

Key Rental Assistance: Owner Agreement to Participate

This Owner Agreement to Participate (the “Agreement”) is entered into on this the ___ day of ____, 201__, by the NORTH CAROLINA HOUSING FINANCE AGENCY (the “Agency”), a public agency of the State of North Carolina, and «OE.OrganizationName», (the “Owner”).

RECITALS

- A. The Agency, in conjunction with the NC Department of Health and Human Services (NC DHHS), operates the Targeting Program that creates access to affordable rental units for people with disabilities.
- B. The Agency, in conjunction with NC DHHS, operates a rental assistance program, “Key Rental Assistance”, which provides financial assistance to owners of rental housing projects in order to provide more affordable housing opportunities for persons with disabilities renting targeted units.
- C. The Owner owns and operates a rental project and has requested Key Rental Assistance.
- D. The Agency is willing to provide Key Rental Assistance to the Owner subject to the terms and conditions outlined in this Agreement.

NOW THEREFORE, in consideration of the payment of Ten Dollars (\$10.00) by the Owner to the Agency, the exchange of the mutual promises set forth herein and other good and valuable consideration, the Owner and the Agency agree as follows:

Section 1: Procedures and Requirements

This Agreement, and any assistance provided under it, is made pursuant to Key Rental Assistance procedures and requirements found in the Targeting Program Manual issued by the Agency and NC DHHS, as may be modified, supplemented or amended from time to time by the Agency at its sole discretion. Modifications, supplements, and additions to the Targeting Program Manual shall become effective no earlier than thirty (30) days after the date of issuance, or as noted in the modification, supplement, or additions and may be disseminated by mail, e-mail, or other web-based format including posting to the Agency’s website. The Owner is responsible for checking the website for modifications, supplements, and additions to the Targeting Program Manual. All provisions for the Targeting Program Manual are hereby incorporated into this Agreement by reference and are considered a material part of this Agreement. Additionally, this Agreement is made to support the commitments made by the Owner in the Targeting Unit Agreement executed by the Owner and the Agency, or in any subsequent modifications, updates or revisions to the Targeting Unit Agreement.

Section 2: Term and Termination

The term of this Agreement will be for a period of ten (10 years) from the date first written above (“Initial Term”). After the Initial Term, the Agreement will automatically renew for subsequent 12-month terms until the earlier of any of the following:

- (a) The date the Agency serves written notice to the Owner of Agreement termination.
- (b) The date the Agency provides written acceptance of the Owner’s written notice to voluntarily terminate this Agreement.
- (c) The date that funding for the Key Rental Assistance is exhausted, insufficient or otherwise not available to the Agency.
- (d) The date a modified Targeted Unit Agreement is executed to reduce the number of Key Rental Assistance units to zero.

- (e) The date an Event of Default described in Section 8 occurs.

In the event of termination, the Key Rental Assistance will not be provided for any new targeted unit tenant(s) who move in after the date of termination, but will continue for existing targeted unit tenant(s) with Key Rental Assistance prior to the date of termination until any of the following occurs for said existing tenant(s):

- (a) Moves from the property.
- (b) Becomes ineligible for Key Rental Assistance.
- (c) Funding for Key Rental Assistance is exhausted or otherwise not available to the Agency.

In the event of Agreement termination, the Owner shall not be relieved of liability to the Agency for damages sustained by the Agency by virtue of any breach of this Agreement. The Agency may withhold any disbursement to the Owner until such time as the exact amount of damages due to the Agency from the Owner is determined. Termination of this Agreement will not waive, diminish or otherwise alter the Owner's obligations under the Tenant Lease(s). In the event of either:

- (a) Voluntary Agreement termination by the Owner, or termination due to a breach by the Owner, the Owner will renew all targeted unit Tenant Lease(s) at the tenant-paid share of the contract rent amount for a period of three (3) additional years. During this time if there are repeated lease violations or other good cause, the Owner may elect not to renew a lease or may evict a tenant for repeated lease violations or other good cause.
- (b) Termination because funding is exhausted or otherwise not available to the Agency, upon notice from the state, the Owner or Property Management company shall provide 90-day written notice to the tenant of the impending end of assistance. Once Key Rental Assistance ends:
 - i. Owner shall accept only the tenant-paid portion of the rent as full satisfaction of the rent payment for the duration of the lease, or for a period of 90 days from the date of the written notice to the tenant, whichever is greater.
 - ii. After the 90-day period or upon the expiration of the lease, whichever is greater, the tenant will be responsible for the entire amount of the rent.
 - iii. Loss of Key Rental Assistance may not be considered a breach of the lease, nor grounds for eviction.

