

Steve Hyatt

From: Drew.Gandy@hklaw.com
Sent: Friday, January 16, 2026 3:22 PM
To: Kinsey Patel; Eduardo Teran; Wendi Bellows; Brian Ivy; Steve Hyatt; Bernard, Nathan; Chris Shear
Cc: Lloyd Burman; Andrew Baker; Henry Phillips; Nancy DeLoach; Andrea Frate; McKinney, Emily; Kump, Analise; Kew, Lauren; Christa Queen-Sutherland
Subject: RE: Ekos at Arbor Park II - Developer Agreement
Attachments: Standstill Agreement - CDBG Sarasota County (Arbor Park II)-527535692-v3.docx; Redline - v2 Subordination Standstill Agreement - CDBG Sarasota County (Arbor Park II)(527535692.2) + KP and Standstill Agreement - CDBG Sarasota County (Arbor .pdf

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Kinsey, see attached for the revised subordination agreement with a redline against your comments. There were comments from the County that neither Truist nor Freddie can accept because it impacts the financiability of the senior loan.

Let's hop on a call next week so that I can walk through Truist's position (which likely mirrors Freddie's). Please let me know some times that work for you and I'll make it work.

Thanks.

Drew Gandy | **Holland & Knight**

Partner

Holland & Knight LLP

1180 West Peachtree Street, NW, Suite 1800 | Atlanta, Georgia 30309

Phone +1.404.817.8518 | Mobile +1.404.550.7679

drew.gandy@hklaw.com | www.hklaw.com

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From: Kinsey Patel <kpatel@scgov.net>
Sent: Thursday, December 4, 2025 10:07 AM
To: Gandy, Drew H (ATL - X48518) <Drew.Gandy@hklaw.com>; Eduardo Teran <eteran@mcdhousing.com>; Wendi Bellows <wbellows@scgov.net>; Brian Ivy <bivy@mcdhousing.com>; Steve Hyatt <shyatt@scgov.net>; Bernard, Nathan <nbernard@nixonpeabody.com>; Chris Shear <cshear@mcdhousing.com>
Cc: Lloyd Burman <lburman@mcdhousing.com>; Andrew Baker <abaker@mcdhousing.com>; Henry Phillips <HPhillips@mcdhousing.com>; Nancy DeLoach <ndeloach@scgov.net>; Andrea Frate <afrate@scgov.net>; McKinney, Emily <emily.mckinney@dinsmore.com>; Kump, Analise <akump@nixonpeabody.com>; Kew, Lauren <Lauren.Kew@truist.com>; Christa Queen-Sutherland <csutherland@scgov.net>
Subject: RE: Ekos at Arbor Park II - Developer Agreement

Good morning,

We have some preliminary comments and edits on the subordination agreement, but we will need additional time to finalize those terms. In the meantime, we will need you to execute the Developer Agreement and the Land Use Restriction Agreement (LURA), and to record the LURA before we are able to execute a subordination agreement. Please review the attached initial draft of the subordination agreement. We are working to provide you with the final County attorney approved edits to the Developer Agreement and LURA soon so that you can proceed with execution.

Thank you.



Kinsey Patel
Resilient SRQ Policy & Compliance Program Manager
Financial Management
c. 941-315-8253

www.scgov.net

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From: Drew.Gandy@hklaw.com <Drew.Gandy@hklaw.com>
Sent: Wednesday, December 3, 2025 4:33 PM
To: Kinsey Patel <kpatel@scgov.net>; Eduardo Teran <eteran@mcdhousing.com>; Wendi Bellows <wbellows@scgov.net>; Brian Ivy <bivy@mcdhousing.com>; Steve Hyatt <shyatt@scgov.net>; Bernard, Nathan <nbernard@nixonpeabody.com>; Chris Shear <cshear@mcdhousing.com>
Cc: Lloyd Burman <lburman@mcdhousing.com>; Andrew Baker <abaker@mcdhousing.com>; Henry Phillips <HPhillips@mcdhousing.com>; Nancy DeLoach <ndeloach@scgov.net>; Andrea Frate <afrate@scgov.net>; McKinney, Emily <emily.mckinney@dinsmore.com>; Kump, Analise <akump@nixonpeabody.com>; Kew, Lauren <Lauren.Kew@truist.com>; Christa Queen-Sutherland <csutherland@scgov.net>
Subject: RE: Ekos at Arbor Park II - Developer Agreement

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Hi folks, I wanted to check on the status of the CDBG subordination/standstill agreement. I was looking at some other matters on this deal and realized that this loop seemed to still be open.

