



# **AGENDA AND NOTICE**

---

**Special**

**Board of Commissioners Meeting**

**Wednesday, June 20, 2018**



**Spartanburg Housing Authority  
Special Board Meeting  
Wednesday, June 20, 2018  
11:45a.m.**

**NOTICE**

The Housing Authority of the City of Spartanburg will hold a board training on June 20, 2018 at 11:45 p.m. in the Executive Board Room at the Spartanburg Housing Authority offices, located at 2271 S. Pine St., Spartanburg, S.C., 29302

**AGENDA**

**CALL MEETING TO ORDER**

- I. Moment of Silence**
- II. Roll Call**
- III. Introduction of Guests**
- IV. Information Item: Pre-Development Loan Agreement (see attachment)**
- V. Information Item: Master Development Agreement (see attachment)**
- VI. Update on Archibald Tax Credit Application (see attachments)**
- VII. Adjournment**



## **Pre-Development Loan Agreement**

---

**Board of Commissioners**  
**Special Meeting**  
**Wednesday, June 20, 2018**

## PREDEVELOPMENT LOAN AGREEMENT

This Predevelopment Loan Agreement ("**Agreement**") is entered into as of July \_\_, 2018, by and between **THE HOUSING AUTHORITY OF THE CITY OF SPARTANBURG, SC**, a South Carolina body corporate and politic (**SHA or the "Authority"**), and **THE NATIONAL HOUSING PARTNERSHIP FOUNDATION**, a New York non-profit corporation (**NHP or "Developer"**) (collectively the "**Parties**").

### RECITALS

- A. On June 13, 2017, a Request for Qualification ("**RFQ**") was issued by the Authority seeking Development Partners for SHA's RAD Portfolio Conversion.
- B. NHP was selected to partner with SHA in the redevelopment of certain Public Housing communities to complete the RAD Portfolio Conversion.
- C. In November 2017, the Authority's Board of Commissioners and Developer entered into an Early Start Agreement to commence work on the RAD Portfolio Conversion.
- D. The Authority has agreed to provide financial assistance to assist Developer in performing predevelopment tasks associated with the Development, including but not limited to planning, architectural design work and site engineering work ("**Predevelopment Work**").

NOW, THEREFORE, in consideration of the above recitals and the mutual promises and covenants set forth in this Agreement, and intending to be legally bound, the Parties agree as follows:

### ARTICLE 1 DEFINITIONS AND EXHIBITS

Section 1.1 Definitions. The following capitalized terms have the meanings set forth in this Section 1.1 wherever used in this Agreement, unless otherwise provided.

- (a) "**Agreement**" shall mean this Predevelopment Loan Agreement.
- (b) "**Approved Predevelopment Budget**" shall mean the Predevelopment Budget attached hereto and incorporated herein as Exhibit C, as it may be amended by joint written agreement of the Parties.
- (c) "**Assignment**" shall mean the Assignment of Agreements, Plans and Specifications and Approvals attached hereto as Exhibit B.
- (d) "**Default**" shall have the meaning set forth in Section 6.1 below.
- (e) "**Development Project**" shall mean the Property and the proposed improvements thereon.
- (f) "**Loan**" shall mean the cost reimbursement loan from the Authority loan to the Developer described in Article 2 below.

(g) "**Loan Documents**" shall mean this Agreement, the Note, and the Assignment.

(h) "**MDA**" shall mean the Master Development Agreement between the Authority and Developer.

(i) "**Note**" shall mean one or more promissory notes that will evidence Developer's obligation to repay the Loan, in substantially the form attached hereto as Exhibit A.

(j) "**Secretary**" shall mean the Secretary of the United States Department of Housing and Urban Development, and its employees, agents and authorized designees.

(k) "**Term**" shall mean shall mean the term of the Loan, commencing on the date of this Agreement and continuing for the period described in Section 2.4(a).

(l) "**Transfer**" shall have the meaning set forth in Section 4.5 below.

Section 1.2 Exhibits. The following exhibits are attached to this Agreement and incorporated into this Agreement by this reference:

EXHIBIT A: Form of Note (Cost Reimbursement)

EXHIBIT B: Form of Assignment

EXHIBIT C: Approved Predevelopment Budget

## **ARTICLE 2 LOAN PROVISIONS**

Section 2.1 Loan. On and subject to the terms and conditions of this Agreement, the Authority agrees to make, and Developer agrees to accept, a Loan for predevelopment activities for the Development Project in the principal amount not to exceed \$200,000 of which will be evidenced by one Note.

Section 2.2 Interest.

(a) Subject to the provisions of Section 2.2(b) below, any amount advanced under the Loan shall not bear interest.

(b) In the event of Default by Developer that remains uncured after expiration of the applicable cure period, the Authority's option, may declare that the amount of the Loan shall be immediately due and payable, and shall bear interest per annum at the lesser of the Applicable Federal Rate on the day of execution, plus 3%, or the maximum rate permitted by law, which shall accrue beginning as of the date of Default and continue until such time as the Loan funds are repaid in full. In this regard, payments received from Developer shall be applied first to interest accrued and the remaining balance, if any, to principal.

Section 2.3 Use of Loan Funds. Developer shall use the Loan funds to reimburse a portion of the predevelopment costs of the Development Project, consistent with the Approved Predevelopment Budget. Developer shall not use the Loan funds for any other purpose. The Authority will advance to Developer funds for 50% of third-party costs attributable to the Development Project, as incurred. Reimbursable costs will be limited to items and amounts shown on the Approved Predevelopment Budget and any such amendment of the

Predevelopment Budget as approved by the Authority. Third-party costs which may be reimbursed hereunder are limited to those costs permitted under the HUD Cost-Control Guidelines and made available for advance by HUD in a pre-development budget, unless the Authority shall determine in its sole discretion to advance other funds.

Section 2.4 Repayment of the Loan. The Loan shall be repaid as follows:

(a) Term. The Loan shall have a term (“***Term***”) which commences on the date of this Agreement and expires on the earlier of:

(i) the date of initial disbursement of the Authority’s construction/permanent loan for the Development, unless earlier terminated in accordance herewith;

(ii) Within fifteen (15) business days from the date on which Developer advises the Authority in writing that it has abandoned the Development Project;

(iii) the date on which the MDA is terminated, by action of either party, after the exhaustion of any cure provisions provided for therein; or

(iv) the occurrence of initial closing on the final Development Project pursuant to the MDA (subsections i-iv, collectively, “Termination Date”)

(b) Payment in Full. All principal and interest, if any, on the Loan shall, at the option of the Authority, be due and payable upon the occurrence of a Default or upon the expiration of the Term.

Section 2.5 Security. Developer shall secure its obligation to repay the Loan evidenced by the Note by executing the Assignment. Delivery to the Authority of all Agreements, Plans and Specifications, and Land Use Approvals (as defined in the Assignment), and all work product under the Agreements which has been paid for in whole or part by the Loan, shall constitute repayment in full of the Loan and Note.

Section 2.6 Conditions Precedent to Disbursement. The Authority shall not be obligated to make any disbursements of Loan proceeds or take any other action under the Loan Documents unless the following conditions precedent are satisfied prior to each such disbursement of the Loan:

(a) There exists no Default nor any act, failure, omission or condition that would constitute an event of Default under this Agreement;

(b) Developer has executed and delivered to Authority all documents and instruments required under the Loan Documents, including the Note and the Assignment;

(c) Submission of a draw request acceptable to Authority as set forth below.

Section 2.7 Disbursement of Proceeds of Loan. The proceeds of the Loan shall be disbursed as the work to be paid for by such Loan proceeds is performed. Developer shall submit a draw request to the Authority not more frequently than one time each calendar month. The draw request shall be in a form containing sufficient detail and with sufficient supporting

documentation to permit the Authority to confirm that the work to be funded by the draw request has been performed and that the Authority may accept such work in accordance with the guidelines established by HUD for disbursement of the Loan proceeds. The Authority will disburse the Loan proceeds under each draw request within ten (10) business days after receipt of a properly completed draw request with all necessary supporting documentation.

Section 2.8 Prepayment of Loan. Developer shall have the right to prepay the Loan at any time, without penalty.

### **ARTICLE 3 PREDEVELOPMENT**

Section 3.1 Predevelopment Activities. Subject to the Budget, Developer shall use the Cost Reimbursement Loan proceeds only to perform the Predevelopment Work in accordance with all applicable provisions of this Agreement.

Section 3.2 Work Product. Within thirty days of receipt, Developer shall provide to the Authority copies of any work product funded in whole or in part from proceeds of the Loan, including without limitation designs, plans and specifications, shop drawings, reports, studies, land use approvals, building permits, and other governmental approvals of any nature obtained for the Development Project, including in all cases subsequent amendments and supplements thereto (collectively, the “*Work Product*”).

Section 3.3 Periodic Reports. Developer shall submit monthly expenditure reports, including, but not limited to, receipts indicating payments made and amounts owing to contractors creating or supplying Loan work product. Disbursement requests shall be accompanied by invoices or receipts evidencing the costs incurred or expended by Developer in the preceding month. At the request of the Authority, Developer shall provide the Authority with copies of contracts, work product, satisfactory documentation evidencing the payment of expenses previously funded by the Authority, or other documentation reasonably necessary to the Authority to assure itself that requested advances are for costs appropriately reimbursed under this Agreement and that no default exists under either agreement.

### **ARTICLE 4 LOAN REQUIREMENTS**

Section 4.1 Books and Records. Developer shall keep and maintain books, records and other documents relating directly to the receipt and disbursement of the Loan funds for a period of at least thirty-six (36) months after HUD closeout of the grant and the resolution of all outstanding issues pursuant thereto. Any duly authorized representative of the Authority, the Secretary or the Comptroller General of the United States shall, at all reasonable times and upon reasonable notice during said period, have access to and the right to inspect, copy, audit, and examine all such books, records and other documents of Developer directly related to the receipt and disbursement of Loan funds until the completion of all close-out procedures between HUD and the Authority respecting the Loan funds. Upon receipt of a written request from the Authority, Developer shall provide to the Authority all information within its control necessary for the Authority to satisfy any reporting obligations of the Authority to HUD. Such information shall be provided to the Authority within five (5) business days of such request or within such longer time as may be practical under the circumstances.

Section 4.2 HUD Requirements. Developer shall comply with all applicable requirements of the HUD relating to the Loan funds.

Section 4.3 No Assignment of the Authority's Rights. No transfer of Loan funds to Developer shall be or be deemed an assignment of the Authority's rights to the Loan funds. Developer shall not succeed to any rights, benefit or advantages of the Authority under the Annual Contributions Contract between HUD and the Authority, nor attain any rights, privileges, authorities or interests in or under the Annual Contributions Contract.

Section 4.4 Noninvolvement of Secretary. Nothing contained in this Agreement, nor any act of the Secretary, the Authority, or Developer, shall be deemed or construed by the Secretary, the Authority, or Developer, or any third person, to create any relationship of third-party beneficiary, principal and agent, limited or general liability company, joint venture, or any association or relationship involving the Secretary or the Authority.

Section 4.5 Transfer. For purposes of this Agreement, "***Transfer***" shall mean any sale, assignment, or transfer, whether voluntary or involuntary, of (i) any rights and/or duties under this Agreement, and/or (ii) the interest of Developer in or under the MDA (once executed). No Transfer shall be permitted without the prior written consent of the Authority, which the Authority may withhold in its reasonable discretion. The Loan shall automatically accelerate and be due in full upon any unauthorized Transfer.

## **ARTICLE 5 REPRESENTATIONS AND WARRANTIES OF DEVELOPER**

Section 5.1 Representations and Warranties. Developer hereby represents and warrants to the Authority as follows:

(a) Organization. Developer is duly organized and validly existing in the State of South Carolina and is authorized to conduct business in the State of South Carolina and has the power and authority to own its property and carry on its business as now being conducted.

(b) Authority of Developer. Developer has full power and authority to execute and deliver this Agreement and to make and accept the borrowings contemplated hereunder, to execute and deliver the Authority Loan Documents and all other documents or instruments executed and delivered, or to be executed and delivered, pursuant to this Agreement, and to perform and observe the terms and provisions of all of the above.

(c) Authority of Persons Executing Documents. This Agreement and the Loan Documents and all other documents or instruments executed and delivered, or to be executed and delivered, pursuant to this Agreement have been executed and delivered by persons who are duly authorized to execute and deliver the same for and on behalf of Developer, and all actions required under Developer's organizational documents and applicable governing law for the authorization, execution, delivery and performance of this Agreement and the Loan Documents and all other documents or instruments executed and delivered, or to be executed and delivered, pursuant to this Agreement, have been duly taken (to the extent such actions are required as of the date of execution and delivery of the above-named documents).

(d) Valid and Binding Agreements. This Agreement and the Loan Documents and all other documents or instruments which have been executed and delivered pursuant to or in connection with this Agreement constitute or, if not yet executed or delivered, will when so executed and delivered constitute, legal, valid and binding obligations of Developer enforceable against it in accordance with their respective terms, subject to the laws affecting creditors rights and principles of equity.



(e) No Breach of Law or Agreement. Neither the execution nor delivery of this Agreement and the Loan Documents or of any other documents or instruments executed and delivered, or to be executed or delivered, pursuant to this Agreement, nor the performance of any provision, condition, covenant or other term hereof or thereof, will conflict with or result in a breach of any statute, rule or regulation, or any judgment, decree or order of any court, board, commission or agency whatsoever binding on Developer, or any provision of the organizational documents of Developer, or will conflict with or constitute a breach of or a default under any agreement to which Developer is a party, or will result in the creation or imposition of any lien upon any assets or property of Developer, other than liens established pursuant hereto.

(f) Pending Proceedings. Developer is not in default under any law or regulation or under any order of any court, board, commission or agency whatsoever, and there are no claims, actions, suits or proceedings pending or, to the knowledge of Developer, threatened against or affecting Developer or the Development Project, at law or in equity, before or by any court, board, commission or agency whatsoever which might, if determined adversely to Developer, materially affect Developer's ability to repay the Loan or impair the security to be given to the Authority pursuant hereto.

## **ARTICLE 6 DEFAULT AND REMEDIES**

Section 6.1 Events of Default. Each of the following shall constitute a "Default" by Developer under this Agreement:

(a) Failure to Make Payment. Failure to repay the principal and any interest on the Loan within ten (10) days of receipt of written notice from the Authority that such payment is due pursuant to the Loan Documents.

(b) Breach of Covenants. Failure by Developer to duly perform, comply with, or observe any of the conditions, terms, or covenants of any of the Loan Documents, or the occurrence of an Event of Default under the MDA (once executed), and such failure having continued uncured for thirty (30) days after receipt of written notice thereof from the Authority to Developer or, if the breach cannot be cured within thirty (30) days, Developer shall not be in breach so long as Developer demonstrates to the Authority's reasonable satisfaction that it is undertaking to cure such breach and such breach is cured within sixty (60) days.

(c) Insolvency. A court having jurisdiction shall have made or entered any decree or order (i) adjudging Developer to be bankrupt or insolvent, (ii) approving as properly filed a petition seeking reorganization of Developer or seeking any arrangement for Developer under the bankruptcy law or any other applicable debtor's relief law or statute of the United States or any state or other jurisdiction, (iii) appointing a receiver, trustee, liquidator, or assignee of Developer in bankruptcy or insolvency or for any of their properties, or (iv) directing the winding up or liquidation of Developer, if any such decree or order described in clauses (i) to (iv), inclusive, shall have continued unstayed or undischarged for a period of ninety (90) days; or Developer shall have admitted in writing its inability to pay its debts as they fall due or shall have voluntarily submitted to or filed a petition seeking any decree or order of the nature described in clauses (i) to (iv), inclusive. The occurrence of any of the events of Default in this paragraph shall act to accelerate automatically, without the need for any action by the Authority, the indebtedness evidenced by the Note.

(d) Assignment; Attachment. Developer shall have assigned its assets for the benefit

of its creditors or suffered a sequestration or attachment of or execution on any substantial part of its property, unless the property so assigned, sequestered, attached or executed upon shall have been returned or released within ninety (90) days after such event or, if sooner, prior to sale pursuant to such sequestration, attachment, or execution. The occurrence of any of the events of default in this paragraph shall act to accelerate automatically, without the need for any action by the Authority, the indebtedness evidenced by the Note.

(e) Suspension; Termination. Developer shall have voluntarily suspended its business or shall have been dissolved or terminated.

(f) Unauthorized Transfer. Any Transfer other than as permitted by Section 4.5.

Section 6.2 Remedies. The occurrence of any event which would constitute a Default hereunder upon expiration of a specified time period or following the expiration of all applicable notice and cure periods will, either at the option of the Authority or automatically where so specified, relieve the Authority of any obligation to make further advances under the Loan unless and until cure of the Default. Following the expiration of all such specified time periods and applicable notice and cure periods, the Authority shall have the right to proceed with any and all remedies set forth in this Agreement and the Loan Documents, including but not limited to the following:

(a) Acceleration of Note. The Authority shall have the right to cause all indebtedness of Developer to the Authority under this Agreement and the Note, together with any accrued interest thereon, to become immediately due and payable. Developer waives all right to presentment, demand, protest or notice of protest or dishonor.

The Authority may proceed to enforce payment of the indebtedness and to exercise any or all rights afforded to the Authority as a creditor and secured party under the law, including the Uniform Commercial Code as adopted in the State of South Carolina. Developer shall be liable to pay the Authority on demand all reasonable expenses, costs and fees (including, without limitation, reasonable attorney's fees and expenses) paid or incurred by the Authority in connection with the collection of the Loan and the preservation, maintenance, protection, sale, or other disposition of the security given for the Loan.

(b) Specific Performance. The Authority shall have the right to mandamus or other suit, action or proceeding at law or in equity to require Developer to perform its obligations and covenants under the Loan Documents or to enjoin acts or things which may be unlawful or in violation of the provisions of the Loan Documents.

