



ADDENDUM #1

ISSUE DATE: Wednesday, December 29, 2021

This Addendum shall become and form a part of:

Request for Proposals #2022-0062

Redevelopment of Bowen Homes, a *Choice Neighborhoods Initiative*

TO ALL VENDORS

This Addendum, including all articles and corrections listed below, shall become a part of the original Request for Proposals ("RFP") package and shall be taken into account in preparing your proposal response.

The above-numbered solicitation is amended as set forth below. Vendors must acknowledge receipt of this addendum by signing and completing the attached **Addenda Acknowledgement Form**. The Addenda Acknowledgement Form must be submitted with the Firm's response to this RFP. *Failure to include the Form in the proposal response may subject your firm to disqualification.*

In order to ensure that all firms are given an equal opportunity to submit a competitive response, the following are responses to questions and/or requests for clarification concerning **RFP #2022-0062**.

ADDITIONAL INFORMATION PROVIDED BY ATLANTA HOUSING

***Please find Appendix M attached: Form of Master Development Agreement for Bowen Homes Site**

Addenda to this RFP will only be issued and posted on AH's website. Addenda **will not** be mailed to potential Respondents. It is the responsibility of the Respondent to monitor AH's website and Business Management Portal for any addenda issued.

DocuSigned by:

Albert Murillo

49165751AA141037
Albert Murillo

Senior Vice President, Contracts & Procurement

MASTER DEVELOPMENT AGREEMENT

BY AND BETWEEN

THE HOUSING AUTHORITY OF THE CITY OF ATLANTA GEORGIA

AND

[DEVELOPER NAME]

FOR

FORMER BOWEN HOMES SITE

**MASTER DEVELOPER AGREEMENT
[Former Bowen Homes Site]**

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MASTER DEVELOPER AGREEMENT
[Former Bowen Homes Site]

THIS MASTER DEVELOPER AGREEMENT (this "**Agreement**") is made this ____ day of January, 2022 (the "**Effective Date**") by and between [____], a _____ limited liability company (the "**Developer**"), and **THE HOUSING AUTHORITY OF THE CITY OF ATLANTA, GEORGIA**, a body corporate and politic organized under the Housing Authorities Law of the State of Georgia ("**Atlanta Housing**" or "**AH**") (AH and Developer are the "**parties**").

RECITALS

WHEREAS, AH is the fee owner of approximately 73.96 acres of real property located at [STREET ADDRESS] in the [NEIGHBORHOOD NAME] in the City of Atlanta, Fulton County, Georgia, owned in fee simple by AH and on which was formerly located a public housing development consisting of XX apartment buildings and [if applicable: XX non-residential buildings] known as the former Bowen Homes Site, which site is more particularly described in SCHEDULE 1, attached hereto and incorporated by reference herein ("**Site**").

WHEREAS, AH desires to develop a [multi-phased mixed use, mixed-income development comprised of one or more phases of xxx multifamily rental units of which xxx will be affordable, one or more phases of xxx For Sale Units of which xxx will be affordable – with XXX total units and one or more phases of xxx sf of commercial development on the Site known as [Development name] and comprised of approximately xxx acres of the 74-acre property (each separately owned and/or financed development of a phase shall be known as a "Project") on the Site;

WHEREAS, in accordance with its policies and procedures, and the applicable rules and regulations of the United States Department of Housing and Urban Development ("**HUD**"), AH conducted an open and competitive process to select its development partner for the Project. Upon the recommendation of AH's [procurement selection committee and senior management], AH's Board of Commissioners approved the selection of the Developer to join with AH for co-development of the Site;

WHEREAS, Developer desires to perform the Services (hereinafter defined) for AH; and

WHEREAS, the parties desire to set forth their mutual understanding and obligations with respect to the objectives to be accomplished pursuant to this Agreement.

NOW, THEREFORE, for and in consideration of the foregoing Recitals, and other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. ARTICLE I. DEFINITIONS

1.1. **Bankruptcy** means any of the following: (i) the filing of a voluntary petition under any federal or state law for the relief of debtors; (ii) the filing of an involuntary proceeding

under any such law; (iii) the making of a general assignment for the benefit of the assignor's creditors; (iv) the appointment of a receiver or trustee for a substantial portion of a Person's assets; or (v) the seizure by a sheriff, receiver, or trustee of a substantial portion of a Person's assets; provided, however, that no bankruptcy shall be deemed to have occurred in the case of an event described in clause (ii), (iv), or (v) above, until the proceeding, appointment, or seizure has been pending for sixty (60) days;

- 1.2. **Change in Control** means [either: (i) the Developer is no longer controlled by [any one of/both of] [NAMES OF KEY PRINCIPALS OR ENTITIES]; (ii) a merger, consolidation, or conversion of the Developer with or into another business entity that is the surviving entity in such merger, consolidation, or conversion other than a merger, consolidation, or conversion with an Affiliate of the Developer; or (iii) a change in control of the Developer, including, without limitation, by the transfer of fifty percent (50%) or more of the stock in the Developer to any one person or entity in one or a series of transactions. A Change in Control shall also be deemed to have occurred if in a single transaction or a series of transactions (including without limitation, increased capitalization, merger with another entity, combination with another entity, or other amendments, issuance of additional or new stock, partnership interests or membership interests, reclassification thereof or otherwise), whether related or unrelated, there is any decrease in the percentage of ownership interests in Developer held by any Controlling Interest, from that existing as of the Effective Date.
- 1.3. **Developer** means _____, which shall have the legal and lead responsibility for co-development interest set forth in **Exhibit A** for the period set forth herein.
- 1.4. **Developer Fee** means the gross maximum developer fee for all Projects that are part of a phase on the site, charged in line this Agreement.
- 1.5. **Environmental Laws** means any federal, state, or local law, rule, or regulation pertaining to environmental regulation, contamination, remediation, or clean-up, including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. § 9601 et seq. and 40 CFR § 302.1 et seq.), the Resource Conservation and Recovery Act of 1976 (42 U.S.C. § 6901 et seq.), the Federal Water Pollution Control Act (33 U.S.C. § 1251 et seq. and 40 CFR § 116.1 et seq.), the National Environmental Policy Act (NEPA) (42 U.S.C. 4321 et seq.), those relating to lead based paint, and the Hazardous Materials Transportation Act (49 U.S.C. § 1801 et seq.), O.C.G.A. § 12-8-90, O.C.G.A. § 12-8-60, O.C.G.A. § 31-41-1, O.C.G.A. § 31-41-1, O.C.G.A. § 12-12-1, O.C.G.A. § 12-8-20, and the implementing Executive Orders and regulations promulgated pursuant to said laws, all as amended.
- 1.6. **Force Majeure**. Shall be defined as acts of God, war, terrorism, strike or severe and continuing shortage of labor, equipment, materials or supplies, affecting work at a development project, or any other cause beyond the reasonable control of Developer or its affected affiliate (it being understood and agreed, however, that any such Force Majeure delay cannot have resulted as a result of Developer's or its affiliate's fault, negligence or

failure to plan for foreseeable or avoidable events). For the purposes of this Agreement, "force majeure" shall not include the shortage or unavailability of funds or equity unless due to an extraordinary national financial crisis which severely restricts the availability of funds to Developer from institutional lenders for a period of at least one year or more.

- 1.7. **Governmental Authorities** means any and all federal, state, county, city, town, other municipal corporation, governmental or quasi-governmental board, agency, authority, department, or body having jurisdiction over the Project.
- 1.8. **Governmental Authorizations** means the permits, licenses, variances, entitlements, approvals, and other actions that, under Governmental Requirements applicable to the Project, have been or must be issued, granted, or taken by Governmental Authorities in connection with the Project.
- 1.9. **Governmental Requirements** means building, zoning, subdivision, traffic, parking, land use, environmental, occupancy, health, accessibility for disabled, and other applicable laws, statutes, codes, ordinances, rules, regulations, requirements, and decrees of any Governmental Authority pertaining to the Project. This term shall include the conditions or requirements of Governmental Authorizations.
- 1.10. **Hazardous Materials** means any hazardous, toxic, or harmful substances, wastes, materials, pollutants, or contaminants (including, without limitation, asbestos, lead based paint, polychlorinated biphenyls, petroleum products, flammable explosives, radioactive materials, infectious substances, or raw materials which include hazardous constituents) or any other substances or materials which are included under or regulated by Environmental Laws, or any molds, spores, fungus, or other harmful microbial matter.
- 1.11. **Law or law** means any statute, law, ordinance, regulation, rule, code, order, constitution, treaty, common law, judgment, decree, other requirement or rule of law of any Governmental Authority.
- 1.12. **Material Adverse Effect** means any event, occurrence, fact, condition or change that is materially adverse to (a) the Developer, results of operations, financial condition or assets of the Developer, taken as a whole, or (b) the ability of Developer to consummate the transactions contemplated hereby; provided, however, that "Material Adverse Effect" shall not include any event, occurrence, fact, condition or change, directly or indirectly, arising out of or attributable to: (i) general economic or political conditions; (ii) conditions generally affecting the industries in which the Developer operates; (iii) any changes in financial, banking or securities markets in general, including any disruption thereof and any decline in the price of any security or any market index or any change in prevailing interest rates; (iv) acts of war (whether or not declared), armed hostilities or terrorism, or the escalation or worsening thereof; (v) any changes in applicable Laws or accounting rules (including GAAP) or the enforcement, implementation or interpretation thereof.
- 1.13. **Net Cash Flow** is defined as all cash flow, minus loan debt service not payable from net cash flow, ground rent, property management fees, asset management fees, deferred

development fee payments, reasonable General Partner asset management fees and preferred distribution return to private equity investor.

- 1.14. **Prohibited Person** shall mean any individual or party that has been excluded by HUD or AH from further participation in HUD, AH or the Georgia Department of Community Affairs tax credit, procurement and/or non-procurement programs and other federal government programs. To the extent required under such programs, Developer shall dismiss all Prohibited Persons from engagement on the Project promptly after such time as Developer shall become aware that such party is a Prohibited Person.
- 1.15. **Total Project Cost** shall be defined as the total development costs associated with the acquisition, construction, and infrastructure and vertical development of the Project as set forth in the Project budget and sources and uses. The Total Project Costs may not include pre-construction costs incurred and borne solely by AH, including, without limitation, demolition costs, site remediation costs, relocation costs, and any program administration or other similar costs.

2. ARTICLE II. COMMUNICATION; PROPERTY ACCESS

- 2.1. Access Agreement. The Developer shall not go upon, enter or physically access the Site until the Developer has executed an access agreement or right of entry agreement with AH.
- 2.2. Communication with HUD. The Developer hereby agrees that it shall not initiate any communication with HUD regarding any Project, Development Plan or any aspect thereof, without the prior written consent of AH, which shall be within AH's sole discretion to grant. For the purposes of this Section 2.2, at AH's discretion, written consent may be provided by e-mail message only from AH's President and Chief Executive Officer.
- 2.3. Media Contact. The President and Chief Executive Officer or his or her designee shall act as a spokesperson for AH. If Developer or any employee, officer, contractor, agent or Developer ("**Developer Representatives**") are approached by a representative of the media regarding any program, incident, or occurrence, directly or indirectly related to the operations of AH, or events and occurrences involving Site, or any activities or matters related to this Agreement, the Developer or Developer Representatives shall refrain from making or providing any statements or comments. Rather, the Developer must immediately refer the media representative to AH's President and Chief Executive Officer, and state to the media representative that AH's President and Chief Executive Officer is the official channel for information regarding AH. If an Executive Office representative is not available, all media calls must be referred to the AH Office of General Counsel.

3. ARTICLE III. DEVELOPER STRUCTURE; DEVELOPER RIGHTS

- 3.1. Developer Rights. The parties acknowledge that the parties shall co-develop the Property consistent with the terms of this Agreement. [IDENTIFY TERMS DESCRIBING MULTIPHASE NATURE OF DEVELOPMENT WITH RENTAL, FOR-SALE AND COMMERCIAL COMPONENTS, IF APPLICABLE]. AH or its affiliate shall have at

least a twenty-five percent (25%) interest in each Project of the development. Following AH's approval, in writing of the Development Plan (defined below herein), the Developer is hereby granted the right to partner with AH for the percentage of development interest set forth in **Exhibit A** [for the phases of the Development Plan], which designation encompasses the right to develop the following types of uses: mixed-income and affordable rental housing, mixed-use, mixed-income and affordable for-sale housing, leasing office, retail, and community space (subject to such HUD and Governmental restrictions, if any, as may govern a particular parcel) on the Site (the "**Developer Rights**"). AH or its affiliate shall have at least a _____ percent (___ %) interest in the owner entity or general partner or managing member of the owner entity for each Project that is part of a phase of the development. [IF APPLICABLE: IDENTIFY DEVELOPER RIGHTS AND STRUCTURES ASSOCIATED WITH RENTAL, FOR-SALE AND COMMERCIAL COMPONENT THE PROJECTS IN EACH PHASE].

- 3.2. Developer Lead. Consistent with the terms of the procurement of Developer by AH, the parties acknowledge and agree that the entity set forth in **Exhibit A** as the Developer Lead (the "**Developer Lead**") shall remain in control of the Developer and shall serve as the Developer Lead for the term of this Agreement. Specifically, the parties acknowledge and agree that the Developer Lead, who shall serve as the Developer Lead for each Project (unless AH authorizes any party to serve as Developer Lead), shall also be individually responsible and accountable for the successful completion of the Development Plan (defined below), and shall remain in the role of Developer Lead until (and shall in all events retain liability for) completion and stabilization of the phases of the Development Plan, including, without limitation, for the provision of any and all guarantees associated therewith. The Developer Lead is responsible for assuring AH that key management reports are shared with AH on a timely and routine basis, such reports to include but not be limited to monthly financial statements, annual audits and tax returns, development progress and schedules, and Project leasing reports and maintenance reports. The parties further acknowledge and agree that the managing member of Developer shall in no way have the authority to replace, remove, transfer or create a Change in Control of the membership interest of Developer to another party without the prior written approval of AH in accordance with the terms of Sections 1.3 and 16.11 hereof.
- 3.3. Term of Developer Rights. Notwithstanding anything to the contrary set forth herein, provided that neither the Developer nor any of its affiliates (A) has Abandoned (as defined below in this subsection) the development of the Site contemplated by this Agreement, (B) is in material default under this Agreement or any other agreement with AH or (C) has failed to achieve the financial closing for the first Project of the first phase of rental housing on the Site within 15 months of the execution of the Agreement or execution by AH and HUD of a Choice Neighborhoods Implementation Grant Agreement, whichever is earliest, and such material default has not been cured in full by the _____ anniversary of Effective Date and within any applicable cure period set forth herein; then the Developer Rights shall run for a period of Ten (10)___ years from the Effective Date after any Development Rights attach to the Site, those rights shall expire at the end of the last day of the tenth (10th) year from the Effective Date ("Expiration of Developer Rights"). As of the Expiration of Developer Rights, the Agreement shall terminate and all rights and

obligations of the parties, except those expressly set forth herein, shall terminate. In the event that either of the events set forth in clauses (A) or (B) of this subsection occurs, the Developer Rights shall terminate effective as of the date of such event, as set forth in a written notice from AH to Developer. No such termination of the Developer Rights shall be considered a "termination for convenience" under Section 15.2 of this Agreement, and accordingly, in the event of a termination under this Article 3, the Developer shall not be eligible to exercise any rights nor receive any payments contemplated by "termination for convenience" in Section 15.2 of this Agreement.