Thanks.

Drew Gandy | Holland & Knight

Partner

Holland & Knight LLP

1180 West Peachtree Street, NW, Suite 1800 | Atlanta, Georgia 30309

Phone +1.404.817.8518 | Mobile +1.404.550.7679

drew.gandy@hklaw.com | www.hklaw.com

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From: Kinsey Patel <kpatel@scgov.net>
Sent: Tuesday, October 21, 2025 2:30 PM
To: Eduardo Teran <eteran@mcdhousing.com>; Wendi Bellows <wbellows@scgov.net>; Brian Ivy <bivy@mcdhousing.com>; Steve Hyatt <shyatt@scgov.net>; Bernard, Nathan <nbernard@nixonpeabody.com>; Chris

Shear <cshear@mcdhousing.com>

Cc: Lloyd Burman <lburman@mcdhousing.com>; Andrew Baker <abaker@mcdhousing.com>; Henry Phillips <HPhillips@mcdhousing.com>; Nancy DeLoach <ndeloach@scgov.net>; Andrea Frate <afrate@scgov.net>; McKinney, Emily <emily.mckinney@dinsmore.com>; Kump, Analise <akump@nixonpeabody.com>; Gandy, Drew H (ATL - X48518) <Drew.Gandy@hklaw.com>; Kew, Lauren <Lauren.Kew@truist.com>; Christa Queen-Sutherland <csutherland@scgov.net>

Subject: RE: Ekos at Arbor Park II - Developer Agreement

[External email]

Thank you for clarifying that, we will be sure to update the agreement on our end to be as follows to reflect the NTP (date in which the project received environmental clearance):

<u>Activity</u>	<u>Performance Goal</u>	<u>Timeframe for Completion of Performance Goal</u>
<u>Acquisition of Real Property</u>	<i>Close on the property</i>	<i>Within 90 180 calendar days of County's issuance of NTP</i>
	<i>Commence Construction</i>	<i>Within 90 200 calendar days of of 66 total rental units County's issuance of NTP</i>
	<i>Construction Complete</i>	<i>Within 30 months of County's issuance of NTP</i>
	<i>Certificate of Occupancy Complete</i>	<i>Within 1 month of Construction Complete</i>

We will be in touch as soon as we have information to share on the subordination agreement.



Kinsey Patel
Resilient SRQ Policy & Compliance Program Manager
Financial Management
c. 941-315-8253
301 N Cattlemen Road, Sarasota, Florida 34232
www.scgov.net

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From: Eduardo Teran <eteran@mcdhousing.com>
Sent: Tuesday, October 21, 2025 2:03 PM
To: Kinsey Patel <kpatel@scgov.net>; Wendi Bellows <wbellows@scgov.net>; Brian Ivy <bivy@mcdhousing.com>; Steve Hyatt <shyatt@scgov.net>; Bernard, Nathan <nbernard@nixonpeabody.com>; Chris Shear <cshear@mcdhousing.com>
Cc: Lloyd Burman <lburman@mcdhousing.com>; Andrew Baker <abaker@mcdhousing.com>; Henry Phillips <HPhillips@mcdhousing.com>; Nancy DeLoach <ndeloach@scgov.net>; Andrea Frate <afrate@scgov.net>; McKinney, Emily <emily.mckinney@dinsmore.com>; Kump, Analise <akump@nixonpeabody.com>; 'Drew.Gandy@hklaw.com' <drew.gandy@hklaw.com>; Kew, Lauren <Lauren.Kew@truist.com>; Christa Queen-Sutherland <csutherland@scgov.net>
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Thank you, Kinsley, we will be on the lookout! Regarding your question below, yes, the Commence construction date should have been tied to NTP, not the execution of the agreement.