Section 6.3 Right of Contest. Developer shall have the right to contest in good faith any claim, demand, levy, or assessment the assertion of which would constitute a Default hereunder. Any such contest shall be prosecuted diligently and in a manner unprejudicial to the Authority or the rights of the Authority hereunder.

Section 6.4 Remedies Cumulative. No right, power, or remedy given to the Authority by the terms of this Agreement or the Loan Documents is intended to be exclusive of any other right, power, or remedy; and each and every such right, power, or remedy shall be cumulative and in addition to every other right, power, or remedy given to the Authority by the terms of any such instrument, or by any statute or otherwise against Developer and any other person. Neither the failure nor any delay on the part of the Authority to exercise any such rights and remedies shall

operate as a waiver thereof, nor shall any single or partial exercise by the Authority of any such right or remedy preclude any other or further exercise of such right or remedy, or any other right or remedy.

Section 6.5 Non-Recourse Nature of Loan Developer's liability under any of the Cost Loan Notes shall only extend to collateral given to secure the Loan, as stated in Section 2.5, and the Authority shall not thereafter enforce such liability against any other asset, property or funds of Developer or any member of Developer; provided, however, the foregoing shall not: (a) impair the right of the Authority to bring suit and obtain personal, recourse judgments against any person or entity (including Developer or any member of Developer) relating to any losses sustained by Authority in connection with any fraud or intentional misrepresentation; (b) affect the validity or enforceability of, or impair the right of the Authority to bring suit and obtain personal, recourse judgments against any person or entity (including Developer or any person or entity constituting Developer) to enforce any guaranty, indemnity or release of liability made by such person or entity; or (c) impair the enforcement of the Assignment executed in connection herewith.

## **ARTICLE 7 GENERAL PROVISIONS**

Section 7.1 Relationship of Parties. Nothing contained in this Agreement shall be interpreted or understood by any of the Parties, or by any third persons, as creating the relationship of employer and employee, principal and agent, limited or general liability company, or joint venture between the Authority and Developer or its agents, employees or contractors, and Developer shall at all times be deemed an independent contractor and shall be wholly responsible for the manner in which it or its agents, or both, perform the services required of it by the terms of this Agreement. Developer has and retains the right to exercise full control of employment, direction, compensation, and discharge of all persons assisting in the performance of services under the Agreement. Developer shall be solely responsible for its own acts and those of its agents and employees.

Section 7.2 No Claims. Nothing contained in this Agreement shall create or justify any claim against the Authority by any person that Developer may have employed or with whom Developer may have contracted relative to the purchase of materials, supplies or equipment, or the furnishing or the performance of any work or services with respect to the Development Project, and Developer shall include similar requirements in any contracts entered into with respect to the Development Project.

Section 7.3 Amendments. No alteration or variation of the terms of this Agreement shall be valid unless made in writing by the Parties.

Section 7.4 Indemnification. Developer shall indemnify, defend and hold the Authority, its commissioners, officers, employees, agents, successors, assigns and assets harmless against all claims (to include liens or similar claims) made against it and expenses (including reasonable attorneys' fees actually incurred) which arise out of or in connection with Developer's activities under this Agreement, except to the extent such claim arises from the grossly negligent or willful misconduct of the Authority, its board members, officers, employees, agents, successors and assigns. The provisions of this Section 7.4 shall survive the expiration of the Term.

Section 7.5 Non-Liability of Authority Commissioners, Officials, Employees and Agents. No commissioner, official, employee or agent of the Authority shall be personally liable to Developer in the event of any default or breach by the Authority or for any amount which may become due to Developer or its successor or on any obligation under the terms of this Agreement.

Section 7.6 No Third-Party Beneficiaries. There shall be no third-party beneficiaries to this Agreement.

Section 7.7 Conflict of Interest.

(a) No person described in Section 7.7(b) below who exercises or has exercised any functions or responsibilities with respect to the activities funded pursuant to this Agreement or who is in a position to participate in a decision-making process or gain inside information with regard to such activities, may obtain a personal or financial interest or benefit from the activity, or have an interest in any contract, subcontract or agreement with respect thereto, or the proceeds thereunder, either for themselves or those with whom they have family or business ties, during, or at any time after, such person's tenure. Developer and Authority shall exercise due diligence to ensure that the prohibition in this Section 7.7(a) is followed.

(b) The conflict of interest provisions of Section 7.7(a) above apply to any person who is an employee, agent, consultant, officer, or any immediate family member of such person, or any elected or appointed official of the Authority, or any person related within the third (3rd) degree of such person.

Section 7.8 Notices, Demands and Communications. Formal notices, demands, and communications between the Parties shall be sufficiently given if and shall not be deemed given unless dispatched by registered or certified mail, postage prepaid, return receipt requested, or delivered by express delivery service, return receipt requested, or delivered personally, to the principal office of the Parties as follows:

If to Authority, to:

Terril Bates, Chief Executive Officer  
Housing Authority of the City of Spartanburg, SC  
2271 S. Pine Street  
Spartanburg, SC 29302

and a copy to:

Bo Campbell, Attorney  
Horton Law Firm, PA  
307 Pettigru Street  
Spartanburg, SC 29601

If to Developer, to:

Jamie Smarr, SVP Affiliate Program  
The National Housing Partnership Foundation  
1090 Vermont Ave., Suite 400  
Washington, DC 20005

and a copy to:

All such notices and other communications shall be deemed given on the date of personal or local courier delivery, delivery to overnight courier or express delivery service, or deposit in the United States Mail, and shall be deemed to have been received (i) in the case of personal or local courier delivery, on the date of such delivery, (ii) in the case of delivery by overnight courier or express delivery service, on the date following dispatch, and (iii) in the case of mailing, on the date specified in the return receipt therefor.

Section 7.9 Applicable Law. This Agreement shall be governed by South Carolina law.

Section 7.10 Contingent Obligation of the Authority. Notwithstanding anything herein contained to the contrary, it is understood and agreed that the Authority shall have absolutely no obligations under the terms of this Agreement unless and until HUD makes the HUD Funds available to the Authority.

Section 7.11 Parties Bound. Except as otherwise limited herein, the provisions of this Agreement shall be binding upon and inure to the benefit of the Parties and their heirs, executors, administrators, legal representatives, successors, and assigns.

Section 7.12 Attorneys' Fees. If any lawsuit is commenced to enforce any of the terms of this Agreement, the prevailing Party will have the right to recover its reasonable attorneys' fees and costs of suit from the other Party.

Section 7.13 Severability. If any term of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions shall continue in full force and effect unless the rights and obligations of the Parties have been materially altered or abridged by such invalidation, voiding or unenforceability.

Section 7.14 Force Majeure. In addition to specific provisions of this Agreement, performance by either Party shall not be deemed to be in default where delays or defaults are due to war; insurrection; strikes; lock-outs; riots; floods; earthquakes; fires; quarantine restrictions; freight embargoes; lack of transportation; or court order; or any other similar causes (other than lack of funds of Developer or Developer's inability to finance the construction of the Development Project) beyond the control or without the fault of the Party claiming an extension of time to perform. An extension of time for any cause will be deemed granted if notice by the Party claiming such extension is sent to the other within ten (10) days from the commencement of the cause and such extension of time is not rejected in writing by the other Party within ten (10) days of receipt of the notice. In no event shall the Authority be required to agree to cumulative delays in excess of one hundred eighty (180) days.

Section 7.15 Authority Approval. Whenever this Agreement calls for Authority approval,

consent, or waiver, the written approval, consent, or waiver of the Executive Director of the Authority shall constitute the approval, consent, or waiver of the Authority and may be relied upon by Developer. Developer recognizes that the Executive Director may determine that he requires further Board authorization before issuing any approval, consent or waiver.

Section 7.16 Waivers. Any waiver by the Authority of any obligation or condition in this Agreement must be in writing. No waiver will be implied from any delay or failure by the Authority to take action on any breach or default of Developer or to pursue any remedy allowed under this Agreement or applicable law. Any extension of time granted to Developer to perform any obligation under this Agreement shall not operate as a waiver or release from any of its obligations under this Agreement. Consent by the Authority to any act or omission by Developer shall not be construed to be a consent to any other or subsequent act or omission or to waive the requirement for the Authority's written consent to future waivers.

Section 7.17 Title of Parts and Sections. Any titles of the sections or subsections of this Agreement are inserted for convenience of reference only and shall be disregarded in interpreting any part of the Agreement's provisions.

Section 7.18 Entire Understanding of the Parties. This Agreement constitutes the entire understanding and agreement of the Parties with respect to the Loan.

Section 7.19 Multiple Originals; Counterpart. This Agreement may be executed in multiple originals, each of which is deemed to be an original, and may be signed in counterparts.

Section 7.20 Jury Trial Waiver. To the extent permitted by applicable law, Developer and the Authority hereby acknowledge and agree that any and all claims arising out of, connected with, or relating to this Agreement or the relationship created hereby are matters which should be adjudicated by a court without a jury. Therefore the Parties hereby waive a trial by a jury. Neither the Authority nor Developer or any successor thereof shall seek a trial by jury in any action or proceeding (whether at law or in equity, whether direct or collateral, whether in contract or in tort) arising out of or related to this Agreement or the relationship created hereby. Neither the Authority nor Developer shall seek to consolidate any action or proceeding in which trial by jury has been waived with any other action or proceeding in which a jury trial cannot be or has not been waived. The provisions of this section cannot be and have not been waived. The provisions of this section have been fully discussed by the Parties and their respective attorneys and the provisions hereof shall be subject to no exceptions. The Authority and Developer acknowledge and agree that no one, including, without limitation, the Authority's agents or contractors, has represented that the provisions of this section or of any other section of this Agreement will not be fully enforced.

(Signature Page Follows)

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals as of the date first above written.

**THE HOUSING AUTHORITY OF THE CITY  
OF SPARTANBURG, SC**

By: \_\_\_\_\_  
Terril Bates, Chief Executive Officer

**THE NATIONAL HOUSING PARTNERSHIP  
FOUNDATION**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_

DRAFT



**EXHIBIT A**  
**PREDEVELOPMENT LOAN PROMISSORY NOTE**  
**(Cost Reimbursement)**

**\$200,000**

\_\_\_\_\_, 2018

FOR VALUE RECEIVED, **THE NATIONAL HOUSING PARTNERSHIP FOUNDATION**, an New York non-profit corporation, (the "**Developer**"), promises to pay to **The Housing Authority of the City of Spartanburg, SC** (the "**Authority**"), the principal sum of Two Hundred Thousand and No/00 dollars (\$200,000.00) (or so much as has been disbursed), plus interest thereon pursuant to Section 2 below.

1. Developer's Obligation. This promissory note (the "**Note**") evidences Developer's obligation to pay the Authority such sums as have been disbursed to Developer by Authority to finance predevelopment expenses in connection with the Development pursuant to the Predevelopment Loan Agreement between Developer and the Authority of even date herewith (the "**Loan Agreement**"). All capitalized terms not otherwise defined in this Note shall have the meanings set forth in the Loan Agreement.

2. Interest. Any amount advanced under the Loan shall bear no interest; provided, however, that in an Event of Default, any sums outstanding shall bear interest at the lesser of the short-term AFR on the day of execution, plus 3%, or the maximum rate permitted by law, which shall accrue beginning as of the date of Default and continuing until such time as the Loan funds are repaid in full or the Default is cured

3. Term and Repayment Requirements. This Note shall be payable in full upon first disbursement of proceeds from a construction/permanent loan from the Authority to Developer sufficient to pay all amounts due hereunder, or as otherwise provided in the Loan Agreement.

4. No Assumption. This Note shall not be assumable by the successors and assigns of Developer without the prior written consent of the Authority.

5. Security. This Note is secured by an Assignment of Agreements, Plans and Specifications and Approvals of even date herewith.

6. Terms of Payment.

(a) All payments due under this Note shall be paid in currency of the United States of America, which at the time of payment is lawful for the payment of public and private debts.

(b) All payments on this Note shall be paid to The Housing Authority of the City of Spartanburg, SC, Attention: Chief Executive Officer, or to such other place as the Authority may from time to time designate in writing.



(c) Notwithstanding any other provision of this Note, or any instrument securing the obligations of Developer under this Note, if, for any reason whatsoever, the payment of any sums by Developer pursuant to the terms of this Note would result in the payment of interest which would exceed the amount that the Authority may legally charge under the laws of the State of South Carolina, then the amount by which payments exceeds the lawful interest rate shall automatically be deducted from the principal balance owing on this Note, so that in no event shall Developer be obligated under the terms of this Note to pay any interest which would exceed the lawful rate.

7. Default.

(a) Any of the following shall constitute an Event of Default under this Note:

(i) Any failure to pay, in full, any payment required under this Note when due (or to deliver all things secured by the Assignment, in accordance with Section 2.5 of the Loan Agreement) following written notice by Authority of such failure and ten (10) days opportunity to cure;

(ii) Any failure in the performance by Developer of any term, condition, provision or covenant set forth in this Note and such failure having continued uncured for thirty (30) days after receipt of written notice thereof from the Authority to Developer or, if the breach cannot be cured within thirty (30) days, Developer shall not be in breach so long as Developer demonstrates to the Authority's reasonable satisfaction that it is undertaking to cure such breach and such breach is cured within sixty (60) days; provided, however, that if a different period or notice requirement is specified under any other section of this Note or the Loan Agreement, the specific provisions shall control; and

(iii) The occurrence of any Event of Default under the Loan Agreement, or other instrument securing the obligations of Developer under this Note or under any other promissory notes hereafter issued by Developer to the Authority pursuant to the Loan Agreement subject to notice and cure periods, if any, set forth therein;

(b) Upon the occurrence of such an Event of Default, the entire unpaid principal balance, together with all interest thereon, and together with all other sums then payable under this Note shall at the option of the Authority become immediately due and payable upon written notice by the Authority to Developer without further demand.

(c) The failure to exercise the remedy set forth in Subsection 7(b) above or any other remedy provided by law upon the occurrence of one or more of the foregoing events of default shall not constitute a waiver of the right to exercise any remedy at any subsequent time in respect to the same or any other default. The acceptance by the Authority of any payment which is less than the total of all amounts due and payable at the time of such payment shall not constitute a waiver of the right to exercise any of the foregoing remedies or options at that time or at any subsequent time, or nullify any prior exercise of any such remedy or option, without the express consent of the Authority, except as and to the extent otherwise provided by law.

8. Waivers.

(a) Except for the notice and cure provisions stated in this Note, Developer hereby waives diligence, presentment, protest and demand, and notice of protest, notice of demand, and notice of dishonor of this Note. Developer expressly agrees that this Note or any payment hereunder may be extended from time to time, and that the Authority may accept further security or release any security for this Note, all without in any way affecting the liability of Developer.

(b) No extension of time for payment of this Note or any installment hereof made by agreement by the Authority with any person now or hereafter liable for payment of this note shall operate to release, discharge, modify, change or affect the original liability of Developer under this Note, either in whole or in part.

(c) The obligations of Developer under this Note shall be absolute and Developer waives any and all rights to offset, deduct or withhold any payments or charges due under this Note for any reason whatsoever.

9. Nonrecourse Provisions. Developer's liability under this Note shall only extend to collateral given to secure the Loan, and the Authority shall not thereafter enforce such liability against any other asset, property or funds of Developer or any member of Developer; and pursuant to the assignment agreement attached; provided, however, the foregoing shall not: (a) impair the right of the Authority to bring suit and obtain personal, recourse judgments against any person or entity (including Developer or any member of Developer) relating to any losses sustained by the Authority in connection with any fraud or intentional misrepresentation; (b) affect the validity or enforceability of, or impair the right of the Authority to bring suit and obtain personal, recourse judgments against any person or entity (including Developer or any person or entity constituting Developer) to enforce any guaranty, indemnity or release of liability made by such person or entity; or (c) impair the enforcement of the Assignment of Plans and Specifications executed in connection herewith

10. Miscellaneous Provisions.

(a) All notices to the Authority or Developer shall be given in the manner and at the addresses set forth in the Loan Agreement, or to such addresses as the Authority and Developer may hereinafter designate.

(b) Developer promises to pay all costs and expenses, including reasonable attorney's fees, incurred by the Authority in the enforcement of the provision of this Note, regardless of whether suit is filed to seek enforcement.

(c) This Note may not be changed orally, but only by an agreement in writing signed by the party against whom enforcement of any waiver, change, modification or discharge is sought.

(d) This Note shall be governed by and construed in accordance with the laws of the State of South Carolina.

(e) The times for the performance of any obligations hereunder shall be strictly construed, time being of the essence.

(f) This document, together with the Loan Documents, contains the entire agreement between the parties as to the Loan. It may not be modified except upon written consent of the parties.

**IN WITNESS WHEREOF**, the said Developer, intending this Note to take effect as an instrument under seal and intending to be legally bound, has caused these presents to be duly executed the day and year first above written.

**DEVELOPER:**  
**THE NATIONAL HOUSING PARTNERSHIP**  
**FOUNDATION**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_

DRAFT

**EXHIBIT B**  
**ASSIGNMENT OF AGREEMENTS, PLANS AND SPECIFICATIONS, AND**  
**APPROVALS**

This Assignment Agreement (the "**Assignment**") is entered into as of the \_\_\_\_ day of \_\_\_\_\_, 2018, by and between The Housing Authority of Spartanburg County (the "**Assignee**") and THE NATIONAL HOUSING PARTNERSHIP FOUNDATION, a New York non-profit corporation (the "**Assignor**"), with reference to the following facts:

**RECITALS**

A. Assignor intends to develop the Development Project on certain real property located in Spartanburg County, South Carolina (the "**Property**").

B. Pursuant to the terms of the Predevelopment Loan Agreement dated of even date herewith by and between Assignor and Assignee (the "**Predevelopment Loan Agreement**"), Assignee has made a cost reimbursement loan to Assignor ("**Loan**"). As security for the Loan, Assignor desires to assign to Assignee, and Assignee desires to accept from Assignor, the assignment of Assignor's right, title, and interest in and under certain agreements and contracts incurred by Assignor in connection with the Development Project, as listed in Exhibit A attached hereto.