- 3.4. Abandonment of Project. For purposes hereof, the development of the Site shall be deemed to have been "Abandoned" if, (i) sufficient progress has not been made to have a financial closing of the first Project of the first phase within twenty-four (24) months of the Effective date (unless extended in writing by AH), and (ii) after the closing of any construction financing for same, work on such Project fails to commence within one hundred twenty (120) days, or, if commenced, ceases for a period in excess of thirty (30) days, excluding any delays caused by Force Majeure.
- 3.5. Project-by-Project Negotiation. Terms included herein for the phases of the Development Plan are conceptual based on projected market conditions and sources of funding. Upon successful closing, financing and commencement of vertical building construction for first Project of the first Phase of the Development Plan, Developer and AH may reassess and negotiate terms for the remaining or subsequent phase(s).
- 3.6. Developer Structure. The Developer shall have a manager(s) and be comprised of the member structure as set forth in **Exhibit A**. The Developer hereby represents that current organization structure and membership and/or ownership percentages of the Developer as outlined in **Exhibit A** and the entities that comprise the Developer and any individual person or persons that are principals of the managing member entity of the Developer, shall remain in place throughout the term of this Agreement and Developer hereby warrants that any proposed transfer or Change in Control in the foregoing shall be subject to AH advance written approval in accordance with the terms of Sections 1.3 and 16.11 hereof.
- 3.7. Co-Development Team. The Developer team and responsibilities shall be set forth in **Exhibit A**.
- a. **Change to Architect, Contractor, Engineer or Other Professional.** Any replacement by Developer of any of the selected architects, contractors, engineers or other professionals shall be subject to the prior written approval of AH, which approval, following a reasonable notice and review period not to exceed ninety (90) days, and shall not be unreasonably withheld.
 - b. **Change to Property Management Company.** In the event that Developer engages a new firm to act as property manager, financial advisor or management consultant acting on behalf of Developer for this Project or any portion thereof, such change may be made without the approval of AH, but Developer shall notify AH of such change in the Monthly Status Report

(as defined below) or other written notice promptly upon the effectiveness of such change.

- c. **No Prohibited Persons.** Notwithstanding the foregoing, no Prohibited Person (as defined below) shall be engaged by Developer to perform any service or provide any goods and materials or perform any work with respect to the Project or any portion thereof. Further, in the event that any affiliate of Developer or its constituent parties engaged to provide services in connection with any of the transactions contemplated hereunder (including as a subcontractor or lower-tier subcontractor) later becomes a Prohibited Person, said party shall no longer be considered approved to serve in such capacity, and shall be replaced as may be required under applicable programs referenced below.

4. ARTICLE IV. CONDITIONS TO DEVELOPMENT

- 4.1. HUD and AH Board of Commissioners Consent. Notwithstanding that the Development Plan is intended to be undertaken in phases and component Projects, and that Developer hereby acknowledges that AH shall not convey any legal interest in any part of the Site to an Owner Entity (as defined in Section 6.1 below) until the financial closing for the applicable Project, the parties hereto acknowledge that the closings and the consummation of certain components of the transactions contemplated herein are subject to HUD acknowledgments or approvals and the approval of AH's Board of Commissioners, and appropriate AH affiliate, if applicable. Notwithstanding any provisions herein, the Developer hereby acknowledges and agrees that any approval by the AH Board of Commissioners for AH to enter into this Agreement does not constitute approval by the AH Board of Commissioners to submit any requests for authorization to HUD, to submit any Development Plan, to convey any interest in land to Developer or its affiliates, to provide any AH funds to Developer or its affiliates or expend any AH funds on the _____ proposed Development Plan, or to consummate any financial closing for the development of a Phase nor the refinancing or restructuring of any Project that has already attained financial closing, and that Developer hereby acknowledges that the such actions or provide such approvals shall be in the sole and absolute discretion of the AH Board of Commissioners and HUD.
- 4.2. Adjustments to Project Schedule. Subject to receiving the HUD approval(s) that may be required pursuant to any Choice Neighborhoods Implementation Grant that may be awarded to the AH and the City of Atlanta for the Site, or other public entity approvals for funding, the projected completion date for first Project of the first phase of the Development Plan may be extended as may be appropriate in the event of any delay caused by: (1) the failure or inability of HUD to process any submission or review and approve any legal documentation regarding the transaction within a reasonable period of time, if applicable; (2) any environmental review requirements set forth by HUD in official publications or specifically required by HUD; (3) any environmental or historic preservation reviews required under local or state law, (4) any legal action affecting the

development of the Site, except legal action relating to Developer's default under the Agreement; or (4) Force Majeure.

- 4.3. Submission of Mixed-Finance Development Proposals to HUD (or other similar submissions requesting HUD approval federal funds and/or land transactions). The Developer will assist AH in such manner as may reasonably be requested by AH to permit the submission of such requests by AH to HUD relating to the specific details associated with each funding request and/or Project of each phase of the Development Plan.
- 4.4. HUD Acknowledgements. The parties hereby agree to cooperate and work together in good faith to obtain all necessary HUD acknowledgments or approvals, and AH hereby agrees to be responsible for requesting and obtaining all necessary HUD acknowledgments or approvals for each Rental Project of any Phase and expenditure of all federal funds as required by HUD. The construction of all phases of the Development Plan shall be completed on or before the date in accordance of the Agreement.
- 4.5. DOT/DORC. Any property conveyed or leased by AH to the joint venture with Developer, its affiliate, or any other third party for any phase of the Development Plan on the Site, shall be subject to a Declaration of Trust or Declaration of Restrictive Covenants, as applicable, for the Site in the instrument of conveyance, with the duration of such covenant being the maximum term prescribed by HUD and the AH Board of Commissioners.
- 4.6. Funding for Commercial/Retail/ [And For Sale Homes]. The Commercial/Retail Component [and for sale homes component, if any] will be accomplished with various funding sources as appropriate given the type of development and developed in response to market demand and subject to market conditions, including availability of buyers, tenants and/or financing.
- 4.7. Meeting Project Schedule Deadlines. The applicable phase of the Development Plan will be completed by Developer on-time according to the Project Schedule, otherwise, following notice of failure to complete and _____ months of time for Developer to cure, then this Agreement may be subject to termination as set forth in Article XIV hereof..

5. ARTICLE V. DEVELOPMENT PLAN

- 5.1. Prior Due Diligence Performed. [IDENTIFY ACTUAL DUE DILIGENCE HERE]
- 5.2. Initial Plan. The parties shall reach tentative consensus on the conceptual plans and have assembled all of the foregoing components in a comprehensive Initial Plan for Site (the "**Initial Plan**") prior to presenting the Initial Plan to stakeholders for feedback and working with engineers, contractors, and investors to create schematic plans and eventually construction drawings.
- 5.3. Obtaining Financing Sources; Engineers; Contractors; Community Meetings. Developer shall work in partnership with AH, consult with financing sources, prepare budgets with

engineers and contractors, and organize master planning meetings for the area surrounding the Site with community stakeholders.

5.4. Creating the Development Plan. Prior to the execution of the Agreement, Developer shall prepare and present to AH, for AH's review and approval, a final schematic plan for the first Project of the first phase of development of the Site (the "**Development Plan**") for incorporation into the Agreement. The Development Plan must include all of the following elements:

- a. **Master Plan**. Description of master design concept and graphic master plan submitted in _____ format with 30" x 42" presentation boards, fully rendered.
- b. **Business Terms**. All components of the Business Terms set forth in **Exhibit A** attached hereto.
- c. **Overall Project Schedule**. A detailed milestone schedule based upon the schedule attached hereto as **Exhibit B** (the "**Project Schedule**"), which shall be modified, to the extent necessary, to be consistent with the final Development Plan approved by AH and the Developer pursuant to the terms of this Agreement.
- d. **Elements for Each Phase**. For each planned phase of development and each Project within each phase (unless the parties agree that not all of the following are applicable):
 - i. *Phase Plan*. Schematic plan submitted in _____ format with 30" x 42" presentation boards, fully rendered.
 - ii. *Design Concept*. Detailed description of the design concept for each planned phase of development including site plans, drawings, renderings, finish materials, and/or elevations depicting the proposed improvements in line with the conceptual design theme approved by AH;
 - iii. *Phase Schedule*. Detailed milestone schedule for the construction of each planned phase of the Development Plan, including the projected dates for infrastructure, site and building design, permit and entitlement approvals, financial closings, construction commencement, and completion of construction and lease-up;
 - iv. *Budget*. Detailed acquisition (if any), development and construction budget for each planned Project within a phase of the Development Plan including detailed sources and uses for all reasonably anticipated costs, including infrastructure, site work and vertical construction and community space (hard and soft costs), parking and a pro forma showing projected performance of the Project within a phase for the term of construction and permanent financing (see xi below);

- v. *Funding Sources*. Identification of proposed funding sources and anchor tenant and other tenant lease terms to implement the Project including details of the terms of the funding;
 - vi. *Permits*. Identification of necessary demolition permits, land disturbance permits, building permits, storm water permits, sanitary sewer taps and other required permits;
 - vii. *Public Improvements*. Identification of necessary and any desirable public improvements to the Site, including the development of a schematic plan for the necessary and, if included, desirable planned public improvements for each of the planned phases of the [Enter Name] Development Plan;
 - viii. *Sustainability*. Green Building/Sustainability Plan for each of the planned Project within each of the phases;
 - ix. *MBE/WBE/Section 3*. An employment and local opportunities plan that details Section 3, MBE/WBE inclusion plans related to development and operations of each of the planned Projects within each of the phases, including but not limited to plans and strategies, as described in its procurement proposal, to be undertaken by any proposed construction contractors and the contractor's designated MBE/WBE coordinator to promote active participation of MBE/WBE and Section 3 businesses and individuals;
 - x. *Marketing Strategy*. A detailed marketing strategy showing costs, advertising outlets, sample ads and a brochure for each of the planned phases;
 - xi. *Sources/Uses/Proforma*. Detailed financial statements of Sources and Uses, Development Proforma and 30 year Operating Proforma consistent with the final development plan are required to include rental, homeownership (price points, holding term and sales distributions) and commercial;
 - xii. *Contractor Letters*. General contractor letters indicating interest in participating in later phases and the conditions of that participation are requested for multiphase developments;
 - xiii. *Community Outreach*. Community outreach plan and a schedule for regular robust and continuing communication with community stakeholders; and
 - xiv. *Rezoning/Variance*. Identification of rezoning and variance requirements, timing and feasibility
- e. **Unit Mix; Improvements; Amenities**. The Development Plan will include the number, square footage and bedroom mix of the planned units (both affordable and

market) (the “**Unit Mix**”), the common area improvements, commercial/retail, and amenities (the “**Commercial/Retail and Amenities**”). The initial Unit Mix and Amenities, which are subject to change, are set forth in **Exhibit A**, and include the following, as applicable:

- i. *Rental Phases*. The number of units and the number of Projects for construction of new construction family rental units (“**Family Rental Units**”) and new construction senior rental units (“**Senior Rental Units**”) (the Family Rental Unit Projects and the Senior Rental Unit Projects shall be collectively referred to herein as “**Rental Phase(s)**”);
 - ii. *Homeownership Units*. The number of units and the number of Projects within a phase(s) for constructions of for-sale single family homeownership units (“**Homeownership Units**”);
 - iii. *Affordable Units*. The percentage of Homeownership Units and units in the Rental Phases that will be affordable - defined as percentage of Area Median Income for all housing types and bedroom sizes.
 - iv. *Market Rate Units*. The percentage of Homeownership Units and units in the Rental Phases that will be Market-Rate.
 - v. *HomeFlex Units*. The percentage of units in the Rental Phases that will be set aside for persons who are eligible to receive the benefit of project based rental assistance subsidy specified in the HomeFlex Commitment and the corresponding HomeFlex Assistance Agreement (as defined herein).
 - i. *Commercial/Retail and Amenities*. The number of square feet of integrated mixed-use commercial and retail space (the “**Commercial/Retail Component**”) and other Amenities to be developed on the Site, if applicable.
- f. **Business Terms**. The parties agree that the specific business terms and agreements relating to the Rental Phases, the Commercial/Retail Component, Homeownership Units and other components of the Development Plan are set forth in **Exhibit A** and shall continue to be negotiated between the parties in accordance with the terms set forth in this Agreement. Any amendment or modification to the terms in **Exhibit A** must be in writing signed by the parties hereto. To the extent that this Agreement or any terms herein conflict with **Exhibit A**, the terms set forth in **Exhibit A** shall govern.
- 5.5. **Review; Approval of Development Plan**. The Developer will work collaboratively with AH to complete the Development Plan and AH will review and provide comments on the Development Plan draft within twenty-one (21) business days after the date the draft is received by AH, in order to allow: (i) sufficient review time by AH, and (ii) the Developer to maintain its proposed schedule for completion of the Development Plan. Accordingly,

the Developer will revise each draft of the Development Plan in response to AH's comments and resubmit the revised draft to AH within a reasonable time frame but no longer than ten (10) business days (unless a longer period is agreed to by the parties).

- 5.6. **Changes to Development Plan.** Developer shall prepare a written request for approval of changes by AH to the Development Plan due to changed market or financing conditions, including the reason for change and the impact on development design, budget and schedule and/or property operations. Any material changes to the Development Plan shall be subject to AH prior written approval. “**Material**” shall mean a reduction in the scope or quality of construction and development work provided for in the projected development budget for each Phase Plan or the tentative plans and specifications for each Phase Plan that: (a) could result in a deviation from the projected development budget for the Phase Plan of ten percent (10%) of the development budget for the aggregate of all line items for the development budget for the Phase Plan; (b) would result in a decrease to the width of any alley, road, sidewalk, boardwalk, bike path, promenade or other green space in excess of ten percent (10%); (c) would result in a material decrease in the performance of any materials or equipment which contribute to the Sustainability Plan or quality of the housing; or (d) would require the review or approval of HUD or any governmental authority.

5.7. Meetings/Updates.

- a. **Prior to Approval of Development Plan.** Until such time when the final Development Plan has been approved by AH, the Developer shall hold weekly progress meetings with AH staff and consult with AH staff to receive feedback and comments regarding the draft Development Plan. AH may request that the Developer attend monthly meetings to present status updates and reports to AH's Board of Commissioners as scheduled by AH.
- b. **Status Updates.** Upon approval of the Development Plan by AH, the Developer agrees to provide weekly written updates by electronic mail (e-mail) to AH on the status of that Development Plan, particularly as to milestones and if and to the extent that the Developer determines that it is necessary or desirable to make changes to the Development Plan in accordance with changed market or financing conditions.
- c. **Community Stakeholder Meetings.** Upon approval of the Development Plan by AH, the Developer hereby agrees to collaborate with AH to schedule, plan, participate and attend meetings with community stakeholders to notify them of any information from the Development Plan that may affect them and to gain insight into issues of concern relating to development of the Site. Notwithstanding the foregoing, after said approval by AH, AH and the Developer agree that the Developer shall not be required to attend more than two (2) stakeholder meeting within a three (3) consecutive month period or six (6) meetings in the aggregate in a twelve consecutive month period that is convened or organized by AH (or such additional meetings agreed to by the Developer). Both parties agree to notify each

other at least fifteen (15) days prior to any meetings with community stakeholders concerning the Development Plan, providing both parties with the opportunity to participate or attend said meetings. These community meetings are in addition to any community meetings the Developer is required to attend as part of their entitlement process, if applicable.