Thanks,

Eduardo Teran

Director of Development

McDowell Housing Partners

777 Brickell Avenue, Suite 1300 | Miami, FL 33131

Office: (786) 604-2797 | Cell: (202) 262-7690

www.mcdhousing.com



From: Kinsey Patel <kpatel@scgov.net>
Sent: Tuesday, October 21, 2025 1:49 PM
To: Eduardo Teran <eteran@mcdhousing.com>; Wendi Bellows <wbellows@scgov.net>; Brian Ivy <bivy@mcdhousing.com>; Steve Hyatt <shyatt@scgov.net>; Bernard, Nathan <nbernard@nixonpeabody.com>; Chris Shear <cshear@mcdhousing.com>
Cc: Lloyd Burman <lburman@mcdhousing.com>; Andrew Baker <abaker@mcdhousing.com>; Henry Phillips <HPhillips@mcdhousing.com>; Nancy DeLoach <ndeloach@scgov.net>; Andrea Frate <afrate@scgov.net>; McKinney, Emily <emily.mckinney@dinsmore.com>; Kump, Analise <akump@nixonpeabody.com>; 'Drew.Gandy@hklaw.com' <drew.gandy@hklaw.com>; Kew, Lauren <Lauren.Kew@truist.com>; Christa Queen-Sutherland <csutherland@scgov.net>
Subject: RE: Ekos at Arbor Park II - Developer Agreement

Good afternoon,

It is with our attorney for review. We will provide an update and feedback once reviewed. In the meantime, can you please explain the increase in the project schedule to commence construction or does the schedule need to reflect NTP instead of execution of this agreement as noted in the table below? Thank you.

MCD revisions in red, provided on 10/8:

<u>Activity</u>	<u>Performance Goal</u>	<u>Timeframe for Completion of Performance Goal</u>
<u>Acquisition of Real Property</u>	<i>Close on the property</i>	<i>Within 90 180 calendar days of County's issuance of NTP</i>
	<i>Commence Construction of 66 total rental units</i>	<i>Within 90 200 calendar days of execution of this Agreement</i>

Construction Complete *Within 30 months of execution of this Agreement*

Certificate of Occupancy *Within 1 month of Construction Complete*



Kinsey Patel
Resilient SRQ Policy & Compliance Program Manager
Financial Management
c. 941-315-8253
301 N Cattlemen Road, Sarasota, Florida 34232
www.scgov.net

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From: Eduardo Teran <eteran@mcdhousing.com>
Sent: Tuesday, October 21, 2025 12:23 PM
To: Wendi Bellows <wbellows@scgov.net>; Brian Ivy <bivy@mcdhousing.com>; Steve Hyatt <shyatt@scgov.net>; Bernard, Nathan <nbernard@nixonpeabody.com>; Kinsey Patel <kpatel@scgov.net>; Chris Shear <cshear@mcdhousing.com>
Cc: Lloyd Burman <lburman@mcdhousing.com>; Andrew Baker <abaker@mcdhousing.com>; Henry Phillips <HPhillips@mcdhousing.com>; Nancy DeLoach <ndeloach@scgov.net>; Andrea Frate <afrate@scgov.net>; McKinney, Emily <emily.mckinney@dinsmore.com>; Kump, Analise <akump@nixonpeabody.com>; 'Drew.Gandy@hklaw.com' <drew.gandy@hklaw.com>; Kew, Lauren <Lauren.Kew@truist.com>; Christa Queen-Sutherland <csutherland@scgov.net>
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Hello Wendi,

I hope you're doing well! I wanted to see if there was any updates on the below referenced Subordination agreement?

Thank you,

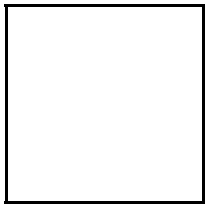
Eduardo Teran
Director of Development
McDowell Housing Partners
777 Brickell Avenue, Suite 1300 | Miami, FL 33131
Office: (786) 604-2797 | Cell: (202) 262-7690
www.mcdhousing.com