NOW, THEREFORE, in consideration of the foregoing, of the mutual promises of the parties hereto and for other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound, the parties mutually agree as follows:

**TERMS**

1. Assignment by Assignor. Assignor hereby assigns and delegates to Assignee, and Assignee hereby accepts from Assignor, all of Assignor's right, title, and interest in and obligations under the following agreements and contracts:

a. All architectural, design, construction, engineering, and consulting contracts, and any and all amendments, modifications, supplements, addenda, and general conditions thereto (collectively, the "**Agreements**"), heretofore or hereafter entered into by any Contractor (as defined below), provided that such Agreements are funded in whole or in part from proceeds of the Loan;

b. All plans and specifications, shop drawings, working drawings, reports, studies, amendments, modifications, changes, supplements, general conditions, addenda, and work product thereto (collectively, the "**Plans and Specifications**") heretofore or hereafter prepared by any Contractor (as defined below) provided that such Plans and Specifications are funded in whole or in part from proceeds of the Loan; and

c. All land use approvals, building permits, and other governmental approvals of any nature obtained for the Development Project (collectively, the "**Land Use Approvals**") provided that such Land Use Approvals are funded in whole or in part from proceeds of the Loan.

For purposes of this Assignment, the term "**Contractor**" means any architect, contractor, engineer, consultant, or other person or entity entering into Agreements with the Assignor and/or preparing Plans and Specifications for Assignor with respect to the Development Project.

2. Purpose. This Assignment is made to secure: (i) payment to Assignee of all sums now or hereafter owing under the Loan Note, dated concurrently herewith and made by Assignor to the order of Assignee, and any and all additional advances, modifications, extensions, renewals, and amendments thereof; and (ii) payment and performance by Assignor of all its obligations under the Predevelopment Loan Agreement. Delivery of collateral is subject to payment by Assignee of any remaining balance of the cost of such collateral that is not covered by the Loan.

3. No Assumption of Obligations. Assignee does not assume any of Assignor's obligations or duties under the Agreements or concerning the Plans and Specifications and Land Use Approvals, including, but not limited to, the obligation to pay for the preparation of the Plans and Specifications, until and unless Assignee shall exercise its rights under this Assignment.

4. Attorney-In-Fact. Assignor hereby irrevocably appoints Assignee as its attorney-in-fact, which power is coupled with an interest, so that Assignee shall have the right, upon the occurrence of a Default by Assignor (after notice and opportunity to cure) under and as defined in Section 6.1 of the Predevelopment Loan Agreement, to demand, receive, and enforce any and all of Assignor's rights with respect to the Agreements, Plans and Specifications, and Land Use Approvals, and to perform any and all acts in the name of Assignor or in the name of Assignee with the same force and effect as if performed by Assignor in the absence of this Assignment.

5. No Previous Assignment. Assignor represents and warrants to Assignee that no previous assignment(s) of its rights or interest in or to the Agreements, Plans and Specifications, and/or Land Use Approvals, has or have been made, and Assignor agrees not to assign, sell, pledge, transfer, mortgage, or hypothecate its rights or interest therein (without the written approval of Assignee's Executive Director) so long as Assignee holds or retains any security interest therein under the Predevelopment Loan Agreement.

6. Governing Law. This Assignment shall be governed by the laws of the State of South Carolina except to the extent that federal laws preempt the laws of the State of South Carolina, and Assignor consents to the jurisdiction of any federal or state court within the State of South Carolina having proper venue for the filing and maintenance of any action arising hereunder and agrees that the prevailing party in any such action shall be entitled, in addition to any other recovery, to reasonable attorneys' fees and costs.

7. Binding Upon Successors and Assigns. This Assignment shall be binding upon and inure to the benefit of the heirs, legal representatives, successors-in-interest, and assigns of Assignor and Assignee; provided, however, this shall not be construed and is not intended to waive the restrictions on assignment, sale, transfer, mortgage, pledge, hypothecation, or encumbrance by Assignor contained in the Predevelopment Loan Agreement.

8. Capitalized Terms. Capitalized terms used but not defined in this Assignment shall have the meanings set forth in the Predevelopment Loan Agreement.

9. Headings. Section headings contained in this Assignment are inserted as a matter of convenience and for ease of reference only and shall be disregarded for all other purposes, including the construction or enforcement of this Assignment or any of its provisions.

10. Counterparts. This Assignment may be executed in counterparts by the parties hereto, each of which shall be deemed to be an original, and all such counterparts shall constitute one and the same instrument.

Executed on \_\_\_\_\_, 2018.

**ASSIGNEE:**

THE HOUSING AUTHORITY OF THE CITY OF  
SPARTANBURG, SC

By: \_\_\_\_\_  
Terril Bates, Chief Executive Officer

**ASSIGNOR:**

THE NATIONAL HOUSING PARTNERSHIP  
FOUNDATION

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_

DRAFT

## EXHIBIT C

### PREDEVELOPMENT BUDGET

[illegible]



**Master Development Agreement  
(MDA)**

---

**Board of Commissioners  
Special Meeting  
Wednesday, June 20, 2018**



**MASTER DEVELOPMENT AGREEMENT**

**By and Between**

**HOUSING AUTHORITY OF THE CITY OF SPARTANBURG, SC**

**AND**

**NHP DEVELOPMENT LLC**

**For the Implementation of the**

**RAD PORTFOLIO REDEVELOPMENT**

**(RFQ No. \_\_\_\_\_)**

DRAFT

## TABLE OF CONTENTS

	Page
ARTICLE I - ENGAGEMENT OF DEVELOPER .....	2
1.01 Engagement of the Developer .....	2
ARTICLE II - DEVELOPER SERVICES; OBLIGATIONS .....	2
2.01 Development Plan .....	2
2.02 Developer's Obligation to Develop .....	3
2.03 Development Services .....	3
2.04 Progress Reports and Information .....	4
2.05 Security for Overruns .....	4
ARTICLE III - SHA RESPONSIBILITIES .....	4
3.01 SHA Responsibilities .....	4
ARTICLE IV - GENERAL DEVELOPMENT ACTIVITIES.....	5
4.01 Development Schedules .....	5
4.02 Development Budgets .....	5
4.03 Governmental Agency Permits.....	6
ARTICLE V – SITE ASSESSMENT AND SITE PREPARATION .....	6
5.01 General .....	6
5.02 Environmental Assessments and Remediation.....	6
5.03 Geotechnical Assessment and Remediation.....	7
5.04 Environmental, Historic and Archaeological Review .....	7
5.05 Access to and Entry by the Developer Upon the Site.....	8
ARTICLE VI – DEVELOPMENT PHASE.....	8
6.01 Owner Entity .....	<b>Error! Bookmark not defined.</b>
6.02 Owner Equity – Multifamily Component.....	<b>Error! Bookmark not defined.</b>
6.03 Ground Lease .....	9
6.04 SHA Loan Documents.....	9
6.05 Property Management and Compliance Management.....	9
6.06 Option and Right of First Refusal .....	9
6.07 Agreements for Each Phase.....	10
ARTICLE VII - DEVELOPER FEE .....	10
7.01 Developer Fees .....	10
7.02 Costs, Expenses and Funding .....	11
7.03 Limitation on Developer Fee.....	11

## TABLE OF CONTENTS

(continued)

Page

7.04 Development Costs.....	11
7.05 Development Budget Cost Savings .....	12
7.06 Guarantee Fee; Compliance Fee; Cash Flow .....	12
ARTICLE VIII - SELECTION OF PROFESSIONALS, CONTRACTORS AND CONSULTANTS .....	12
8.01 General .....	12
8.02 Prohibited Arrangement .....	13
8.03 Minority and Women Business and Section 3.....	13
ARTICLE IX - REPRESENTATIONS AND WARRANTIES .....	14
9.01 Representations and Warranties of the Developer .....	14
9.02 Survival .....	15
ARTICLE X - COOPERATION AND COMPLIANCE .....	15
ARTICLE XI - INSURANCE.....	15
ARTICLE XII - ACCOUNTING RECORDS.....	15
12.01 Books and Records; Access.....	15
12.02 Audit.....	16
12.03 Audit of Contractors .....	16
12.04 Maintenance of Books and Records .....	16
ARTICLE XIII - RESPONSIBILITY FOR EMPLOYEES .....	16
ARTICLE XIV - ROLE OF HUD.....	17
14.01 .....	17
ARTICLE XV - DISPUTES .....	17
15.01 Disputes .....	17
ARTICLE XVI - TERM; TERMINATION .....	17
16.01 Term .....	17
16.02 Termination by Parties .....	17
16.03 Damages .....	19
16.04 Termination for Convenience by SHA.....	19
16.05 Assignment and Delivery of Contracts and Work Product .....	20
16.06 Non-Liability of SHA Members, Employees and Agents .....	20
ARTICLE XVII – INDEMNIFICATION .....	20
17.01 Indemnity by Developer .....	20
17.02 Indemnity by SHA.....	21

## TABLE OF CONTENTS

(continued)

### Page

17.03 .....	21
ARTICLE XVIII - INDEPENDENT CONTRACTOR .....	21
ARTICLE XIX - DISCLAIMER OF RELATIONSHIPS .....	22
19.01 No Third Party Beneficiary .....	22
19.02 No Assignment of Funds .....	22
19.03 Covenant Against Contingent Fees .....	22
ARTICLE XX – FEDERAL, STATE AND LOCAL REQUIREMENTS .....	22
20.01 .....	22
ARTICLE XXI - CONFLICT OF INTEREST .....	25
21.01 Conflict of Interest.....	25
21.02 Certification Regarding Lobbying.....	25
ARTICLE XXII - NO LIENS; NO ASSIGNMENT .....	25
22.01 Liens and Encumbrances .....	25
22.02 Discharge .....	25
22.03 No Implied Consent.....	26
22.04 Assignment.....	26
ARTICLE XXIII - WRITTEN MATERIALS AND PUBLIC STATEMENTS.....	26
ARTICLE XXIV - FORCE MAJEURE.....	26
ARTICLE XXV - MISCELLANEOUS .....	26
25.01 Notices; Contact .....	26
25.02 Counterparts .....	27
25.03 Survival .....	27
25.04 Further Assurances .....	27
25.05 Interpretation and Governing Law .....	27
25.06 Severability .....	27
25.07 Parties Bound .....	27
25.08 Final Agreement .....	27
25.09 Waivers.....	28
25.10 Successors .....	28
25.11 Titles of Articles and Sections.....	28
25.12 Warranties .....	28
25.13 No Effect on Closed Phase .....	28

**TABLE OF CONTENTS**  
(continued)

**Page**

EXHIBIT A - DEVELOPMENT PLAN	
EXHIBIT B - PREDEVELOPMENT BUDGET	
EXHIBIT C - PROJECT MANAGEMENT AND DEVELOPER SERVICES	
EXHIBIT D – FINANCING SERVICES	
EXHIBIT E – DESIGN/PLANNING SERVICES	
EXHIBIT F – SITE SERVICES	
EXHIBIT G – CONSTRUCTION SERVICES	
EXHIBIT H – SHA RESPONSIBILITIES	
EXHIBIT I – INSURANCE REQUIREMENTS	
EXHIBIT J - CERTIFICATION REGARDING LOBBYING	

DRAFT

## MASTER DEVELOPMENT AGREEMENT

This Master Development Agreement (this "**Agreement**") is entered into as of July\_\_\_\_, 2018 between the **HOUSING AUTHORITY OF THE CITY OF SPARTANBURG, SC ("SHA")**, and **THE NATIONAL HOUSING PARTNERSHIP FOUNDATION ("NHPF")**, a New York Non-Profit and 501(c)3 Corporation (the "**Developer**").

### PREAMBLE

A. SHA is the owner of Section 9 Public Housing communities commonly known as Archibald-Rutledge Highrise; Archibald Village, Victoria Gardens, Camp Croft and Prince Hall in Spartanburg, South Carolina, collectively consisting of 476 public housing units ("**RAD Portfolio**").

B. SHA promotes the development and professional management of a variety of affordable housing opportunities by working cooperatively with the United States Department of Housing and Urban Development ("**HUD**"), the South Carolina Housing Development and Finance Authority ("**SCHFDA**"), the City of Spartanburg and other entities.

C. On June 13, 2017, SHA issued a Request for Qualifications for a development partner (the "**RFQ**") seeking developers to assist SHA in the redevelopment of the RAD Portfolio.

D. The Developer submitted a proposal, (the "**Proposal**"), which resulted in the competitive selection of the Developer for the redevelopment of the RAD Portfolio, which the Proposal is incorporated into and made a part of this Agreement by reference to the extent that the Proposal does not conflict with the other terms of this Agreement.

E. The redevelopment of the RAD Portfolio will consist of various phases or components which are intended to result in the RAD conversion of: 150 units at Archibald Rutledge Tower; 100 units at Prince Hall; 96 units at Camp Croft; 80 units at Victoria Gardens; and, 50 units at Archibald Village; and other site and related improvements, each referred to herein as a "**Development**" or collectively the "**Developments**."

F. SHA competitively selected the Developer to serve as the developer of the Developments and to perform planning and developer services in accordance with the proposal by the Developer submitted to SHA and the Developer desires to perform such services in accordance with the terms of this Agreement.

G. SHA and the Developer intend to develop the Developments utilizing multiple financing sources. SHA shall ground lease the necessary site(s) to various Owner Entities (as defined in Section 6.01(a)) formed for such purpose by the Developer. Each Owner Entity will develop and construct, own and operate a Development Project, as hereinafter defined.

## AGREEMENT

In consideration of the foregoing recitals, promises and mutual covenants the parties agree as follows with the intent to be legally bound.

### ARTICLE I - ENGAGEMENT OF DEVELOPER

1.01 Engagement of the Developer. SHA hereby confirms the designation of the Developer as the developer for the Developments, subject to and in accordance with the terms and conditions of this Agreement and engages the Developer to perform the obligations and services specified in Article II hereof, and the Developer hereby accepts such engagement, all upon the terms and conditions set forth herein.

### ARTICLE II - DEVELOPER SERVICES; OBLIGATIONS

#### 2.01 Development Plans.

(a) Insofar as the RAD conversions of the Developments are expected to occur over a period of five (5) to seven (7) years, SHA and the Developer will jointly prioritize each Development Project for RAD conversion and agree on a Development Project start date for each Development Project. Within six (6) months from the start date of each Development Project the Developer shall submit for SHA's approval a Development Plan (as hereinafter defined) specifying all items set forth in Section 2.01(b) and which shall supersede all earlier conceptual development plans contained in the RFQ and the Developer proposal.

(b) The development plan for each Development shall specify, at a minimum the following (a "**Development Plan**"): (i) the cost of the Development; (ii) the expected types and sources of financing; (iii) the site layout with common area facilities; and, (iv) the site plan. The Development Plan will be based on such assumptions regarding sources of financing as the Developer deems appropriate in light of circumstances existing at the time of preparation of the Development Plan. The Development Plan shall include a Development Budget (as defined in Section 4.02 below) and a Development Schedule (as defined in Section 4.01 below), each of which is incorporated herein by this specific reference. To the extent the preceding elements of the Development Plan are included in a tax credit application as approved by SHA, such application shall constitute the relevant element(s) of the Development Plan. SHA's approval of the Development Plan will confirm SHA's commitment in principle of any resources ascribed to SHA in the Development Plan and SHA's approval of the proposed actions by the Developer described in the Development Plan, and will permit the Developer, lenders, investors and other third parties to proceed to finalize plans in reliance upon such approval. As the lenders, investors and other third parties providing funds commit to the Developments, the Developer shall submit progressively more detailed Development Plans for the applicable Development, each of which shall be dated, shall supersede earlier versions of the Development Plan, and shall be deemed incorporated herein by this specific reference. The Development Schedule and Development Budget are more fully addressed in Article IV.

(c) "**Accessibility Goals**" shall mean that

(i) The Uniform Federal Accessibility Standards and Section 504 of the Rehabilitation Act of 1973 requirements shall be met in each Development;

(ii) A minimum of 5% of the residential units in each Development shall be accessible units as required by applicable building codes and 2% of such units shall be designed for vision and hearing-impaired residents;

(iii) The Developments must be fully compliant with all requirements of the Americans with Disabilities Act, including but not limited to site, common areas and accessible route to and from common areas; and

(iv) To the extent commercially feasible, all units in each Development shall meet the current visitability standards according to HUD guidelines.

2.02 Developer's Obligation to Develop. The Developer shall use its commercially reasonable, best efforts to cause to occur a Closing (as defined in Section 25.13 hereof) for each Development in accordance with the Development Plan, subject to and contingent upon the Developer's obtaining commitments for all financing sources for the Development and SHA's obtaining all necessary HUD approvals. The Developer shall use its commercially reasonable, best efforts to cause a Closing for the first Development to occur no later than June 30, 2019, and to cause construction of the first Development to be completed by the earlier of December 31, 2020, or such date as is required by any source of funding.

2.03 Development Services. The Developer shall, subject to the terms and conditions of this Agreement, provide, or arrange for the provision of, all such services as are necessary for the development and construction of the Developments, including without limitation the following services (collectively the "**Development Services**"), the compensation for which shall be the Developer's share of the Developer Fees provided in Section 7 hereof:

(a) Project Management and Developer Services. All project management and developer services as are necessary for the development and construction of each Development including without limitation the services listed on Exhibit B (the "**Project Management and Developer Services**").

(b) Financing Services. All financing activities as are necessary for each Development and construction of each Development including without limitation the services listed on Exhibit C (the "**Financing Services**").

(c) Design/Planning Services. All design/planning services as are necessary for each Development and construction of the Development including without limitation the services listed on Exhibit D (the "**Design/Planning Services**").

(d) Site Services. Except for the SHA responsibilities set forth on Exhibit G and elsewhere in this Agreement, all site services as are necessary for the development and construction of each Development including without limitation the services listed on Exhibit E (the "**Site Services**").