- 5.8. Reporting. The parties acknowledge that TIME WILL BE OF THE ESSENCE for the submittal of the various information and reports referenced in the Agreement to be entered into between the Owner Entity, the Developer and the Property Manager (if applicable) and other agreements contemplated by the Development Plan (the "**Reports**"), including, but not limited to monthly construction reports, monthly lease-up reports, annual audit reconciliation reports, annual statement of income reports, development schedule progress, development budget versus actual reports, and other reports. The Developer hereby agrees to ensure that the Management Agreement and other agreements to be executed by the Owner Entity for each Project and the corresponding Property Manager or any contractor, agent or vendors of Developer or Owner Entity shall provide for the Reports to be delivered in a timely fashion and when possible by electronic transmission. Once the Development Plan is approved by HUD, Developer shall submit to AH no later than the tenth (10th) day of each calendar month, a written status report ("**Monthly Status Report**") in a format agreed to by the parties, setting forth the current status of each component of the Development Plan, including site construction, forecast of unit production and development schedule information as to the progress of the development and construction of any Project which has reached financial closing and is under construction, the sales of the Homeownership Units and leasing or sale of Commercial/Retail Components and Section 3, MBE/WBE utilization and the AH Opportunity and Inclusion Policy. The Monthly Status Report shall be for informational purposes. The Monthly Status Report shall include a description of any changes in the ownership of the interests in, or control of, Developer and any of the member entities that comprise the Developer, with the Developer hereby agreeing and acknowledging that such changes cannot be made without prior written approval from AH in accordance with the terms of Section 1.3 and 16.11 hereof. The Developer's obligation to provide Monthly Status Reports to AH shall terminate with respect to a Project upon stabilization of the Project. Developer must adhere to all applicable Federal and State Labor compliance laws/regulations for the development of any Project, including but not limited to Davis-Bacon and Related Acts (40 U.S.C. 3142) requirements for all construction jobs created, as required for all Project documentation, including but not limited to any AH funding documents. Developers and all tiers of subcontractors shall submit weekly certified payrolls and monitor and report total labor hours worked. Developer must also comply with all other applicable laws and regulations including the Fair Housing Act, Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act, and the Uniform Federal Accessibility Standards (UFAS) and Fair Housing requirements.
- 5.9. LIHTC Program. [DESCRIBE LOW INCOME HOUSE TAX CREDIT PROGRAM, IF APPLICABLE]. Development Plan schedule of execution is not contingent upon availability of LIHTC funding, or the receipt of any LIHTC award.

- 5.10. Final Project Plans. The parties agree to negotiate and work collaboratively and expeditiously to finalize the financial and legal terms of each of the Projects in the planned phases. The Developer agrees to deliver to AH, no less than one hundred twenty (120) days prior to the scheduled financial closing date for each planned Project of the AH-approved Development Plan (the "**Final Project Plan**"), a final version of the Development Plan for that Project for AH's review and approval. Subject to AH's third party certification of (i) the development costs and (ii) the compliance of the plans and specifications with HUD's Uniform Federal Accessibility Standards ("**UFAS**"), and provided the Development Plan for said Project meets the standards and partnership provisions in favor of AH set forth herein and include terms no less favorable to AH than those terms set forth in **Exhibit A** hereto, AH's approval of the Final Project Plan shall not be unreasonably withheld. Any material changes to a Final Project Plan shall be approved in writing by AH.
- 5.11. Moving to Work Agreement. Pursuant to the terms of that certain Amended and Restated Moving to Work Agreement, effective as of November 13, 2008, by and between AH and HUD, as further amended by First Amendment to the Moving to Work Agreement effective as of November 13, 2008, that certain Second Amendment to the Moving to Work Agreement, effective as of January 16, 2009, as same may further be amended or extended from time to time (the "MTW Agreement"), AH may (but is not obligated to do so), with respect to certain eligible activities and when working or contracting with entities like Developer, make available the least restrictive statutory and regulatory requirements allowable based on the terms of the MTW Agreement. The HUD requirements that have been or may be waived or modified pursuant to the MTW Agreement pertain to, among other items, certain reporting requirements of AH, HUD review and approval processes and HUD statutory and regulatory requirements affecting the leasing and operation of the HomeFlex Units, all as set forth in the MTW Agreement and adopted and implemented by AH pursuant to the terms and conditions thereof (collectively, the "**MTW relief**"). AH has implemented the MTW relief since entering into the MTW Agreement with HUD, and may in the future implement additional MTW relief from time to time during the term of the MTW Agreement. Further, AH has elected to make the MTW relief available with respect to the HomeFlex Units, so that the applicability of the United States Housing Act of 1937 and HUD's implementing requirements and regulations thereunder to the HomeFlex Units and the rights and obligations of the parties to the HomeFlex Agreement is expressly modified consistent with the MTW relief, all as reflected in the HomeFlex Agreement. To the extent that the MTW Relief waives any obligation under this Agreement, the MTW Relief shall supersede such provision of this Agreement. The Developer and Owner Entity shall be entitled to the benefit of any and all of the MTW relief applicable to the development of the Site, to the full extent contemplated in the MTW Agreement.

6. ARTICLE VI. RENTAL PROJECT OWNER STRUCTURE

- 6.1. Formation of Owner Entity. For each of the Rental Phase Projects, the Developer hereby agrees, in joint venture co-ownership with AH, to form a Georgia limited partnership or other similar entity (the "**Owner Entity**") which will ground lease the land from AH at market rates, unless otherwise authorized by AH in order to further affordable housing

development and approved by HUD, and own the improvements which, when completed, will constitute the improvements associated with that Project within a phase of the Development Plan. Per HUD regulations, the ground lease payment amount will be determined by obtaining a certified appraisal of the land value no earlier than six (6) months prior to submission of the disposition application to HUD for each Project. The parties hereto hereby agree and acknowledge that the Tax Credit Investor will be admitted to that Owner Entity as a limited partner or other similar member, if applicable. Unless AH or its affiliate has an interest in the Owner Entity's General Partner, AH will either have a limited partnership or membership interest in the Owner Entity as set forth in **Exhibit A**. AH shall have the opportunity to review and comment on the content and terms of any Tax Credit Investor commitment letter, which shall reference the desired participation percentages of the Tax Credit Investor and AH in the cash flow and proceeds from a refinancing or other capital event for the Project within a phase to be owned by each Owner Entity.

- 6.2. Formation of Owner Entity's General Partner. For each of the Project within the Rental Phases, the Developer further agrees that unless AH or its affiliate has an interest in the Owner Entity', the general partner of the Owner-Entity shall be a Georgia limited partnership or limited liability company with AH or its affiliate serving as at least twenty percent (20%) limited partner or member (the "**General Partner**"). Developer or its affiliate will be the Manager of the General Partner and will, directly or indirectly, hold an ownership interest in such General Partner.
- 6.3. Profits; Losses; Cash Flow. The parties acknowledge that the amount of profits, losses, credits and distributable cash flow which will be available to the applicable General Partner from or with respect to each Owner Entity shall be set forth in **Exhibit A**, as may be amended. The participation in distributable cash flow that would otherwise be payable to the General Partner (after payment of all debt service (including AH funding if applicable), ground rent, deferred development fee payments, the property management fee, the AH Co-Management Services Fee, a reasonable and market rate Tax Credit Investor asset management fee, payments to the Tax Credit Investor for tax credit shortfalls or recapture and a reasonable and market rate General Partner asset management fee) will be shared on a pro-rata basis between the General Partner and AH (or its affiliate), a percentage going to the Developer or its affiliate and a percentage going to AH or its non-profit affiliate, in accordance with **Exhibit A**, unless otherwise agreed to by the parties hereto or their respective affiliates in writing. The parties acknowledge that the General Partner's share of the distributable cash flow may be subject to dilution by virtue of any reasonable, market rate cash flow participation share as may be required to be given to the Tax Credit Investor, provided such participation is reasonable and market rate. However, any cash flow due to AH which is not paid shall vest and accrue to AH's benefit, to be paid as a preference when cash flow becomes available later. Participation in all sale or refinancing proceeds, approval of which is subject to AH Board of Commissioners and HUD approval, from any Project within a phase of the Site development that would otherwise be payable to the General Partner under the terms of the Owner Entity's partnership agreement (subject to dilution by virtue of any reasonable, market rate participation in such sale or refinancing proceeds as may be granted to the Tax Credit Investor) will be shared on a pro-rata basis as set forth in **Exhibit A**.

7. ARTICLE VII. DEVELOPMENT FINANCING

- 7.1. Environmental Remediation. Notwithstanding anything to the contrary set forth herein, subject to the HUD and AH Board of Commissioners prior written authorization, AH shall complete and cover all HUD approved costs associated with environmental remediation for the entire Site prior to commencement of public infrastructure construction.
- 7.2. Public Infrastructure. Notwithstanding anything to the contrary set forth herein, subject to the HUD and AH Board of Commissioners prior written authorization, the availability of HUD AH Funds therefor, or other funds being identified or granted, AH may make available to the Owner Entities, as a loan or a capital investment in each Project, AH Funds in an aggregate amount not to exceed no more than \$_____, (calculated as the pro rata share of AH-subsidized units to the total number of units in each Project), which shall be capital or in the form of a _____ priority construction/permanent loan ("**AH Loan**"), or a capital contribution, to each of the Owner Entity for the Projects of the Development Plan towards public infrastructure costs related to each individual Project as set forth in **Exhibit A**.
- 7.3. Rental Phase AH Loan. Notwithstanding anything to the contrary set forth herein, subject to the availability of HUD and AH Funds therefor, or other funds being identified or granted, and further subject to HUD and AH Board of Commissioners pre-approval, AH may make available to the Owner Entities, as a loan or a capital investment in each Project within a phase of the Development Plan, as AH may choose, in accordance with the closing documents entered into between Developer, AH, the Owner Entities and others at each closing, AH Funds in an aggregate amount of no more than \$_____, which shall be capital or in the form of a _____ priority construction/permanent loan ("**AH Loan**") to each of the Owner Entities for the Project and units of the Development Plan as set forth in **Exhibit A**. This loan amount equals ____% of the current HUD Total Development Cost limit maximum amount of \$_____ based on the current number of AH-subsidized units as set forth in **Exhibit A**. Any change in the current Development Plan, Project program, and/or number and type of AH-subsidized units will require a re-evaluation of funding eligibility.
- 7.4. Rental Phase AH Commitment. AH hereby agrees to provide each Owner Entity with a commitment letter ("**AH Commitment**") with respect to that portion of the AH Funds which constitutes a secured loan or other AH Board of Commissioners' approved financial commitment, containing terms such as AH determines are appropriate and acceptable and are acceptable to the Developer, in its reasonable judgment. AH hereby acknowledges that the Developer will rely on the AH Commitment for each Project in the Rental Phase and that the Developer will make representations to other financial institutions and investors regarding AH's commitments.
- 7.5. AH Homeownership Project Loans. Notwithstanding anything to the contrary set forth herein, subject to the availability of AH Funds therefor, or other funds being identified or granted, and further subject to HUD and AH Board of Commissioners pre-approval, AH may make available to the Developer, as a loan or a capital investment in each

Homeownership Project, as AH may choose, in accordance with the closing documents entered into between Developer, AH, and others at each closing, AH Funds in an aggregate amount of no more than \$_____, which shall be capital or in the form of a _____ priority construction **AH Loan** to the Developer for the Homeownership Projects and Affordable Homeownership Units reserved for households earning up to 80% AMI (“**AH Homeownership Units**”) of the Development Plan as set forth in **Exhibit A**. This loan amount equals ____% of the current HUD Total Development Cost limit maximum amount of \$_____ based on the current AH Homeownership Units as set forth in **Exhibit A**. Any change in the current Development Plan, Project program, and/or number and type of AH Homeownership Units will require a re-evaluation of funding eligibility.

- 7.6. **CNIG Homeownership Loans.** Notwithstanding anything to the contrary set forth herein, subject to the availability of CNIG Funds therefor, or other funds being identified or granted, and further subject to HUD and AH Board of Commissioners pre-approval, AH may make available to the Developer, as a loan or a capital investment in each Homeownership Project, as AH may choose, in accordance with the closing documents entered into between Developer, AH, and others at each closing, CNIG Funds in an aggregate amount of no more than \$_____, which shall be capital or in the form of a _____ priority construction AH Loan to the Developer for the Homeownership Projects and Affordable Homeownership Units reserved for households earning up to 81-120% AMI (“**CNIG Homeownership Units**”) of the Development Plan as set forth in **Exhibit A**. This loan amount equals ____% of the current HUD Total Development Cost limit maximum amount of \$_____ based on the current CNIG Homeownership Units as set forth in **Exhibit A**. Any change in the current Development Plan, Project program, and/or number and type of CNIG Homeownership Units will require a re-evaluation of funding eligibility.
- 7.7. **Homeownership Project AH Commitment.** AH hereby agrees to provide each Owner Entity with a commitment letter (“**AH Commitment**”) with respect to all AH Funds and/or CNIG Funds containing terms such as AH determines are appropriate and acceptable and are acceptable to the Developer, in its reasonable judgment. AH hereby acknowledges that the Developer will rely on the AH Commitment for each Rental and Homeownership Project, and that the Developer will make representations to other financial institutions and investors regarding AH's Commitments. .
- 7.8. **No Advance Funds or Pre-Development Loans from AH.** Unless specified in **Exhibit A** hereto, the parties acknowledge that AH is not obligated to provide any predevelopment loan funds to the Developer for HUD-eligible third party pre-development costs contemplated by the Development Plan, or HUD-eligible costs incurred by Developer for due diligence or pre-development.
- 7.9. **Financing Structure.** The Developer will consult with AH or its designated representative and Tax Credit Investor, where applicable, with respect to the development of the legal and

financial transaction structures or arrangements to support the Development Plan. The Developer will adopt only those structures to which AH has given its prior written consent, which shall not be unreasonably withheld, delayed or conditioned. The parties hereto agree that the Developer is authorized to negotiate first mortgage loan financings for each Project in the Rental Phase. The parties hereto agree that the Developer is authorized to negotiate first priority construction loan financings for all Projects. The parties hereto agree that the Developer is authorized to negotiate construction loan financings for all horizontal construction and development. The Developer shall cause each of the Rental Phase Project Owner Entities to perform the covenants and obligations that are contained in the first mortgage loan commitment and any AH Commitments, including, without limitation, the obligations of each Owner Entity associated with securing a construction loan, a commitment for a first mortgage permanent loan, obtaining a bridge loan, and commencing and completing the construction of the dwelling units. The terms, provisions, obligations, covenants and conditions of the first mortgage loan commitment and the AH Commitments will include relevant terms and conditions incorporated herein. The Developer agrees to cause its affiliates, including without limitation, the Owner Entities, to comply with the covenants and obligations contained in this Agreement.

- 7.10. No Guarantees or Letters of Credit from AH. As between the parties, the Developer shall be solely responsible for providing all guarantees relating to the financing and constructing of the development of the Site, including any financing provided by AH (e.g., construction completion, tax credit guarantees, payment and performance bonds, etc.). Neither AH nor any of its affiliates nor Tax Credit Investor shall be required to provide any such guarantees, sureties or letters of credit.
- 7.11. Notices; Payment Certificate. The Developer shall cause the managing general partner or member of the General Partner to timely provide AH or its non-profit affiliate with a copy of the payment certificate submitted to the Tax Credit Investor, if any, for the payment of installments of capital contributions. All notices provided to the General Partner shall also be provided to AH or its non-profit affiliate.