From: Wendi Bellows <wbellows@scgov.net>
Sent: Thursday, October 9, 2025 9:03 AM
To: Brian Ivy <bivy@mcdhousing.com>; Steve Hyatt <shyatt@scgov.net>; Bernard, Nathan <nbernard@nixonpeabody.com>; Kinsey Patel <kpatel@scgov.net>; Eduardo Teran <eteran@mcdhousing.com>; Chris Shear <cshear@mcdhousing.com>
Cc: Lloyd Burman <lburman@mcdhousing.com>; Andrew Baker <abaker@mcdhousing.com>; Henry Phillips <HPhillips@mcdhousing.com>; Nancy DeLoach <ndeloach@scgov.net>; Andrea Frate <afrate@scgov.net>; McKinney, Emily <emily.mckinney@dinsmore.com>; Kump, Analise <akump@nixonpeabody.com>; 'Drew.Gandy@hklaw.com' <drew.gandy@hklaw.com>; Kew, Lauren <Lauren.Kew@truist.com>; Christa Queen-Sutherland <csutherland@scgov.net>
Subject: RE: Ekos at Arbor Park II - Developer Agreement

The subordination agreement is currently being reviewed by our legal department.

We will send it over as soon as it is ready.



Wendi Bellows
Resilient SRQ / Multifamily Affordable Housing Coordinator
Financial Management
o. 941-861-5533
301 N Cattlemen Road., Sarasota, Florida 34232
www.scgov.net

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From: Brian Ivy <bivy@mcdhousing.com>
Sent: Wednesday, October 8, 2025 2:54 PM
To: Wendi Bellows <wbellows@scgov.net>; Steve Hyatt <shyatt@scgov.net>; Bernard, Nathan <nbernard@nixonpeabody.com>; Kinsey Patel <kpatel@scgov.net>; Eduardo Teran <eteran@mcdhousing.com>; Chris Shear <cshear@mcdhousing.com>
Cc: Lloyd Burman <lburman@mcdhousing.com>; Andrew Baker <abaker@mcdhousing.com>; Henry Phillips <HPhillips@mcdhousing.com>; Nancy DeLoach <ndeloach@scgov.net>; Andrea Frate <afrate@scgov.net>; McKinney, Emily <emily.mckinney@dinsmore.com>; Kump, Analise <akump@nixonpeabody.com>; 'Drew.Gandy@hklaw.com' <drew.gandy@hklaw.com>; Kew, Lauren <Lauren.Kew@truist.com>; Christa Queen-Sutherland <csutherland@scgov.net>
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Hi Wendi.

Sounds good, but we do need to figure out the Subordination Agreement before we're fully authorized to sign the docs. Kindly send that over when you get a chance.

See below for suggested edits so that it matches the timeline of how things have transpired.

Brian Ivy
Executive Vice President of Development

McDowell Housing Partners

777 Brickell Avenue, Suite 1300 | Miami, FL 33131

Office: (786) 600-3690 | Email: bivy@mcdhousing.com

www.mcdhousing.com



From: Wendi Bellows <wbellows@scgov.net>

Sent: Wednesday, October 8, 2025 2:36 PM

To: Brian Ivy <bivy@mcdhousing.com>; Steve Hyatt <shyatt@scgov.net>; Bernard, Nathan <nbernard@nixonpeabody.com>; Kinsey Patel <kpatel@scgov.net>; Eduardo Teran <eteran@mcdhousing.com>; Chris Shear <cshear@mcdhousing.com>

Cc: Lloyd Burman <lburman@mcdhousing.com>; Andrew Baker <abaker@mcdhousing.com>; Henry Phillips <HPhillips@mcdhousing.com>; Nancy DeLoach <ndeloach@scgov.net>; Andrea Frate <afrate@scgov.net>; McKinney, Emily <emily.mckinney@dinsmore.com>; Kump, Analise <akump@nixonpeabody.com>; 'Drew.Gandy@hklaw.com' <drew.gandy@hklaw.com>; Kew, Lauren <Lauren.Kew@truist.com>; Christa Queen-Sutherland <csutherland@scgov.net>

Subject: RE: Ekos at Arbor Park II - Developer Agreement

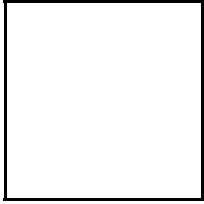
Brian,

Great news! I will be sending the final agreement and LURA over shortly for signature.

