

**TERM SHEET FOR THE DEVELOPMENT OF**

**KILLEEN APARTMENTS**

**IN THE CITY OF KILLEEN, TEXAS**

**January \_\_\_\_\_, 2021**

This Term Sheet addresses the terms for the development and financing of the Property (hereafter defined). This Term Sheet is not meant to be an exhaustive document and will be replaced and superseded by definitive documentation. No legally binding obligations on either party will be created, implied or inferred until documents in final form are executed and delivered by all parties in a form acceptable to each party, in each party's sole and absolute discretion. This Term Sheet replaces all previous understandings and agreements, written or oral, with respect to the Property.

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The Project will be owned by a public facility corporation formed by The City of Killeen specifically for this Project, the "PFC". Approximately 25.7 acres of land will be owned by an affiliate of NRP and will be conveyed to the PFC. The PFC will at Closing pay that NRP affiliate for approximately 25.7 acres of land and simultaneously enter into a lease with the Tenant for 22.2 acres of land (the "Land"), who will make a Prepaid Rent Prepayment to the PFC of an equal amount. PFC will retain 3.5 acres of land free and clear. Tenant will be responsible for the costs of the Improvements. The Land and Improvements will be leased to Tenant on a long term lease. The PFC and a NRP affiliate will be limited partners of Tenant.

**Adaptable Units:**

The Tenant shall construct the project such that all ground floor units (other than units that are allocated as Accessible Units as defined by the 2018 International Building Code, January 2020, Fourth Edition) as Adaptable Dwelling Units. "Adaptable Dwelling Units" means a ground floor dwelling unit constructed and equipped so grab bars may be added to the walls of one of the showers or bathtubs to accommodate the needs of any future residents or occupants with different types or degrees of disabilities. Residents or occupants with a disability, as defined by the Fair Housing Act, of an Adaptable Dwelling Unit may request a reasonable modification for the installation of grab bars in their respective Adaptable Dwelling Unit. The costs of the reasonable modification of adding grab bars to the walls of one of the showers or bathtubs in an Adaptable Dwelling Unit for residents or occupants with a disability shall be borne by the Tenant.

**Assumed Debt Service:**

At the initial Capital Event, the hypothetical equal monthly payments of principal and interest that would be owed by the Tenant to a lender, assuming (irrespective of whether the Tenant has actually incurred any indebtedness and the actual terms of any such indebtedness) that Tenant borrowed seventy percent (70%) of the most recent purchase price for the direct or indirect transfer of the entire Lease to a party that

is not an Affiliate of the Tenant (including any indirect transfer of the Lease effected by means of the direct or indirect sale of all of the equity interest in the Tenant), at a rate of interest equal to the Ten Year Treasury Rate plus three hundred (300) basis points, determined on the date of transfer and with a thirty (30) year level debt service amortization. All calculations of the Assumed Debt Service shall be made by Tenant, shall be reasonable and shall be on the same basis as all reporting provided to Tenant's owners except as provided in this Lease.

**Available Cash:**

For the applicable period, all cash proceeds realized and received by Tenant from operations (other than (i) receipts of capital contributions to Tenant, (ii) proceeds from loans to or refinancing by Tenant, (iii) proceeds from any direct or indirect sale or assignment of the Lease occurring after an election to effect a PFC Withdrawal, as hereafter defined, or (iv) proceeds from any insurance or from any condemnations) less (a) all operating costs and expenses of Tenant (and its affiliates to the extent relating to the Project), other than any expense not involving a cash expenditure (such as any amount charged for amortization or depreciation) or expenses paid to a related party; (b) the Assumed Debt Service; (c) all sums expended by Tenant (and its affiliates to the extent relating to the Project) for capital expenditures for the Project; and (d) cash reserves for working capital, capital expenditures, expenses, liabilities and other purposes as determined by Tenant after consideration of Tenant's financial position. Any of the costs, expenses and reserves contemplated in the foregoing clauses (a) through (d) may at the election of Tenant (and in such manner as Tenant shall reasonably approve) be carried forward and applied against future periods to the extent in excess of the aggregate amount of Available Cash for any current period. Available Cash must be calculated and accounted for consistently with the calculations of and accounting for distributions to Tenant's partners or owners. Notwithstanding the foregoing, prior to the first sale of the Project, when using the defined term Available Cash for Partnership Distributions, actual debt service shall be deducted from cash proceeds in lieu of the Assumed Debt Service.