(e) Construction Services. All construction services as are necessary for the development and construction of each Development including without limitation the services listed on Exhibit F (the "**Construction Services**").



(f) Contractors

(i) Section 3, MBE and WBE Services. The Developer shall require all subcontractors working on each Development, including the general contractor, architect and engineer and all their subcontractors to comply with Section 3 (as defined in Section 2.04(a)) and the minority business enterprise ("**MBE**") and women-owned business enterprise ("**WBE**") requirements set forth in Section 8.03 of this Agreement.

(ii) Approval. The general contractors for each Development and all vendors engaged by Developer in connection with the construction of the Development, that in the aggregate will be paid in excess of \$100,000 shall be approved in advance by SHA, such approval not to be unreasonably withheld, conditioned or delayed.

2.04 Progress Reports and Information. Developer shall provide SHA with timely and appropriate information about the status of each Development Project (subsequently defined) including telephone conferences, meetings, and written reports as may be reasonably requested. Not later than the 15<sup>th</sup> day of each month following the date of execution of this Agreement and continuing until the completion of construction of all Developments, the Developer shall provide SHA with written progress reports in such form as may be reasonably required by SHA on the status of the Development Plans, including all Development Services performed by the Developer, its contractors and other entities (collectively the implementation of the Development Plan and the Development Services are referred to as the "**Development Project**"). Such reports shall include (a) documentation of compliance with Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. § 1701(u) ("**Section 3**") and minority and women business participation in the Development Project as set forth in Section 8.03 hereof, (b) variances between actual completion dates and the Development Schedule, (c) a summary report of all Development Project activities undertaken and/or completed since the last monthly report, (d) minutes of construction meetings, (e) information on all contract changes or modifications under consideration or proposed contract changes, (f) actions taken when the requirements of any contract are not being satisfied, (g) variances between actual expenditures and the Development Budget, (h) all proposed changes or modifications to the Development Budget or Development Schedule, (i) evidence of Developer's and its Contractors' and subcontractors' compliance with state and/or federal E-Verify laws and regulations, and (j) evidence of Developer's compliance with Davis-Bacon Act requirements and other applicable laws and regulations. At SHA's request, the Developer shall furnish SHA with copies of all third-party plans, reports and studies prepared in connection with the Development.

2.05 Security for Overruns. At the Closing of each Development phase, the Developer shall guarantee to SHA the lien-free completion of construction of such phase of the Development in compliance with the Development Schedule. The Developer, and not SHA, shall be responsible to the low-income housing tax credit investor ("**Tax Credit Investor**") for all construction cost overruns, timely completion of construction and the delivery of any tax credits. The Developer shall provide all guarantees required by the Tax Credit Investor, including a development deficit guarantee, until such time as Developer's affiliate exits the applicable Owner Entity.

### **ARTICLE III - SHA RESPONSIBILITIES**

3.01 SHA Responsibilities. SHA shall have the responsibilities set forth in Exhibit G.

## ARTICLE IV - GENERAL DEVELOPMENT ACTIVITIES

### 4.01 Development Schedules.

(a) Predevelopment Schedule. Concurrently with delivery of the Development Plans in accordance with Section 2.01, the Developer shall prepare and submit to SHA for review and approval (such approval not to be unreasonably withheld, conditioned or delayed) a Predevelopment Schedule, including a critical path schedule, of time and order for the performance of all predevelopment activities necessary to effectuate a closing. The Developer shall periodically revise and update the Predevelopment Schedule to reflect evolving events and circumstances, including actual dates of commencement and completion, as needed.

(b) Development Schedule. Concurrently with delivery of the Development Plan in accordance with Section 2.01, the Developer shall prepare and submit to SHA for review and approval (such approval not to be unreasonably withheld, conditioned or delayed) a schedule, for the completion of construction of the Development and, for subsequent phases of the same Development or the remaining Developments, a schedule including target times and order for the performance of all major milestones (the "**Development Schedule**"), based upon reasonable times for review, approval and return of documents to ensure the prompt and continuing prosecution of the Developments. The Development Schedule shall be organized on a month-by-month basis. The Developer shall periodically revise and update the Development Schedule to reflect evolving events and circumstances, including actual dates of commencement and completion.

### 4.02 Development Budgets.

(a) Predevelopment Budget. Attached hereto as Exhibit A is an estimated budget for all predevelopment activities necessary to bring the first Development Project to a Closing (the "**Archibald-Rutledge Predevelopment Budget**"). Developer shall prepare a budget for each Development reflecting the estimated expenses for all predevelopment activities to bring such phase to a Closing ("**Predevelopment Budget**") The Developer shall periodically revise and update the Predevelopment Budgets to reflect evolving events and circumstances. Proposed revisions to the Predevelopment Budgets will be submitted by the Developer to SHA with identification and explanation of changes. SHA will fund 50% of all third-party predevelopment costs up to a maximum of \$100,000 per Development Project, reflected in a Predevelopment Budget, which are incurred and payable until such time as the Developer secures the necessary financial commitments (i.e., letters of intent or term sheets) for each Development Project. Upon receipt by Developer of financial commitments for a Development Project (including an award from SCHFDA of low income housing tax credits), SHA will fund an addition 50% of all third-party predevelopment costs up to a maximum of \$100,000, reflected in a Predevelopment Budget, which are incurred and payable. The total predevelopment costs to be paid by SHA per each Development Project shall not exceed \$200,000. SHA's obligation to fund the expenses in the Predevelopment Budget shall be specified in more detail in a Predevelopment Loan Agreement to be negotiated and executed for Development Project.

(b) Development Budget. Concurrently with preparation and submission of the Development Plan for each Development Project, the Developer shall prepare and submit to SHA for review a preliminary development budget (the "**Development Budget**"), which

shall be updated and revised as appropriate. The Development Budget shall encompass all sources and uses of funds and shall detail the assumptions upon which the Development Budget is based. An updated Development Budget will be provided to SHA prior to Closing of each Development Project.

4.03 Governmental Agency Permits. Before commencement of construction or development of any buildings, structures or other improvements at a Development Project, the Developer shall secure, or cause to be secured, any and all permits which may be required by the City of Spartanburg or any other governmental agency affected by such construction, development or work thereon.

## ARTICLE V – SITE ASSESSMENT AND SITE PREPARATION

5.01 General. The sites owned by SHA for each Development Project shall be delivered to the Developer (or the applicable Owner Entity) in “as-is” condition. SHA will provide Developer with all third-party reports in their possession regarding site and property conditions of each Development Project.

### 5.02 Environmental Assessments and Remediation.

(a) Post-Closing Environmental Condition. If, after a Closing and during the course of any construction work, the Developer determines that the nature of, time frames for, or cost of remediation of an Environmental Condition (as defined in Section 5.02(c)) in accordance with a scope of remediation required by applicable law or necessary for construction per the plans and specifications for such Development Project and not caused by Developer or Developer's contractors, agents or employees, or created after Developer obtains control of the site, affecting the site or a portion thereof which is discovered during the course of such work (or a materially increased scope or cost of remediation of a previously discovered condition which is determined during the course of such work) would render the construction of a Development Project or portion thereof materially more expensive than as contemplated in the Development Budget (a "**Post-Closing Environmental Condition**"), the Developer and SHA shall meet to consider the feasibility of the development of the site (or affected portions thereof) and possible methods and sources of payment for remediation of such Post-Closing Environmental Condition. The Development Schedule for a Development Project may be extended by the time needed to remediate such Post-Closing Environmental Condition, if feasible in the light of controlling deadlines, imposed by financing or supervisory agencies. If the Developer, after conferring with SHA, determines that remediation of such Post-Closing Environmental Condition in accordance with a scope of required remediation cannot feasibly be accomplished, the affected portion thereof shall be removed from a Development Project. In no event shall the Developer or the Owner Entity be required to fund any environmental remediation, unless such Environmental Condition is caused or exacerbated by the gross negligence or willful misconduct of the Developer, its agents, contractors or affiliates, or is created while the Developer or the Owner Entity is in possession and control of the site(s).

(b) An "**Environmental Condition**" shall mean the presence of Hazardous Substances (as defined in Section 5.02(d)) on, in, or under a Development Project site at concentrations requiring remediation under the Environmental Laws.

(c) "**Hazardous Substances**" shall mean substances, chemicals, materials or elements that are defined as "hazardous" or "toxic" or otherwise regulated by any and all

federal, state or local laws or regulations pertaining to the protection of land, water, air or the environment whether now or in the future enacted (the "**Environmental Laws**").

The term "Hazardous Substances" shall also include, without limitation, any substance, chemical, material, or element (i) defined as a "hazardous substance" under the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. §§ 9601, et seq.), as amended by the Superfund Amendment and Reauthorization Act of 1986, and as further amended from time to time and regulations promulgated thereunder; (ii) defined as a "regulated substance" within the meaning of Subtitle I of the Resource Conservation and Recovery Act (42 U.S.C. § 6991-6991 i), as amended from time to time and regulations promulgated thereunder; (iii) designated as "hazardous substances" pursuant to Section 311 of the Clean Water Act (33 U.S.C. § 1321), or listed pursuant to Section 307 of the Clean Water Act (33 U.S.C. § 1317); (iv) which is petroleum, petroleum products or derivatives or constituents thereof; (v) which is asbestos or asbestos-containing materials; (vi) the presence of which requires notification, investigation or remediation under any Environmental Laws; (vii) which is urea formaldehyde foam insulation or urea formaldehyde foam insulation-containing materials; (viii) which is lead-based paint or lead-based paint-containing materials; (ix) which are polychlorinated biphenyls or polychlorinated biphenyl-containing materials; or (x) which is radon or radon-containing or producing materials.

#### 5.03 Geotechnical Assessment and Remediation.

(a) Post-Closing Geotechnical Condition. If, after Closing and during the construction work, the Developer determines that the nature of, time frames for, or cost of remediation of a Geotechnical Condition (as defined in Section 5.03(c)) which is discovered during the course of such post-Closing construction work (or a materially increased scope or cost of remediation of a previously discovered Geotechnical Condition which is determined during the course of such post-Closing work) would render the construction of the Development or portion thereof practically or financially unacceptable (a "**Post-Closing Geotechnical Condition**"), the Developer and SHA shall meet to consider the feasibility of the development of the site (or affected portions thereof) and possible methods and source of payment for remediation of such Post-Closing Geotechnical Condition. The Development Schedule may be extended by the time needed to remediate such Post-Closing Geotechnical Condition. If the Developer, after conferring with SHA, determines that such Post-Closing Geotechnical Condition cannot feasibly be cured, the affected portion of the site thereof shall be removed from the Development. In no event shall the Developer or the applicable Owner Entity be required to fund any geotechnical remediation, unless such Geotechnical Condition is caused or exacerbated by the gross negligence or willful misconduct of the Developer, its agents, contractors or affiliates.

(b) "**Geotechnical Condition**" shall mean a condition of the soils, rock units, bedrock, or other subsurface materials or formations underlying the Development site requiring remedial action in order to provide sufficient structural support for buildings to be built on the Development site by the Developer.

5.04 Environmental, Historic and Archaeological Review. The Developer will assist SHA with any documentation and other assistance needed to carry out required reviews under the National Environmental Policy Act ("**NEPA**") and other applicable federal laws, and to comply with the requirements of 24 C.F.R. part 58.

5.05 Access to and Entry by the Developer Upon the Site. Prior to the conveyance of a leasehold by SHA to the Developer or the applicable Owner Entity, the Developer or its agents, employees, designees and nominees, SHA shall permit the Developer or its agents, employees, designees and nominees the right of access to and entry upon the Development site at all reasonable times, subject to the rights of existing tenants, if any, for the purpose of obtaining data and making surveys and tests necessary to evaluate the site and perform any and all predevelopment activities.

## ARTICLE VI – DEVELOPMENT PHASE

### 6.01 Owner Entity

(a) The Developer shall cause the formation of one or more limited liability companies (each, an "**Owner Entity**") to own each Development Project. The principal equity interest in each Owner Entity will be owned by a Tax Credit Investor or Tax Credit Investors. All documents evidencing an Owner Entity's rights and obligations with regard to the members, including but not limited to the payment of Developer Fees, guarantees, and pledges, shall be subject to the review and reasonable approval of SHA. Notwithstanding the foregoing, SHA will not object to matters which are customarily provided for in connection with the type of financing contemplated. Each Developer Managing Member will be the managing member of each Owner Entity from the date hereof through Stabilization with respect to each phase of the Development. "**Stabilization**" shall mean: (i) Stabilized Occupancy ("**Stabilized Occupancy**") with respect the Development shall mean the date on which the rental component of such phase of the Development has attained an occupancy level of 95%.) and (ii) the release by all lenders and Tax Credit Investors of Developer and its affiliates from all completion, lease-up, operating deficit, tax credit delivery, tax credit compliance and other guarantees (collectively, the "**Guarantees**") for such Development. Following Stabilization of the Development, SHA shall may acquire the Developer ownership interest of the Owner Entity in consideration of \$10.00, and upon assuming all of the obligations of Developer and its affiliates (including the Guarantees referenced above) in the manner described in this Section 6.01. If SHA, and/or an affiliate of SHA, acquires the Developer's ownership interest in an Owner Entity, SHA and/or an affiliate of SHA will assume all remaining Guarantees and obtain a release of Developer and/or Developer affiliate from all such Guarantees; provided, however, that the Developer shall use its good faith, best efforts to obtain the agreement of the Tax Credit Investor and SCHFDA to limit any operating deficit guarantee to a reserve funded from Tax Credit Investor equity in an amount agreed upon by the Tax Credit Investor prior to SHA's, and/or an affiliate of SHA's, assumption of such guarantee, unless there are deferred Developer Fees, in which case SHA, and/or an affiliate of SHA will fund the reserve from its share of deferred Developer Fees. Accordingly, upon the permitted exit of the Developer Managing Member as the member of an Owner Entity pursuant to this Section 6.01 and approval from the Tax Credit Investor, SHA, and/or an affiliate of SHA, will assume the remaining Guarantees as set forth herein.

In addition to the foregoing, prior to the Developer Managing Member's exiting an Owner Entity, it shall, to the extent assignable, assign to SHA, and/or an affiliate of SHA, and/or such Owner Entity any and all warranties running to it for items utilized in the construction of the phase of the Development owned by such Owner Entity. SHA, and/or an affiliate of SHA will have the right to receive all documents and reports that the Developer Managing



Member or the limited partners receive. Notwithstanding anything to the contrary in this Section 6.01(a), all rights of SHA may be exercised by an affiliate of SHA and accordingly, any obligations of SHA may be undertaken by an affiliate of SHA.

(b) In soliciting Tax Credit Investor proposals as provided in Exhibit C to this Agreement, the Developer will alert each potential respondent to the provisions of the foregoing paragraph and Sections 7.05 and 7.06 hereof, as well as Exhibit C and require each respondent to include in its proposal either acceptance of the foregoing paragraph and Sections 7.05 and 7.06 hereof, as well as Exhibit C or a description of any contrary or modifying terms it would require.

6.02 Ground Lease. SHA shall, not later than concurrently with the applicable Closing, enter into a ground lease (each a "**Ground Lease**") with the applicable Owner Entity, pursuant to which the Owner Entity will operate the phase of the Development during the term of the Ground Lease. Each Ground Lease will be separately negotiated.

6.03 SHA Loan Documents. SHA may enter into one or more loan agreements with the applicable Owner Entity providing for one or more loans from funds as may be made available by SHA, to be used in accordance with the applicable HUD requirements. Any such loans will be subordinate to other loans made by private lenders to such Owner Entity, payable from available cash flow after payment of all operating expenses, debt service on other mortgage financing, and lease payments under the Ground Lease, and shall contain other terms and conditions as shall be agreed upon by SHA and the applicable Owner Entity and be consistent with the Financing Plan (as defined in Exhibit C).

6.04 Property Management and Compliance Management. Not later than concurrently with each Closing, the applicable Owner Entity shall enter into a management agreement (each a "**Management Agreement**") with a third-party Management Agent to be approved by SHA. The Management Agreement shall provide that the management agent shall be responsible to the applicable Owner Entity for management of the Development in accordance with the terms of the applicable Management Agreement and other applicable requirements referenced therein, and in accordance with a management plan (each a "**Property Management Plan**"). The property management fee (the "**Management Fee**") will be no more than 6% of gross collections of the property.

SHA will receive an annual asset management fee of 2.0% of net rental revenue. The annual asset management fee paid to SHA will be paid as a routine operating expense prior to any distributions.

6.05 Option and Right of First Refusal. Each Owner Entity shall grant to SHA, and/or an affiliate, an option to purchase the Owner Entity's entire interest in a Development Project no later than six months following the end of the 15 year tax credit compliance period from the date such Development is placed in service for the greater of fair market value based on continued rent restriction pursuant to the Extended Use Agreement, or assumption of existing debt; and, a right of first refusal with respect to any bona fide offer from an unrelated third party to purchase the Owner Entity's interest in a Development Project which such Owner Entity desires to accept, under the same terms and conditions. The remaining terms of the option and the right of first refusal shall be agreed upon by the Owner Entity and SHA and be set forth in a separate option and right of first refusal agreement entered into between SHA and/or an affiliate and the applicable Owner Entity. The Developer shall include the terms of

SHA's, and/or an affiliate's option and right of first refusal in any Tax Credit Investor commitment letters.

6.06 Agreements for Development. SHA, Developer, and each Owner Entity may enter into specific development agreements or other documents with respect to each Development Project and such documents shall supersede the terms of this Agreement. Once a Closing has occurred with respect to Development Project, the documents applicable to such Development Project and any other documents executed in connection with such Closing ("**Closing Documents**") shall govern the parties' obligations as to matters set forth in them. No termination of this Agreement, in and of itself, shall release either other party from the obligations undertaken in the Closing Documents nor increase the rights and remedies under such Closing Documents.

