Law). Grantee represents and acknowledges that it has read and understands Florida's Public Records Law and agrees to comply with Florida's Public Records Law.

If Grantee has questions regarding the application of Chapter 119, Florida Statutes, to Grantee's duty to provide public records relating to this Agreement, contact the Corporation Clerk at:

Corporation Clerk

227 N. Bronough Street, Suite 5000

Tallahassee, Florida 32301-1329

Phone: 850.488.4197

E-mail: Corporation.Clerk@floridahousing.org

8. Personally Identifiable Information (PII); Security:
 - a. If Grantee or any of its subcontractors may or will create, receive, store or transmit PII under the terms of this Agreement, Grantee must provide for the security of such PII, in a form acceptable to Florida Housing, without limitation, non-disclosure, use of appropriate technology, security practices, computer access security, data access security, data storage encryption, data transmission encryption, security inspections and audits. Grantee shall take full responsibility for the security of all data in its possession or in the possession of its subcontractors and shall hold Florida Housing harmless for any damages or liabilities resulting from the unauthorized disclosure of loss thereof.
 - b. If Grantee or any of its subcontractors may or will create, receive, store or transmit PII under the terms of this Agreement, Grantee shall provide Florida Housing with insurance information for stand-alone cyber liability coverage, including the limits available and retention levels. If Grantee does not carry stand-alone cyber liability coverage, Grantee agrees to indemnify costs related to notification, legal fees, judgments, settlements, forensic experts, public relations efforts, and loss of any business income related to this Agreement.
 - c. Grantee agrees to maintain written policies and procedures for PII and/or data classification. This plan must include disciplinary processes for employees that violate these guidelines.
 - d. Grantee agrees at all times to maintain reasonable network security that, at a minimum, includes a network firewall.
 - e. Grantee agrees to protect and maintain the security of data with protection security measures that include maintaining secure environments that are patched and up to date with all appropriate security updates as designated by a relevant authority (e.g. Microsoft notifications, Common Vulnerabilities and Exposures (CVE) database, etc.) Grantee agrees that PII shall be appropriately destroyed based on the format stored upon the expiration of any applicable retention schedules.


- f. Grantee agrees that any and all transmission or exchange of system application data with Florida Housing and/or any other parties shall take place via secure Advanced Encryption Standards (AES), e.g. HTTPS, FTPS, SFTP or equivalent means. All data stored as a part of backup and recovery processes shall be encrypted, using AES.
 - g. If Grantee reasonably suspects that a cybersecurity event or breach of security has occurred, they must notify Florida Housing's Contract Administrator within 48 hours.
 - h. In the event of a breach of PII or other sensitive data, Grantee must abide by provisions set forth in Section 501.171, Fla. Stat. Additionally, Grantee must immediately notify Florida Housing in writing of the breach and any actions taken in response to such a breach. As the information becomes available the statement must include, at a minimum, the date(s) and number of records affected by unauthorized access, distribution, use, modification or disclosure of PII; Grantee's corrective action plan; and the timelines associated with the corrective action plan.
9. Other Provisions:
- a. This Agreement shall be construed under the laws of the State of Florida, and venue for any actions arising out of this Agreement shall lie in Leon County.
 - b. No waiver by Florida Housing of any right or remedy granted hereunder or failure to insist on strict performance by Grantee shall affect or extend or act as a waiver of any other right or remedy of Florida Housing hereunder or affect the subsequent exercise of the same right or remedy by Florida Housing for any further or subsequent default by Grantee. A waiver or release with reference to any one event shall not be construed as continuing or as constituting a course of dealing.
 - c. Any power of approval or disapproval granted to Florida Housing under the terms of this Agreement shall survive the terms and life of this Agreement as a whole.
 - d. The Agreement may be executed in any number of counterparts, any one of which may be taken as an original.

REMAINDER OF PAGE INTENTIONALLY LEFT BLANK

IN WITNESS WHEREOF, the parties have executed this Agreement Number 401-2020, each through a duly authorized representative, effective on the Effective Date.

BERKSHIRE CLUB PARTNERS, LTD.
a Florida limited partnership

By: CED Capital Holdings 2000 EB, L.L.C.
a Florida limited liability company
its general partner

By: 
Brian Spear Manager

Date: 9/29/20

FEIN: 59-3691683

DUNS Number: 134179261

SAM.gov CAGE Number: 8QD61

FLORIDA HOUSING FINANCE CORPORATION

By: 

Name/Title: Hugh R. Brown/General Counsel

Date: 10-6-20