**Net Available Cash From Sale:** The Sale Price actually paid at a Capital Event, less the debt repaid or assumed at the Capital Event and less expenses paid in connection with the Capital Event.

**Capital Event:** A sale of the Project (including any proposed assignment of the entire Lease) to a third party for consideration or of all of the interests in the Tenant Partnership to a third party for consideration.

**City:** City of Killeen, Texas.

**Closing Date:** The date of closing for all financing for the Project.

**Construction:** Tenant will contract with the PFC, as General Contractor, to construct the Improvements; and the PFC will enter into a Master Sub-Contract with NRP Contractors II LLC, an affiliate of NRP (“**NRP Contractors**”), to construct the Improvements. NRP Contractors will receive a Contractor Fee of 5%, and any construction contract with NRP Contractors will also include a contractor’s contingency of 3% solely for the use of NRP Contractors. NRP Contractors will provide construction completion guarantees necessary to satisfy any lenders and Equity Contribution Partners for the Project on terms acceptable to NRP Contractors in its sole discretion. The PFC, as General Contractor, shall be indemnified to the fullest extent permitted by applicable law by each of the Tenant and NRP Contractors, and the indemnification shall be reflected in the construction contract documentation.

**Commercial Property:** Approximately 3.5 acres of land at the corner of Terrace Dr. and WS Young, to be platted as a separate lot that will not be subject to the Lease. Developer reserves the right to record a restrictive covenant acceptable to the PFC at Closing prohibiting noxious uses on the property to ensure compatible land uses with the Project.

**Developer:** NRP Lone Star Development, LLC, or another affiliate of NRP.

**Development Agreement:** Developer, the PFC and Tenant will enter into a development agreement (“**Development Agreement**”) in a form acceptable to the parties of the contract, in accordance with the terms set forth herein.

**Developer Fee:** Developer is to receive a Developer Fee in connection with the development of the Project in an amount equal to three and one-half percent (3.50%) of the total development costs of the Project. It is anticipated thirty percent (30%) of the Developer Fee will be earned and paid at the construction loan closing. Fifty percent (50%) of the Developer Fee will be earned and paid monthly out of the loan proceeds as part of the monthly construction loan process and the final twenty percent (20%) will be earned and paid upon issuance of the final certificate of occupancy for the Project. The timing and amount of the payment shall be subject to the lender and Equity Partner’s consent.

**Equity Contribution Partners:** The entity or entities which are selected by NRP to contribute common equity (cash or property) to the Equity Partner and to be admitted as a limited partner to the Equity Partner, one of which will be NRP Partner. Such interest may receive a hurdle return for all or a portion of its equity contribution.

**Equity Partner:** A Texas limited partnership, the sole general partner of which will be NRP Manager, and whose limited partners will be NRP Partner (which will contribute the Land Contribution and some cash in accordance with the Project Budget) and the Equity Contribution Partners (which will contribute cash in accordance with the Project Budget) and the PFC or one of its affiliates.

**Governing Law:** State of Texas.

**Guarantees:** Certain financial obligations will be guaranteed by NRP Contractors or an affiliate on terms to be negotiated by NRP and lenders and the Equity Contribution Partners. The PFC will not be required to provide any financial guarantees with respect to financing or construction of the Project.

**Housing Vouchers:** The Project will accept vouchers under the Housing Choice Voucher Program provided that the value of such voucher shall not be included in the prospective tenant's income for purposes of determining whether or not such tenant qualifies as low income. Any tenant utilizing a voucher will be charged a rent equal to a comparable unit in the project being leased to low income tenants not utilizing the voucher program.

**Sale Price:** The sales price received by the Tenant Partnership for the sale of the Leasehold Estate.

**Hypothetical Distribution:** The distribution (or proceeds) that the PFC would receive from a sale if consummated by Tenant at the Sale Price pursuant to the payment waterfall as set forth in the Tenant's partnership agreement.

**Improvements:** Approximately 368 units of multifamily residential housing in the Project, together with all onsite and offsite infrastructure improvements for the Project, pursuant to Plans and Specifications developed by Developer, and will include a pool, fitness center, clubhouse space, internet café, dog park, and other Class-A multifamily amenities appropriate for the Project as determined by Tenant Partnership. The overall quality of the development and the tenant finish out will be substantially similar to NRP's Lucent Apartments in Austin, Texas, except the Project shall use stone or brick for a minimum of 10% of the total exterior façade of all buildings combined and stucco for a minimum of 20% of the total exterior façade of all buildings combined. No building shall have less than 20% of its exterior façade as masonry (combination of brick, stone, and stucco).