Section 3: Key Rental Assistance

The Agency agrees to provide ongoing financial assistance to the Owner as described in this Section provided the Owner is in compliance with the terms and requirements outlined in this Agreement, the Targeting Unit Agreement, and the Targeting Program Manual.

- (a) The Key Rental Assistance is made to provide assistance to a residential housing project known as «AMP.Name» (the "Project") located in «AMPADD.CountyName» County.
- (b) The Key Rental Assistance will be for the number of units with Key Rental Assistance as specified in the current executed Targeting Unit Agreement, as may be modified from time to time, and as occupied and leased pursuant to the requirements of the Targeting Program Manual.
- (c) The Key Rental Assistance will fund the difference between the tenant-paid rent amount and the Key payment standard, each as determined under the Targeting Program Manual.

- (d) The Owner authorizes the management company responsible for the Project to submit requests for the Key Rental Assistance in a form and manner approved by the Agency.
 - i. Key Rental Assistance payment requests must be submitted within 30 days of the move-in date and monthly thereafter.
 - ii. Key Rental Assistance payment requests submitted more than 12 months after the payment due month will not be paid.
- (e) The Targeting Program Manual will be updated from time to time and once published to the Agency website will supersede all previous versions.
- (f) Any Key Rental Assistance required to be paid by the Agency to the Owner is contingent upon the availability of funding for the Key Rental Assistance and may be terminated at any time the funding is exhausted, insufficient or otherwise not available to the Agency.

Section 4: Representations of the Owner

The Owner hereby makes the following representations, warranties and covenants to the Agency and the truth and accuracy of such representations and warranties and compliance with and performance of such covenants are continuing obligations of the Owner. If any of the material representations or warranties made herein cease to be true and correct or the Owner breaches any of its material covenants made herein, the Owner agrees to notify the Agency immediately and the same shall constitute an Event of Default under this Agreement:

- (a) The Owner is duly organized and validly existing under the laws of the State of North Carolina with full power to undertake the obligations as contemplated by this Agreement. The execution and delivery of the Agreement have been duly authorized by all necessary corporate action on the part of the Owner, its partners, members, officers, and/or directors, as applicable.
- (b) There is no action, suit or proceeding at law or in equity, or by or before any governmental instrumentality or agency, or to the knowledge of the Owner, threatened against or affecting it, which, if adversely determined, would materially impair its right or ability to carry on business substantially as now conducted, or as contemplated to be conducted under this Agreement, or that would materially adversely affect the Owner's financial condition.
- (c) The Owner shall take all reasonable actions necessary to ensure it has the capacity to implement the services contemplated under this Agreement and the Targeting Program Manual.
- (d) The Owner is in compliance and covenants that all services under this Agreement will be performed in compliance with, all Federal, state, and local laws, regulations, regulatory guidance, statutes, ordinances, codes and requirements applicable to the business of the Owner and the provisions of services by Owner under this Agreement. This includes but is not limited to all Federal and state laws and regulations related to privacy/confidentiality, tenant's rights, and those designed to prevent unfair, deceptive, and discriminatory housing practices.
- (e) The Owner covenants that:
 - i. It will perform its services and obligations in accordance with this Agreement and Applicable Laws, and will promptly provide such performance or other reporting as may be reasonably required by the Agency.
 - ii. It will maintain complete, accurate and appropriate records of, and supporting documentation for, all services provided in connection with the Key Rental Assistance.

- iii. All data and other information reported by the Owner to the Agency under this Agreement will be true, complete and accurate in all material respects, and consistent with all relevant business records, as and when provided.
- (f) The Owner will be responsible for the supervision and oversight of any property management company it engages to assist in the performance of the services or any obligation under this Agreement. The Owner shall ensure that all its property managers comply with the terms and provisions of this Agreement and the Targeting Program Manual.
- (g) The Owner agrees to maintain at all times, at Owner's expense, until final completion of the services covered under this Agreement, unless otherwise agreed to by the Agency, insurance in the following forms and amounts:
 - i. Workers Compensation and Employer's Liability Insurance
 - ii. Commercial General Liability Insurance or equivalent with limits of not less than \$1,000,000 per occurrence and \$2,000,000 general aggregate, for bodily injury, personal injury, and property damage liability
 - iii. Professional Liability insurance covering acts, errors, or omissions shall be maintained with limits not less than \$1,000,000 annual aggregate
 - iv. Business Personal Property Coverage on commercially reasonable amounts and on commercially reasonable policy forms
- (h) The Owner has not executed and will not execute any agreements with provisions contradictory to, or in opposition to, the provisions of this Agreement.