Before doing so, we will need an updated timeline. The NTP was issued on 3/24/25 when you received the AUGF from HUD, so the timeline in the agreement (below) does not align.

<u>Activity</u>	<u>Performance Goal</u>	<u>Timeframe for Completion of Performance Goal</u>
<u>Acquisition of Real Property</u>	<i>Close on the property</i>	<i>Within 90 180 calendar days of County's issuance of NTP</i>
	<i>Commence Construction of 66 total rental units</i>	<i>Within 90 200 calendar days of execution of this Agreement</i>
	<i>Construction Complete</i>	<i>Within 30 months of execution of this Agreement</i>
	<i>Certificate of Occupancy</i>	<i>Within 1 month of Construction Complete</i>

Wendi Bellows
 Resilient SRQ / Multifamily Affordable Housing Coordinator
 Financial Management
 o. 941-861-5533



301 N Cattlemen Road., Sarasota, Florida 34232
www.scgov.net

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From: Brian Ivy <bivy@mcdhousing.com>
Sent: Wednesday, October 8, 2025 2:27 PM
To: Wendi Bellows <wbellows@scgov.net>; Steve Hyatt <shyatt@scgov.net>; Bernard, Nathan <nbernard@nixonpeabody.com>; Kinsey Patel <kpatel@scgov.net>; Eduardo Teran <eteran@mcdhousing.com>; Chris Shear <cshear@mcdhousing.com>
Cc: Lloyd Burman <lburman@mcdhousing.com>; Andrew Baker <abaker@mcdhousing.com>; Henry Phillips <HPhillips@mcdhousing.com>; Nancy DeLoach <ndeloach@scgov.net>; Andrea Frate <afrate@scgov.net>; McKinney, Emily <emily.mckinney@dinsmore.com>; Kump, Analise <akump@nixonpeabody.com>; 'Drew.Gandy@hklaw.com' <drew.gandy@hklaw.com>; Kew, Lauren <Lauren.Kew@truist.com>; Christa Queen-Sutherland <csutherland@scgov.net>
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Hi Wendi,

Thanks for following up. Good timing. We've been actively working with Truist over the last week to find a path forward and we just figured it out. We'll be able to execute the CDBG docs as written. To finalize we just need:

1. The Dev Agreement and LURA updated with the requested correction to the recitals. The recitals currently state that MHP Arbor Park II is wholly owned by McDowell. MHP Arbor Park II is in fact managed and partially owned by a GP entity that is an affiliate of McDowell. We provided some suggested language for this in the last comments.
2. The County's comments to the Subordination Agreement requested by the construction lender (and the construction lender's approval to them). Kindly send the comments as soon as their available.

Let me know if you have any questions. We're almost there.

Thanks!

Brian Ivy
Executive Vice President of Development
McDowell Housing Partners
777 Brickell Avenue, Suite 1300 | Miami, FL 33131
Office: (786) 600-3690 | Email: bivy@mcdhousing.com
www.mcdhousing.com

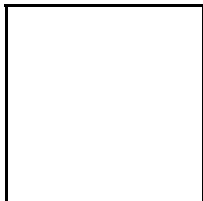


From: Wendi Bellows <wbellows@scgov.net>
Sent: Wednesday, October 8, 2025 2:10 PM
To: Brian Ivy <bivy@mcdhousing.com>; Steve Hyatt <shyatt@scgov.net>; Bernard, Nathan <nbernard@nixonpeabody.com>; Kinsey Patel <kpatel@scgov.net>; Eduardo Teran <eteran@mcdhousing.com>; Chris Shear <cshear@mcdhousing.com>
Cc: Lloyd Burman <lburman@mcdhousing.com>; Andrew Baker <abaker@mcdhousing.com>; Henry Phillips <HPhillips@mcdhousing.com>; Nancy DeLoach <ndeloach@scgov.net>; Andrea Frate <afrate@scgov.net>; McKinney, Emily <emily.mckinney@dinsmore.com>; Kump, Analise <akump@nixonpeabody.com>; 'Drew.Gandy@hklaw.com' <drew.gandy@hklaw.com>; Kew, Lauren <Lauren.Kew@truist.com>; Christa Queen-Sutherland <csutherland@scgov.net>
Subject: RE: Ekos at Arbor Park II - Developer Agreement

Good afternoon,

Kinsey had respectfully requested on 9/29 that we receive your decision regarding whether you are signing the agreement as it stands by the end of last week. We have not yet heard back from your team. Please let us know what you have decided.