**Lease:** Lease between the PFC, as landlord, and Tenant, pursuant to which the PFC leases each phase of the Property to the Tenant for a term of 75 years (the "Lease"). So long as Tenant is not in default under the Lease, Tenant will be permitted under the Lease to assign its interest in the Lease without the requirement of any consent from Landlord. Landlord will not be permitted to assign its interests under the Lease in

any manner which jeopardizes the availability of exemption of the Project from ad valorem taxation or to the extent as may be prohibited in any loan documents with the lenders or any agreement between the Tenant and the Equity Contribution Partner. The rent will be (1) prepaid rent at closing equivalent to the amount paid by the PFC for the Land and (2) \$1 per year (in the absence of a foreclosure or PFC Withdrawal).

The Lease will provide that for any year the Tenant wishes to obtain a property tax exemption, it will set aside or rent 50% of the units to tenants whose income is 80% of the AMI (the "Affordable Units"), which will not be adjusted for household size, such AMI shall have a floor no lower than the AMI at Closing. NRP will lease such Affordable Units at a rate of 30% rent to income, with no adjustment for utility allowance.

**Ad Valorem  
Tax Exception:**

The PFC shall be responsible for obtaining a 100% property tax exemption for the Project and Lease. The PFC shall apply for, and use good faith efforts to obtain prior to closing, a predetermination letter from the appraisal district indicating that the Project will be exempt. Upon Closing, the PFC will apply for the formal tax exemption. Pursuant to the Lease, if the ad valorem tax exemption with respect to the Project is lost ("Loss of Tax Status Event") for any reason at any time during the Term of the Lease, then the PFC, as Landlord, will convey the Project to Tenant (fee ownership of the Project, free and clear) and the Lease will terminate and the PFC will assign the Tenant its interest in the Tenant and no further distributions shall be made to the PFC in accordance with the "Distribution" section below. In the event of a Loss of Tax Status Event, prior to the transfers discussed in the prior sentence, the PFC and the Tenant shall use reasonable efforts to modify the structure to allow the ad valorem tax exemption to continue.

**Management:**

NRP Management LLC, an affiliate of NRP Group ("**NRP Manager**"), will be designated the property manager for the Project and will manage the leasing and operations of the Project. NRP Management will receive a base Management Fee as follows:

Commencing with the end of the first complete calendar month after the first employee of NRP or any affiliate commences work on site at the Project (provided such date is typical for when a management company would commence work on promotional and/or leasing activities at similar project), the greater of (i) \$35 per unit per month or (ii) \$11,000 per month; and

Commencing with substantial completion of the first residential building, the greater of (i) \$35 per unit per month or (ii) 3% multiplied

by the effective gross income of the Project as outlined in the Management Agreement; but in no event less than \$11,000 per month.

NRP Manager shall receive a set up fee, payable no later than the first (1<sup>st</sup>) annual anniversary of the Closing Date. NRP Manager shall further receive a property lease up fee, payable upon stabilization of the project. The amounts of such fees shall be determined by the Equity Partner and NRP based on market conditions.

**Marketing:** Developer agrees to include in all public marketing materials and websites for the Project a reference to the affordability provisions and voucher acceptance.

**Miscellaneous Expenses:** Tenant Partnership will be responsible for and will include in the Project Budget all legal fees of the PFC actually incurred in connection with the preparation, negotiation and execution of the Organization Documents, all reasonable out-of-pocket expenses, including, without limitation, all business, financial, collateral due diligence expenses, and, to the extent provided herein, all appraisal fees and all examination fees.

**Net Cash Flow Rent:** None, unless lender forecloses on the leasehold estate or there is a PFC Withdrawal, then such rent shall be set in an amount equal to the Post Withdrawal Percentage multiplied by the Available Cash for the one year period prior to the initial sale and shall thereafter be adjusted annually by the annual percentage adjustment to the AMI for Bell County capped at 3% per year. For example, if AMI for Bell County increases in Year 2 of the payment of Net Cash Flow Rent by 2%, then Net Cash Flow Rent shall increase by 2% in that year.

**NRP:** NRP Properties LLC, an Ohio limited liability company, or its affiliates.

**NRP Partner:** An affiliate of NRP, which will be a limited partner of the Equity Partner, which in turn will be a limited partner of the Tenant Partnership.

