

## MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding (“MOU”) is entered into by and between the **Gainesville Housing Authority** (“GHA”) and **Lincoln Ventures, LLC, its successor and assigns** (“Developer”), together referred to herein as the (“Parties”), regarding proposed redevelopment of that certain property (“Property”) located at 1209-1227 West University Avenue, Gainesville, Florida (“Project”).

**WHEREAS**, GHA is a duly authorized Public Housing Agency (“PHA”), as defined in the United States Housing Act of 1937 (42 U.S.C. 1437a(b)(6)) and pursuant to chapter 421, Florida Statutes; and

**WHEREAS**, Developer proposes to develop dedicated Affordable Housing Units defined as housing for Residents up to Eighty percent (80%) of Area Median Income (AMI) as determined by the GHA, within a combination multi-family and student-oriented housing development to be located at the Property described in Exhibit “A”; and

**WHEREAS**, Developer proposes to reserve ten percent (10%) of its units consisting of two-bedroom units at lower than market rate for occupancy by eligible Residents who qualify to occupy Affordable Housing Units; and

**WHEREAS**, GHA and Developer desire to work together to facilitate development of Affordable Housing Units in the Project to help address a need for housing that is affordable to qualified residents in the Gainesville community near the urban core.

**NOW, THEREFORE**, GHA and the Developer agree as follows:

**1. Purpose:** The purpose of this MOU is to create a legal agreement to be carried out by GHA, as a PHA, and the Developer that will result in the coordinated development, operation and maintenance of Affordable Housing Units in Developer’s Project. It is the intent of the Parties that the Project will transform the approach to providing Affordable Housing Units in redevelopment projects in the City of Gainesville. Developer proposes to reserve ten percent (10%) of its units, consisting of two-bedroom units, at a discount rate established using the Florida Housing Finance Corporation’s “Two Person” income limits<sup>1</sup>, for Alachua County (2020), as adjusted for the current year and, regardless of the renter’s AMI qualification for occupancy by eligible Residents whose eligibility is determined by GHA and the property management’s tenant qualifications; and

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<sup>1</sup> See: <http://flhousingdata.shimberg.ufl.edu/> for illustration of Developer’s rent discount determination, in this instance not to exceed rent limits set for 80% AMI for a two-person, two-bedroom unit.

**2. Zoning, Land Use, and Preliminary and Post-Development Approvals:** The Developer is seeking a land use amendment and re-zoning to PUD-PD of the Property depicted in **Exhibit “A.”** The Parties recognize that the City of Gainesville, in its regulatory capacity, is the governmental entity that is vested with authority to grant or deny land use, zoning, and site development approvals. The parties agree that nothing contained in this MOU shall be interpreted or construed as an approval, waiver or contract to approve or waive any governmental requirement that the City has jurisdiction over in its regulatory capacity. **This MOU shall be governed by the PUD-PD conditions adopted by the City of Gainesville as it relates to the obligations of the Developer under this MOU; the PUD-PD shall be incorporated into this MOU by reference.**

**3. Negotiations:** The Parties shall undertake negotiations to determine the terms and conditions of the lease for Affordable Housing Units, including those terms and conditions required by the U.S. Department of Housing and Urban Development (HUD) in its standard tenant-based Housing Assistance Payments Contracts (HAP), if applicable, as determined by the GHA and not to exceed ten percent (10%) of the total units in the project. The HAP also shall contain provisions by which GHA shall: (1) make rent payments for the term of the HAP contract; and, (2) allow Developer to fill units with market-rate tenants if GHA is unable to identify an eligible tenant from its waiting list no later than 60 days after Developer notifies GHA of a vacancy.

**4. Conditions:** Developer’s obligations to provide Affordable Housing Units in its Project is expressly conditioned and contingent on Developer obtaining all necessary permits and approvals from local, state and federal governmental or quasi-governmental agencies (with jurisdiction over the Project) in unappealable final form to construct its Project in substantially the same configuration and dimension as depicted in **Exhibit “B”**.

**5. Termination of MOU:** This MOU may be terminated by written notice by GHA or the Developer for the following causes:

- i. Non-performance of any provision of this MOU by any party after notice and opportunity to cure
- ii. Failure by Developer to obtain final permits and approvals in unappealable form to construct its Project in substantially the same configuration and dimension as depicted in Exhibit “B.”

**6. Determining Eligible Tenants:** The GHA shall be responsible for initially screening and determining eligibility to lease an Affordable Housing Unit in the Developer’s Project. The project’s on-site management will income-qualify candidates vetted and proposed by the GHA by verifying that monthly income limits are no less than three times that of the proposed monthly affordable rent. Where the proposed monthly rent can be reduced further by

GHA provision of an approved housing voucher, that resulting reduced monthly rent will be used to qualify a proposed tenant's monthly income limits (i.e. no less than three times the difference between the original affordable rental and the voucher) to allow access to affordable rents for candidates earning from Fifty percent (50%) up to Eighty percent (80%) of Area Median Income (AMI) as determined by the GHA.

