

MEMORANDUM OF AGREEMENT

This Memorandum of Agreement (the “**Agreement**”), entered into as of the ___ day of _____, 2020, by and between **The Housing Authority of Columbus, Georgia** (herein called the “**Authority**”) and the **City of Columbus, Georgia** (herein called the “**City**”).

RECITALS

WHEREAS, the Authority (together with a private sector developer, New Affordable Housing Partners, LLC {Columbia Residential}) is engaged in the revitalization of the Chase Home public housing community (“**Chase**”) into a new mixed-income, mixed-use community called Mill Village; and

WHEREAS, the City is committed to the general revitalization of Chase and the portion of Columbus, Georgia known as the “Mill District”; and

WHEREAS, the revitalization of Chase will include the demolition of its current housing units, and the construction of the new Mill Village 102 one, two- and three- bedroom apartments (91 affordable/11 market rate). The development will also include a community center/leasing office, health center, playground, gazebo, and other site amenities.; and

WHEREAS, the Development is of enormous importance to the economic health of the City and the areas of the City known as Chase Homes and the Mill District; and

WHEREAS, as part of its contribution to the Development, the City has agreed to contribute the sum of One Million Dollars (\$1,000,000.00) of Community Development Block Grant (“CDBG”) funds to the Development as further described in this Agreement (the “Monetary Contribution”); and

WHEREAS, an owner entity controlled by the Authority was awarded Low-Income Housing Tax Credits (LIHTC) with a total development of \$19.5 million not inclusive of demolition, site work and relocation costs; and

NOW, THEREFORE, in consideration of the mutual agreements and covenants hereinafter set forth and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the parties hereto, the parties hereto hereby agree as follows:

1. City Legislation and Funding.

The City represents and warrants that (i) pursuant to Resolution No. - _____, adopted by the City Council _____. 2020 and executed by the Mayor on _____, 2020, the City Manager is authorized to execute this Agreement and (ii) sufficient funds (\$1,000,000.00) are available

to fulfill its obligations hereunder to make the Monetary Contribution. The City has agreed to that \$1,000,000.00 of the Monetary Contribution shall be directed towards the Development's predevelopment activities, relocation, demolition, and public infrastructure to support the development.

2 City's Monetary Contribution.

a. Amount of Monetary Contribution. The City has agreed to contribute \$1,000,000.00 of the Monetary Contribution towards the Development's predevelopment activities, relocation, demolition and public infrastructure to support development. The Authority shall use the Monetary Contribution exclusively for costs and expenses incurred towards the Development to include demolition, public infrastructure/Riverwalk public access, builder's profit/overhead and professional services.

b. Schedule of Payments to Authority. The City hereby agrees to the following payment schedule to the Authority:

Fiscal Year 2020:	\$250,000.00
Fiscal Year 2021:	\$250,000.00
Fiscal Year 2022:	\$250,000.00
Fiscal Year 2023:	\$250,000.00

c. Disbursement. The City shall disburse the Monetary Contribution to the Authority as the work is performed to the extent outlined in the payment schedule in 2. b. above. The Authority shall submit a draw request to the City not more frequently than one time each calendar month. The draw request shall be in a form acceptable to the City and containing sufficient detail and with sufficient supporting documentation to permit the City to confirm that the work to be funded by the draw request has been performed. The supporting documentation shall include, without limitation, the Authority's affidavit indicating performance of the work being claimed, material stored on site and compliance with the requirements of the Contract; the civil engineer's/architect's certification by his signature that the work claimed for payment has been performed, material is stored on site and is in compliance with the Contract; copy of the Contractor's Payment request; copy of approved Change Orders pertinent to the payment request and lien waivers from all parties who may claim a lien on any asset of City for work performed in relation to the construction/infrastructure improvements. The City shall disburse such portions of the Monetary Contribution for each draw request within fifteen (15) business days after receipt of a properly completed draw request.

d. Acknowledgment of Purpose of the City Funds.

The purpose of the Monetary Contribution is to provide the Authority with sufficient funds for costs incurred as contemplated by the Development within the property boundaries of the Chase Homes site. The Monetary Contribution has not been planned or budgeted for any additional construction or infrastructure improvements.