## ARTICLE VII - DEVELOPER FEE

7.01 Developer Fees. As full compensation for its undertaking and performance of the Development Services hereunder, the Developer (or a Developer affiliate designated by it) shall be entitled to earn and receive a developer fee (the "**Developer Fee**") with respect to each Development Project which shall be paid solely from syndication proceeds or other Development Project financing sources other than SHA federal funds. Except as otherwise provided herein, the Developer and SHA intend that, the Developer Fee shall be the maximum permitted by lenders and other funders. The Developer will seek SCHFDA approval of a Developer Fee up to the maximum fee permitted by the agency. SHA shall be entitled to receive 50% of the total gross amount of Developer Fee for all phases of the Development, (the "**SHA Fee Portion**") with the remaining 50% to constitute the Developer's share of the Developers Fee (the "**Developer Fee Portion**"). The SHA Fee Portion shall: (i) be paid to SHA by Developer as and when Developer Fee payments are received by Developer from the applicable Owner Entity, and (ii) not result in Developer receiving an amount greater than the Developer Fee Portion, and (iii) not include fees or other sources of funding that SHA is otherwise entitled to receive. Subject to agreement by the Tax Credit Investor and approval by SCHFDA (if required), the parties hereto agree that Developer Fee with respect to Development Project shall be payable 25% at construction loan closing, 50% at substantial completion, and 25% at achievement of Stabilized Occupancy. For purposes of this provision, "**achievement of Stabilized Occupancy**" shall be determined as provided in the agreement between the Developer and the applicable Owner Entity but not prior to achievement of initial occupancy of 95% of all units of the applicable phase of the Development and "**substantial completion**" shall mean the date that all of the following have occurred: (i) the Developer shall certify in writing that the Developer's contractor has completed a Development Project in conformance with the applicable Development Plan, and that such work is deemed complete, notwithstanding minor details of construction, mechanical adjustment or cosmetic items which do not interfere with the use and occupancy of such phase of the Development for its intended purpose (i.e., punch list items); (ii) the Developer or the Developer's construction contractor has obtained permanent, unconditional certificates of occupancy or their equivalent from all appropriate governmental entities for such phase of the Development; (iii) all sanitary, security, electrical, heating, ventilating and air conditioning systems in the phase of the Development are operational to the extent necessary to provide adequate services to a Development Project; and (iv) access to Development and the parking areas and other common areas are available to the residents of a Development Project.

## 7.02 Costs, Expenses and Funding.

(a) Cost Reimbursement. Costs incurred by the Developer in planning or implementing the Project shall be funded by SHA and Developer as agreed by the parties in this Agreement and reimbursed by the applicable Owner Entity at Closing.

(b) No Payment for Other Services. No services for which an additional cost or fee will be charged by the Developer shall be furnished without the prior written consent of SHA.

(c) No Payment for Legal Fees. No funds or amounts payable by SHA to the Developer shall be used by the Developer to pay its in-house legal counsel or any entity furnishing legal services which is an affiliate of the Developer, unless such legal work would otherwise have been performed by outside counsel at equal or greater cost.

(d) Availability of Funds. SHA funds available for development of the Developments (the "**SHA Development Funds**") may consist of public housing reserve funds; Replacement Housing Factor (RHF) funds; or other such funds designated by SHA for each Development. The amount of SHA funding for each Development Project shall be determined on a project by project basis. SHA shall not be obligated to pay any moneys in the event that the source of funds attributable to SHA are terminated, withheld or recaptured by HUD; provided that SHA shall pursue, with the Developer's assistance and cooperation, alternative sources of funding. The SHA Development Funds are in addition to any SHA funds used to perform its obligations under Section 5.01 hereof. SHA will also make every effort to secure funding and waiver(s) of related fees and costs from the City of Spartanburg and other local governmental bodies towards the expense of infrastructure improvements required for a Development Project.

(e) Retention of Rights. SHA's review, approval or acceptance of, or payment for Development Services shall not be construed to operate as a waiver of any of SHA's rights arising out of this Agreement or otherwise.

7.03 Limitation on Developer Fee. The Developer Fee shall be deferred to secure the Development against any cost overruns only if (a) the construction contingency funds and cost savings are insufficient to cover such cost overruns, and (b) the Developer has been unsuccessful in its attempt to find other sources to pay for such cost overruns. If none of the foregoing is sufficient to fully cover such cost overrun in excess of any contingency set forth in the Development Budget, the Developer Fee may be deferred in order to pay for such overrun.

7.04 Development Costs. For each phase of the Development, proceeds from the financing and equity investment raised by the tax credit syndication or otherwise and related to such phase will reimburse and/or repay any outstanding predevelopment loan(s) provided by the Developer and/or SHA for all direct development costs associated with such phase of the Development, including, but not limited to actual legal fees and consulting fees incurred by SHA (which amounts reimbursed for legal fees and consulting fees by SHA shall not exceed \$30,000 per Development Project but such limitation will not apply to fees separately incurred by Owner Entity). Such costs will be treated as costs of the Development and will be paid at the Closing for Development Project. In the event a Closing does not occur, SHA and the Developer will be responsible for their own respective costs. Notwithstanding the foregoing, if a Closing for a phase of the Development does not occur, all SHA predevelopment loans shall



be demand satisfied in exchange for delivery of the work product created by all third parties for which such funds were advanced.

7.05 Development Budget Cost Savings. Any funds remaining in a construction contingency reserve and any other cost savings from a Development Budget (permanent sources less permanent uses as determined at Stabilization), subject to the applicable Owner Entity documents and financing documents, shall be paid/distributed in accordance with the distribution provisions of the operating agreement of the applicable Owner Entity.

7.06 Guarantee Fee; Compliance Fee; Cash Flow.

(a) Fees Payable to Managing Member. The Owner Entity documents shall include that SHA and the Developer Managing Member (or their affiliates) shall share in the partnership management fees, incentive management fees or similar fees paid to members of such Owner Entity, if any, 50% to Developer Managing Member and 50% to SHA, subject to payment requirements of the Tax Credit Investor.

(b) Available Cash Flow. "Available Cash Flow" shall conform to a similar definitional term in the Owner Entity's operating agreement, but is generally agreed by the parties to mean the net amount equal to (a) all cash received in any calendar year from operations of a particular phase of the Development (including funds released from reserves, the refinancing of any loan, receipt of proceeds of an event covered by property or liability insurance to the extent not used to repair or restore the improvements, and a property condemnation or taking to the extent not used to repair or restore the improvements and excluding the proceeds of sale or other disposition of all or part of the assets), less (b) the following, determined on an accrual basis, payable for the same calendar year from such cash: (i) operating expenses (other than fees payable to a member of Owner Entity or an affiliate thereof), including, without limitation, mandatory payments of principal and interest on any loans; and, (ii) funding of any reserves and other deposits or escrows required by any loans. Available Cash Flow shall be distributed 50% to Developer and 50% to SHA.

If SHA has provided secondary financing to a phase, SHA's combined debt service payments on such loan and cash flow distribution shall be limited to twenty-five percent (50%) of Available Cash Flow. Each party's claim to Available Cash Flow shall be further subject to the requirements and limitations of the investor and (if applicable) other "soft" lenders – including (as applicable) priority payments for investor fees, credit adjusters, deferred developer fees or other similar priorities.

**ARTICLE VIII - SELECTION OF PROFESSIONALS,  
CONTRACTORS AND CONSULTANTS**

8.01 General. The Developer or the applicable Owner Entity shall select and engage contractors, consultants and other third parties necessary for carrying out Development Services pursuant to this Agreement. SHA acknowledges that, in accordance with 24 C.F.R. Part 905, neither the Developer nor any Owner Entity is required to comply with procedures set forth in 2 C.F.R. Part 200. In light of the public investment in the Development, the Developer shall engage, and shall cause each Owner Entity to engage, consultants and contractors pursuant to open and fair competitive procedures to the extent practical. In selecting contractors and consultants, the Developer and each Owner Entity shall be alert to organizational conflicts of interest as well as noncompetitive practices that may restrict or

eliminate competition or otherwise restrain trade and will make awards to the bidder or offeror whose bid or offer is in the Developer's or Owner Entity's sole determination most advantageous to the applicable phase of the Development, taking into consideration price, quality and other factors. The other factors shall include (but not be limited to) the bidder's or offeror's commitment to compliance with MBE, WBE and Section 3 participation plans in accordance with Section 8.03 hereof. In no event shall the Developer or any Owner Entity contract with any party that has been debarred or suspended by HUD. No less than ten (10) business days prior to finalizing the engagement of any contractor (excluding subcontractors of the general contractor), consultant or third party (other than accountants and attorneys or third parties paid from Developer's share of Developer Fee), the Developer and the Owner Entity shall advise SHA in writing ("**Notice of Engagement**") of the proposed selection by the Developer or the Owner Entity of such contractors, consultants or other third party to be engaged or selected for participation in the Development who is to be paid at least \$100,000. Within 10 business days after SHA's receipt of a Notice of Engagement, SHA may disapprove (approval not to be unreasonably withheld conditioned or delayed) any selection made by the Developer or the Owner Entity in writing specifying the reasonable basis of such disapproval. Those contractors and consultants set forth as team members in the Proposal are deemed acceptable to SHA. All contracts shall contain all standard provisions required by HUD and shall conform to the applicable requirements of this Agreement.

8.02 Prohibited Arrangement. The Developer shall not enter into any contract, lease, purchase order or other agreement ("**Arrangement**") in connection with the Development with any affiliate of the Developer, unless such Arrangement has been approved in writing by SHA, after full disclosure in writing by the Developer to SHA of such affiliation or relationship and all details relating to the proposed Arrangement.

8.03 Minority and Women Business and Section 3. Not later than ninety (90) days after the execution of this Agreement, the Developer shall formulate and submit plans to ensure MBE, WBE and Section 3 hiring (together, the "**Hiring Plans**") to SHA for review and approval (such approval not to be unreasonably withheld, conditioned or delayed). The Hiring Plans shall specify how Section 3 and MBE/WBE hiring requirements will be implemented with respect to the Development and shall comply with the requirements set forth in the RFQ and the representations contained in the Developer's response.

The Hiring Plans shall be applicable to all Development Services rendered by the Developer, its contractors and any Owner Entity. The Developer shall implement or cause each Owner Entity to implement the Hiring Plans for the Development.

(a) To achieve greater participation of MBEs and WBEs in contracts, the Developer will, if necessary:

(i) place qualified MBEs and WBEs and small business concerns on solicitation lists;

(ii) divide the Development Services into smaller tasks or quantities to permit maximum participation by MBEs and WBEs and small business concerns;

(iii) establish a Development Schedule and Development Budget which encourages participation by MBEs, WBEs and small business concerns; and

(iv) use the services and assistance of the U.S. Small Business Administration, the Minority Business Development Agency of the U.S. Department of Commerce, any local minority assistance organizations and various state and local government small business agencies.

(b) Ratios. The Developer shall use commercially reasonable efforts for each phase of the Development to:

(i) target Section 3 hires of 25 individuals for each Development Project (the "**Section 3 Requirement**"; and

(ii) target MBE/WBE/DBE firms to receive contracts paying such enterprises an amount equal to at least 30% of the total (hard and soft) cost of the Development Services (the "**MBE Requirement**").

## **ARTICLE IX - REPRESENTATIONS AND WARRANTIES**

9.01 Representations and Warranties of the Developer. The Developer hereby represents and warrants to SHA as follows:

(a) It has the legal capacity to assume responsibility for compliance with all applicable laws, regulations, rules, programs and agreements and to enter into this Agreement and to perform all of the undertakings set forth herein.

(b) The Developer is a duly organized and validly existing legal entity under the laws of the State of \_\_\_\_\_.

(c) This Agreement has been duly and validly executed and delivered by the Developer and constitutes a valid and legally binding obligation enforceable in accordance with its terms.

(d) The Developer is not subject to any charter or other legal restriction of any kind which materially and adversely affects the business, property or assets, or the condition, financial or otherwise, of the Developer. Neither the execution and delivery of this Agreement, nor compliance with the terms, conditions and provisions hereof, will conflict with or result in a breach of the terms, conditions or provisions of, or constitute a default under any law or any regulation, order or decree of any court or governmental agency, or any indenture or other agreement or instrument to which the Developer is subject, or will result in the creation or imposition of any lien, charge or encumbrance of any nature whatsoever upon any of the property or assets of the Developer pursuant to the terms of any such indenture or agreement or instrument, and will not require the approval of any federal regulatory body or of any state or local commission or authority having jurisdiction with respect thereto, unless such approval has been obtained and is in full force and effect on the date hereof.

(e) There is no action, proceeding or investigation now pending before any court or any governmental department or agency nor any basis therefor, known or believed to exist which: (i) questions the validity of this Agreement or any action or act taken or to be taken by the Developer pursuant to this Agreement, or (ii) is likely to result in a material adverse change in the authority, property, assets, liabilities or condition of the Developer which will

materially and substantially impair its ability to perform pursuant to the terms of this Agreement.

(f) Developer represents that, taking into account the present fair saleable value of Developer's assets and the probable liability of its debts and other liabilities, Developer has a positive net worth; Developer will be able to pay its debts and liabilities as they become due; Developer will have sufficient income and cash flow to timely pay all subcontractors for work performed under contracts and subcontracts entered into as contemplated by this Agreement; and Developer does not have unreasonably small capital with which to conduct the business in which it is engaged as such business is now conducted and is proposed to be conducted following the date of this Agreement.

(g) The Developer shall cause each Owner Entity to comply with all terms and conditions of this Agreement which are applicable to the Owner Entity.

9.02 Survival. The representations and warranties of the Developer shall survive until eighteen months following the date of substantial completion for the final phase of the Development. The Developer shall immediately notify SHA in writing if any of these representations change during the duration of this Agreement.

## **ARTICLE X - COOPERATION AND COMPLIANCE**

The parties hereto agree to cooperate with each other and provide all necessary documentation, certificates and consents and to take all necessary action in order to satisfy the terms and conditions hereof and the applicable laws, regulations and agreements relating thereto, without limitation the Developer.

## **ARTICLE XI - INSURANCE**

The Developer shall maintain and keep in force insurance, naming SHA as an additional insured in the type and for the amounts specified on Exhibit H. The Developer shall furnish SHA certificates of insurance and they shall state that a thirty (30) day notice of prior cancellation or change will be provided to SHA.

Notwithstanding the foregoing, the Developer shall notify SHA (a) simultaneously with any notice sent by the Developer to its insurance carrier terminating all or any portion of its insurance coverage; or (b) within five (5) days following receipt by the Developer of notice of cancellation or nonrenewal from its insurance carrier. Immediately upon receipt or provision of notice terminating any insurance coverage, the Developer shall obtain new coverage in such types and for such amounts as required by this Article XI. The Developer promptly shall provide to SHA copies of such new policies and comply in all respects with this Article XI. SHA reserves the right to adjust the types and amounts of insurance required to be maintained by the Developer. All insurers shall be licensed in Tennessee and rated at least "A" by AM Best.

## **ARTICLE XII - ACCOUNTING RECORDS**

12.01 Books and Records; Access. The Developer's books and records pertaining to its performance under this Agreement shall be kept in accordance with generally accepted accounting principles and as required under any grant agreement and any other funding agreement between SHA and a public funding source. SHA, HUD and other interested

governmental agencies providing funds to the Development shall have the right at all times to review and inspect the Developer's books and records pertaining to its performance under this Agreement and the Developer shall afford full and free access to such books and records to SHA and HUD.

12.02 Audit. SHA, HUD and any agency providing funds to SHA, shall have the right to perform any audit of the Developer's and each Owner Entity's finances and records related to its performance under this Agreement, including without limitation, the financial arrangement with anyone the Developer or any Owner Entity may delegate to discharge any part of its obligations under this Agreement.

12.03 Audit of Contractors. The Developer shall provide and shall cause each Owner Entity and each of their contractors to provide access to SHA, HUD, any agency providing funds to SHA, the Comptroller General of the United States or any of their duly authorized representatives to any books, documents, papers and records of each such contractor which are directly pertinent to this Agreement for the purpose of making, audit, examination, excerpts and transcriptions. In addition, the Developer shall provide, and shall cause each Owner Entity to provide to SHA copies of all third party prepared audits, reviews, compilations or other reports of the books and records of the Developer or any Owner Entity concerning any and all phases of the Development within thirty (30) days of the issuance thereof. Such documents will include, but not be limited to all audits, reviews, or compilations, concerning compliance with low-income housing tax credit requirements, the annual audit or review submitted to the Tax Credit Investor, and the final tax credit certification.

12.04 Maintenance of Books and Records. In order to permit the making of audit, examination, excerpts and transcriptions by SHA, HUD, any agency providing funds to SHA, the Comptroller General of the United States or any of their duly authorized representatives, the Developer agrees to maintain and to cause each Owner Entity and each of their contractors to maintain all records and supporting materials with respect to its performance under this Agreement for a period of three years following completion and delivery of the audit referred to in this Article XII, or any longer period required by 2 C.F.R. Part 200, as amended in subpart F of 24 C.F.R. Part 905.

### **ARTICLE XIII - RESPONSIBILITY FOR EMPLOYEES**

The Developer agrees to provide a competent staff for the proper administration, coordination, and supervision of a Development Project. All officers and employees of the Developer shall be compensated by the Developer and shall be under the control of the Developer. SHA shall not have any liability or obligation whatsoever with respect to any employment arrangement between the Developer and any of its officers and employees. All matters concerning the employment, supervision, compensation, promotion and discharge of such officers and employees shall be the sole responsibility of the Developer. The Developer shall fully comply with all applicable laws and regulations with respect to workers' compensation, social security, unemployment insurance, hours of labor, wages, working conditions, licensing and other employer-employee related matters, including, without limitation, all laws, rules and regulations with respect to non-discrimination based on race, sex or otherwise. The Developer represents that no person supplied by it to perform any of the Development Services is an employee of SHA.