Thank you,



Wendi Bellows
Resilient SRQ / Multifamily Affordable Housing Coordinator
Financial Management
o. 941-861-5533
301 N Cattlemen Road., Sarasota, Florida 34232
www.scgov.net

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From: Brian Ivy <bivy@mcdhousing.com>
Sent: Wednesday, October 1, 2025 9:54 AM
To: Steve Hyatt <shyatt@scgov.net>; Bernard, Nathan <nbernard@nixonpeabody.com>; Kinsey Patel <kpatel@scgov.net>; Eduardo Teran <eteran@mcdhousing.com>; Wendi Bellows <wbellows@scgov.net>; Chris Shear <cshear@mcdhousing.com>
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Hi Steve,

Thank you for your feedback. We'll circle up with the Truist team and see if we can find an alternative solution. We'll be on the lookout for the comments to the subordination agreement.

Hi Nate,

Thanks for your continued work on this issue. We'll give you and Lauren a call to discuss.

All, we'll try and get this wrapped up as quickly as possible.

From: Steve Hyatt <shyatt@scgov.net>

Sent: Wednesday, October 1, 2025 9:12 AM

To: Bernard, Nathan <nbernard@nixonpeabody.com>; Brian Ivy <bivy@mcdhousing.com>; Kinsey Patel <kpatel@scgov.net>; Eduardo Teran <eteran@mcdhousing.com>; Wendi Bellows <wbellows@scgov.net>; Chris Shear <cshear@mcdhousing.com>

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Subject: RE: Ekos at Arbor Park II - Developer Agreement

Hi Nathan,

We understand your position in the project; however, we will not be altering this language. Many of these points we've addressed at least once or more before – some are a wholesale change to county standard contract language which is at its core, is not going to be accepted by staff nor our Office of the County Attorney. Besides being months into this process with this language and it was my understanding from Chris that we navigated the major obstacles, I think we need to acknowledge the limited exposure on all parties with a \$1M grant for strictly property acquisition.

Brian / Chris,

You need to work these matters out with your partners. We have many other developers and their investors having already agreed to this language and signed our agreements for a much larger sum and exposure than this. They and McDowell itself are already on record of accepting this language in other deals and projects so I am hard pressed to understand the continued concerns here, particularly when we will not alter this language. Staff will send back the subordination agreement for your all's review.

Thank you.

Steve Hyatt, MBA, CPM

Division Manager, Program Management Division

Office of Financial Management (OFM)

301 N. Cattlemen Road, Suite 200, Sarasota, FL 34232

Cell: 941-315-5187

Email: shyatt@scgov.net

Web: www.scgov.net/ResilientSRQ

Web: www.scgov.net/ARPA



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From: Bernard, Nathan <nbernard@nixonpeabody.com>

Sent: Tuesday, September 30, 2025 5:41 PM

To: Brian Ivy <bivy@mcdhousing.com>; Kinsey Patel <kpatel@scgov.net>; Eduardo Teran <eteran@mcdhousing.com>; Wendi Bellows <wbellows@scgov.net>; Chris Shear <cshear@mcdhousing.com>

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Thanks Brian. Kinsey – to give some context for our comments – we represent Truist Community Capital as the equity investor in Arbor. As an equity investor, we are contributing significant capital to the transaction on an unsecured basis so we need to negotiate certain provisions into the financing documents to make sure we are protected since the greatest risk to our tax benefits would be a foreclosure/acceleration of debt. As of now, Truist has contributed \$4.2 million and will have a total equity investment of over \$17 million, all put in to the transaction in advance of receiving its expected tax benefits.

I've provided context for each of our comments below in bold. Additionally, these are all provisions that we request and routinely receive from conventional lenders and other municipalities utilizing federal funding. Happy to discuss in more detail.