8. ARTICLE XIII. DEVELOPMENT FEE; ADDITIONAL FEES

- 8.1. Development Fee. The parties hereto acknowledge and agree that the Developers will share proportionately in and receive as a development fee an amount equal to a percentage of Total Project Cost associated with the development of each Project within a phase of the Development Plan as set forth in **Exhibit A**. The development fee shall be payable out of funds other than "**AH Funds**" (as defined below).
- 8.2. Development Fee Methodology. For each Project within a phase, the distributable development fee shall be calculated based on the gross maximum allowable development fee in accordance with both the DCA guidelines and the HUD Cost Controls and Safe Harbor Standards for Mixed Finance Developments, as provided in Section 13.4 below and **Exhibit A** attached hereto.

- a. **Rental Phase Project Development Fee.** The parties hereto further acknowledge and agree that for each of the Projects within a Rental Phase, AH or its affiliate shall also be entitled to receive a percentage of the Development Fee from private debt or equity financing in accordance with the development fees set forth in **Exhibit A** and that said development fee shall be payable out of funds other than AH funds. The development fee shall be in an amount not to exceed the greater of (A) up to _____ percent (____%) of the portion of the total development cost associated with the development of the Site Rental in question, as reflected in the final Project budget used for purposes of a financial closing for the development, (B) the maximum development fee allowed under any HUD requirements that may be applicable with respect to the Project in question, or (C) the maximum amount allowed by DCA with regard to low-income housing tax-credit financed projects in Georgia for the phase or Project in question, whichever is controlling for purposes of the development fee for the phase of development in question.

- 8.3. **Commitment Fee.** At or prior to the financial closing of the first Project, Developer shall pay to AH one hundred percent (100%) reimbursement of all due diligence expenses, professional fees, feasibility studies, and soft costs incurred by AH in connection with evaluation and planning for the Site (the "**Commitment Fee**"). If applicable, these expenses comprising the Commitment Fee are detailed on **Exhibit C** attached hereto. The Commitment Fee is payable to AH as a condition of Developer acquiring any rights pursuant to this Agreement.

- 8.4. **Paid at Closing. [Intentionally Deleted]**

- 8.5. **AH Co-Management Services Fees.** All Projects within a Rental Phase will include an annual Management Fee of six percent (6%) of gross rental receipts and collections, charged as an operating expense. Of the 6%, AH will receive an annual AH Co-Management Services Fee in an amount equal to at minimum one percent (1%) of the gross annual rent receipts and collections from all of the units for the Project within a Rental Phase calculated on a cash basis as provided in the supplement to the annual audited financial statements for the Rental Phase Project Owner Entity. Gross collections are inclusive of all miscellaneous income such as late fees and commercial rental income. Payment of the AH Co-Management Services Fee to AH by the Owner Entity shall be an operating expense of the Rental Phase Project and shall commence at the end of the calendar year in which initial occupancy of all units is achieved. The AH Co-Management Services Fee shall be paid by the Owner Entity to AH within thirty (30) days of the completion of the Owner Entity's annual audited financial statements, but in no event later than June 30 of each year. The AH Co-Management Services Fee shall be payable as a property operating expense for the term of the Ground Lease.

- 8.6. Commercial/Retail Component. The parties acknowledge and agree that AH and the Developer will receive development and other fees for the Commercial/Retail Component in accordance with the terms of Exhibit A.
- 8.7. Homeownership Units. The parties acknowledge and agree that AH and the Developer shall receive development and other fees and profit participation for the development of the Homeownership Units in accordance with the terms of Exhibit A.

9. ARTICLE IX. SITE WORK; REMEDIATION OF SITE.

- 9.1. Contract for Remedial Site Work. Should the Developer be required to do any remedial site work or environmental remediation of the Site prior to the start of construction, Developer hereby agrees that the form of the contract between Developer, Owner Entity, and any site work or remediation (if applicable) subcontractor shall include at least the following requirements: (i) a file shall be maintained by the contractor that identifies each disposal and/or recycling site that receives any Site materials, and will include the address and location of the receiving site, and the address, telephone number and contact name for any broker, transporter, operator, or owner of the disposal or recycling/reclamation company; (ii) a file shall be maintained by the contractor that includes all appropriate permits with a copy of the permit identification number and copy of permit; (iii) terms that make payments to the contractor contingent on the terms in (i) and (ii) above; (iv) terms that require the party that initially selects a receiving site to make appropriate inquiries with regulatory authorities (federal, state, and local) regarding the receiving facility's record of environmental compliance (and to ensure all necessary permits are obtained); (v) indemnification provisions requiring the contractor to indemnify, defend, and hold harmless Developer, any Owner Entity and AH for any liability associated with a breach of contract relating to transportation, disposal, handling, storage or recycling of any Hazardous Materials, including costs associated with clean-up, and removal/restoration activities, and attorney's fees; and (vi) special insurance coverage (e.g., pollution liability) held by the entity disposing of Hazardous Materials for losses associated with any breach of contract identified in (v) above, unless otherwise determined by AH; and (vii) all work addressed in the scope of work, including remediation (if applicable), shall be conducted in accordance with certain identified protocols setting forth requirements for environmental testing, and remediation at the Site and coordination among AH, the Developer and any environmental consultants and contractors hired by the Developer (the "**Environmental Protocols**"). Work will not commence without AH authorization.
- 9.2. Extraordinary Site Costs. While AH does not warrant that the Site is without Recognized Environmental Condition ("**RECs**"), AH may, at its sole discretion and without admitting any liability, provide funds for any required extraordinary site work that is classified as "**Extraordinary site costs**" under HUD rules, or any required environmental remediation. Prior to the Developer initiating any such scope of work related to any required environmental remediation or extraordinary site work, the Developer must include the Environmental Protocols in the scope of work. In the event that AH elects not to fund any required environmental remediation or extraordinary site work, the Developer will not be obligated to proceed with the impacted developments phase(s). If Developer elects to relinquish its rights to develop the impacted development phase, AH shall reimburse

Developer for all reasonable and customary actual third-party expenses already incurred by Developer for the impacted development Phase in accordance with HUD guidelines.

10. ARTICLE X. INFRASTRUCTURE IMPROVEMENTS

- 10.1. Definition of Infrastructure Improvements. The parties hereby acknowledge and agree the development of the Projects on the Site will require the planning, design and installation of infrastructure improvements which shall include, but shall not be limited to, clearing, grading, paving, erosion and sediment control, sanitary and storm sewers and storm water maintenance, streets, curbs, gutters, curb cuts and driveways, sidewalks, and facilities for utilities such as water, gas, electricity, telephone, cable, internet and other telecommunications (“**Infrastructure Improvements**”). The parties agree and acknowledge that development of the Site will require installation of Infrastructure Improvements on the site up to and within the boundary of the property line (“**On-Site Infrastructure Improvements**”). The parties also agree and acknowledge that development of the Site may require the installation of Infrastructure Improvements on public land within the existing public right-of-way (“**Off-Site Infrastructure Improvements**”).
- 10.2. Design and Planning of Infrastructure Improvements. AH may, in its sole discretion, elect to manage, either directly or through an affiliate entity, intergovernmental agreement or contractor, all the planning and design of the Infrastructure Improvements for the Site. For any program management work performed by AH for design, planning and/or installation, the parties hereby agree that AH shall have the right to earn a construction management fee in an amount that is customary and in line with industry standard. If AH elects to manage the planning and design of the Infrastructure Improvements, it agrees to work in collaboration with the Developer, along with other applicable community stakeholders. If AH does not elect to manage the planning and design of the Infrastructure Improvements, it shall be the Developer’s responsibility to plan and design the Infrastructure Improvements. The parties hereby agree that all construction management fees and third-party costs for the planning and design of Infrastructure Improvements shall be incorporated into the site and vertical development budget for the phases of the Project on the Site and AH or its affiliate shall be reimbursed for any eligible expenditures advanced for this purpose.
- 10.3. Funding Infrastructure Improvements. The Developer acknowledges that AH Funds, which are provided by HUD, cannot be used to fund any Off-Site Infrastructure Improvements. At AH’s sole discretion subject to AH Board and HUD approval, AH Funds may be used to fund a portion of On-Site Infrastructure Improvements in accordance with the limitations imposed by HUD regulations and AH’s financial resources. The Developer agrees it shall be responsible for including all construction management fees and costs for all Infrastructure Improvements in the site and vertical development budgets for the Project or Projects on the Site. AH agrees to cooperate with and support the Developer’s efforts to secure third-party funding for Infrastructure Improvements provided AH shall not be a required co-applicant nor shall AH provide guarantees. If grant funding for public improvements is available from any City of Atlanta (“**City**”), City-related entities, and/or the State of Georgia (“**State**”) and State-related entities, AH in its sole

discretion, may execute an intergovernmental agreement(s) with the City, City-related entity, State or State-related entity to obtain the grant funds. If AH receives government grant funds from the City, State, or HUD it may, in its sole discretion, elect to procure a third-party contractor or use the grant funds in coordination with the governmental entity's general contractor, or the Developer, to install and construct the Infrastructure Improvements. If AH elects to have the Developer install and construct the Infrastructure Improvements, AH will execute a separate public improvements agreement(s) in a form acceptable to both parties but Developer acknowledges and agrees that the form of public improvements agreement must include any applicable procurement and legal compliance requirements as well as AH Environmental Protocols. If approved by HUD, the Developer and AH will have an up to 85%/15% split, respectively, of any construction management fees payable under a public improvements agreement.

- 10.4. Installation of Infrastructure Improvements. The Developer agrees to perform or cause its contractors to perform the On-Site Infrastructure Improvements needed for each Project on the Site in a timeframe that supports the development of each Project of the Site. In addition, the Developer shall be responsible for obtaining all required approvals, reports, insurance, bonding and permits for the On-Site Infrastructure Improvements. If the Developer is selected to complete the Off-Site Public Improvements, the Developer shall be responsible for obtaining all required approvals, reports, insurance, bonding and permits for the Off-Site Public Improvements. If approved by HUD, the Developer and AH will have an up to 85%/15% split, respectively, of any construction management fees payable under a public improvements agreement. For Off-Site Infrastructure Improvements fees payable to AH should be funded from the non-AH funds that Developer secures for the pro rata share attributable to the development of non-affordable units.
- 10.5. Dedication of Land for Public Utility or Right-of-Way. As may be required under any public improvements agreement, or otherwise at the discretion of the parties, after the Infrastructure Improvements work is completed, inspected and accepted by government officials (after any required repairs) if necessary, the applicable public utilities/infrastructure, as improved, shall be dedicated to the applicable government entity with the process initiated within a 90-day period from installation completion. The Developer shall be responsible for completing the land dedication process with the government entity, including, but not limited to, preparing and submitting any application or other documentation and AH agrees to cooperate with Developer in the completion of this process. Any public utilities/infrastructure that are not dedicated to the applicable government entity, the Developer agrees that such public utilities/infrastructure not dedicated will be included under the ground lease to the applicable Project owner entity, and shall be maintained by the applicable Project Owner Entity for the Project of the Phase said Owner Entity at its expense.

11. ARTICLE XI. REQUIRED DOCUMENTS

- 11.1. DOT/DORC. Any property conveyed or leased by AH to the Developer's affiliated Owner Entity or any other third party for the rental housing, for-sale homeownership, or the Commercial/Retail Component of the Development Plan if required by HUD, shall be

subject to a Declaration of Trust or Declaration of Restrictive Covenants as required by the AH Board of Commissioners and HUD, as applicable. Such declarations will be identified in the instrument of conveyance, with the duration of such covenant being the minimum term required by HUD and Georgia law.

- 11.2. Rental Phase Project Required Documents. Each party hereby acknowledges that with respect to each of the Projects within a Rental Phase, the following documents, without limitation, will be required:
- a. **Owner Entity Formation Documents.** A limited partnership agreement and certificate of limited partnership or limited liability company operating agreement and articles of organization (collectively, the "**Owner Entity Formation Documents**"), the terms and provisions of which are consistent with the organization and formation of an Owner Entity and a General Partner (defined herein);
 - b. **Ground Lease.** With respect to the Rental Phase Projects, a definitive market rate, or other rate authorized by AH subject to HUD requirements, will be identified in the ground lease agreement ("**Ground Lease**") for each Project between AH as lessor and the applicable Owner Entity as lessee, which will provide, in part, that (1) the term of the Ground Lease for each multifamily rental Project shall be no more than seventy-five (75) years (with each subsequent multifamily rental Project's Ground Lease being coterminous with that of the first Project that has already reached financial closing), and (2) all of the property covered by the Ground Lease and improvements developed thereon will revert to AH without charge at the end of the term of the Ground Lease, in accordance with the specific terms and conditions of each of the executed Ground Leases. Terms for a Ground Lease for non-residential development must be negotiated by the parties and approved by the AH Board of Commissioners and HUD. The Ground Leases will have either a front end loaded capital lease payment or periodic payments over up to seventy-five 75 years which will provide an appropriate rate of return and capital reimbursement to AH as described in **Exhibit A**;
 - c. **Ownership Interest Option to Purchase and Right of First Refusal.** If any partner or member of the Owner Entity exercises its right to sell their interest in the limited partnership or limited liability company that owns any Project of a multifamily rental development, AH or its affiliate shall have a Right of First Refusal ("ROFR") to purchase any general or limited partner's interest in the Owner Entity or the Owner Entity's interest in the real estate improvements at all times. AH or its affiliate shall have a right to purchase ("**Purchase Option**") any other general partner's, limited partner's or member's interest at all times at a sales price to be negotiated by the parties at the time of the purchase. Terms of such a ROFR or Purchase Option transaction will be contingent upon further AH Board of Commissioners and HUD approval.