## ARTICLE XIV - ROLE OF HUD

14.01 The parties acknowledge that performance of certain elements of this Agreement by SHA and the transactions contemplated hereby are contingent upon the review and approval by HUD. The Developer and SHA agree to cooperate in good faith in order to obtain all necessary HUD approvals. The parties generally recognize that unless SHA provides federal funds to the Developer, federal requirements that accompany such funding will not be applicable. Any provision of this Agreement notwithstanding, the parties intend that there should be no more involvement by HUD in the Development than is legally required. Notwithstanding the foregoing or anything to the contrary contained in this Agreement, any unconditioned references in this Agreement to HUD requirements, or to processing steps and procedures associated with HUD, are intended to apply not as governmental regulations but instead as contractual guidelines agreed upon by the parties pursuant to this Agreement.

## ARTICLE XV - DISPUTES

15.01 Disputes. All disputes under or relating to this Agreement, including any claim for damages, which are not otherwise disposed of by agreement shall be resolved as follows:

(a) Claims. Any and all claims or disputes by the Developer or SHA under this Agreement (each a "**Claim**") shall be made in writing and submitted to the other party in accordance with Section 25.01 of this Agreement.

(b) Mediation. Within fifteen (15) days of receipt of a Claim, the Claim shall be submitted to mediation in an effort to resolve the dispute. The party mediating shall provide notice to the other party within such fifteen (15) day period requesting that the dispute be submitted to mediation. The parties will select a mediator within ten (10) business days following the request for mediation. The mediator shall schedule such mediation sessions as he/she deems advisable. Each party agrees that it will fully participate in the mediation process until the mediator determines that further proceedings are not warranted; provided, however, that the mediation process shall conclude no later than thirty (30) days following the commencement of such mediation process.

Each party shall be responsible for its costs and those of its advisors in the mediation process. All costs and expenses of the mediation process, including the fee charged by the mediators (if any), shall be borne equally by the parties unless otherwise agreed upon in writing.

## ARTICLE XVI - TERM; TERMINATION

16.01 Term. This Agreement shall commence upon the execution hereof and shall continue until the Closing for the final phase of the Development, unless sooner terminated in accordance with this Agreement. Sections 16.02 - 16.04 shall have no application to any phase of the Development which shall have achieved Closing.

16.02 Termination by Parties. This Agreement may be terminated:

- (a) By the mutual agreement of the Developer and SHA;
- (b) By the Developer or SHA if there has been a default in the performance or observance of any material term of this Agreement by the other party that is not cured within thirty (30) days after receipt of written notice thereof from the non-defaulting party;

provided that, if such default cannot reasonably be cured within thirty (30) days, and the defaulting party shall have commenced to cure such default within such thirty (30) day period, then the defaulting party shall have such additional time as is reasonably necessary to cure the default if the defaulting party promptly and diligently proceeds to cure the same, it being agreed that no extension shall be for a period in excess of ninety (90) days;

(c) Immediately by SHA, if the Developer ceases doing business as a going concern, makes a general assignment of its assets for the benefit of creditors, files a voluntary petition seeking for itself any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar arrangement under the federal bankruptcy laws or any similar federal or state statute, law or regulation, or files an answer admitting the material allegations of such a petition or consents to or acquiesces in the appointment of a trustee, receiver or liquidator of all or any part of its assets or properties; or

(d) By Developer as set forth below, if Developer determines that one or more Development Contingencies cannot reasonably be achieved which render completion of the Development to be commercially infeasible.

The parties acknowledge and agree that the following matters are conditions precedent to the Developer's ability to proceed with a Development Project and to fulfill the terms and conditions of this Agreement. Developer's ability to perform its responsibilities hereunder is substantially contingent upon actions by third parties over which they have limited control, or factual circumstances which could not reasonably have been determined as of the date of this Agreement (each a "**Development Contingency**"). Such Development Contingencies include, but may not be limited to, the following items: (i) the award of tax credit allocations in the amount projected; (ii) the investment of equity at projected terms, conditions and rates; (iii) the making of private loans under projected terms and conditions; (iv) the provision of all projected assistance, including grants, loans, land transfers, and tax abatement;

(v) the successful elimination or control of adverse geotechnical conditions at the Development site; (vi) the successful elimination or control of adverse environmental conditions at the Development site; (vii) the receipt of all necessary government approvals and permits, including without limitation HUD's approval as required; and (viii) the continuation of law, regulations and policy at least as favorable to redevelopment of former public housing sites in general, and to the Development in particular, as they currently exist. If, at any time prior to the Closing on the final phase of the Development, Developer concludes that completion of the Development is or has become commercially infeasible because a Development Contingency has not been satisfied, then Developer may initiate consideration of suspension or termination of the Development by delivery to SHA of written notice (a "**Notice of Infeasibility**") describing the conditions supporting Developer's determination. The Developer's Notice of Infeasibility may describe actions that the Developer proposes that either party take in order to address the unresolved Development Contingency or state reasons why the Developer believes that all potential avenues of cure have been exhausted.

Following delivery of a Notice of Infeasibility, SHA and the Developer, as appropriate, shall use all commercially reasonable efforts to cause resolution of the Development Contingency in a manner which reasonably permits the accomplishment of the remaining phases of the Development in accordance with this Agreement. SHA and the Developer will attempt in good faith to revise the scope of the Development in a mutually acceptable fashion by extending deadlines, revising goals, or otherwise. The parties may agree (A) to suspend development of

the applicable phase of the Development, including return of any credits to SCHFDA, and to pursue an alternative Development Plan, which may include application for tax credits in a later year, subject to all necessary approvals and deadline extensions by HUD or other controlling agencies, or (B) to adopt an alternative mutually agreed upon course of action. If, after good faith efforts to cure or otherwise resolve the conditions of infeasibility, the parties cannot, within sixty (60) days following delivery of the Notice of Infeasibility, agree to actions to satisfy the Development Contingency, then Developer may terminate this Agreement by delivering written notice to SHA of such termination.

Following delivery of such notice of termination of this Agreement, SHA shall reimburse the Developer for all third-party costs and out-of-pocket costs incurred by it in its work hereunder including reasonable costs of wrapping up as reasonably documented by the Developer. The Developer shall assign and turn over all drawings, studies, plans, specifications and other interim work product to SHA, upon full payment as provided herein.

#### 16.03 Default.

(a) Developer Default. If the SHA terminates this Agreement pursuant to Section 16.02(b), then the SHA may make a Claim in accordance with Article XV hereof.

(b) SHA Default. If the Developer terminates this Agreement pursuant to Section 16.02(b), then the Developer may make a Claim in accordance with Article XV hereof.

(c) Termination or Dissolution of SHA. If SHA is dissolved or otherwise rendered incapable of performing its obligations under this Agreement, the Developer may treat any such circumstances as a termination for convenience and be entitled to a claim pursuant to Section 16.04(b).

#### 16.04 Termination for Convenience by SHA.

(a) SHA may terminate this Agreement in its entirety for the convenience of SHA ("**Termination For Convenience**") in the event SHA determines in good faith that it is infeasible or contrary to the interests of SHA to proceed with a Development Project.

(b) In the event of a Termination For Convenience by SHA under this Section 16.04, the Developer may make a Claim in accordance with Article XV. SHA shall either make payment on such claim within thirty (30) days of receipt or, within such thirty (30) day period, submit the claim for dispute resolution pursuant to Article XV and pay all uncontested amounts.

(c) In the event of a Termination For Convenience or a Development Project is suspended by SHA for a period of time in excess of one hundred twenty (120) days, either in whole or in part, SHA shall be liable to Developer for all reasonable and proper costs resulting therefrom, which costs shall be paid to Developer within thirty (30) days of receipt by SHA of a properly presented claim setting out in detail: (i) the total cost of all third-party costs incurred by Developer through the date of termination; (ii) the cost (including reasonable profit) of settling and paying claims under subcontracts and material orders for work performed and materials and supplies delivered to the site, or for settling other liabilities of Developer incurred in performance of its obligations hereunder; (iii) the cost of preserving and protecting the work already performed until SHA or its assignee takes possession thereof or assumes responsibility therefor; (iv) the actual or estimated cost of legal and accounting



services reasonably necessary to prepare and present the termination claim to SHA; and (v) fair compensation to Developer for all tasks performed through the date of termination in an amount equal to a designated percentage of the total projected Developer Fee for phases of the Development that have not had a Closing and based upon the achievement of certain identified events such designated percentage will increase as follows: twenty-five percent (25%) of the Developer's portion of the projected Developer Fee upon achievement of one of the "development milestones" listed below plus an additional five percent (5%) of the total projected Developer Fee upon achievement of each additional development milestone without regard to the sequence of achieving such development milestones. For purposes hereof the "development milestones" shall be (1) submittal to SCHFDA of the tax credit application for the applicable phase of the Development, (2) notification from SCHFDA that in response to the tax credit application the applicable phase will receive an award of LIHTCs, (3) meeting the 10% carryover requirement relating to the LIHTCs for the applicable phase, (4) submission of all design documentation and other materials to the applicable governmental body necessary to apply for building permits for the applicable phase, (5) obtaining all governmental approvals necessary for issuance of building permits for the applicable phase, and (6) obtaining all necessary financing commitments for the applicable phase. For example, the total projected Developer Fee will be based upon the aggregate Developer Fee for the first and second phases of the Development in the case of a termination before the Closing of the first phase of the Development, and the total projected Developer Fee will be based upon the Developer Fee for the second phase of the Development in the case of a termination after the Closing of the first phase of the Development.

16.05 Assignment and Delivery of Contracts and Work Product. The Developer shall collaterally assign to SHA, in connection with SHA's funding of predevelopment costs pursuant to this Agreement, Developer's right, title, and interest in all documents, drawings, plans and specifications, studies, files, contracts, permits, approvals, grants, tax credit reservations and all other documents, materials and work product (including, but not limited to architectural documents), prepared or obtained for the Developer by third parties (collectively the "**Documentation**") to construct the Development or in connection with this Agreement or the Development Services, which Documentation is funded in whole or in part by SHA. If this Agreement is terminated, upon payment in full by SHA of the cost for such Documentation (including reimbursement to Developer of the portion of the cost paid by Developer), then (a) the Developer shall assign all right, title and interest and deliver to SHA originals or copies, as applicable, of all Documentation for phases of the Development that have not achieved a Closing and (b) Developer shall cause each applicable Owner Entity to execute and deliver to SHA an assignment of such Owner Entity's right, title and interest in all such Documentation for phases of the Development that have not achieved a Closing. The Developer shall include in all third party contracts a provision giving Developer or the Owner Entity the right to assign all applicable Documentation to SHA upon payment in full.

16.06 Non-Liability of SHA Commissioners, Employees and Agents. No commissioner, employee or agent of SHA shall be personally liable to the Developer, or any successor in interest, in the event of any default or breach by SHA or for any amount which may become due to the Developer or on any obligation under the terms of this Agreement.

## **ARTICLE XVII – INDEMNIFICATION**

17.01 Indemnity by Developer. The Developer shall indemnify, defend and hold SHA and its Commissioners, employees, and agents harmless from and against any and all claims,

damages, losses, liabilities, costs and expenses arising out of or in connection with (a) the performance by a Developer Party of the Development Services, (b) any breach of this Agreement by a Developer Party, (c) any violation, or alleged violation by a Developer Party of state, federal, or local law, rule or regulation; (d) any employee or third party claim arising under Article XIII of this Agreement, or (e) any bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (including the loss of use resulting therefrom) caused by a Developer Party; provided that such indemnification obligation shall not apply to any claim resulting from gross negligence, willful misconduct or breach of this Agreement by SHA, its agents or employees or a failure to act by SHA, its agents or employees when a duty to act is present. For purposes hereof, "**Developer Party**" shall include the Developer, its affiliates, joint venture partners, agents or employees of any of them, any Owner Entity, or anyone for whose acts they may be liable. It is agreed that the Developer will be responsible for primary loss investigation, defense and judgment costs where the foregoing indemnity applies.

17.02 Indemnity by SHA. To the extent permitted by applicable law, SHA shall indemnify, defend and hold Developer harmless from and against any and all claims, damages, losses, liabilities, costs and expenses arising out of or in connection with (a) the performance by SHA and its affiliates of the property management services under a Management Agreement or Management Plan, (b) any breach of this Agreement or a Management Agreement by SHA and its affiliates, (c) any violation, or alleged violation by SHA and its affiliates of state, federal, or local law, rule or regulation; or (d) any bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (including the loss of use resulting therefrom) caused by SHA and its affiliates; provided that such indemnification obligation shall not apply to any claim for which Developer has an indemnification obligation pursuant to Section 17.01 hereof or any claim resulting from gross negligence, willful misconduct or breach of this Agreement by Developer, its agents or employees or a failure to act by Developer, its agents or employees when a duty to act is present.

17.03 In consideration of entering into this Agreement, (i) Developer agrees to waive all rights of subrogation against SHA, its officers, agents and employees for losses arising from the work performed by the Developer for SHA and (ii) SHA agrees to waive all rights of subrogation against Developer, its officers, agents and employees for losses arising from the services performed by SHA. This Article XVII shall survive termination of this Agreement.

## **ARTICLE XVIII - INDEPENDENT CONTRACTOR**

Nothing contained in this Agreement shall be deemed or construed to create a relationship of partners, co-venturers, or principal and agent between SHA and the Developer. In entering into this Agreement and carrying out its obligations hereunder, the Developer is an independent contractor working for itself and is not, shall not be deemed to be and shall not hold itself out as an agent, legal representative or employee of SHA or HUD. The Developer is not granted any right or authority to assume or to create any obligation, liability or responsibility, express or implied, on behalf of or in the name of SHA or HUD, to bind SHA or HUD in any manner to any contractual or other undertaking whatsoever or to accept payment from any party of any obligation owing to SHA or HUD. The Developer shall be responsible for all costs it incurs in performing its obligations under this Agreement, and SHA and HUD shall not have any liability for any debts or other obligations which the Developer may incur in rendering such performance. The Developer shall have no power or authority to create any obligation or liability on the part of SHA or HUD, as principal, obligor, guarantor, or surety, with respect to any obligation or liability to third parties incurred by the Developer.

## ARTICLE XIX - DISCLAIMER OF RELATIONSHIPS

19.01 No Third Party Beneficiary. Nothing contained this Agreement, nor any act of SHA, shall be deemed or construed to create any relationship of third party beneficiary, principal and agent, limited or general partnership, joint venture, or any association or relationship involving HUD, except between HUD and SHA.

19.02 No Assignment of Funds. The Developer acknowledges that any transfer of public housing funds by SHA to the Developer or an Owner Entity shall not be deemed an assignment of such funds. Neither the Developer nor any Owner Entity will succeed to any rights or benefits of SHA or attain any privileges, authorities, interests, or rights in or under the Amended and Restated Annual Contributions Contract between SHA and HUD ("ACC") or any grant agreement between SHA and HUD.

19.03 Covenant Against Contingent Fees. Developer represents that no person or selling agent has been employed or retained to solicit or secure this Agreement upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee.

## ARTICLE XX – FEDERAL, STATE AND LOCAL REQUIREMENTS

20.01 The Developer, as well as each Owner Entity and all their respective contractors and subcontractors, shall comply with 24 C.F.R. Part 905 and all of the applicable requirements of the following, as the same may be amended from time to time:

(a) The Fair Housing Act, 42 U.S.C. §§ 3601-19, and regulations issued thereunder, 24 C.F.R. Part 100; Executive Order 11063 (Equal Opportunity in Housing) and regulations issued thereunder, 24 C.F.R. Part 107; the fair housing poster regulations, 24 C.F.R. Part 110, and advertising guidelines, 24 C.F.R. Part 108 (collectively "**Fair Housing**"). The Developer shall take affirmative action to further Fair Housing.

(b) Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d, and regulations issued thereunder relating to nondiscrimination in housing, 24 C.F.R. Part 1.

(c) Age Discrimination Act of 1975, 42 U.S.C. §§ 6101-07, and regulations issued thereunder, 24 C.F.R. Part 146.

(d) Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794, and regulations issued thereunder, 24 C.F.R. Part 8; the Americans with Disabilities Act, 42 U.S.C. §§ 12181-89, and regulations issued thereunder, 28 C.F.R. Part 36, and the Architectural Barriers Act of 1968, as amended (42 U.S.C. § 4151) and regulations issued pursuant thereto, 24 C.F.R. Part 40.

(e) Section 102 of the Department of Housing and Urban Development Reform Act of 1989, as implemented at 24 C.F.R. Part 4, which contains provisions designed to ensure greater accountability and integrity in the provision of certain types of assistance administered by HUD.

(f) Section 3 and its implementing regulations at 24 C.F.R. Part 135.

(g) 24 C.F.R. Part 24, which applies to the employment, engagement of services, awarding of contracts, subgrants, or funding of any recipients, or contractors or

subcontractors, during any period of debarment, suspension, or placement in ineligibility status.

(h) The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 and government-wide implementing regulations at 49 C.F.R. Part 24.

(i) Section 306 of the Clean Air Act, Section 508 of the Clean Water Act, and Executive Order 11738.

(j) Section 12 of the Act, 42 U.S.C. § 1437j which applies to the payment of not less than the wages prevailing in the locality, as determined by or adopted by the Secretary of HUD, to all architects, technical engineers, draftsmen and technicians.

(k) 2 C.F.R. Part 200, which applies to requirements for grants.

(l) The Immigration Reform and Control Act of 1986, Pub L. No. 99-603, 100 Stat. 3359.

(m) Executive Order 11246 of September 24, 1965 entitled, "Equal Employment Opportunity," as amended by Executive Order 11375 of October 13, 1967, and as supplemented in Department of Labor regulations, 41 C.F.R. Part 60. (All construction contracts awarded in excess of \$10,000 by Federal grantees and their contractors or subcontractors.)

(n) Copeland "Anti-Kickback" Act, 18 U.S.C. § 874, as supplemented in Department of Labor regulations at 29 C.F.R. Part 3. (All contracts and subgrants for construction or repair.)