Thanks,

Nate

Nathan A. Bernard

Partner

nbernard@nixonpeabody.com

T 617-345-1236 | F 866-908-2713

Nixon Peabody LLP | Exchange Place | 53 State Street | Boston, MA 02109-2835

nixonpeabody.com | [@NixonPeabodyLLP](https://twitter.com/NixonPeabodyLLP)

From: Brian Ivy <bivy@mcdhousing.com>

Sent: Monday, September 29, 2025 4:21 PM

To: Kinsey Patel <kpatel@scgov.net>; Eduardo Teran <eteran@mcdhousing.com>; Wendi Bellows <wbellows@scgov.net>; Chris Shear <cshear@mcdhousing.com>

Cc: Lloyd Burman <lburman@mcdhousing.com>; Andrew Baker <abaker@mcdhousing.com>; Henry Phillips <HPhillips@mcdhousing.com>; Nancy DeLoach <ndeloach@scgov.net>; Andrea Frate <afrate@scgov.net>; Steve Hyatt <shyatt@scgov.net>; McKinney, Emily <emily.mckinney@dinsmore.com>; Bernard, Nathan <nbernard@nixonpeabody.com>; Kump, Analise <akump@nixonpeabody.com>; 'Drew.Gandy@hklaw.com' <drew.gandy@hklaw.com>

Subject: RE: Ekos at Arbor Park II - Developer Agreement

[EXTERNAL E-MAIL]

Be Aware of Links and Attachments

Hi Kinsey,

Thank you for the quick review. Were you also able to look at the Subordination and Standstill Agreement requested by the construction lender? I've reattached it for convenience.

I'm looping in Nate Bernard and Analise Kump from Nixon Peabody who are the investor's counsel to review the responses below in **RED**. Nate and Analise, can you kindly provide your feedback on the County's concerns? Please feel free to reach to Kinsey directly if you need to discuss. I'm also happy to arrange a call if the parties feel that would be beneficial.

Looping in Drew Gandy at Holland & Knight who is construction lender counsel into the conversation as well.

Thanks,

Brian Ivy

Executive Vice President of Development

McDowell Housing Partners

777 Brickell Avenue, Suite 1300 | Miami, FL 33131

Office: (786) 600-3690 | Email: bivy@mcdhousing.com

www.mcdhousing.com



From: Kinsey Patel <kpatel@scgov.net>

Sent: Monday, September 29, 2025 2:42 PM

To: Brian Ivy <bivy@mcdhousing.com>; Eduardo Teran <eteran@mcdhousing.com>; Wendi Bellows <wbellows@scgov.net>; Chris Shear <cshear@mcdhousing.com>

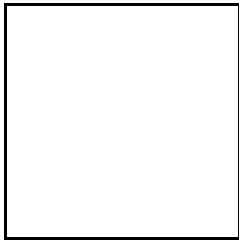
Cc: Lloyd Burman <lburman@mcdhousing.com>; Andrew Baker <abaker@mcdhousing.com>; Henry Phillips <HPhillips@mcdhousing.com>; Nancy DeLoach <ndeloach@scgov.net>; Andrea Frate <afrate@scgov.net>; Steve Hyatt <shyatt@scgov.net>; McKinney, Emily <emily.mckinney@dinsmore.com>

Subject: RE: Ekos at Arbor Park II - Developer Agreement

Good afternoon Brian,

Thank you for sharing your feedback. Many of the comments provided are ones we have previously reviewed, and as stated, we are not able to modify the agreement language in those areas. I have included responses to your specific comments below in red for your reference. Please note that the agreement sent on 9/5 reflects the County's extensive efforts to accommodate modifications where feasible. However, we are unable to accept the requested changes. The agreement language has been reviewed by the Office of the County Attorney, is consistent with terms used in other grant agreements with Developers, and aligns with HUD requirements. Accepting the requested revisions would place the

County at risk and jeopardize federal funding. We respectfully request your decision on execution of this agreement within this week.