- d. **HomeFlex Agreement.** If applicable, a project based rental assistance agreement which AH has named the HomeFlex Assistance Agreement ("**HomeFlex Agreement**") between AH and the applicable Owner Entity which shall provide for any residential rental, in pertinent part, that (1) the Owner Entity will set aside, maintain and operate a stated number of rental units (the "**HomeFlex Units**"), solely for "eligible households" (as defined in the HomeFlex Agreement); (2) AH will provide monthly project based rental assistance ("**HomeFlex**") payments to the Owner Entity such that the HomeFlex payments and the rents payable by eligible households in the HomeFlex Units, when added together, will generally equal the amount of reasonable market rents approved for the HomeFlex Units by AH pursuant to a market study relating to the Project, as reviewed by AH for rent reasonableness and provided that in no event shall rents exceed the lesser of (a) sixty percent (60%) of the Area Median Income or (b) the maximum rents permitted for sixty percent (60%) AMI units operated and maintained as qualified low-income units under Section 42 of the Code, if applicable; and (3) the initial term of the HomeFlex Agreement shall be twenty (20) years, unless specified otherwise, and may be extended by AH as set forth in the HomeFlex Agreement and which extensions the Owner Entity shall be required to accept for the term of the Ground Lease;
- e. **Development Services Agreement.** A development services agreement ("**Development Services Agreement**") between AH and the Developer pursuant to which the Developer and AH shall agree that AH will act as Developer by assisting Developer with the development and construction of each applicable Project of a phase of the Development Plan, which agreement shall describe the services to be performed, the percentage of and formula for calculation of the Developer's fee to be paid to AH (generally 25% - 35%) of the development fee paid to the Owner Entity for those services, and the timing of such payment; and
- f. **Management Agreement.** A management agreement ("**Management Agreement**") by and between the applicable Owner Entity for each of the Rental Phase Project and the Developer's property manager, which shall be either _____ or _____ [(identify if the property manager is an affiliate of the Developer)] (the "**Property Manager**"), pursuant to which the Property Manager will manage the property and improvements comprising the applicable Project of the Development Plan and a management plan, both of which must be approved in advance of financial closing by AH. The Management Agreement will provide that the Property Manager will earn a management fee that shall be a percentage of the gross rental revenue collected for the applicable Project (ranging from approximately 6.0% to _____ [such higher fee as may be permitted by the Georgia Department of Community Affairs ("**DCA**") or HUD].) In any event, any fees payable to Developer's affiliates hereunder, including, without limitation, the Property Manager, shall not exceed market rates for the services provided. Further, if Property Manager becomes a Prohibited Person at any point during the term of this Agreement, said party shall no longer be considered approved to serve in such capacity, shall not be entitled to fees that may have been *earned* after the date of

the designation, and shall be replaced as may be required under applicable rules, regulations or policies in the Prohibited Person definition in Section 1.13. The Management Agreement between the Owner Entity and Property Manager shall be prepared by the Owner and submitted by Owner to AH for its prior review and approval in writing, which approval shall not be unreasonably withheld. Any change in the Property Manager must be approved by AH, which approval shall not be unreasonably withheld. The Management Agreement shall contain the following provisions: (1) the Management Agreement may not be amended in any material respect other than in writing signed by both parties, which shall be subject to the prior written approval of AH, whose approval may not be unreasonably withheld; (2) the Management Agent shall follow the monthly, quarterly and annual reporting requirements in accordance with AH policies, and shall immediately furnish all reports to AH upon request; and (3) upon written request by AH, the Property Manager shall provide reasonable access to books and records maintained by the Property Manager with respect to the Development during normal business hours to the Authority; and (4) the Owner Entity may terminate the Management Agreement and appointment of the Property Manager may be terminated thereunder under certain circumstances by the Owner Entity or at AH's request.

- f. **Management Plan.** The Owner Entity shall require the Property Manager to cooperate with AH in ensuring that the AH-Assisted Units are leased and operated, and the Project is managed and maintained in compliance with all applicable AH policies and HUD and other Governmental Requirement (including MTW benchmarks therein). The Owner Entity for the Project and Property Manager shall develop a "Management Plan" for the Project that is consistent with the AH policies, which shall be submitted to and approved by the AH prior to financial closing of the Project; such approval not to be unreasonably withheld. The Management Plan may not be amended without the prior written approval of AH.
- 11.3. Additional Documents. The parties further agree to work reasonably and expeditiously to enter into such additional agreements or execute such additional documents as may be necessary or appropriate in connection with the financial closing for each planned Project within a phase, including, without limitation, the agreements or documents necessary to evidence the appropriate financing arrangement and payment of fees for each Rental Phase Project, the Homeownership Units Projects, and the Commercial/Retail Component Projects and other components, and documents related to compliance with Fair Housing and Equal Opportunity law or regulatory compliance, etc. The terms and provisions of all such agreements and documents, the Partnership Formation Documents, the Ground Leases, the HomeFlex Agreements and the Management Agreements shall be mutually satisfactory, in their reasonable judgment, to the Developer and AH, or their affiliates, and _____ or its affiliate (the "**Tax Credit Investor(s)**"), if applicable, to the extent the Tax Credit Investor or the applicable Owner Entity is a party to or is materially affected by any such agreement.

12. ARTICLE XII. DEVELOPER REPRESENTATIONS AND WARRANTIES.

The Developer hereby represents, warrants and certifies that, as of the date hereof, and for the period beginning ten (10) years prior to the date hereof the following items. For the purpose of this Article 12, all terms used but not defined herein shall have the meanings set forth in 24 CFR 200.215, relating to Participation and Compliance Requirements. The Developer shall be required to notify AH in writing within ten (10) days of the date that Developer becomes aware any of the below declarations of representations, warranties or certifications are not true. The Developer hereby acknowledges and understands that the foregoing declarations and the truthfulness of such declarations are a material inducement to AH to enter into this Agreement and the transactions and agreements contemplated thereby. The Developer hereby agrees to execute a certificate at the closing of each Project of a phase of the Development Plan stating that the declarations set forth in this Section are true in all material respects as of the date of the applicable closing.

- 12.1. Existence, Good Standing, and Authority to do Business. Developer is a limited liability company, validly existing, and in good standing under the laws of the state in which it is formed and is qualified to do business in Georgia. Each other entity with a Controlling Interest in the Developer is duly organized, validly existing, and in good standing under the laws of the jurisdiction in which it is organized and is qualified to do business in Georgia.
- 12.2. Authority of Developer. Developer has all necessary corporate or company power and authority to enter into this Agreement and the other transaction documents contemplated herein to which Developer is or shall be a party, to carry out its obligations hereunder and thereunder and to consummate the transactions contemplated hereby and thereby. The execution and delivery by Developer of this Agreement and any other transaction document to which Developer is a party, the performance by Developer of its obligations hereunder and thereunder and the consummation by Developer of the transactions contemplated hereby and thereby have been duly authorized by all requisite corporate action on the part of Developer. This Agreement has been duly executed and delivered by Developer, and (assuming due authorization, execution and delivery by AH) this Agreement constitutes a legal, valid and binding obligation of Developer, enforceable against Developer in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or similar Laws affecting creditors' rights generally and by general principles of equity (regardless of whether enforcement is sought in a proceeding at law or in equity). When each other transaction document to which Developer is or will be a party has been duly executed and delivered by Developer (assuming due authorization, execution and delivery by each other party thereto), such transaction document will constitute a legal and binding obligation of Developer enforceable against it in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or similar Laws affecting creditors' rights generally and by general principles of equity (regardless of whether enforcement is sought in a proceeding at law or in equity).
- 12.3. No Conflict and No Default. The execution, delivery and performance by Developer of this Agreement and the other transaction documents to which it is a party, and the consummation of the transactions contemplated hereby and thereby, do not and will not:
 - (a) result in a violation or breach of any provision of the certificate of incorporation,

articles of organization or by-laws of Developer; or (b) result in a violation or breach of any provision of any Law or Governmental Order applicable to Developer, or any existing Project. No consent, approval, Permit, Governmental Order, declaration or filing with, or notice to, any Governmental Authority is required by or with respect to Developer in connection with the execution and delivery of this Agreement or any of the other transaction documents and the consummation of the transactions contemplated hereby and thereby.

- 12.4. Liens and Debts. No lien exists on any asset of Developer that could have a Material Adverse Effect on the Project or transactions contemplated herein. Neither the Developer nor any affiliate is an obligor on any debt that could have a Material Adverse Effect on the Project or any transaction contemplated herein.
- 12.5. Financial Condition. There is no fact or condition relating to the Developer's financial condition, business or property that the Developer has failed to disclose that could reasonably be expected to result in a Material Adverse Event. No report, financial statement, certificate or other information furnished by, or delivered on behalf of, the Developer, at the time furnished or delivered, contains any material misstatement of fact or omits to state any material fact necessary to make the statements therein, taken as a whole, in the light of the circumstances under which they were made, not misleading. Developer may be required to reaffirm the foregoing from time to time during the term of Agreement.
- 12.6. Litigation. Except as disclosed to AH in writing prior to the execution of the Agreement by the parties, there are no actions pending or, to Developer's knowledge, threatened against or by Developer or any affiliate of the Developer that challenge or seek to prevent, enjoin or otherwise delay the transactions contemplated by this Agreement. No event has occurred or circumstances exist that may give rise or serve as a basis for any such action.
- 12.7. Taxes. All Tax returns of each Developer and any controlling entity of Developer required to be filed have been timely filed (or extensions have been granted) and all Taxes imposed upon any Developer that are due and payable have been paid before delinquency, other than Taxes which are being contested in good faith by lawful proceedings diligently conducted, against which an accounting reserve or other provision required by GAAP has been made.
- 12.8. Mortgage Material Default; Mortgage Relief. No mortgage on any project assisted or insured by HUD or any State or local government housing finance agency in which the Developer or its affiliate was or is a principal has ever been in material default nor has mortgage relief been given.
- 12.9. Construction/Turnkey Material Default. There have been no material defaults or noncompliance by the Developer or any of its affiliates under any conventional construction contract or turnkey contract of sale in connection with a public housing project.

- 12.10. HUD/Government Unresolved Findings. There are no known unresolved findings against the Developer or any of its affiliates raised as a result of HUD audits, management reviews or other governmental investigations.
- 12.11. Felonies. No member, manager, officer or executive of the Developer has been convicted of a felony or is presently the subject of a complaint or indictment charging a felony.
- 12.12. Suspension/Debarment/Restriction. No member, manager, officer or executive of the Developer has been suspended, debarred or otherwise restricted by any department or agency of the federal government or of a state government from doing business with such department or agency.
- 12.13. Obligation Default. Neither the Developer nor its affiliates have defaulted on an obligation covered by a surety or performance bond, nor has been the subject of a claim under an employee fidelity bond.
- 12.14. HUD Affiliation. No member, manager, officer or executive of the Developer or entity that controls Developer is a HUD employee, relative of a HUD employee, elected or appointed public official of the City, or a member of a HUD employee's or elected or appointed public official's immediate household, as defined by HUD's Standards of Conduct (24 CFR 0.735-205(c)).
- 12.15. Government Official. No member, manager, officer or executive of the Developer or entity that controls Developer is a Member of Congress, member of the Georgia Legislature, or elected or appointed official of a City in Georgia or Fulton County, Georgia.
- 12.16. Authority. The Developer and its affiliated entities have all requisite power and authority, corporate or otherwise, to execute and deliver this Agreement and perform its obligations.
- 12.17. Procurement/Conflict of Interest Requirements. The Developer has complied and will continue to comply with all applicable procurement and conflict of interest requirements described herein or required by law with respect to the selection of entities to assist in the development of the Site.
- 12.18. Ineligibility. Neither the Developer nor any of its affiliated entities, is ineligible to be awarded contracts by an Agency of the United States Government, HUD, or the State or locality in which this Agreement is to be performed or to participate in HUD programs pursuant to 24 CFR Part 24.
- 12.19. Binding. The execution, delivery and performance of this Agreement has been duly authorized and has been executed by the signatories so authorized, and this Agreement constitutes the legal, valid and binding obligation of the Developer and its affiliated entities, to the extent any such entity is a party to or beneficiary of this Agreement.

- 12.20. No Breach; Violation; Default. This Agreement will not result in a breach or violation of, nor constitute a default under, any contract to which the Developer or any of its affiliated entities, to the extent any such entity is a party to this Agreement, is a party, or by which it or its properties may be bound or affected.
- 12.21. No Notices. Neither the Developer nor any of its affiliated entities have received any notices nor is there pending or threatened any notice, of any violation of any applicable laws, ordinances, regulations or decrees which would materially and adversely affect their ability to perform hereunder.
- 12.22. Developer Lead. If the Developer is comprised of two entities, the entity identified as the Developer Lead in its procurement proposal for development of Site and the controlling members, partners and principals of that Developer Lead shall remain in the role of Developer Lead until (and shall in all events retain liability for) completion of the Development Plan.

13. ARTICLE XIII. DEVELOPER COVENANTS

- 13.1. Continued Truthfulness of Representations and Warranties. The Developer hereby covenants and agrees that until the Developer Rights have expired or been terminated, the representations and warranties set forth in Article 12 herein shall continue to be true and accurate. The Developer shall be required to notify AH in writing within ten (10) days of the date that Developer becomes aware that any of the representations, warranties or certifications are not true. The Developer hereby acknowledges and understands that the Article 12 representations and warranties, and the continued truthfulness and accuracy of such representations and warranties shall be a material inducement for AH to continue to do business with the Developer and its affiliates and to enter into future transactions and agreements contemplated hereby.
- 13.2. No Material Adverse Event. Since the Effective Date of this Agreement, there has been no Material Adverse Event.
- 13.3. Insurance. Developer shall maintain insurance reasonably satisfactory to AH as to amount, nature and carrier covering property damage (including loss of use and occupancy) to any of AH's properties, business interruption insurance, public liability insurance, including coverage for contractual liability, and workers' compensation, and any other insurance which is usual for the Developer's business. Each policy shall provide for at least thirty (30) days prior notice to AH of any cancellation thereof. The insurance must be issued by an insurance company reasonably acceptable to AH and must designate AH as an additional insured. Upon AH's request, Developer or its representative shall deliver to AH a copy of each insurance policy, or, if permitted by AH, a certificate of insurance listing all insurance in force.
- 13.4. Compliance with Certain Laws and Regulations. The Developer represents, warrants, covenants and agrees that the development of the Site, including, without limitation, all construction, shall be performed in full and timely compliance with laws and regulations applicable to construction and development projects funded by the federal government,

including the Davis-Bacon Act and Related Acts, commonly known as "DBRA", as authorized by the 1937 Act, the National Housing Act of 1949, the Housing and Community Development Act of 1974, Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. 794, and the regulations issued thereunder, including the requirements for accessibility as set forth in 24 CFR § 8.22, the UFAS promulgated under the Architectural Barriers Act, 42 U.S.C. §§4151-4157 (or any standard enacted to be a successor standard to UFAS), the Fair Housing Act, 42 U.S.C. §§3601-3619, including compliance with the Fair Housing Act's Design and Construction requirements, 42 U.S.C. §3604(f)(3)(C), and the National Affordable Housing Act of 1990, as amended, and the Code of Federal Regulations (24 and 29 CFR), as amended, as and to the extent modified by the MTW Relief (as defined below). Developer shall cause its representatives to attend the DBRA pre-construction meetings for each development phase, as requested by AH. The Developer also represents, warrants, covenants and agrees to comply with the laws, regulations and ordinances of the City of Atlanta, Fulton County, and State of Georgia to the extent applicable to the development, construction and operation of the Projects of a phase in the Development Plan. Furthermore, the Developer agrees to (i) cause the General Partner, the Owner Entity, the Owner Entity's general contractor and subcontractors, or any other contractor and its subcontractors, to fully and timely comply with the foregoing applicable laws, codes, regulations, and ordinances and (ii) permit AH or its agents to make periodic inspections of the work of Owner's Entity's contractors or subcontractors during construction to confirm compliance with UFAS at key construction milestones. The parties acknowledge that the General Contractor or any other contractor may receive reasonable profits and overhead costs provided such profits and costs are within the limitations imposed by the HUD Cost Control and Safe Harbor Standards for Rental Mixed-Finance Development dated April 9, 2003, the HUD Cost Controls and Safe Harbor Standards for Homeownership Development dated April 1, 2004, and other HUD requirements, as applicable, and provided that, to the extent required, HUD approves the Developer's related entity contractors and subcontractors pursuant to AH's Identity of Interest Implementation Protocol under the MTW Agreement.