**Other Terms:** Tenant Partnership's organization documents will contain such usual and customary terms for limited partnership formed for the acquisition, financing, ownership, development, management, leasing and sale of the Project, including, without limitation, provisions for limitation on transfer of partnership interests, delivery of periodic financial and other reports necessary for securities laws disclaimers, accredited investor representations and compliance under the Development Agreement.

**Parkland Fee:** At Closing, the Project will pay a one time fee of \$82,000 to the City of Killeen Recreation Services Department to be used for improvements in Conder Park.

**Partnership Distributions:** Available Cash from a sale or refinancing will be distributed by the Tenant Partnership to the Partners in the following order and priority:

*First* to any Equity Contribution Partner until it has received at least the hurdle rate (negotiated with the third party providing equity) described below on its invested capital;

*Second* to the payment of then any priority capital advance(s) (to fund required cash not otherwise available), pro rata in accordance with the then outstanding principal balance of such priority capital advances, if more than one, in each case, first to the payment of then current interest which is expected to be approximately 10%, then to the payment of accrued and unpaid interest, and then to the return of then outstanding principal balance;

*Third*, to the Equity Contribution Partners until such time as such Partner's unreturned common contribution (that is a return of capital, as defined in the Tenant Partnership agreement) is reduced to zero;

*Thereafter*, the PFC will receive 15%, and NRP and the Equity Contribution Partners will receive the balance.

Available Cash from operating cash flow will be distributed by the Tenant Partnership to the Partners in the following order and priority:

*First* to any Equity Contribution Partner until it has received at least the hurdle rate (negotiated with the third party providing equity) described below on its invested capital;

*Second* to the payment of then any priority capital advance(s) (to fund required cash not otherwise available), pro rata in accordance with the then outstanding principal balance of such priority capital advances, if more than one, in each case, first to the payment of then current interest which is expected to be approximately 10%, then to the payment of accrued and unpaid interest, and then to the return of then outstanding principal balance;

*Thereafter* The PFC will receive 15%, and NRP and the Equity Contribution Partners will receive the balance.

NRP anticipates that the "hurdle rate" will be approximately 10% internal rate of return (per annum compounded monthly based on actual days elapsed and a 360-day year) on initial capital, however, this shall be subject to final negotiations with the Equity Partner.

**PFC Structuring Fee:** The PFC, or one of its affiliates, will receive a structuring fee equal to \$350,000 at the Closing of the Project in return for providing the organizational structure described in this Term Sheet, which allows the Project to be sales tax exempt during the construction of the Project, and to be and remain 100% property tax exempt (including the Property and the Project Improvements) throughout the duration of the Lease. In addition to the Structuring Fee, the PFC will own the Commercial Property with no lease encumbering.

**Plans and Specifications:** The PFC, Tenant Partnership, Lenders, and Equity Contribution Partner will have the right to review and approve the Plans and Specifications for Project once they are materially completed, the approval of which will not be unreasonably withheld or delayed. Once they have approved the conceptual and/or schematic design for the Project, it may not object to such design Plans and Specifications, unless the subsequent Plans and Specifications materially and adversely affects the design character or value of the Project.

**Post-Withdrawal Percentage:** A percentage calculated upon the consummation of the initial Capital Event in connection with which the PFC effected a PFC Withdrawal, or any foreclosure of the Leasehold Estate (if that occurs before the initial Capital Event), if any, which percentage shall be equal to the quotient of the Hypothetical Distribution if the PFC had not effected such PFC Withdrawal, divided by the Net Available Cash from Sale; provided, however, that (A) if, after giving effect to all distributions and other payments of proceeds in respect of such Initial Capital Event, all of the partners of the Partnership have received an ROI (as defined in the Limited Partnership Agreement) with respect to their common contributions (as defined in the Limited Partnership Agreement) of at least 1.5, then the Post-Withdrawal Percentage shall not be less than ten percent (10%), and (B) if, after giving effect to all distributions and other payments of proceeds in respect of such Initial Capital Event, any of the partners of the Partnership have received an ROI with respect to their common contributions of less than 1.5, then the Cash Flow Rent shall be zero (0) until the five (5) year anniversary of the consummation of such Initial Capital Event and ten percent (10%) of the Available Cash in such 5<sup>th</sup> year and thereafter adjusted by the agreed CPI for all periods thereafter.