(o) Davis-Bacon Act, 40 U.S.C. §§ 276a to 276a-7 (as recodified at 40 U.S.C. §§ 3141-3148), as supplemented by the Department of Labor regulations at 29 C.F.R. Part 5, and HUD regulations at 24 C.F.R. 905 or successor provisions.

The provisions of 24 C.F.R. Part 70, as they may be amended from time to time, will apply to the use of volunteers for activities covered by Section 12 of the United States Housing Act of 1937. In addition, if funds from other Federal programs are used in renovation/construction of the Development, the Developer agrees to comply with all applicable requirements of such programs relating to labor standards. Developer shall comply with the policies, guidelines, and requirements of OMB Circular numbers A-110 and A-122, as they relate to the acceptance and use of federal funds and to 2 C.F.R. Part 200, to the extent applicable.

(p) Sections 103 and 107 of the Contract Work Hours and Safety Standards Act, 40 U.S.C. §§ 327-330 (as recodified at 40 U.S.C. §§ 3701-3703), as supplemented by Department of Labor regulations at 29 C.F.R. Part 5.

(q) Executive Orders 11625 (as amended by Executive Order 12007), 13170, 12432, and 12138 (as amended by Executive Order 12608). Consistent with HUD's responsibilities under these Orders, the Developer must make efforts to encourage the use of minority and women's business enterprises in connection with the renovation/construction of the Development.

(r) The cost principles of OMB Circular A-87, relocated to 2 CFR Part 225.

(s) The audit requirements of OMB Circular A-133.

(t) In connection with the Development, the Developer shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, disability, age, or national origin. The Developer shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to race, color, religion, sex, disability, age, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Developer shall or shall cause the appropriate party to insert the foregoing provision (modified only to show the particular contractual relationship) in all contracts in connection with the Development, except contracts for standard commercial supplies or raw materials and contracts, and shall require all contractors to insert a similar provision in all subcontracts, except subcontracts for standard commercial supplies or raw materials. The Developer shall post at the site of each Development component, in conspicuous places available to employees and applicants for employment, notices to be provided by HUD setting forth the provisions of this nondiscriminatory clause.

(u) Any other Federal, state or local law, regulation, rule or ordinance applicable to the Development.

(v) Confidentiality and Data Security. The Developer shall comply with the following:

(i) All data, regardless of form, including originals, images and reproductions, prepared by, obtained by, or transmitted to the Developer by SHA in connection with this Agreement is confidential, proprietary information owned by SHA. Except as specifically provided in this Agreement, the Developer shall not disclose data transmitted to or generated by the Developer in the performance of the services set forth in the Senior Rehab Predevelopment Schedule to any third person without the prior written consent of SHA.

(ii) Personal identifying information, financial account information, or restricted SHA information, whether electronic format or hard copy, must be secured and protected at all times to avoid unauthorized access. At a minimum, the Developer must encrypt and/or password-protect electronic files. This includes data saved to laptop computers, computerized devices or removable storage devices.

(iii) When personal identifying information, financial account information, or restricted SHA information, regardless of its format, is no longer necessary, the information must be redacted or destroyed through appropriate and secure methods that ensure the information cannot be viewed, accessed, or reconstructed.

(iv) In the event that data collected or obtained by the Developer in connection with this Agreement is believed to have been compromised, the Developer shall notify SHA immediately. The Developer agrees to reimburse SHA for any costs incurred by SHA to investigate potential breaches of this data and, where applicable, the cost of notifying individuals who may be impacted by the breach.



(v) The Developer agrees that the requirements of this Section 20.01(v) shall be incorporated into all subcontractor agreements entered into by the Developer. It is further agreed that a violation of this Section 20.01(v) shall be deemed to cause irreparable harm that justifies injunctive relief in court. A violation of this Section 20.01(v) may result in immediate termination of this Agreement without notice.

(vi) The Developer shall indemnify, defend, save and hold harmless SHA and its officers, officials, agents, and employees from and against any and all claims, actions, liabilities, damages, losses, or expenses (including court costs, attorneys' fees, and cost of claims processing, investigation and litigation) for any loss caused, or alleged to be caused, in whole or in part, by the Developer's or any of its owners', officers', directors', agents' or employees' failure to comply with the requirements of this Section 20.01(v). This indemnity includes any claim arising out of the failure of the Developer to conform to any federal, state or local law, statute, ordinance, rule, regulation or court decree.

(vii) The obligations of Developer under this Section 20.01(v) shall survive the termination of this Agreement.

## **ARTICLE XXI - CONFLICT OF INTEREST**

21.01 Conflict of Interest. The parties acknowledge and agree to comply with conflict of interest provisions set forth in 2 C.F.R. Part 200 and 24 C.F.R. Part 905 and the ACC. Each of the parties hereto agrees to include in all contracts with any party involving the use of Federal grant funds, a conflict of interest provision consistent with 2 C.F.R. Part 200 and 24 C.F.R. Part 905 and the ACC.

21.02 Certification Regarding Lobbying. The Developer agrees to execute the Certification Regarding Lobbying attached hereto as Exhibit J and all other certifications required to be executed in connection with receipt of Federal grant funds.

## **ARTICLE XXII - NO LIENS; NO ASSIGNMENT**

22.01 Liens and Encumbrances. Neither the Developer nor any Owner Entity shall place, or allow to be placed, any lien or encumbrance on the ground, structures or any improvements on a Development site owned by SHA, or any portion thereof, including any lien for work or labor done or materials furnished prior to the execution of a Ground Lease and, thereafter, no liens or encumbrances other than a mortgage or other financing instrument permitted by the Ground Lease shall be placed or allowed to be placed on a Development site by or on behalf of the Developer or any Owner Entity.

22.02 Discharge. If any mechanic's, laborer's, or materialman's lien shall at any time be filed against the Development or any part thereof, the Developer or the applicable Owner Entity, within thirty (30) days after notice of the filing thereof, shall cause such lien to be discharged of record by payment, deposit, bond, order of court of competent jurisdiction or otherwise. The Developer or Owner Entity shall notify SHA in writing of its action to either satisfy or contest the lien and, if contested, of the matter's status on a monthly basis until concluded. If the Developer or Owner Entity shall fail to cause such lien to be discharged within the period aforesaid, then, in addition to any other right or remedy, SHA may, but shall not be obligated to, discharge the same either by paying the amount claimed to be due or by procuring the discharge of such lien by deposit or by bonding. Any amount so paid by SHA and

the costs and expenses incurred by SHA in connection therewith, shall be payable by the Developer and shall be paid by the Developer to SHA on demand.

22.03 No Implied Consent. Nothing contained in this Agreement shall be deemed or construed in any way as constituting SHA's expressed or implied authorization, consent or request to any contractor, subcontractor, laborer or materialman, architect, or consultant, for the construction or demolition of any improvement, the performance of any labor or services or the furnishing of any materials for any improvements, alterations to or repair of the Development or any part thereof.

22.04 Assignment. The Developer shall not assign, subcontract or transfer any services, obligations, or interests in this Agreement without the prior written consent of SHA. Such consent shall not be unreasonably withheld when such assignment is for financing the Development.

### **ARTICLE XXIII - WRITTEN MATERIALS AND PUBLIC STATEMENTS**

The parties agree to cooperate and consult with each other regarding any public statements or publication made regarding a Development Project and the Development. The Developer shall provide SHA with drafts of any written material prepared in connection with a Development Project and the Development for a government agency or other third party prior to submission with sufficient time for SHA to review such materials. The Developer shall revise such drafts in accordance with reasonable SHA requests. In addition, the Developer shall provide SHA with any changes to documents that affect the activities or understandings reflected by this Agreement and final versions of all written submissions. The Developer further agrees that no press release, promotional flyer, advertisement, brochure, posters, letters, printed materials, electronic or internet broadcasts, and radio and television broadcasts concerning the Development will be issued without SHA's prior written consent and approval (which approval shall not be unreasonably withheld, conditioned or delayed). Representatives of SHA may attend and SHA shall be recognized at any event as the primary sponsor of the Development.

### **ARTICLE XXIV - FORCE MAJEURE**

Notwithstanding any other provision hereof, in the event that either party shall be delayed or hindered in or prevented from the performance of any covenant, agreement, work, service, or other act required under this Agreement to be performed by such party, and such delay or hindrance is due to causes beyond its reasonable control such as riots, insurrections, martial law, civil commotion, war, fire, flood, earthquake, or other casualty or acts of God, the performance of such covenant, agreement, work, service, or other act shall be excused for the period of delay and the time period for performance shall be extended by the same number of days in the period of delay; provided, however, that the time period for performance shall not be extended beyond 120 days without the prior written consent of the other party.

### **ARTICLE XXV - MISCELLANEOUS**

#### **25.01 Notices; Contact.**

All notices, requests, demands, approvals, or other formal communications given hereunder or in connection with this Agreement shall be in writing and shall be deemed given

when actually received or two days after being sent by registered or certified mail, return receipt requested, postage prepaid, addressed as follows:

If to the Developer:

NHP Foundation  
1090 Vermont Ave., Suite 400  
Washington, DC 20005  
Attn:

If to SHA:

Terril Bates, Chief Executive Officer  
Housing Authority of the City of Spartanburg, SC  
2271 S. Pine Street  
Spartanburg, SC 29302

With a copy to:

With a copies to:

Bo Campbell, Attorney  
Horton Law Firm, PA  
307 Pettigru Street  
Greenville, SC 29601

25.02 Counterparts. This Agreement may be executed in counterparts and all such counterparts shall be deemed to be originals and together shall constitute one and the same instrument.

25.03 Survival. Upon the Closing of any phase of the Development, the Closing documents shall govern the rights and remedies of the parties for such phase only. Articles XV and XVII, shall survive and continue to be enforceable with regard to such phase as shall be further specified in the Closing documents.

25.04 Further Assurances. Each party shall execute such other and further documents as may be reasonably necessary or proper for the consummation of the transactions contemplated by this Agreement.

25.05 Interpretation and Governing Law. This Agreement shall not be construed against the party who prepared it but shall be construed as though prepared by both parties. This Agreement shall be construed, interpreted, and governed by the laws of the State of South Carolina.

25.06 Severability. If any term or provision of this Agreement is declared by a court of competent jurisdiction to be invalid or unenforceable such term or provision shall be deemed severed from this Agreement and the remaining parts shall continue in full force as though such invalid or unenforceable term or provision had not been part of this Agreement.

25.07 Parties Bound. No officer, director, shareholder, employee, agent, or other person authorized to act for and on behalf of either party shall be personally liable for any obligation, express or implied, hereunder.

25.08 Final Agreement. This Agreement constitutes the final understanding and agreement between the parties with respect to the subject matter hereof and supersedes all prior negotiations, understandings and agreements between the parties, whether written or oral. This Agreement may be amended, supplemented or changed only by a writing signed or authorized by or on behalf of the party to be bound thereby. In the event of a conflict between this



Agreement and any document executed at Closing, the document signed at a Closing shall control.

25.09 Waivers. No delay or omission by either party to insist upon the strict performance of any of the other party's obligations under this Agreement or to exercise any right or remedy available hereunder shall impair any such right or remedy or constitute a waiver thereof in the event of any subsequent occasion giving rise to such right or availability or remedy or obligation, whether of a similar or dissimilar nature.

25.10 Successors. The terms, covenants, agreements, provisions, and conditions contained herein shall bind and inure to the benefit of the parties hereto, their successors and assigns; provided that neither party may assign its interests in this Agreement without the prior written consent of the other party.

25.11 Titles of Articles and Sections. Any title of the Articles, Sections or Subsections of this Agreement are inserted for convenience or reference only and shall be disregarded in construing or interpreting any part of its provisions.

25.12 Warranties. SHA does not make any warranty or representation, express or implied, to the Developer as to fitness or condition of any site intended to be included in the Development or the use to be conducted thereon.

25.13 No Effect on Closed Phase. Notwithstanding anything contained in this Agreement to the contrary, this Agreement shall have no effect on and shall not be applicable to any phase of the Development for which a Closing has occurred. At the time a Closing occurs, all of the applicable rights, duties and obligations of the parties thereto will be expressly included in the Closing Documents executed at such Closing and any provisions not included in the Closing Documents shall have no force or effect with regard to such phase of the Development. For purposes hereof, the term "**Closing**" shall mean, with regard to any phase of the Development, the date on which the principal documents regarding financing, construction and operation of such phase are executed and become binding obligations of performance for the parties thereto. The termination of this Agreement for any reason shall not affect or terminate any Ground Lease (or other land disposition agreement) which has been executed between SHA and any Owner Entity, which Ground Lease (or other land disposition agreement) shall continue in accordance with its own terms and conditions notwithstanding the termination of this Agreement.

[SIGNATURES ON NEXT PAGE]

**SIGNATURE PAGE TO  
MASTER DEVELOPMENT AGREEMENT**

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date and year first above written.

**HOUSING AUTHORITY OF THE CITY  
OF SPARTANBURG, SC**

By: \_\_\_\_\_  
Name: Terril Bates  
Title: Chief Executive Officer

**THE NATIONAL HOUSING  
PARTNERSHIP FOUNDATION**

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

DRAFT

**EXHIBIT A**  
**PREDEVELOPMENT BUDGET**

See Attached.

DRAFT

## **EXHIBIT B**

### **DEVELOPER SERVICES**

1. Developing and organizing each Owner Entity for each Development Project in form and with such partners as are approved by SHA, such approval not to be unreasonably withheld, conditioned or delayed.
2. Developing and organizing the Owner Entity for and Multifamily Component.
3. Developing and implementing plans to encourage participation in the development and operation of the Development by Section 3 residents, Section 3 small business concerns, MBEs and WBEs. All such plans shall be submitted to SHA for its review and approval, such approval not to be unreasonably withheld, conditioned or delayed.
4. Use commercially reasonable efforts to cause the phases of the Development to proceed and close in accordance with the Development Schedule and the Development Budget.
5. Oversee all Development Project activities and require that such activities are performed in accordance with customary standards for quality development and construction of housing in the City of Spartanburg, South Carolina.
6. Furnishing the skill and judgment necessary to perform the Development Services in a quality, expeditious and economical manner.
7. Subject to the review and approval of SHA (which approval shall not be unreasonably withheld, conditioned or delayed) and HUD, if necessary, negotiating and entering into all necessary contractual arrangements between lenders, architects, contractors, equity investors, governmental bodies, residents and the applicable Owner Entity for each Development Project.
8. Actively participating in the stakeholder engagement process, including meeting with the neighborhood association, residents, advocates and local governments to assist SHA in securing all necessary approvals for a Development Project.
9. Regularly attending meetings with SHA as needed. Provide reports as reasonably requested.
10. Preparing and updating a market analysis addressing all components of the Development.
11. Performing such other Project Management and Developer Services as Developer determines are necessary for the successful implementation of the Development.

## EXHIBIT C

### FINANCING SERVICES

As part of the Development Plan submissions made pursuant to Section 4.01 of the Agreement, the Developer shall prepare for SHA's review and approval (such approval not to be unreasonably withheld, conditioned or delayed) the overall plan and terms for the financing and equity investment necessary for such phases of the Development (the "**Financing Plan**"), which Financing Plan is incorporated in this Agreement by this specific reference. The Financing Plan shall set forth, inter alia, the debt and equity to be raised, the construction period sources for all funds and expected uses, permanent sources for all funds and expected uses, 15-year projected cash flow, rent schedule, initial operating budget and all underlying assumptions including terms, conditions and pricing of tax credits. The Financing Plan shall reasonably maximize the leveraging of SHA funds with private capital, consistent with operating feasibility for the applicable component of the Development, the current equity market, and current economic conditions in the City of Spartanburg, SC. Once the Financing Plan is approved by SHA, the Developer shall be responsible for its implementation. Such implementation shall include the following:

1. Applying for and obtaining from issuing agencies such tax-exempt bond volume cap and/or low-income housing tax credits as necessary to (a) attract equity investments; (b) ensure such allocations are preserved through the Closing and (c) negotiate the terms and conditions of such equity investments. Obtaining (from a third-party service provider) legal counsel for tax credit syndication and/or bond issuance.

2. Preparation and submission of a Predevelopment Budget and Development Budget in accordance with this Agreement.

3. In the case of selection of a low-income housing tax credit equity investor, the Developer will invite proposals from a minimum of two non-profit respondents and shall identify such potential respondents to SHA prior to the solicitation of proposals by the Developer. All potential respondents shall be identified at least 180 days prior to the projected date of Closing of the applicable phase of the Development. SHA may disapprove (SHA approval not to be unreasonably withheld, conditioned or delayed) a potential respondent identified by the Developer specifying the reasonable grounds of disapproval based upon good faith analysis. The Developer shall solicit proposals from all potential respondents and will provide SHA with copies of all Tax Credit Investor proposals and final selection of the Tax Credit Investor shall be made by the Developer and approved by SHA (such approval not to be unreasonably withheld, conditioned or delayed) based on demonstrated competitiveness of the selected proposal under then-current market conditions in terms of pricing and related terms and conditions, including pay-in schedule, required guaranties, bridge financing, and demonstrated reliability of performance in comparable transactions.

4. The Developer covenants that at least 99% of the low-income housing tax credits shall be sold to an approved Tax Credit Investor. The Developer and its affiliates may neither retain more than .1% of the low-income housing tax credits nor purchase any of the low-income housing tax credits without the prior written consent of SHA, which may be withheld, conditioned or delayed in its sole discretion.

5. Identifying proposed sources of all necessary funding commitments for the Development, including all construction and/or permanent financing therefor, subject to the review and approval of SHA (such approval not to be unreasonably withheld, conditioned or delayed). SHA may recommend to the Developer one or more potential local lenders from whom financing should be solicited (if the Development Plan includes private debt financing), which recommendations will be considered by the Developer.

6. Preparing and submitting all Owner Entity documents, including the Operating Agreement and exhibits thereto and all financing documents to SHA for its review and approval.

7. Maintaining all Development books of account and financial records in accordance with HUD and other funder requirements until such time as Developer Managing Member ceases to be the managing member of an Owner Entity.