14. ARTICLE XIV. DEFAULT; BREACH; COVENANT NOT TO SUE

- 14.1. Termination of Developer's Rights. As set forth above in Article 3, the Developer hereby acknowledges and agrees that Developer Rights are subject to termination for cause in the event of a default of this Agreement.
- 14.2. Events of Default. Each of the following shall constitute an "**Event of Default**" by Developer (or its successor or assign) under this Agreement:
- a. Developer shall fail to pay or cause to be paid any amount required to be paid to AH under this Agreement, and such default shall continue for more than fifteen (15) days after notice from AH specifying such default;
 - b. If Developer shall default in the observance or performance of any term, covenant or condition of this Agreement (other than the payment of any amount required to be paid by Developer pursuant to this Agreement) or in any ancillary agreement described herein on Developer's part to be observed

or performed (other than the Events of Default expressly set forth below) and Developer shall fail to remedy such default within thirty (30) days after notice by AH, or if such a default is of such a nature that it cannot reasonably be remedied within such thirty (30) day period (but is otherwise susceptible to cure), then Developer shall have such additional period of time as may be reasonably necessary to cure such default, but in no event more than an additional ninety (90) days, provided that Developer commences the cure within such original thirty (30) day period and thereafter diligently pursues and completes such cure;

- c. The Developer shall admit in writing its inability to pay its debts as they mature or the Developer or its managing member or other controlling entity shall file a voluntary petition in bankruptcy or a voluntary petition or answer seeking liquidation, reorganization, arrangement, re adjustment of its debts, or for any other relief under Title 11 of the United States Code, as amended from time to time (Bankruptcy Code), or under any other act or law pertaining to insolvency or debtor relief, shall enter into any agreement indicating its consent to, approval of, or acquiescence in, any such petition or proceeding, or apply for or permit the appointment by consent or acquiescence of a receiver, custodian or trustee of such party for all or a substantial part of its property;
- d. There shall have been filed against the Developer or its managing member or other controlling entity an involuntary petition in bankruptcy or seeking liquidation, reorganization, arrangement, readjustment of its debts or for any other relief under the Bankruptcy Code, or under any other act or law pertaining to insolvency or debtor relief and either (i) such petition is not withdrawn or dismissed within ninety (90) days of the date of the service on such party or (ii) an "order for relief" is issued at any time in any such case under the Bankruptcy Code; or the Developer or its managing member or other controlling entity shall suffer or permit the involuntary appointment of a receiver, custodian or trustee for all or a substantial part of its respective property and such appointment shall continue for a period of sixty (60) days;
- e. There occurs any final (as opposed to preliminary, administrative) dissolution of the Developer or any sale, pledge, encumbrance, assignment, Change in Control, transfer or dissolution, voluntarily or involuntarily, whether by operation of law or otherwise of a controlling membership interest in the Developer without the prior written consent of AH;
- f. Developer shall be adjudicated bankrupt or insolvent by any court;
- g. Developer shall make an assignment for the benefit of creditors or Developer shall petition for composition of debts under any law authorizing the composition of debts or reorganization of Developer;

- h. Developer shall fail to obtain or maintain in effect any insurance required of it under this Agreement, or pay any insurance premiums, as and when the same become due and payable, or fails to reinstate, maintain and provide evidence to AH of the insurance required to be obtained or maintained by Developer, and such failure shall continue for a period of ten (10) business days after notice of such failure;
- i. If Developer makes any transfer or assignment in violation of the terms of this Agreement;
- j. The failure of any representations or warranties of Developer to be true at the financial closing in all material respects and such failure has a material adverse impact on Developer's ability to comply with its obligations hereunder;
- k. The failure of Developer to meet any outside date as outlined in Section 5.4 or as subject to **Exhibit B** set forth therefor on the schedule for performance in the Development Plan;
- l. The existence of an uncured default under any ground lease, promissory note, loan agreement, deed to secure debt, HomeFlex Agreement or HUD Declaration of Restrictive Covenants by Developer or the affiliated Owner Entity of a Project in any Phase of the Development Plan that has reached financial closing;
- m. Developer shall make an assignment for the benefit of creditors or Developer shall petition for composition of debts under any law authorizing the composition of debts or reorganization of Developer;
- n. Developer shall be negligent or shall engage in fraud, bad faith, or willful misconduct in connection with the Project or transactions related to the Project;
- o. The filing of a claim or lawsuit by Developer or any of its affiliates, employees, officers, directors against AH or any of its affiliates, commissioners, officers or employees in violation of the terms of Sections 14.4 or 14.5; and
- p. A Change in Control has occurred without the prior consent of AH;

14.3. Material Breach by Either Party. In addition to the provisions of above, in the event of a material breach by either party to this Agreement of any representation, warranty, covenant, undertaking or restriction contained herein relating to the Development Plan, the non-breaching party ("Non Breaching Party") shall notify the other party (the "Breaching Party") in writing of the alleged breach. Except as set forth to the contrary in subsection 14.2 above, the Breaching Party shall have a period of thirty (30) days following receipt of

such notice in which to cure such default, or in which to commence the cure of such default and proceed to pursue such cure with due diligence. If such default cannot reasonably be cured within such thirty (30) day period (but is otherwise susceptible to cure), then Developer shall have such additional period of time as may be reasonably necessary to cure such default, but in no event more than an additional ninety (90) days, provided that Developer commences the cure within such original thirty (30) day period and thereafter diligently pursues and completes such cure. The Non-Breaching Party shall, upon failure by the Breaching Party to cure, have the right, but not the obligation, to commence the cure of a default within the period described above and proceed to such cure with due diligence. Nothing in this Agreement shall prevent the Non-Breaching Party from seeking a remedy at law or in equity in connection with any breach of this Agreement by the other party with respect to the Development Plan.

- 14.4. **HUD and AH Board of Commissioners Consent and Parties Limitation of Liability, Covenant Not to Sue.** The parties hereto acknowledge that the submissions of requests for approval to HUD, the financial closings of each Project of a Phase of the Development Plan, the conveyances of AH land to Owner Entities by ground lease or deed, the payment of AH funds related to the Development Plan and the consummation of any other transaction contemplated herein may be subject to HUD acknowledgments or approvals and are subject to the approval of AH Board of Commissioners in its sole and absolute discretion. Notwithstanding any provisions herein, the Developer hereby acknowledges and agrees that any approval by the AH Board of Commissioners for AH to enter into this Agreement does not constitute approval by the AH Board of Commissioners to submit any requests for authorization to HUD, convey any interest in land to Owner Entities, Developer or its affiliates, to provide any AH funds to Developer or its affiliates or expend any AH funds on the Development Plan, or to consummate any financial closing with Developer or its affiliates, provided, however. The parties hereby agree to cooperate and work together in good faith to obtain all necessary HUD acknowledgments or approvals, and AH hereby agrees to be responsible for requesting and obtaining all necessary HUD acknowledgments or approvals for each Project of a Phase. The construction of all Phases of the Development Plan shall be completed on or before the date to be determined by the parties hereto. Each party waives all claims against the other party upon such party's default of this Agreement for any special (including, without limitation, lost or unearned profits), consequential, unforeseeable, or punitive damages.
- 14.5. **Covenant Not to Sue.** As a material inducement to AH to enter into this Agreement, Developer covenants and agrees not to file or initiate any type of action or proceeding against AH and all commissioners, officers, employees, agents, attorneys, heirs, successors, subsidiary and affiliated corporations and assigns, and each of them regarding any claim, demand, cause of action, suit, damage, loss, or expense of any type or nature, whether known or unknown, whether direct or indirect, relating in any way to AH's exercise of its absolute and sole discretion in good faith pursuant to Section 14.4 of this Agreement and will neither ask nor permit any other person or entity to initiate such a lawsuit or proceeding on their behalf.

15. ARTICLE XV. TERMINATION

- 15.1. Termination. Unless terminated earlier pursuant to Section 15.2, or extended by mutual written agreement of the parties, this entire Agreement shall terminate on the date set forth in Section 3.3 above. The rights and obligations of the parties may be enforced against a party for any Project of a Phase of the Development Plan pursuant to the applicable documents and agreements executed at the closing of such Project, without regard as to whether this Agreement is terminated pursuant to Article 15 of this Agreement.
- 15.2. Termination by AH for Convenience. AH shall have the right to terminate this Agreement for convenience, which shall be a right accorded to AH as a federally funded agency which is AH's obligation to incorporate into the Agreement pursuant to federal procurement rules, in accordance with terms set forth below. Subject to the foregoing limitations, Developer acknowledges that AH may terminate this Agreement at any time for AH's convenience upon giving ninety (90) days prior written notice to the Developer. Following a termination by AH for convenience pursuant to this subsection, the Developer shall be entitled to receive from AH an amount equal to:
- 15.2.1. reimbursement of all actual third party expenses then incurred (or contractually committed and owed to prior to termination) after execution of this Agreement by Developer for all Projects of a phase of the Development Plan, for which a financial closing has not yet occurred, that have been paid and are reasonable and customary and contemplated to be reimbursed to Developer by AH, except that Developer shall not receive payment for expenses which have already been reimbursed by AH;
 - 15.2.2. actual reasonable costs that have been paid by Developer of terminating outstanding subcontracts (provided the subcontracts were executed before Developer's receipt of AH's 90-day notice) and other similar wind-up costs that relate to the phases of the Development Plan for which a financial closing has not occurred; and
 - 15.2.3. the actual reasonable costs that have been paid by Developer of preserving and protecting the work already performed relating to the phases of the Development Plan for which a financial closing has not occurred until AH or its assignee takes possession thereof or assumes responsibility therefore.
 - 15.2.4. In lieu of paying the costs described in Sections 15.2.2 and 15.2.3, above, AH may render amounts due and owing directly to the third party subcontractors.
- 15.3. The Developer shall, within sixty (60) days after the effective date of the termination, submit an invoice to AH for the items set forth in said subsections (i) through (iii) ("Invoice") for which the Developer believes payment is due to it as a result of the termination for convenience. Developer's transmittal of the Invoice to AH shall include supporting receipts and financial, operating and expense statements, calculated on a cash basis and certified by a licensed independent public accounting firm ("Supporting Information"). Upon receipt of the Invoice and Supporting Information from Developer within, but no later than, one hundred twenty (120) days after the effective date of such termination for convenience, AH will review the Invoice and Supporting Information and will pay Developer only those amounts approved by AH as being reasonable and accurate based solely on the Supporting Information submitted by Developer within the time frame

required for the submission of the Invoice and Supporting Information under this subsection less any sums owned to AH by Developer.

- 15.4. Upon any termination of this Agreement pursuant to Article 15, and payment of any and all amounts due to Developer, the Developer shall execute any assignments of contracts or subcontracts related to the Development Plan as requested by AH. The failure to execute any such assignments shall result in a reduction of any payments due to Developer, if any. The Developer shall, within forty-five (45) days after the effective date of the termination and payment of all amounts due to Developer, deliver to AH all work product relating to the design, engineering, construction and financing of the terminated Projects within the Phase(s) of the Development Plan.
- 15.5. Limitations. The parties acknowledge and agree that neither the Developer, any Owner Entity, Tax Credit Investor, nor any investor or lender in a closed transaction shall have any recourse under this Agreement against (i) any public housing project of AH (as defined in the Consolidated Annual Contributions Contract ("ACC") between AH and HUD or any amendment thereto); (ii) any operating receipts of AH; (iii) any public housing operating capital fund, Moving to Work ("MTW"), Section 8, or Section 9 related reserves of AH reflected in any AH annual operating budget required under the ACC, or other agreement with HUD; (iv) any properties in which AH may have an ownership or distribution interest; (v) any Moving to Work fund or reserves; or (vi) other AH assets, beyond those granted in the transaction documents of the closed Projects. The Developer also acknowledges and agrees that AH has the right, but no obligation, to proceed with the financial closing for any Project within a Phase of the Development Plan, if it does not have a joint venture agreement with Developer for such Project or if there exists at the time of such closing any material, uncured default by Developer under this Agreement or any ancillary agreement described herein, or by the Owner Entity under the Ground Lease, HomeFlex Agreement or AH Loan document for a prior closed Project.

16. ARTICLE XVI. MISCELLANEOUS

- 16.1. Cooperation. Each party hereby agrees not to formally submit any application, proposal or documentation to any third party, including, without limitation, any financial institution, which includes any factual statement, representation, or commitment from or by the other party that is related to the Development Plan, without the review by the other party of such submission. For any matters which are harmful to the Developer or closed transactions, Developer may notify HUD directly after issuing to AH a 10-day notice of its intent to do so. AH and the Developer, including consultants, attorneys, and other agents of or contractors hired by Developer, shall address any inquiries related to environmental remediation, or other environmental status of the Development Plan in accordance with the procedures set forth in the Environmental Protocols.
- 16.2. Notices. All notices, requests, claims and other communications described herein or required hereby, shall be given or made by personal delivery, courier, overnight delivery, or certified mail to the parties at the following addresses (or at such other address for a party as shall be specified by like notice):

If to AH: Eugene E. Jones, Jr.
President and Chief Executive Officer
The Housing Authority of the City of Atlanta, Georgia
230 John Wesley Dobbs Ave., N.E.
Atlanta, Georgia 30303-2421
Telephone: (404) 817-7463
Fax: (404) 332-0100

with a copy to: Dwayne C. Vaughn
General Counsel
The Housing Authority of the City of Atlanta, Georgia
230 John Wesley Dobbs Ave, N.E.
Atlanta, Georgia 30303-2421
Telephone: (404) 817-7293
Fax: (404) 888-6096

If to the Developer:

Telephone: (____) _____
Fax: (____) _____

with a copy to:

Telephone: (____) _____
Fax: (____) _____

with a copy to:

Telephone: (____) _____
Fax: (____) _____

Notices shall be deemed given upon receipt by the party to whom such notice is sent, or upon refusal by such party to accept delivery, or upon the inability to deliver because the notice address is no longer correct.

16.3. Amendments. This Agreement may only be amended by a written instrument executed by both parties hereto. In addition, documents and agreements executed in connection with the closings for the Development Plan shall effectively amend the terms of this Agreement and be controlling to the extent that the terms of those documents and agreements conflict with the terms of this Agreement.

16.4. Binding Agreement; Assignment. This Agreement, and the terms, covenants and conditions hereof, shall be binding upon and inure to the benefit of the parties hereto and

their respective successors and permitted assigns. This Agreement may not be assigned by either party without the prior written consent of the other party.

- 16.5. Governing Law, Forum and Attorneys' Fees. This Agreement shall be governed by and construed in accordance with the laws of the State of Georgia without reference to its conflicts of laws principles, and that any action or claim brought pursuant to this Agreement shall be brought in a state or Federal court of competent jurisdiction within Fulton County, Georgia. The parties irrevocably consent to the personal jurisdiction of any such court for the purposes of such an action and waive any defense they might have as to the convenience or venue of any such court for the purpose of such an action. In any suit or cause of action arising hereunder or relating hereto, the non-prevailing party, as adjudged by the court given the totality of the circumstances, shall pay the prevailing party's reasonable attorneys' fees and costs incurred therewith, without regard to conflict of law principles.
- 16.6. Headings. The section headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.
- 16.7. Severability. In case any one or more of the provisions contained in this Agreement (other than the provisions set forth in Section 3.3 and Section 4.2) should be invalid, illegal or unenforceable in any respect, no party hereto shall be required to comply with such provision for so long as such provision is held to be invalid, illegal or unenforceable and the validity, legality and enforceability of the remaining provisions contained herein shall not in any way be affected or impaired. The parties shall endeavor in good faith negotiations to replace the invalid, illegal and unenforceable provisions with valid provisions, the effect of which comes as close as possible to that of the invalid, illegal or unenforceable provisions.
- 16.8. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original and all of which shall be deemed to constitute one and the same agreement.
- 16.9. No Joint Venture Partners. Other than the fact that AH or an affiliate of AH may be or become a limited partner of or member in an Owner Entity or the General Partner or Managing Member of an Owner Entity, or one of its affiliates, neither this Agreement nor any agreements, instruments, documents or transactions contemplated hereby, including without limitation, any loan documents, shall in any respect be interpreted, deemed or construed as making AH or an affiliate of AH a partner (other than a limited partner or member in a limited liability company or General Partner in connection with the Development Plan) or joint venturer with the Developer, Owner Entity or their affiliates, or as creating a similar relationship or entity, and the Developer agrees that neither it nor any of its affiliates will make any contrary assertion contention, claim or counterclaim in any action, suit or other legal proceeding involving the Developer or its affiliates. The parties acknowledge that nothing in the ACC, if applicable, or any other agreement or contract between the parties shall be deemed to create a relationship of third-party beneficiary, principal and agent, limited or general partnership, joint venture, or any

association or relationship involving HUD. The parties further acknowledge that nothing in the Agreement shall be deemed to create a relationship of third-party beneficiary, principal and agent, limited or general partnership, joint venture, or any association or relationship involving AH.