**Equity Contribution Partner:** The entity selected by NRP to provide the limited partner capital for the Project in the form of common equity and to be admitted as a limited partner to the Equity Partner or another entity in the chain of ownership.

**Project:** The Project will be the Land and Improvements, to be developed by Developer.

**Project Budget:** The Project Budget will be finalized and approved by all parties to the transaction prior to Closing, and will include the proposed sources of funds that will be needed to develop, construct and operate the Project, and the uses on which the funds will be spent. Sources of revenue include, without limitation, rental income, capital contributions and other revenues. Project uses include all reasonable and necessary direct and hard costs incurred in connection with the Project.

**Project Financing:** The PFC will provide the leasehold estate for the Project to the Tenant Partnership pursuant to a Lease Agreement. The Lease Agreement will be prepared once the Lenders are identified and will include commercially reasonable provisions required by the Lenders, which may include a requirement the PFC subordinate its interests in the Project, including the leasehold and fee interests in the Project.

#### Loans

For the Project, Developer will obtain a senior loan from a senior lender to the Tenant for approximately the amount shown in the Project Budget for development of the Project to be secured by a first-lien deed of trust on the Tenant's leasehold interest in the Project, and if required, a lien on the PFC's fee interest in the Project. Developer may also obtain subordinated loans (which may be structured as mezzanine financing) from a subordinate lender for approximately the amount shown in the Project Budget which may be secured by a second-lien deed of trust on the Tenant Leasehold interest, a lien on the PFC's fee interest in the Project or partnership interest in the Tenant or Equity Contribution Partner.

All financings and guarantees must be acceptable to Developer and the Tenant Partnership in their sole and absolute discretion.

#### Equity

Developer will obtain one or more Equity Contribution Partners who will invest approximately the amount shown in the Project Budget. One of the Equity Contribution Partners will be NRP Partner (which will make a contribution of the Land at the Agreed Value and a contribution of cash as provided for in the Project Budget). Contributions from the Equity Contribution Partners will be contributed to the Equity Partnership, (which will be contributed by the Equity Partnership to the Tenant for approximately the amounts shown in the Project Budget). The Equity Partner will be paid from Cash Flow and will at all times be subordinate to the Loans. The Equity Contribution Partners and NRP will receive a return hurdle which is expected to be approximately 10% on their initial contributions and

will be repaid their investment from a Capital Event before any “Promote”. Accordingly, Cash Flow splits will adjust after the payment of the hurdle returns.

**Project Term:** The “**Project Term**” is from commencement of Project for a period of 75 years after closing.

**Property:** Approximately 25.77+/- (less the Commercial Property) acres for the Project to be built and operated as proposed by this Term Sheet, located in Killeen, Bell County, Texas, and shown on the parcel map attached as Exhibit A hereto.

**PFC:** The Public Facility Corporation created by the City of Killeen.

**Sale:** Upon the first Capital Event, the PFC shall begin receiving Net Cash Flow Rent.

**Sales Commission:** The PFC shall receive \$250,000 at the closing of the initial sale of the leasehold interest.

**Sales Tax:** The PFC will as General Contractor (which it will subcontract to NRP Contractors) be responsible to for the purchase of materials for the construction of the Project so that the purchases will be exempt from all sales and use taxes pursuant to Applicable Law.

**Tenant:** [Name to be determined], will be a single purpose Texas or Delaware limited partnership, the sole General Partner of which will be NRP Manager, LLC, a Florida limited liability company (or an affiliate), and the Limited Partners of which will be the Equity Partner and the PFC.

This instrument may be executed in several counterparts, each of which will be deemed an original and all of which will constitute one and the same instrument, and will become effective when counterparts have been signed by each of the parties and delivered to the other party; it being understood that all parties need not sign the same counterpart. The exchange of copies hereof and of signature pages by facsimile transmission (whether directly from one facsimile device to another by means of a dial-up connection or whether mediated by the worldwide web), by electronic mail in "portable document format" (".pdf") form, or by any other electronic means intended to preserve the original graphic and pictorial appearance of a document, or by combination of such means, will constitute effective execution and delivery hereof as to the parties and may be used in lieu of the original document for all purposes. Signatures of the parties transmitted by any of the foregoing methods will be deemed to be their original signatures for all purposes.

*Signature Pages Follow*

NRP:

NRP Properties LLC, an Ohio limited liability company

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

PFC:

Killeen PFC

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**EXHIBIT A**  
Property