Section 5: Conditions Precedent to Disbursements

As a condition to its obligation to make the disbursements of funds hereunder, the Owner shall submit documentation including the following:

- (a) This Agreement
- (b) IRS EIN letter
- (c) W-9
- (d) ACH authorization

and any other documentation the Agency may require in a specified manner prior to first Key Rental Assistance payment.

Section 6: Direct Deposit

The Owner authorizes the North Carolina State Treasurer, at the direction of the Agency, to initiate ACH credit entries for payments due under this Agreement, pursuant to the "Established Operational Procedures for State Treasurer's electronic payments system," which may be in effect from time to time. The Owner also authorizes any necessary ACH debit entries or adjustments for any ACH credit entries made in error to the account.

Section 7: Books and Records

The Owner shall always keep and maintain the following: complete and accurate books of accounts, contracts, leases, data, reports, documents, audit logs and records, including electronic records, or copies thereof and other instruments which may relate to the Key Rental Assistance and as stipulated in the Targeting Program Manual ("Records"). Such Records shall be subject to examination and inspection at any reasonable time by Agency, its auditor, or agents. The Records include but are not limited to:

- (a) Records demonstrating that each family is income eligible.
- (b) Records demonstrating that each project meets the written tenant selection policies and criteria of §92.209(c), including any targeting requirements, property inspection reports, and calculation of the subsidy.
- (c) Maintain a copy of the lease to demonstrate each lease for a tenant receiving rental assistance and for an assisted rental housing unit complies with the tenant and participant protections of §92.253. Records must be kept for each family.

In addition to any obligation to retain Records under applicable laws, the Owner covenants to retain all Records related to its obligations under this Agreement. Unless otherwise directed by the Agency, the Owner shall retain these Records for a period of five years after assistance ends, unless those same Records are required to be retained for a longer period by another governing regulation related to a funding source (“Retention Period”). If any litigation, claim, or audit is started before expiration of the five-year period, the Records will be retained until the litigation, claim, or audit findings involving the Records have been resolved and final action taken.

Section 8: Events of Default

Each of the following shall be an Event of Default by the Owner:

- (a) The breach by the Owner of any of Owner’s material representations, warranties, or covenants set forth in this Agreement, the Targeting Unit Agreement or the Targeting Program Manual.
- (b) The failure of the Owner to perform any of its obligations under this Agreement, the Targeting Unit Agreement or the Targeting Program Manual.
- (c) The failure to return disbursed funds that are later determined to be not owed.
- (d) Any representation by the Owner or its agents made in conjunction with this Agreement, the Targeting Unit Agreement, or any other document relating to the Key Rental Assistance, is false or misleading in any material respect when given.
- (e) The dissolution, merger, consolidation or termination of existence of the Owner or the transfer of Owner’s interest in this Agreement without Agency’s prior written consent.
- (f) The application for the appointment of a receiver for Owner; or the filing of a petition under any provisions of the Bankruptcy Code or Act by Owner; or the filing of a petition under any provisions of the Bankruptcy Code or Act against Owner which is not dismissed within 90 days; or the filing of an answer in an involuntary proceeding by Owner admitting insolvency or inability to pay debts; or any assignment for the benefit of creditors by or against Owner; or the attachment, execution or other judicial seizure of any portion of Owner’s assets which is not discharged within ten (10) days (for the purposes of this Section the term Owner includes general partners, members and managers).
- (g) Failure to maintain any part of the Project as decent, safe and sanitary as required under applicable local housing codes.
- (h) Failure to comply with this Agreement, the Targeting Unit Agreement or the Targeting Program Manual, as any may be amended.
- (i) Violation of the Declaration of Land Use Restrictive Covenants for Low-Income Housing Tax Credits, if applicable.

The Agency will be in default if it does not make payment(s) within thirty (30) days of being due, provided the Owner has met all requirements for disbursement including accurate data entry and complete and accurate submission of supporting documentation as determined by the Agency, and is not itself in default of this Agreement. The Owner’s sole

remedy for the Agency's default will be to bring legal action to enforce this Agreement. No action, omission or breach by the Agency will waive, diminish or otherwise alter the Owner's obligations under the Tenant Lease(s).

Section 9: Agency Remedies

Upon occurrence of any default by the Owner, the Agency may, at its option, take any one or more of the following actions or remedies:

- (a) Terminate this Agreement and any Key Rental Assistance.
- (b) Reduce the amount of Key Rental Assistance.
- (c) Obtain against the Owner a mandatory injunction or other equitable relief requiring performance by the Owner of any of its obligations under this Agreement or the Targeting Program Manual.
- (d) Require the Owner to take corrective actions to correct the problem(s) and prevent any reoccurrence.
- (e) Declare the Owner "not in good standing" with the Agency.

The Agency will provide the Owner thirty (30) days written notice and opportunity to cure prior to implementing any of the above.