- 16.10. Waiver. No failure on the part of the parties to exercise, and no delay in exercising, any right, and no failure on their part to insist upon strict performance of any term or provision hereof, shall operate a waiver of any of the parties' rights hereunder, nor shall any single or partial exercise by the parties of any right preclude any other or future exercise thereof or the exercise of any other right. No waiver by the parties of any condition or event of default shall constitute a waiver of any subsequent condition or event of default.
- 16.11. No Assignment, Transfer or Change in Control. The parties further acknowledge that the proposed Change in Control, transfer of development and/or operating assistance to a rental Project Owner Entity shall not be deemed to be an assignment of development and/or operating assistance and that, accordingly, the rental phase Project Owner Entity shall not succeed to any rights or benefits of AH under the ACC, or any other agreement or contract between the parties, if any, nor shall it attain any privileges, authorities, interests, or rights in or under the ACC, or any other agreement or contract between the parties. No Change in Control or transfer shall be made without the prior written approval of AH, of: (i) any interest of a managing member, general partner, or controlling stockholder (any such interest being referred to as a "Controlling Interest") of the Developer; (ii) any Controlling Interest in the Developer Lead member of Developer; or (iii) any Controlling Interest in any entity which has a Controlling Interest in the Developer. The individual employees designated by AH as Developer "Key Persons" under this Agreement may not be replaced, reassigned or have their duties reassigned without the prior written approval of AH, which approval may be withheld at AH's discretion. AH hereby designates _____ as Key Person(s) for this Agreement.
- 16.12. Arbitration. Any dispute, controversy or claim arising out of or in connection with, or relating to, this Agreement or any breach or alleged breach hereof shall, upon the request of any party involved, be submitted to, and settled by, arbitration in Atlanta, Georgia, pursuant to the arbitration rules then in effect of the Georgia Arbitration Code, O.C.G.A. Section 9-1-1, et seq., (or at any time or at any other place or under any other form of arbitration mutually acceptable to the parties so involved). Any award rendered shall be final and conclusive upon the parties and a judgment thereon may be entered in the Fulton County, Georgia Superior Court. The expenses of the arbitration shall be borne equally by the parties to the arbitration, provided that each party shall pay for and bear the cost of its own experts, evidence and counsel's fees, except that in the discretion of the arbitrator, any award may include the cost of a party's counsel if the arbitrator expressly determines that the party against whom such award is entered has caused the dispute, controversy or claim to be submitted to arbitration as a dilatory tactic.

IN WITNESS WHEREOF, the parties, by their duly authorized signatories, hereby enter into this Agreement effective as of the date first set forth above.

[Signature blocks on following pages]

SIGNATURES

[FORM NAME],

a _____, [Type of Organization]

By: _____,

a
Its:

By: _____,

a
Its:

By: _____,

Name:
Title:

[Signatures continued on following page]

THE HOUSING AUTHORITY OF THE CITY OF ATLANTA, GEORGIA

By: _____
Eugene E. Jones, Jr.
President and Chief Executive Officer

SCHEDULE 1
PROPERTY DESCRIPTION

SCHEDULE 2

EXHIBITS

Exhibit A – Summary of Business Terms

Exhibit B – Project Schedule

Exhibit C – AH Expenses Comprising the Commitment Fee

Exhibit A

Summary of Business Terms

The final details of terms, fee schedules and conditions will be negotiated with the Developer on a phase-by-phase (or Project-by-Project) basis. The terms follow the mixed-income model used by AH, and contemplate that AH Funds (as previously defined herein) may be utilized in each transaction in the form of a subordinate loan, grant or capital contribution subject to approval of the AH Board of Commissioners and HUD. The Developer and AH have agreed to the following business terms and parameters relative to development associated with the Development Plan (references to "Developer" herein may also include affiliates, and entities with a controlling interest in the Developer).

SECTION __. PROJECT

1. Name of Project: ____
2. Size of Project: Approximately ____ S/F/Acres

SECTION __ OWNER ENTITY

Each Project of the Development shall have the following ownership interests in the Project partnership:

Owner Entity, [TBD], LP a ____ Limited Partnership,
Manager: Developer or its affiliate

- 99.99% **Investor Limited Partner:** [TBD], LLC
- 0.01% **General Partner:** [TBD], LLC
 Manager(s): TBD
 - __% **Member: AH or its affiliate or subsidiary**
 - __% **Member: Developer or affiliate**
 Manager(s): TBD
 - __% Member: TBD, LLC (Include Member(s) and Manager(s))
 - __% Member: TBD, LLC (Include Member(s) and Manager(s))

SECTION __ DEVELOPER STRUCTURE; TEAM

DEVELOPERS

- ____ % **Developer:** AH or its affiliate
- ____% **Developer:** Developer or its affiliate
 Manager(s): _____
 - ____% **Member:** (Include Type of Company, Member(s), Formation State, EIN)
 - __% **MBE/WBE Member:** (Include Type of Company, Member(s), Formation State, EIN)

- ___% **Managing Member:** Developer or its affiliate (Include Type of Company, Member(s), Formation State, EIN)

1. Developer Lead: _____, a _____ company, an affiliate of _____
2. Developer Team
 - a. Architect:
 - b. Contractor:
 - c. Engineer:
 - d. Attorney:
 - e. Leasing Agent
 - f. Financial Advisor
 - g. Management Consultant
 - h. _____

SECTION ___. RENTAL PHASE PROJECT OWNERSHIP STRUCTURE

1. Name of Owner/Borrower
2. Owner/Borrower Members
 - a. (___%) _____ a _____ limited liability company [corporation], and affiliate of _____
 - b. (___%) _____ a _____ limited liability company [corporation], and affiliate of _____, a MBE/WBE Partner
 - c. (___%) The Housing Authority of the City of Atlanta, Georgia
3. General Partner
4. General Partner Members
 - a. (___%) _____ a _____ limited liability company [corporation], and affiliate of _____
 - b. (___%) _____ a _____ limited liability company [corporation], and affiliate of _____, a MBE/WBE Partner
 - c. _____
5. Managing Member
6. Signatory(ies) of Owner/Borrower:

SECTION ___. OVERALL DEVELOPMENT FINANCING

1. AH Loan: ___ priority. Aggregate amount of no more than \$_____ [describe allocation by phase] for ___ Phase of _____. If Developer does not complete all Projects and phases of the Development Plan, the amount of the AH loan shall be less than \$_____, except to the extent already used for earlier phase. ___ Interest Rate. ___ Term.
2. ___ Loan: ___ Priority Lender. \$ _____ for ___ Project
3. ___ [Bridge] Loan. ___ Priority Lender. \$ _____ for ___ Project
4. ___ [Construction] Loan. ___ Priority Lender. \$ _____ for ___ Project

SECTION ____ . UNIT MIX AND AMENITIES

Tax Credit / PBRA Assisted						40%
Workforce Housing (80 - 120% of AMI)						40%
Homeownership						
Market Rate						20%
Total						100%

	Bedrooms	Bathrooms	AH-Assisted/ Tax Credit Only/ Market	Square Footage
Rental Family				
Rental Senior				

1. Rental Phases. ____ Phases of Family Rental Units (____ units-____ units reserved for public housing eligible families). The Development Plan will be implemented in _____ or more phases and will include no less than ____ new construction multifamily rental units, including approximately ____ new construction family rental units ("**Family Rental Units**") and ____ new construction senior rental units ("**Senior Rental Units**"). The Family Rental Units phases and the Senior Rental Units phase shall be collectively referred to herein as "**Rental Phase(s)**."
2. Homeownership Units. ____ Phases of ____ for-sale single family, condominium, and/or townhome homeownership units ("**Homeownership Units**").
3. Affordable Family Rental Units. approximately _____ percent (____%) of the Family Rental Units (approximately ____ Affordable Family Rental Units) and ____ Homeownership Units will be set aside for families who are eligible to receive the benefit of project based rental assistance subsidy for the period specified in the HomeFlex Agreement (as defined herein) [with first priority for admission being given to former residents of the former Site / public housing community] and other affected residents impacted by the development of the Site, as determined by AH, for the lesser of the term of the ground lease or the Declaration of Trust and Restrictive Covenants for the benefit of HUD recorded against the land on which the Family Rental Units shall be developed. Such

Family Rental Units will also be operated and maintained as qualified low-income units under Section 42 of the Internal Revenue Code of 1986, as amended (the "Code") for a period of not less than the compliance period and any agreed upon extended use period (as such terms are defined in Code Section 42). [The Affordable Family Rental Units shall at all times, to the extent feasible, be scattered evenly throughout the Family Rental Units, and shall not be concentrated in any particular building, structure or area or areas within any particular building or structure];

4. Market Rate Units. approximately _____ percent (____%) of the Family Rental Units (approximately _____ Units) will be reserved for market-rate families;
5. HomeFlex Units. _____ percent (____%) of the Senior Rental Units (____ Senior Family Rental Units) will be set aside for families who are eligible to receive the benefit of project based rental assistance subsidy specified in the HomeFlex Agreement (as defined herein) [with first priority for admission being given to former residents of the former Site / public housing community] and other affected residents impacted by the development of the Site, as determined by AH, for the lesser of the term of the ground lease or the Declaration of Trust and Restrictive Covenants for the benefit of HUD recorded against the land on which the Senior Rental Units shall be developed. Such Senior Family Rental Units will be operated and maintained as qualified low-income units under the Code for a period of not less than the compliance period and any agreed upon "extended use period" (as such terms are defined in Code Section 42);
6. Commercial/Retail. Approximately _____ square feet of integrated mixed-use commercial and retail space (the "Commercial/Retail Component") and other amenities shall be developed for rent on the Site as more details become known about such phase in response to market forces shaping such development.
7. Amenities. _____.

SECTION ____. FAMILY RENTAL UNITS

1. ____ Phase(s) of Affordable Family Rental Units (____ units with all units reserved for public housing eligible families) shall be developed at the Site.
2. Ground Lease: AH will enter into a long-term ground lease of no more than _____ (____) years (or less, so that the term of the lease will be conterminous with any rental phase Project at the Site that has already reached financial closing) with the Owner Entity on market-rate terms mutually satisfactory and commercially reasonable to AH and the Owner Entity for (a) up front lump sum rent of \$____, or (b) an annual rent in the amount calculated by dividing the appraised value of the land by the term of the lease, which rent shall escalate every _____ (____) years by _____ percent (____%) for inflation. Subject to the approval of the Tax Credit Investor, the ground rent payments shall constitute an operating expense of the development and shall be paid prior to other

payments subject to net cash flow but after payment of the first priority loan and second priority loan debt service payments.

3. **AH Investment:** AH will provide to the partnership the approximate amount of \$ _____ for all of the newly constructed units (Family or Senior), reserved for public housing-eligible families for any or all Projects within phases of the [Former Name] Development Plan in the form of one or more subordinate loans to the Owner Entities. The AH Loans shall be fully amortizing for not more than _____ (____) years and are projected to have construction term interest rates of _____ percent (____%) (for approximately _____-_____ months) and permanent term interest rates of not less than the Applicable Federal Rate ("AFR"). The other terms of term of the loan will be determined by AH and Developer on a phase by phase basis and is dependent on the debt and equity vehicles used to finance the non-public housing-eligible units.
4. **Origination Fee:** Fees payable to AH at financial closing in an amount equivalent to one percent (1%) of the total AH Loan amount.
5. **Development Fee:** Fee for executing all activities necessary for the completion of all phases of development, the development fee, less developer overhead, will be split between the Developer and AH in a _____ percent (____%) and _____ percent (____%) ratio, respectively. The development fee is calculated as a percent of total development cost. The distributable development fee will be calculated based on the maximum allowable development fee _____ percent (____%) less developer overhead, in accordance with both the DCA guidelines and the HUD Cost Controls and Safe Harbor Standards for Mixed Finance Developments. AH will allow up to _____ percent (____%) of the distributable development fee to be paid to cover developer overhead the balance of which shall determine the net distributable development fee. The net distributable development fee will be paid as follows: _____ percent (____%) to AH and _____ percent (____%) to the Developer.
6. **Net Distributable Cash Flow:** AH will share in net distributable cash flow from each Project. The net distributable cash flow will be shared by Owner Entity and AH, where the Owner Entity or the General Partner, thereof receives _____ percent (____%) and AH or AH's affiliate will receive _____ percent (____%).
7. **Property Management Fee:** The property manager, an affiliate of the Developer, will earn a property management fee equal to approximately six percent (6%) of gross collections from the Family Rental Units or such higher fees permitted by DCA or HUD. Notwithstanding the foregoing, the parties agree that in the event the property manager shall fail either a physical inspection or the business process review inspection which requirement will be incorporated into the Management Plan to be prepared pursuant to the requirements in the Master Developer Agreement, the Owner Entity shall be required to hold back and escrow five percent (5%) of the of property management fee with such five percent (5%) amount escrowed being eligible for release by the Owner Entity to the property manager upon written confirmation by AH that the failures identified in the inspections have been corrected. A "business process review" or "BPR" is an annual

evaluation process that AH utilizes to ensure that property managers are adhering to HUD and AH regulations and guidelines. The process involves the selecting of a random sample of tenant files by AH's compliance personnel, to be reviewed by using the most current tenant data in the Public and Indian Housing Information Center database. The number of files required for the BPR will be _____ percent (____ %) of AH-assisted units, per Project, with a minimum requirement of _____ files and a maximum of _____ files. AH will select a variety of active and non-active files to be reviewed with including new admissions, annual recertification, interim recertification, unit transfers, evictions, skip-moves, and application rejection files. AH will review each active and non-active file and identify any deficiencies or deviations from policies and/or procedures. For every BPR, the property will receive a score with the score determine the timing of the next BPR and the property manager will be given _____ (____) days from the date a BPR Summary is provided, to review the deficiencies listed on the summary, if any, and to take any necessary actions to correct the deficiency.

8. Co-Management Services Fee: AH will receive one percent (1%) of the gross rent collections from the Family Rental Units.
9. Reversion: At the end of the ground lease term of no more than _____ (____) years, or such other term as may be agreed to by AH, ownership of all the rental multifamily housing and improvements will revert to AH.
10. Net Proceeds (Net of Debt and Transaction Costs) from Refinancing, Conveyance, Sale or other Capital Transactions: Owner Entity to receive _____ percent (____ %), AH to receive _____ percent (____ %).
11. Issuer's Fee: In the event a Project within a phase is financed with bond proceeds with bonds issued by AH, AH will receive _____ percent (____ %) of the issuer's fee at closing and an annual fee. AH will [not] receive an issuer's fee for bonds issued by URFA.
12. Construction Management Fee: For any extraordinary site work funded by AH and performed by the Developer, the Developer shall be entitled to the initial _____ percent (____%) of the construction management fee for that work, as compensation to the Developer for its overhead, with the balance of the construction management fee (i.e., _____ percent (____%) of the construction management fee) being split between AH and the Developer for the construction management services with _____ percent (____%) going to the Developer and _____ (____%) going to AH. The construction budget, including amount of construction management fee, is subject to AH approval.