The City acknowledges that if the Authority does not receive distributions in a timely manner, then the Authority may become liable for, or subject to, liens, fines, penalties and other monetary damages in connection with unpaid construction costs incurred with respect to the Development. Accordingly, the City agrees to indemnify and hold harmless the Authority from any damages, losses, expenses, liens, penalties or fines incurred or caused by reason of the City's failure to provide fully and timely distributions of the Monetary Contribution to the Authority as provided in the preceding paragraph.

4. Dedication of Public Improvements to City

As the Development is progressively completed, or at such earlier time as may be practicable relative to the construction schedule for the construction and infrastructure improvements, the Authority, as appropriate, shall cause the portion of the Development such as the infrastructure improvements (the "Infrastructure Improvements") to be dedicated to the City, and the City shall accept such dedication, subject to said improvements having been completed in accordance with City requirements and standards. When the Infrastructure Improvements have been dedicated to the City it shall be the responsibility of the City to ensure that the Infrastructure Improvements are maintained and repaired to appropriately service the new Mill Village community.

5. Default; Force Majeure

a. Event of Default. The following events shall constitute an event of default if not cured, or if immediate action is not taken to cure and diligently pursued, within thirty days of written notice (or such longer period stated in said notice) thereof by the non-defaulting party ("**Event of Default**"): (i) any representation made by the Authority or the City in, pursuant to, or in connection with this Agreement proves to be untrue or incorrect in any material respect as of the date made; or (ii) the Authority or the City breaches any material covenant, warranty or obligation set forth in this Agreement.

b. Remedies. Upon the occurrence of an Event of Default, the non-defaulting party may terminate this Agreement or take such measures as may be lawful. The rights and remedies of the parties to this Agreement, whether provided by law or by this Agreement, shall be cumulative, and the exercise by either party of any one or more of such remedies shall not preclude the exercise by it, at the time or at different times, of any other such remedies for the same Event of Default by the other party.

c. Force majeure. Notwithstanding anything to the contrary contained herein, the Authority shall not be considered in breach of its obligation to perform the Infrastructure Improvements work in the event of a delay in the performance of such obligation due to causes beyond its control and without its fault or negligence, including, but not restricted to, delays of the other Party in meeting its obligations hereunder, acts of God or public enemy, fires, floods, epidemics, quarantine restrictions, strikes or labor disputes, freight embargoes, unusually severe weather, archaeological discoveries, delays of subcontractors or suppliers at any tier arising from causes beyond the control and without the fault or negligence of the Authority, litigation, and delays caused by unavailability of materials.

6. Miscellaneous.

a. Insurance. The Authority and its contractors shall maintain such property, casualty, fire, hazard and liability insurance as the City may reasonably require and on all such insurance policies, the City shall be named as an additional insured as its interests may appear. The Authority and the City hereby acknowledge that the cost of such insurance will be considered a cost of the Development.

b. Indemnity. To the extent that the Authority is the beneficiary of any indemnifications made by any contractor, subcontractor or supplier in connection with the construction/infrastructure improvements work, the Authority agrees to indemnify and hold harmless the City, its officers, agents and employees from any and all losses, expenses, demands and claims (collectively, "Losses") against the City, its officers, agents and employees sustained or alleged to have been sustained in connection with or as a result from the gross negligence or willful misconduct of the Authority in performing the Development; provided, that any claim for indemnification must be submitted to the Authority within thirty (30) days of the date on which the City becomes aware that a Loss is sustained or alleged to be sustained by the City. Any indemnification or obligation to indemnify under this paragraph is expressly limited to any insurance proceeds received by the Authority from liability insurance required under this Agreement and to any amounts received by the Authority from contractors, subcontractors or suppliers as a result of indemnifications. In the event it is determined that a Loss which was alleged to have been sustained by the City was not actually sustained, the City shall refund to the Authority any amounts paid to it by the Authority or on behalf of the Authority pursuant to this Section 5.b. This indemnification shall expire two years from the date of the completion of the Development.