8. Preparing and submitting to SHA such financial reports relating to a Development Project as set forth herein and as SHA may reasonably request.

9. Utilizing public housing funds, if any, in accordance with SHA and/or HUD requirements.

10. Monitoring the Development Budget and monitoring, reviewing and certifying draw requests from funding sources.

11. Providing all required guarantees to the equity investor and lenders during the development period, as well as guarantees of construction completion to SHA only for the period while serving as the Managing Member of Owner Entities.

12. Performing all such other Financing Services as Developer determines are necessary in connection with a Development Project.

DRAFT

## **EXHIBIT D**

### **DESIGN/PLANNING SERVICES**

1. Preparing all budgets, schedules and contracts, including those with the architect, engineers, contractors and other parties working on a Development Project. All such plans, budgets, schedules and contracts shall be subject to the review and approval of SHA (such approval not to be unreasonably withheld, conditioned or delayed), including the hourly rates for all architects, engineers, contractors and other parties working on a Development Project.
2. Preparing the bidding package strategy for the Development including geotechnical consultant, environmental consultant and surveyor, all with the advice and consent of SHA (such consent not to be unreasonably withheld, conditioned or delayed).
3. Applying for and obtaining all zoning approvals (including the Rezoning/Plan Development), permits (including building and construction permits), licenses, easements and approval necessary for the physical improvements contemplated by a Development Project.
4. Preparing and submitting all design documents and development plans, critical path schedules, cost estimates, budgets, schedules, specifications, life cycle analysis and design and development documents to SHA for review and approval (such approval not to be unreasonably withheld, conditioned or delayed). NHP will use commercially reasonable efforts to endeavor to design and construct the Development in a manner that fits the character and quality of the surrounding community, and SHA's approval of the development plans will be confirmation that such requirement has been achieved.
5. On an ongoing and timely basis, advising SHA as to the status of the processing of all applications necessary to obtain all governmental approvals required for a Development Project. Advising SHA as to any hearings or meetings regarding a Development Project with sufficient advance notice to enable representatives of SHA to attend such hearings or meetings.
6. Monitoring the performance of all persons and entities that are to provide Design/Planning Services to the Development and taking such actions as are necessary to maintain adherence to quality standards, safety standards, shipping dates, job-site requirements, the Development Budget and the Development Schedule.
7. Submitting written design and development progress reports to SHA as reasonably requested and in such form as may be reasonably required.
8. Implementing quality assurance and control measures to ensure effective performance by all parties working on a Development Project.
9. Assist SHA with obtaining environmental clearances from all interested agencies pursuant to NEPA, State of South Carolina, City of Spartanburg and HUD regulations.
10. Obtaining meaningful and active participation by key stakeholders throughout the planning, design, construction and operations of the Development. In addition to the Developer and SHA, other key stakeholders will, at a minimum, include residents, community groups, and City of Spartanburg agencies and authorities.

11. Performing all such other Design/Planning Services which Developer determines are necessary in connection with a Development Project.
12. Ensuring compliance with all requirements for accessible units for all phases of the Development.

DRAFT



## **EXHIBIT E**

### **SITE SERVICES**

1. Verifying utility locations based on plats and coordinating site preparation requirements with utility systems and providers for water waste, water storm, natural gas, electricity and telecommunications.
2. Implementing quality assurance and control measures to ensure effective performance by all parties working on a Development Project.
3. Performing all such other Site Services which Developer determines are reasonably necessary in connection with a Development Project.
4. Selecting such consultants, reasonably acceptable to SHA, as are necessary to monitor and report on all environmental, and geotechnical compliance work. Such reports may be required by Developer, an Owner Entity, or a Tax Credit Investor.

DRAFT

## **EXHIBIT F**

### **CONSTRUCTION SERVICES**

1. Prepare and submit all construction plans, budgets, schedules and contracts, including those with the construction contractor and other parties working on a Development Project to SHA for review and approval, such approval not to be unreasonably withheld, conditioned or delayed.
2. Select the construction contractor with the advice and consent of SHA, such consent not to be unreasonably withheld, conditioned or delayed.
3. Invite SHA or its representative to all monthly progress meetings with the construction contractor, architect and other contractors. The Developer shall also provide SHA or its representative with reasonable access to the Development site during the construction period at all reasonable times upon advance notice to Developer in order for SHA to periodically inspect the Development and the progress thereof.
4. Cause the construction and completion of each phase of the Development (exclusive of public infrastructure construction) in accordance with the Development Schedule and the Development Budget.
5. Monitor the performance of all persons and entities that are to provide materials, equipment or services to a Development Project and taking such actions as are necessary to maintain adherence to customary quality standards, safety standards, production schedules, shipping dates, and job-site requirements.
6. Monitor the approved construction budget. The Developer shall develop and submit to SHA monthly cash flow reports and forecasts showing actual costs for activities in process and estimates for uncompleted work. Monitoring, reviewing and certifying construction draw schedules.
7. Submit written construction progress reports to SHA monthly, in such form as may be reasonably required.
8. Upon substantial completion and 10 months after substantial completion of a phase of the Development, the Developer and the architect shall inspect the work to determine and record the condition of the work. The Developer shall notify SHA of such inspection and shall allow SHA representatives to accompany it on any such inspection. The Developer shall require the construction contractor to replace or correct faulty work.
9. Require the construction contractor to provide on the completed improvements and work warranties of good title to the work and workmanship. The warranties shall continue for a period of not less than one year from the date of final acceptance of the work.
10. Implement quality assurance and control measures to ensure effective performance by all parties working on a Development Project.

11. Perform all such other Construction Services which Developer determines are reasonably necessary in connection with a Development Project.

DRAFT

## **EXHIBIT G**

### **SHA ACTIVITIES**

1. Provide the Developer with all necessary information to assure timely and orderly progress of a Development Project.
2. Undertake all necessary actions to secure or assist the Developer in securing approval from HUD, SCHFDA, the City of Spartanburg or other local governmental bodies for all activities related to a Development Project.
3. Review matters submitted by Developer and advise Developer, if required, of its approval or of why its approval is being withheld.
4. Provide to the Developer all relevant information regarding the area of the Development in the possession of SHA, including zoning, utility locations, demographics, topography, land ownership, environmental studies, soil conditions, etc.
5. Provide all relevant information and prepare documents required, including financial information and previous experience, which may be necessary to obtain investor approval of SHA as a managing member of an Owner Entity or as the Management Agent.
6. Prepare all necessary disposition applications for submission to HUD and secure HUD approval of disposition as required for each phase.
7. Undertake relocation of residents necessitated by disposition and/or rehabilitation of existing housing (Garden Apartments) included in the Development and pay all costs for relocation.
8. Prepare all HUD documents related to the Rental Assistance Demonstration (RAD) conversion; upload and manage the RAD Resource Desk requirements; secure the RCC and prepare all necessary documents to effectuate the RAD closing.
9. Provide Rental Assistance Demonstration Project Based Vouchers and/or SHA Project Based Vouchers as negotiated under the agreed upon financing plans for each Development.
10. Provide the necessary subdivision of lots on the site and corresponding legal descriptions as necessary to execute the Ground Lease for each phase.
11. Provide secondary financing as negotiated under the agreed upon Financing Plans for each phase of the Development.
12. Provide all SHA closing documents including opinions of counsel and all HUD RAD documents to assure timely Closing on each phase of the development.
13. Perform all other obligations of SHA as set forth in this Agreement.

## EXHIBIT H

### INSURANCE REQUIREMENTS

The Developer shall cause the appropriate entity to maintain and keep in force the following insurance:

A. General Liability including bodily injury and property damage:

\$2,000,000 General Aggregate Limit  
\$2,000,000 Products & Completed Operations Aggregate Limit  
\$2,000,000 Per Occurrence  
\$1,000,000 Personal Liability & Advertising Liability Insurance  
\$300,000 Fire/Legal Liability  
\$10,000 Medical Expense

Endorsement: Designated Construction Project General Aggregate Limit, including contractual liability.

B. Excess and Umbrella Liability:

\$5,000,000 Per Occurrence  
\$10,000,000 Aggregate  
Endorsement: Designated Construction Project General Aggregate Limit

C. Workers Compensation and Employers Liability:

\$500,000 Each Accident  
\$500,000 Disease-Policy Limit  
\$500,000 Disease-Each Employee

D. Builders Risk:

(1) The Developer shall have "All Risk" insurance against loss or damage by fire, flood and such other risks and matters, including without limitation, business interruption, rental loss, public liability, and boiler damage and liability. The amount of such insurance will not be less than 100% of the full replacement value of the Development, including the cost of debris removal, without deduction for depreciation. The deductible shall not be in excess of \$10,000.

(2) All contractors, sub-contractors should provide proof they have a Builders Risk/Installation Floater in place with limits not less than the cost of their portion of the job/contract.

(3) Riggers Liability: Limit of Liability \$2,000,000 Aggregate/\$1,000,000 Per Occurrence if the contractor or sub-contractor's operation include rigging.

Endorsement: Designated Construction Project General Aggregate Limits.

E. Business Automobile Liability - \$1,000,000

F. Professional Liability - \$1,000,000. Additionally, the following contractors must be required to provide \$1,000,000 of professional liability coverage:

- (1) Engineers
- (2) Architects; and
- (3) Attorneys

G. Employee Dishonesty Policy - \$400,000

H. The Developer's insurance shall include the following:

- (1) Waiver of subrogation all liability policies.
- (2) Hold Harmless Agreement covering SHA, and all successors and assigns, commissions, officers, directors, agents, lessees, employees and authorized representatives.
- (3) All Carriers should be "A" rated by AM Best.

All policies of insurance (other than professional liability) must be made on an occurrence basis.

DRAFT

## **EXHIBIT I**

### **CERTIFICATION REGARDING LOBBYING**

The undersigned certifies, to the best of his or her knowledge and belief, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

**THE NATIONAL HOUSING  
PARTNERSHIP FOUNDATION**

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





## **Update on Archibald Tax Credit Application**

---

**Board of Commissioners  
Special Meeting  
Wednesday, June 20, 2018**



## South Carolina State Housing Finance and Development Authority

300-C Outlet Pointe Blvd., Columbia, South Carolina 29210

Telephone: 803.896.9001 TTY: 803.896.8831

SCHousing.com

June 12, 2018

Terril Bates  
Archibald Towers, LLC  
2271 South Pine Street  
Spartanburg, SC 29302

Via Email: [tbates@shasc.org](mailto:tbates@shasc.org)

RE: Project #18038  
Archibald Towers

Dear Ms. Bates:

I regret to inform you that the proposed application for Archibald Towers has been disqualified from the 2018 tax credit competition for the following threshold criteria:

As per page 10 of the 2017-2018 Qualified Allocation Plan (QAP), Development Characteristics, Optional Development Design Criteria Points:

*"This section allows developers to choose various optional design criteria to be included as part of the development. All developments **must** obtain a minimum of one hundred ten (110) points from this section to avoid disqualification. Although developments may choose to do more, the maximum number of points to be awarded from this section (items 1-30) is one hundred ten (110). Developments awarded credits must incorporate into the development all of the items chosen for points. As part of the placed in service application submission, the Authority will require manufacturer's data sheets as confirmation that items chosen meet the standards as outlined."*

Only 109 points were obtained in this section for points which is below the minimum one hundred ten (110) required.

If the Authority identifies a deficiency in an application during its review that results in the disqualification of an application, the Authority will issue a preliminary decision letter to the Applicant identifying the grounds for the potential disqualification.

Any Applicant wishing to request a reconsideration of a disqualification decision of the Authority may do so in writing to be delivered to the attention of the Executive Director. Applicants may ONLY request reconsideration for applications in which they have an ownership interest. The Applicant or their legal counsel may then provide a written response specifically identifying the reasons that the application should not be disqualified. Written responses must be delivered via hand delivery or overnight courier to the attention of the

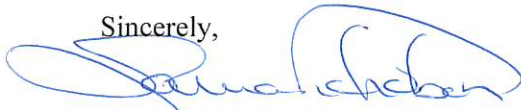
Executive Director. An e-mail courtesy copy is appreciated, but does not constitute a timely response. Responses, along with a cashier's check for the \$1,200 filing fee per request, must be received by the Authority by 5:00 p.m. (EST) within three (3) business days of the date of the preliminary decision letter, June 15, 2018.

Reconsideration requests must specifically identify the grounds for the reconsideration request. Only the application and documents then existing in the Authority's file will be considered. No additional documentation will be accepted unless it explains previously submitted documentation. The burden is on the Applicant to demonstrate why the application should not be disqualified.

The Authority will forward the reconsideration request, along with the Authority's staff's response to the reconsideration request and documents from the application or documents then existing in the Authority's file that the Authority deems to be relevant to the request, to a Hearing Officer to review and make a recommended determination on the reconsideration request. The Authority will also forward a copy of the Authority's staff's response to the Applicant.

The tax credit Reconsideration Process may be referenced at page 21 of the 2017-2018 Qualified Allocation Plan, located on the Authority's tax credit web page. Should you have any questions please call me at (803) 896-9190.

Sincerely,



Laura Nicholson  
Development Director



[WWW.SHASC.ORG](http://WWW.SHASC.ORG)

June 14, 2018

Laura Nicholson  
Development Director  
South Carolina State Housing Finance and Development Authority  
300-C Outlet Pointe Boulevard  
Columbia, SC 29210

Via Email: [laura.nicholson@schousing.com](mailto:laura.nicholson@schousing.com)

RE: Project #18038  
Archibald Towers – Reconsideration Request

Dear Ms. Nicholson,

The Spartanburg Housing Authority ("SHA") appreciates the time and effort that your organization has invested in review of our application for a 9% tax credit award for Archibald Towers (the "Property"). In response to the disqualification letter sent on June 12, 2018 for Archibald Towers, we are requesting the Authority to reconsider its decision to disqualify the proposed application. Please consider the following information as sufficient support to rescind the disqualification decision and grant the Property an award.

- **Evidence of Intention to Upgrade Existing Gazebo:** A gazebo currently exists on the Property. However, it does not comply with the QAP's requirements. During construction the existing gazebo structure will be upgraded to a new gazebo that meets all of the requirements of the QAP. This intention is evidenced throughout the application. See below for the specific areas it is referenced in the application.
  - Page G-021 under the Outline of Work in the Schematic Drawings, Section I. Site Work part (2)(D) gives instructions to "Provide a new covered resident gazebo with fan and lighting. Gazebo to be fully accessible for those impaired."
  - Page ii of the Property Condition Report under the Reported Capital Expenditures section, the engineer notes proposed capital improvements within the next three years which includes "installation of a new gazebo".
  - In the development narrative, under the Property Section, it notes that "all existing amenities are to remain", which includes the existing gazebo – albeit it will be upgraded to a new gazebo to meet the QAP requirements. Furthermore, the upgrade to the new QAP compliant gazebo is also referenced under the Construction/Scope of Work



2271 S. PINE STREET, SPARTANBURG, SC 29302  
PHONE: 864.598.6000 FAX: 864-598-6155  
INFO@SHASC.ORG





Laura Nicholson, Development Director

June 14, 2018

Page 2

- section, where it lists "Creation of additional community space..." as a scope of work item.
- Line 5 of the Development Costs section of the Application notes \$514,335 of On Site Improvements, which includes the upgrading of the gazebo to create a new QAP compliant gazebo.
- **Dire Need of Renovation:** Although the Property was soundly built, it is 46 years old with many of its major systems failing. Without an award the property will further deteriorate putting its population of elderly, disabled, and special needs tenants at risk. Furthermore, the redevelopment would help to further development efforts in the community. It sits on the northwestern border of the Northside community, which is undergoing a major private/publicly funded development effort that includes a new school, retail stores, a new recreation center, and additional housing. A CHAP was issued for this project through the HUD Rental Assistance Demonstration Program ("RAD"). Time is of the essence in qualifying the Property's RAD status. SHA without this award has no other vehicle which would permit the continued occupancy of these residents in conditions that are safe, decent, and sanitary.
- **Unique Financing:** This application includes a financing structure that would be the first of its kind in South Carolina, and one of an elite few in the country. Awarding this application would not only support the tenants by ensuring safe and descent housing, but also be a duplicable structure for other projects to garner more private funding to close funding gaps without the need for additional government subsidy. Therefore, the State would be able to produce more affordable housing without committing any additional tax payer dollars, and be an example to the country on how to expand the financing capacity for affordable housing projects.

We understand that SCSHFDA must make difficult decisions regarding the award of LIHTCs to citizens throughout South Carolina. Your consideration in taking a further look at this project and applying any options available to you is greatly appreciated.

Sincerely,



Terril Bates  
Chief Executive Officer

# OFFICIAL CHECK

7000018656

THE REPLACEMENT OF THIS DOCUMENT REQUIRES THE COMPLETION OF A BB&T DECLARATION OF LOSS

CLIENT COPY

ISSUING BRANCH 8049201

DATE June 14, 2018

SC State Housing Finance & Development Authority

\$1,200.00

One Thousand Two Hundred and 00/100ths Dollars

COPY NOT NEGOTIABLE

BB&T

MEMO/PURCHASER

THIS DOCUMENT CONTAINS A TRUE WATERMARK - HOLD TO LIGHT TO VIEW

OFFICIAL CHECK

7000018656

68-236/514

ISSUING BRANCH 8049201

DATE June 14, 2018

PAY TO THE  
ORDER OF

SC State Housing Finance & Development Authority

\$1,200.00

One Thousand Two Hundred and 00/100ths Dollars

BB&T

\$1,200.00  
DOLLAR ONE CDHMA TWO ZERO ZERO PERIOD ZERO ZERO

PROJECT #18038

SPARTANBURG HOUSING AUTHORITY

MEMO/PURCHASER

AUTHORIZED SIGNATURE

Dan Bible

7000018656 053101121019010097



































**CHIBALD TOWERS**  
764 North Church Street  
Spartanburg, SC 29303

PROJECT  
INFORMATION

---

G-021