Kinsey Patel

Resilient SRQ Policy and Compliance Program Manager

Financial Management

941-315-

8253

301 N. Cattlemen Rd. Suite 200 Sarasota, FL 34232

www.resilientsrq.net

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From: Brian Ivy <bivy@mcdhousing.com>
Sent: Thursday, September 25, 2025 2:42 PM
To: Kinsey Patel <kpatel@scgov.net>; Eduardo Teran <eteran@mcdhousing.com>; Wendi Bellows <wbellows@scgov.net>; Chris Shear <cshear@mcdhousing.com>
Cc: Lloyd Burman <lburman@mcdhousing.com>; Andrew Baker <abaker@mcdhousing.com>; Henry Phillips <HPhillips@mcdhousing.com>; Nancy DeLoach <ndeloach@scgov.net>; Andrea Frate <afrate@scgov.net>; Steve Hyatt <shyatt@scgov.net>; McKinney, Emily <emily.mckinney@dinsmore.com>
Subject: RE: Ekos at Arbor Park II - Developer Agreement

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Hi Kinsey and Wendi,

We were able to track down responses from investor and construction lender counsel. Below are the investor's comments. I went ahead and dropped them into the attached agreements as tracked changes so you can see them incorporated into the drafts. Please note that the comments are basically the same as previously provided. The investor is generally concerned with cure rights and notice as you can see:

Development Agreement:

- MHP Arbor Park II is not wholly owned by McDowell. This needs to be updated globally. **Acknowledged.**
- Article VI, A: The language currently reads that the County can require repayment for "events that may include, but not be limited to the following:" This essentially reads that the County could require repayment of the Grant for any reason. We need this narrowed down to a specified list of default events. **Not able to modify. The Investor needs to know what potential defaults are for a funding source, otherwise, the County could choose to recapture these funds for any reason. If the concern is HUD requirements we would be fine with a default provision for any failure of the Project to comply with HUD requirements, but if we do not know what the potential defaults are we can not assess the risk of the financing and have comfort that the funds will be in place through the tax credit compliance period.**

- Article VII: Please delete “(but are not limited to)” . As noted above, we need to know what the possible default scenarios are. **Not able to modify. Note: The agreement with Lee County for \$17M has similar language and includes “(but are not limited to)” . Same as above.**
- Article VII.C, viii: Please delete or limit to the general partner entity. The Investor cannot agree to be jointly and severally liable with the General Partner. **Not able to modify. The Investor is a limited partner in this transaction and as such is expected to have limited liability. We cannot enter into any funding documents which require us to be jointly and severally liable with the General Partner. Your recourse in the event of a default is through the Partnership and the General Partner.**
- Article XI: Please provide notices to the Investor. The Investor has significantly capital in the transaction and needs to be made aware of potential defaults that could jeopardize its investment. **Not able to modify. Should any notices be sent, the Developer should inform their lenders of such notices. We are not lender. We do not have the benefit of a subordination agreement and need some assurance that the lender will provide notices and permit the Investor to cure defaults. I am fine if notices are done on a best efforts basis, but we would request our address be listed and their be some endeavor to provide copies to the Investor. This is standard in tax credit transactions.**

CDBG LURC:

- MHP Arbor II is not wholly owned by McDowell. Please update. **Acknowledged.**
- Section 14: The Investor needs to have notice and cure rights to protect its Investment in the Project. As a reminder the Investor is contributing significantly more capital then the County and is not benefiting from the subordination agreement that the lenders receive. **The Investor is not a party to this agreement The investor is a partner in the party that owns the transaction and needs the ability to step in and cure a default to protect its investment. Since we are not a secured lender this is critically important for the equity investor.**
- Section 15: This section reads that if any unit has a tenant which over income the full amount of the CDBG funds can be recaptured. There needs to be some mechanism to cure this via the next available unit rule or a minimum unit percentage below 100%. **In the event this were to occur, the county would work with the developer but we are not open to modifying this language.** As noted above, we need to understand what the risk of default would be. We would ask that this track LIHTC requirements.

The construction lender requested that the County enter into the attached Subordination and Standstill Agreement. It is based on the standard Freddie Mac form used for governmental lenders.

If there’s any comments or documents that you cannot accept, please provide your availability for a call. It would be best to hash out these remaining items with a discussion.

Thanks!

Brian Ivy

Executive Vice President of Development

McDowell Housing Partners

777 Brickell Avenue, Suite 1300 | Miami, FL 33131

Office: (786) 600-3690 | Email: bivy@mcdhousing.com

www.mcdhousing.com



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