c. Excess Costs. Notwithstanding anything to the contrary contained in this Agreement, the City shall have no responsibility to make any monetary contributions to fund construction costs related to the Development in any amount in excess of the Monetary Contribution. In the event the existing infrastructure systems outside the legal property boundaries of the Chase Homes revitalization site are inadequate or deficient for the purpose of making operational the Development and the Infrastructure Improvements, then the City shall be responsible for the additional financial burden beyond the scope of the Monetary Contribution to ensure correction of identified inadequacies and deficiencies ("**Additional Work**") and any such Additional Work shall be performed under an additional Construction Contract between the City and an additional Contractor. The City will ensure that such Additional Work shall be performed with all necessary due diligence to ensure compliance with the completion schedule for the Development.

d. Monitoring Activities. The Authority agrees that the City may carry out inspection, monitoring, evaluation and auditing activities concerning the performance of the Development and the Infrastructure Improvements work as the City deems reasonably necessary. Notwithstanding the foregoing, the City may enter the site of the Development during normal business hours without advance notice for the purpose of conducting inspections to assure itself of the Authority's compliance with the obligations under this Agreement.

e. Records. The Authority and its contractors shall maintain such records and accounts related to the Development as are deemed reasonably necessary by the City. Upon receipt of five business days prior written notice from the City, the Authority shall permit representatives of the City, at the City's sole cost and expense, to have full access to and the right to examine any books, documents, papers and records involving the performance of the work related to the Development during normal business hours at the Authority's central office. The Authority's obligation to maintain such records and accounts and the City's right to examine any books, records or other documents shall expire five years after the date of the completion of the Infrastructure Improvements. A formal set of as-built documents will be conveyed to the City at the completion of the Development.

f. Notices. Notices and reports described herein shall be delivered or sent to the parties as follows.

To the Authority: Chief Executive Officer
Housing Authority of Columbus, Georgia
1000 Wynnton Rd.
Columbus, Georgia 31906
Attn: J. Len Williams
Fax: (706) 571-2864
Tel: (706) 571-2807

With a copy to: Page, Scrantom, Sprouse, Tucker and Ford P.C.
P.O. Box 1199
Columbus, GA 31902
Attn: James Clark
Fax: (706) 323-7519
Tel: (706) 243-5619

To the City: City Manager
Columbus Consolidated Government
P. O. Box 1340
Columbus, Georgia 31902-1340
Attn: Isaiah Hugley
Tel: (706) 653-4029

With a copy to: City Attorney
Columbus Consolidated Government
P. O. Box 1340
Columbus, Georgia 31902-1340

Attn: Clifton Fay
Tel: (706) 653-4025

g. Severability. If any term or other provision of this Agreement is invalid, illegal or incapable of being enforced by any law or by reason of public policy, all other conditions and provisions of this Agreement shall nevertheless remain in full force and effect so long as the economic or legal substance of these transactions contemplated hereby is not affected in any manner materially adverse to either party.

h. Entire Agreement; Amendment; Waiver; Counterparts. This Agreement constitutes the entire agreement between the parties; it supersedes any prior agreement or understandings between them, oral or written, with respect to the matters addressed herein, all of which are hereby canceled. This Agreement may not be amended or modified except by an instrument in writing signed by both parties hereto. Waiver of any term or condition of this Agreement shall be effective only if in writing and shall not be construed as a waiver of any subsequent breach or waiver of the same term or condition, or a waiver of any other term or condition of this Agreement. This Agreement may be executed in one or more counterparts, each of which when executed shall be deemed to be an original but all of which taken together shall constitute one and the same agreement.

i. Compliance with Federal Laws and Regulations. In the performance of the services under this Agreement, the Authority shall comply with, and cause its contractors to comply with, all applicable statutes, ordinances, regulations, and rules of the Federal Government.

IN WITNESS WHEREOF, the City and the Authority have executed this Agreement and caused their seals to be affixed and attested as of the day and year first above written.

(Signatures on following page)

THE HOUSING AUTHORITY OF
COLUMBUS, GEORGIA

By: _____
J. Len Williams
Chief Executive Officer

Witness:

(SEAL)

CITY OF COLUMBUS, GEORGIA

By: _____ (SEAL)
Name: Isaiah Hugley
Title: City Manager

Attest:

Sandra T. Davis
Clerk of Council

Approved as to Form:

Clifton C. Fay
City Attorney

