

This Instrument Prepared by:
LEE COUNTY PLANNING SECTION
Post Office Box 398
Fort Myers, Florida 33902-0398
STRAP No.

**AFFORDABLE HOUSING
DENSITY AGREEMENT
IMPOSING COVENANTS AND RESTRICTIONS ON
REAL PROPERTY**

THIS AFFORDABLE HOUSING DENSITY AGREEMENT (the “Agreement”) is made this _____ day of _____, 2024 by Lee County, Florida, a Political Subdivision of the State of Florida (the “County”), whose address is Post Office Box 398, Fort Myers, Florida 33902-0398, to Hermosa NFTM 41, Ltd., a Florida limited partnership (the “Developer”), whose address is _____.

Whereas, the Developer owns a tract of real property more particularly described in Exhibit “A” attached hereto and incorporated herein (the “Land”) and wishes to construct, develop and operate a _____ residential unit rental apartment complex, to be known as _____ on +/- _____ acre site located within the _____ and _____ zoning districts (“Development”); and

Whereas, Florida Housing Finance Corporation (“Florida Housing”) has approved an award of Low-Income Housing Tax Credits to the Developer for the Development pursuant to Florida Housing’s Request for Applications RFA 2022-201 Housing Credit Financing for Affordable Housing Developments located in Medium and Small Counties (the “RFA”). In order for Developer to construct the Development on the Land in accordance with its specifications provided in the RFA, Developer and the County intend to utilize Section 125.01055(7) Florida Statutes, to obtain additional density for the Development.

NOW THEREFORE, in consideration of the mutual covenants and undertakings set forth herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the County and the Developer do hereby contract and agree as follows:

1. **Recitals.** The foregoing Recitals are true and correct and by this reference are incorporated as if fully set forth herein.
2. **Use and Occupancy.** The Developer hereby represents, covenants and agrees that for a thirty (30) year period, which shall commence on the date the Development’s certificate of occupancy is issued (the “Affordability Period”), at least _____ () of the units in the Development (the “Affordable Units”) shall be considered floating units and be rented to households who have a household income less than or equal to one hundred and twenty percent (120%) of the area median gross income for the County, adjusted for family size (“AMI”). For purposes of this Agreement, the designation of a unit as “floating” means that the specific units designated as Affordable Units may change over time as long as the total number of Affordable Units is at least ___ units, and each

substituted unit is comparable in terms of size, features, and number of bedrooms to the originally designated Affordable Units.

During the Affordability Period, the monthly rents (including taxes, insurance and utilities) for the Affordable Units shall not exceed thirty percent (30%) of the imputed income limitation that would be applicable to such Affordable Units based on the formula used for Low-Income Housing Tax Credits under Section 42(g)(2) of the Internal Revenue Code of 1986, as amended (the "Code") . The County acknowledges that Florida Housing is requiring that at least eighty percent (80%) of the total units in the development be set-aside as elderly housing as defined under the RFA. Notwithstanding anything provided herein, a deeper set-aside (for households with incomes lower than as restricted herein) as a result of other subsidies will not result in a default herein.

3. **Bonus Granted.** The County hereby acknowledges, authorizes, and grants to Developer, to the maximum extent allowed under Section 125.01055(7) F.S., bonus density to construct the Development within the specifications provided in the RFA. The County agrees that it will not restrict the bonus density of Development authorized under this Agreement below twelve (12) dwelling units per acre, for a total Development density of twenty-two (22) dwelling units per acre.
4. **Income Certification and Monitoring.** During the Affordability Period, Developer shall utilize Florida Housing's Tenant Income Certification Form attached hereto as "Exhibit B" to certify the household income for each Affordable Unit, and request such certification to be updated at the time of the annual lease renewal for such unit. The County may after providing Developer prior written notice and during reasonable business hours perform on-site inspections to verify compliance with the tenant income and rent requirements set forth in Section 2 hereof. Notwithstanding anything provided herein to the contrary, if Developer is compliant with its income certification and reporting obligations Florida Housing requires of it under the RFA, then the Developer shall be deemed compliant with its obligations and Covenants, as defined below set forth in Agreement.
5. **Violation of Agreement.** If a material violation of any of the provisions hereof occurs and after written notice from the County is not cured within a reasonable period of time, affected parties may institute and prosecute any proceeding at law or in equity to abate, prevent, or enjoin any such violation or attempted violation and to compel specific performance. A reasonable period of time to cure any default shall be sixty (60) days from the date the Developer receives written notice of such default from the County; provided, however, if such default may not reasonably be cured within such sixty (60) day period in the reasonable discretion of the County, a default shall not be deemed to have occurred so long as Developer is diligently and continuously endeavors to cure such default. Notwithstanding anything to the contrary contained herein, the County agrees that any cure of any default made or tendered by Developer's tax credit investor member shall be deemed to be a cure by Developer and shall be accepted or rejected on the same basis as if made or tendered by Developer. Upon the occurrence of an event of default under this Agreement that has not otherwise been cured or is continuing beyond any applicable notice and cure period set forth herein, the County may undertake additional monitoring of the Project, the County, in its sole but reasonable discretion, may after providing Developer, prior written notice to require the Developer to pay to the County a reasonable compliance monitoring fee for supplemental monitoring in the actual out of pocket amount necessary to reimburse the County for performing such supplemental monitoring. This fee shall be in addition to, and distinct from, any reimbursement of reasonable costs and legal fees to

which the County may be entitled as a result of judicial enforcement action and any fines payable to the County and shall be payable without respect to whether the County undertakes or succeeds in judicial enforcement or code enforcement activities. The County shall submit written fee statements to the Developer on a quarterly basis which shall be paid by the Developer within thirty (30) days of receipt.