**7. Notices:** All official notices required by this MOU shall be made in writing and given to the parties at their respective addresses, facsimile numbers or e-mail addresses as specified below. Notice shall be deemed to have been duly given upon receipt by an agent of the party to whom the notice is addressed. Proper means for delivering notice shall be by (i) personal delivery, (ii) facsimile, (iii) electronic mail, (iv) registered or certified mail, postage prepaid, or (v) nationally recognized express courier (e.g. FedEx, UPS), charges prepaid. Delivery of notice after 5:00 pm Eastern Standard Time shall be deemed made on the next following business day. Notices shall be addressed as follows:

If to GHA: Pam Davis, CEO  
1900 SE 4<sup>th</sup> Avenue  
Gainesville, FL 32641  
[Pamelad@gnvha.org](mailto:Pamelad@gnvha.org)

If to Developer: Chris Johnson, EVP  
Lincoln Ventures, LLC  
2324 Guadalupe Street  
Suite 200  
Austin, Texas 78705  
[Chris@lincoln-ventures.com](mailto:Chris@lincoln-ventures.com)

**8. Representations and Warranties.** The Parties are fully authorized to execute this MOU: GHA is a PHA; Developer is a limited liability company in good standing under the laws of the State of Delaware and is the contract purchaser of the Property depicted in Exhibit "B." The Parties may rely on the signators appearing below as having full authority to bind their respective entities.

**9. Governing Law:** This MOU shall be construed and enforced in accordance with the laws of the State of Florida. Should any part or provision of this MOU be held unenforceable or in conflict with the law of the applicable jurisdiction, the validity of the remaining parts or provisions shall not be affected by such holding. The prevailing party in any dispute arising under, out of, or in relation to this MOU shall be entitled to reimbursement of its reasonable attorneys' fees and all costs, plus the cost of collection and interest.

**10. Headings:** Headings used in this MOU are provided for convenience only and shall not be used to construe meaning or intent of the parties.

**11. Force Majeure:** The parties shall be excused from performing their obligations under this MOU if performance is delayed or prevented by any event beyond the reasonable control and without the fault or negligence of the party seeking to excuse performance, including, but not limited to, acts of God, fire, terrorism, explosion, third party criminal acts, weather, plague, war, insurrection, civil strife or riots, provided, however, such performance shall be excused only to the extent of and during such disability and affected party makes commercially reasonable efforts to remove the disability. Any party seeking to excuse or delay performance under this section shall provide detailed written notice to the other parties of the nature and anticipated duration of the delay.

**12. No Third-Party Beneficiaries:** The parties do not intend that this MOU shall confer on any third party any right, remedy or benefit or that any third party shall have any right to enforce any provision of this MOU.

**13. Indemnification:** Subject to applicable laws, each party shall indemnify and hold the other parties, their directors, officers, agents and employees harmless from and against any and all losses, damages, liabilities, costs and expenses, including reasonable attorney and court costs, that may result from (a) any demand, claim or litigation brought by a third party and relating to, resulting from or arising out of the indemnifying party's breach of any of its duties, obligations, representations, warranties or covenants herein, or (b) the negligence, willful misconduct or fraud of the indemnifying party or its personnel in connection with the performance of this MOU. Notwithstanding anything contained herein to the contrary, nothing in this MOU shall be construed or interpreted to limit alter or modify any protections that GHA would be entitled to pursuant to Section 768.28, Florida Statutes, as may be amended.

To receive the foregoing indemnities, a party seeking indemnification must promptly and officially provide notice to the party or parties from which indemnification is being sought and tender to them the full authority to defend and settle the claim or suit; provided, however, that an indemnifying party will not enter into any settlement agreement or compromise of a claim that admits liability of an indemnified party without first receiving written authorization from the indemnified party. Following acceptance of the tender, an indemnified party may elect to hire legal counsel of its own choosing to monitor and participate in the defense, but such expense shall be borne solely by the indemnified party.

**14. Miscellaneous:** This MOU is intended to create a legal agreement between the GHA and Developer to set for the intent, understandings, and independent obligations of the Parties in their joint effort to bring about the construction of Affordable Housing Units in the Developer's Project on the terms outlined herein. This MOU may be revised from time to time

or terminated by written document approved by both the governing boards of the GHA and the Developer.

AGREED TO AND ACCEPTED \_\_\_\_\_, 2021, by the  
**GAINESVILLE HOUSING AUTHORITY**

By: \_\_\_\_\_  
\_\_\_\_\_, its \_\_\_\_\_

AGREED TO AND ACCEPTED \_\_\_\_\_, 2021, by **LINCOLN VENTURES, LLC**

By: \_\_\_\_\_  
\_\_\_\_\_, its \_\_\_\_\_

**EXHIBIT A**

**Legal Description of Project Property**

**EXHIBIT B**

**Project Site Plan and Renderings/Description**