SECTION __ SENIOR RENTAL UNITS

1. One Phase of Affordable Senior Rental Units (____ units with all units reserved for public housing eligible families) shall be developed at the Site.

2. Ground Lease: AH will enter into a long-term ground lease of no more than _____ (____) years (or less so that the term of the lease will be conterminous with any rental phase Project at the Site that has already reached financial closing) with the Owner Entity on terms mutually satisfactory and commercially reasonable to AH and the Owner Entity for an annual rent in the amount calculated by dividing the appraised value of the land by the term of the lease, which rent shall escalate every _____ (____) years by _____ percent (____%) for inflation (provided the parties will discuss adjusting the ground rent for the Senior Rental Units if Developer requires nominal ground rent to earn points under DCA's Qualified Allocation Plan for low-income housing tax credits). Subject to the approval of the Tax Credit Investor, the ground rent payments shall constitute an operating expense of the development and shall be paid prior to other payments subject to net cash flow but after payment of the first priority loan and second priority loan debt service payments.
3. AH Investment: AH will provide the approximate amount of \$_____ for any or all of the newly constructed units (Family or Senior, reserved for public housing-eligible families for any or all phases of the [Former Name] Development Plan in the form of subordinate loan(s) to the Owner Entity. The AH Loans are projected to have a construction term interest rates of _____ percent (____ %) (for approximately _____-_____ months) and permanent term interest rates of not less than the AFR, and a loan term of ____ years. The other terms of the loan will be determined by AH and Developer on a phase-by-phase and Project-by-Project basis and is dependent on the debt and equity vehicles used to finance the non-public housing-eligible units.
4. Origination Fee: Fees payable to AH at financial closing in an amount equivalent to 1% of the total AH Loan.
5. Development Fee: Fee for executing all activities necessary for the completion of all Projects within a phase of the Development Plan, the development fee, less developer overhead, will be split between the Developer and AH in a _____ percent (____%) and _____ percent (____%) ratio, respectively. The development fee is calculated as a percent of total development cost. The distributable development fee will be calculated based on the maximum allowable development fee _____ percent (____ %) less developer overhead, in accordance with both the DCA guidelines and the HUD Cost Controls and Safe Harbor Standards for Mixed Finance Developments. AH will allow up to _____ percent (____ %) of the distributable development fee to be paid to cover developer overhead the balance of which shall determine the net distributable development fee. The net distributable development fee will be paid as follows: _____ percent (____ %) to AH and _____ percent (____ %) to the Developer.
6. Net distributable Cash Flow: AH will share in net distributable cash flow from each Project within a phase of the Development Plan. The net distributable cash flow will be shared by Owner Entity and AH, where the Owner Entity or the General Partner, thereof receives _____ percent (____%) and AH or AH's affiliate will receive _____ percent (____%).

7. **Property Management Fee:** The property manager, an affiliate of the Developer, will earn a property management fee equal to six percent (6%) of gross collections from the Family Rental Units. Notwithstanding the foregoing, the parties agree that in the event the property manager shall fail either a physical inspection or a BPR inspection which requirement will be incorporated into the Management Plan, the Owner Entity shall be required to hold back and escrow five percent (5%) of the property management fee with such five percent (5%) amount escrowed being eligible for release by the Owner Entity to the property manager upon written confirmation by AH that the failures identified in the inspections have been corrected.
8. **Co-Management Services Fee:** AH will receive one percent (1 %) of the gross rent collections from the Affordable Family Rental Units.
9. **Reversion:** At the end of the ground lease term of no more than _____ (_____) years, or such other term as may be agreed to by AH, ownership of all the leased multifamily housing and improvements will revert to AH.
10. **Net Proceeds (Net of Debt and Transaction Costs) from Refinancing, Conveyance, Sale or other Capital Transactions:** Subject to the approval of the Tax Credit Investor, Owner Entity to receive _____ percent (____ %), AH to receive _____ percent (____ %).
11. **Issuer's Fee:** In the event a Project within a phase is financed with bond proceeds with bonds issued by AH, AH will receive _____ percent (____ %) of the issuer's fee at closing and an annual fee. AH will not receive an issuer's fee for bonds issued by URFA.
12. **Construction Management Fee:** For any extraordinary site work funded by AH and performed by the Developer, the Developer shall be entitled to the initial _____ percent (____ %) of the construction management fee for that work, as compensation to the Developer for its overhead, with the balance of the construction management fee (i.e., _____ percent (____ %) of the construction management fee) being split between AH and the Developer for the construction management services with _____ percent (____ %) going to the Developer and _____ percent (____ %) going to AH. The construction budget, including amount of construction management fee, is subject to AH approval.

SECTION __ [HOMEOWNERSHIP] UNITS

1. ___ Phase of Homeownership Units (____ for-sale single-family, condominium, and/or town home units with ___ units reserved for low-income eligible families [up to 80% AMI]), and _____ units reserved for eligible families from 81% -120% AMI, shall be developed at the Site. The for-sale homes shall be _____ percent (____ %) market rate unless HUD requires that a percentage of the units be designated affordable. In order to support the development of affordable for-sale housing in the [Former Name] community, AH may elect to discount the land value for the affordable unit lots, reduce its level of profit participation and/or provide down payment assistance to the eligible

purchasers of the affordable units. Developer will make efforts to contain costs and secure additional grants or other low-cost funds for construction cost of affordable units and down payment assistance in addition to what may be provided by AH.

2. AH subsidy. AH will provide seller's notes for the land value, and/or if approved by at the AH Board of Commissioners or HUD, construction subsidy towards public infrastructure costs.
3. Down-Payment Assistance (if applicable). AH will make best efforts to set aside down payment assistance funds not to exceed \$_____ per homebuyer for the affordable units, to the extent funding is available. While AH can make no guarantees about HUD's affordability requirements, it is customary for the amount to be no more than _____ percent (____%) of the planned units to be affordable to families who are otherwise eligible and who earn up to _____ percent (____%) of _____.
4. Subject to HUD approval and any restrictive covenants that may be required to be recorded against the land with AH as the beneficiary (to ensure the approved homeownership development of the land, including but not limited to the number, type and location of any required affordable homeownership units, the minimum 20-year term of affordability, amount of AH subsidy, recapture and equity split requirements), AH may in its sole and absolute discretion permit the Developer to assign or sell its option to develop the land to a third party homebuilder approved by AH in advance and in writing for any amount which the third party agrees to pay Developer for such option, provided that (i) AH shall be a party to the sales contract, (ii) AH shall not owe Developer a developer preference payment if the option to develop is sold to a third party and (iii) the third party agrees to the terms set forth above regarding sale price for the land and AH's share of the profits and to complete the homeownership development before the expiration of the Developer Rights as set forth in the Master Developer Agreement.
5. Payment for Land. AH shall receive payment of the land value (whether leased or sold) based on the fair market appraised as-is value of the land as determined by a third party certified appraiser no earlier than 6 months prior to submission of the HUD disposition application, to be paid at such time as the Developer closes on the property and receives title which must occur within ____ months of the HUD disposition approval.
6. AH Public Infrastructure Investment: AH will provide MTW Funds in an amount not to exceed the pro rata share of the number of units reserved for low-income families earning up to 80% AMI to the total homeownership units in each Project of the [Former Name] Development Plan. MTW Funds may be contributed in the form of subordinate construction loan(s) to the Developer, or as a grant/direct cost. The terms of the AH MTW Loan Funds will be negotiated and agreed upon for each Phase of Public Infrastructure prior to construction commencement, are subject to AH Board and HUD approval, and are dependent on the debt and equity vehicles used to finance the non-public housing-eligible units.

7. AH Investment: AH will provide a seller's note for each unit/lot in an amount equal to the appraised fair market value of the land, plus the amount of the Public Infrastructure Investment attributable to each lot.
8. Homeownership Development Fee (if applicable): Fee for executing all activities necessary for the completion of all homeownership Projects of development, the gross development fee, will be split between the Developer and AH in a _____ percent (____%) and _____ percent (____%) ratio, respectively. The gross development fee is calculated as a percentage of the total development budget. The distributable development fee will be calculated based on the HUD maximum allowable development fee _____ percent (____%), in accordance with both the DCA guidelines and the HUD Cost Controls and Safe Harbor Standards for Homeownership Mixed Finance Developments.
9. Profit Percentage: Revenues from the sale of the for-sale homes shall be shared between the Developer and AH at closing to the homebuyer as follows: _____ percent (____%) to the Developer and _____ percent (____%) to AH.
10. Reversion (if applicable per HUD approvals): _____.
11. Issuer's Fee: In the event a Project is financed with bond proceeds, with bonds issued by AH, AH will receive _____ percent (____%) of the issuer's fee at closing and an annual fee. AH will not receive an issuer's fee for bonds issued by URFA.
12. Construction Management Fee: For any extraordinary site work funded by AH and performed by the Developer, the construction management fee shall be split between AH and the Developer for the construction management services with _____ percent (____%) going to the Developer and _____ percent (____%) going to AH. The construction budget, including amount of construction management fee, is subject to AH approval, third party cost reasonableness review, and HUD approval prior to commencement of construction.

SECTION ____ . OTHER DEVELOPMENT – ON-SITE COMMERCIAL/RETAIL COMPONENT

1. In ____ Phases, _____ square feet of commercial/retail space shall be developed on the Site.
2. Ground Lease: AH will enter into a long-term ground lease of no more than _____ (____) years (or less, so that the term of the lease will be coterminous with any rental phase Project at the Site that has already reached financial closing) with the Owner Entity on market-rate terms mutually satisfactory and commercially reasonable to AH and the Owner Entity for an annual rent in an amount determined based on a fair market value appraisal obtained no more than 6 months prior to submission of the HUD disposition

application, which rent shall escalate every five (5) years based on an updated appraisal. AH may consider below market rate ground rent if Owner Entity leases the land to a tenant with an accepted "public" or "charitable" purpose, subject to AH Board and HUD approval.

3. Development Fee: Fee for executing all activities necessary for the completion of all Projects within the phases of development, the development fee will be split between the Developer and AH in a _____ percent (____ %) and _____ percent (____ %) ratio, respectively. The development fee is calculated as a percent of total development cost.
4. Net Distributable Cash Flow: AH will share in Net Distributable Cash Flow (as defined below) from any Commercial/Retail phase Project. The Net Distributable Cash Flow will be shared by Owner Entity and AH, where the Owner Entity or the General Partner, thereof receives _____ percent (____%) and AH or AH's affiliate will receive _____ percent (____%).
5. Property Management Fee: The property manager, an affiliate of the Developer, will earn a property management fee equal to approximately _____ percent (____ %) of gross collections from the Commercial/Retail development.
6. Co-Management Services Fee: AH will receive ____% of the gross rent collections from the Commercial/Retail development, if applicable.
7. Reversion: At the end of the ground lease term of no more than _____ (____) years, or such other term as may be agreed to by AH, ownership of all the rental Commercial/Retail development and improvements will revert to AH.
8. Net Proceeds (Net of Debt and Transaction Costs and Private Equity Investor Return) from Refinancing, Conveyance, Sale or other Capital Transactions: Subject to the approval of the private equity investor, Owner Entity to receive _____ percent (____ %), AH to receive _____ percent (____ %).
9. Construction Management Fee: For any extraordinary site work funded by AH and performed by the Developer, the Developer shall be entitled to the initial _____ percent (____%) of the construction management fee for that work, as compensation to the Developer for its overhead, with the balance of the construction management fee (i.e., _____ percent (____%) of the construction management fee) being split between AH and the Developer for the construction management services with _____ percent (____%) going to the Developer and _____ percent (____%) going to AH. The construction budget, including amount of construction management fee, is subject to AH approval.

SECTION ____. DEVELOPER ROLES AND RESPONSIBILITIES

The following aspects of the development will be the joint responsibility of both the Developer and AH:

1. Entitlement/Design:
 - Rezoning
 - Developments of Regional Impact (DRIs) Process
 - Sustainability
2. Financing – Rental:
 - Invest Atlanta Application
 - Other Tax Credit Application
3. Execution – Rental:
 - Marketing

The following aspects of the development will be the primary responsibility of the Developer:

1. Entitlement/Design:
 - NPU Process
 - Other Community Engagement
 - Architecture/Engineering Analysis and Hiring
 - Streets/Storm water
 - ROW easements
 - GDOT/Renew Atlanta Improvements
2. Financing – All
 - Non-AH funding applications
 - Davis Bacon compliance
 - UFAS inspections and compliance
 - Minority Participation & Section 3 Tracking
3. Financing - Rental:
 - DCA Application
 - Permanent Loan
 - Syndication/LP Agreement
 - AH Subordinate Loan
 - Ground Lease with AH
 - Incentives
4. Execution – Rental:
 - Remediation (if applicable)
 - Construction
 - Leasing/Management
5. Execution – For-Sale Homes:
 - Design
 - Construction
 - Sales
 - Construction Financing: Loan/Line
6. Execution – Retail:
 - Financing
 - Construction
 - Marketing

- Leasing/Sales
 - Community Space Marketing/Leasing
- 7.

The following aspects of the development will be the primary responsibility of A

1. Financing – Rental:
 - Subsidy
 - Compliance
2. HUD Approvals & Compliance
3. Execution:
 - Environmental remediation
 - Master planning
 - Public infrastructure and utility design
 -

Exhibit B

Tentative Project Schedule

(See Attached)

Exhibit C

AH Expenses Comprising the Commitment Fee, if applicable



THE HOUSING AUTHORITY OF THE CITY OF ATLANTA, GEORGIA
ADDENDA ACKNOWLEDGEMENT FORM

SOLICITATION #	RFP #2022-0062
SOLICITATION TITLE	Redevelopment of Bowen Homes, a Choice Neighborhoods Initiative

The undersigned hereby acknowledges the following Addendum to the above noted solicitation. The undersigned hereby further acknowledges that its proposal response includes allowances for all of the amended provisions and requirements of the Scope of Work / Specifications, solicitation document and Addenda associated with the above noted solicitation and each has been taken into consideration.

**FAILURE TO ACKNOWLEDGE RECEIPT OF THIS ADDENDUM
 MAY SUBJECT YOUR FIRM TO DISQUALIFICATION**

- ADDENDUM # ISSUANCE DATE - _____
- ADDENDUM # ISSUANCE DATE - _____
- ADDENDUM # ISSUANCE DATE - _____
- ADDENDUM # ISSUANCE DATE - _____
- ADDENDUM # ISSUANCE DATE - _____

No addenda were received for the above referenced solicitation.

DATE	
COMPANY PROVIDING OFFER	
NAME/TITLE OF PERSON PROVIDING OFFER	
COMPANY ADDRESS	
COMPANY PHONE NUMBER	
COMPANY FAX NUMBER	
PERSON PROVIDING OFFER E-MAIL ADDRESS	
SIGNATURE OF PERSON PROVIDING OFFER	

Upon completion of this document, please upload in the attachment section of the event.