6. **Transfers and Assignments.** Developer's obligations hereunder shall constitute covenants, restrictions, and conditions ("Covenants") which shall run with the Land and shall be binding upon the Development and against every person then having a fee simple interest in the Development, including but not limited to Affordable Units, at any time until the Covenants expire or are otherwise terminated. Developer agrees to provide written notice to the County upon an intent to sell or otherwise transfer the Property. In the event of a sale or transfer of ownership of the Property, Developer agrees to provide written notice to the County with contact information regarding the new Developer. County shall coordinate with any successors and assigns to ensure the affordability terms contained in this agreement continue throughout the affordability term. Upon such transfer or conveyance of the Development to another person or entity, this Agreement may be assigned to such transferee, subject to approval by the County, which such approval shall not be unreasonably denied or delayed. Upon such assignment, any person seeking to enforce the terms hereof shall look solely to the transferee for the performance of said obligations.
7. **Modifications.** The County and its successors and assigns and the Developer and the successors and assigns of Developer in and to all or any part of the fee title to the Property, shall have the right to amend, modify, discharge, or terminate this Agreement by an instrument in writing signed by the County and the Developer, or their successors and assigns.
8. **Subordination and Foreclosure.** In the event of a foreclosure and sale of the Developer's interest in the Development or receipt of a deed or an assignment in lieu of foreclosure pursuant to a default, this Agreement shall be null and void and of no further force and effect, provided, however, that if a "Related Person" to the Developer as defined under Section 42(d)(2)(D)(ii) of the Code should purchase the Development following a foreclosure or a deed or an assignment in lieu of foreclosure, the use restrictions shall be reinstated as of the date of transfer to any such Related Person.
9. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Florida, both substantive and governing remedies.
10. **Notice:** All notices and other communications to be made or permitted to be made hereunder shall be in writing and shall be delivered to the addresses shown below or to such other addresses that the parties may provide to one another in accordance herewith. Such notices and other communications shall be given by any of the following means: (a) personal service; or (b) national express air courier, provided such courier maintains written verification of actual delivery. Any notice or other communication given by the means described in subsection (a) or (b) above shall be deemed effective upon the date of receipt or the date of refusal to accept delivery by the party to whom such notice or other communication has been sent.

To the County: Lee County, Florida
Post Office Box 398
Fort Myers, Florida 33902
Attention:

with a copy to: []

Developer: ##

with a copies to: ##

11. **Recoding and Filing.** Upon the execution and delivery by the parties hereto, this Agreement shall be recorded with the Public Records of Lee County, Florida, Office.
12. **Termination.** This Agreement shall automatically terminate and be of no further force and effect upon the expiration of the Affordability Period, or such earlier date as provided in this Agreement.
13. **Severability.** This Agreement may be simultaneously executed in multiple counterparts, all of which shall constitute one and the same instrument and each of which shall be deemed to be an original. Should any part, paragraph, or section of this Agreement be rendered void, invalid or unenforceable by any court of law, for any reason, such a determination shall not render any other part, paragraph or section in this Agreement void, invalid or unenforceable.

[Signatures Pages Follow]

IN WITNESS WHEREOF, County and Developer have caused this Agreement to be executed and delivered on their behalf by their duly authorized representatives as of the date first set forth above.

ACCEPTED ON BEHALF OF THE BOARD
OF COUNTY COMMISSIONERS OF LEE
COUNTY, FLORIDA, A MUNICIPAL
CORPORATION

By: _____
[]

WITNESSES:

ATTEST:

By: _____
[], []

[], []

[], []

DEVELOPER:

##., a Florida limited partnership

WITNESSES:

By: ##, a Florida limited liability company, its Special Limited Partner

Print: _____

By: ##, a Florida limited liability company, its Manager

Print: _____

By: _____
##, Manager

Address:
##

STATE OF _____
COUNTY OF _____

The foregoing instrument was acknowledged before me by means of physical presence or online notarization, this ____ day of _____, 2024, _____, as a manager of _____, on behalf of the limited partnership. Said person is *(check one)*
 personally known to me or have produced a valid driver's license as identification.

[Notary Seal]

Signature of person taking acknowledgment
Name (typed, printed or stamped): _____
Title or Rank: _____
Serial number (if any): _____

Exhibit A
Legal Description

Exhibit B
Florida Housing's Tenant Income Certification Form