The taking of any action or exercise of any remedy shall not constitute an election of remedies or preclude the Agency from taking any other action or exercising another remedy available at law or in equity. No failure to exercise any remedy or take any action enumerated shall constitute a waiver of such right or preclude a subsequent exercise by the Agency of any such remedy. No actions or remedies taken by the Agency under this Section will waive, diminish or otherwise alter the Owner's obligations under the Tenant Lease(s).

Section 10: Prohibited Activities

- (a) No Key Rental Assistance funds shall be used for any partisan political activity, or to further the election or defeat of any candidate for public office.
- (b) There shall be no religious instruction conducted in connection with the performance of the Agreement.
- (c) The Owner will not discriminate against any person employed in the performance of this Agreement, or against any applicant for housing assisted under this Agreement, because of race, sex, age, creed, color, disability, family status, or national origin.
- (d) No employee, officer or agent of the Owner shall create a conflict of interest, real or apparent, in administering the funds covered by this Agreement. Notwithstanding the foregoing, the Agency acknowledges that Owner has entered into a development and/or management Agreement with affiliates of and/or related parties to Owner, and fees paid pursuant thereto may be funded in part by the funds covered by this Agreement.

Section 11: Amendments

Any proposed changes in this Agreement will be in writing, submitted to, approved and executed by the Agency before the performance of any work involved in the proposed change.

Section 12: Notice

Delivery to the parties at the following addresses will satisfy the requirement to provide notice under this Agreement:

Agency: North Carolina Housing Finance Agency
Attn: Community Living
3508 Bush Street

P.O. Box 28066

Raleigh, NC 27609 (street address)

Raleigh, NC 27611-8066 (mailing address)

Owner: «OE.MailAddress»
«OE.MailCity», «OE.MailState» «OE.MailZip»

Notice shall be effective upon the earliest of the following to occur: (a) Actual receipt. (b) If mailed, three business days after deposited in the United States Mail. (c) The next business day if sent to the street address by recognized overnight courier (such as Federal Express) for next day or next business day delivery. (d) Upon refusal of the party being so notified to accept delivery.

Either party may change their address for notice upon at least ten (10) days prior written notice to the other.

Section 13: LIMITATION OF LIABILITY

IN NO EVENT SHALL THE AGENCY, OR ITS OFFICERS, EMPLOYEES, AGENTS OR AFFILIATES BE LIABLE TO THE OWNER WITH RESPECT TO THE SERVICES OR THIS AGREEMENT, OR FOR ANY ACT OR OMISSION OCCURRING IN CONNECTION WITH THE FOREGOING, FOR ANY DAMAGES OF ANY KIND, INCLUDING, BUT NOT LIMITED TO DIRECT DAMAGES, INDIRECT DAMAGES, LOST PROFITS, LOSS OF BUSINESS, OR OTHER INCIDENTAL, CONSEQUENTIAL, SPECIAL OR PUNITIVE DAMAGES OF ANY NATURE OR UNDER ANY LEGAL THEORY WHATSOEVER, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND REGARDLESS OF WHETHER OR NOT THE DAMAGES WERE REASONABLY FORESEEABLE.

Section 14: Governing Law

This Agreement shall be construed, governed, and enforced by and in accordance with the laws of the state of North Carolina. Each party expressly consents to the jurisdiction of the state courts of the state of North Carolina should litigation arise between the parties.

Section 15: Other Obligations of Owner

Nothing in this Agreement should be construed by the Owner to waive or relieve the Owner of any obligation under any other Federal or state law, regulation, program, loan, contract, or other agreement.

Section 16: Waiver

The waiver of any breach of this Agreement by either party shall not constitute a continuing waiver of subsequent breach of either the same or another provision of this Agreement.

Section 17: Assignment

The Owner has no power to transfer or otherwise assign any of the rights, obligations, or duties arising under this Agreement without the prior written consent of the Agency. The Agency may grant or deny its consent in its sole discretion. Any attempted transfer or assignment made without such consent from the Agency shall be void and of no effect.

Section 18: Survival

The terms of this Agreement shall bind and inure to the respective successors and assigns of the parties. Whenever used herein, the singular number shall include the plural, and the plural the singular.

IN WITNESS WHEREOF, the Owner has hereunto set its hand and seal, or if corporate, have caused this instrument to be signed in its corporate name by its duly authorized officers and its seal to be affixed by its board of directors, the day and date first above written.

Owner:

«OE.OrganizationName»

By «MGP.OrganizationName», its managing member

Name: _____

Title: _____

Date: _____

North Carolina Housing Finance Agency:

By: _____

Name: _____

Title: _____

Date: _____

SAMPLE