

**COLUMBUS CONSOLIDATED GOVERNMENT
AMERICAN RESCUE PLAN
AFFORDABLE HOUSING INITIATIVE
LOAN AGREEMENT**

Property Address: 450 5th Avenue, Columbus, Georgia 31901

THIS COLUMBUS CONSOLIDATED GOVERNMENT AMERICAN RESCUE PLAN AFFORDABLE HOUSING INITIATIVE LOAN AGREEMENT (this “Agreement”) is entered into as of _____, 2024, by and between **COLUMBUS, GEORGIA**, a consolidated city-county government of the State of Georgia (“Lender”) and **BTW SOUTH I, L.P.**, a Georgia limited partnership (“Borrower”).

WITNESSETH:

WHEREAS, Borrower is the owner of certain real property located in **Columbus, Georgia** and more particularly described on Exhibit A attached hereto (the “Property”); and

WHEREAS, Lender is qualified by the United States Department of Treasury (“Treasury”) to receive certain funds (the “ARP Funds”), pursuant to the American Rescue Plan (“ARP”), created pursuant to the American Rescue Plan Act of 2021 (the “Act”) and administered by Treasury. The Act and all other statutory or regulatory conditions applicable to this Loan shall hereinafter be collectively referred to as the “ARP Laws”; and

WHEREAS, Lender has agreed to loan to Borrower ARP Funds up **One Million, Five Hundred Thousand Dollars and Zero Cents (\$1,500,00.00)** (the “Loan”) for building construction hard costs, financing costs, start up, and reserves for the construction of the Project (as hereinafter defined) on the Property, all in accordance with the ARP Laws, and this Agreement.

NOW, THEREFORE, in consideration of Lender’s agreement to make the Loan to Borrower, the sum of Ten and No/100 Dollars and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and subject to the following terms and conditions, the parties hereto agree, and covenant as follows:

1. **GRANT TERMS.** Lender agrees to make the Loan to Borrower upon the following terms and conditions:

The Loan. Subject to the provisions of this Agreement, Lender will make, and Borrower will accept the Loan. The proceeds of the Loan shall consist of funds from the **Columbus, Georgia ARP Affordable Housing Initiative** not to exceed **One Million, Five Hundred Thousand Dollars and Zero Cents (\$1,500,00.00)** solely for building construction hard costs, financing costs, start up, and reserves for the construction of the Project to build apartments on the Property for rent exclusively to low-income households deemed “Qualified Renters” pursuant to the definition of the same set forth on Exhibit “B” (the “Project”), in strict accordance with the terms of this Agreement. The Loan funds and the performance of Borrower’s obligations under this Agreement with respect to the use and, if applicable, repayment of the same shall be secured by a **City of Columbus**,

Georgia American Rescue Plan Grant Deed to Secure Debt (the “Security Deed”). The Loan shall accrue at zero percent (0%) interest, shall have a maturity date of approximately forty-two (42) years from Closing (defined below) or such other maturity date as required by a tax credit investor and senior lenders, shall have no repayment due until maturity or, if required by the tax credit investor, repayment only out of available cash flow, and shall be evidenced by a non-recourse promissory note (the “Note”). The Note, Security Deed and this Agreement, together with all other documents and agreements relating to the Loan, as they may be amended, supplemented and/or restated from time to time, shall hereinafter be collectively referred to as the “Loan Documents.”

2. **TERM OF AGREEMENT; DISBURSEMENT OF GRANT PROCEEDS.**

(a) **Term.** This Agreement and Borrower’s obligations hereunder shall commence on the date hereof and expire on the date that is twenty (20) years from the date the Project is completed, which shall be the date of the first lease executed by a Qualified Renter for the Property. Upon such an event occurring the parties shall execute an addendum to this Agreement setting forth such date as the beginning of such 20-year period. Notwithstanding the foregoing to the contrary, the obligations and agreements hereunder shall extend beyond such 20-year period if at such time an Event of Default exists or an event has occurred which, if it were to continue beyond any applicable cure period, would be an Event of Default and shall continue until such matter is cured to the Lender’s satisfaction or waived in writing.

(b) **Term for Draw Requests.** Borrower shall have until December 31, 2025, to make requests for advances under the Loan pursuant to the terms of this Section 2. Any advances for any remaining Loan funds after such date shall be solely at the discretion of Lender.

(c) **Conditions Precedent to Advances.** Lender shall not be required to advance any Loan funds unless it receives a written request from Borrower in such form and including such information as Lender may require, and at the time of any such request the following conditions have been met:

(i) **Insurance:** Borrower shall have obtained and furnished to Lender such property and casualty, liability and other insurance as Lender may reasonably require in coverage, amounts, and with insurers reasonably acceptable to Lender, naming Lender as an additional insured or loss payee as applicable.

(ii) **Title Evidence.** A title insurance commitment (the “Commitment”), evidencing the title insurance company’s commitment to issue an owner’s title insurance policy in favor of Borrower upon compliance with all necessary requirements, insuring good and marketable leasehold title to the Property being held by Borrower, subject only to such encumbrances as reasonably approved by Lender, or, as the case may be, an actual Owner’s title insurance policy insuring the Borrower’s title and subject only to such encumbrances (the “Title Policy”). Following the issuance of the Commitment or

the Title Policy, as the case may be, Borrower must furnish Lender with satisfactory evidence establishing that no new liens or other encumbrances have been filed of record against the Property, other than (w) the Security Deed, (x) in connection with the tax credit and construction financing closing for the Project (“Closing”), (y) standard utility or construction easements for the Project or (z) as otherwise approved by Lender.

(iii) **Evidence of Compliance.** Provide Lender with satisfactory evidence of the existence of the following requirements:

(A) Borrower has provided Lender with all items required to be provided prior to a disbursement in accordance with the ARP Laws.

(B) Up to date compliance with the terms and conditions of this Agreement.

(C) (C) Borrower has provided such invoices, statements of account or other documentation with such information as Lender may request evidencing the sums that have been expended and which are the subject of the disbursement being requested and such interim or final lien waivers, as applicable, as Lender may request. Borrower shall be responsible for insuring that all such amounts are eligible for reimbursement under the ARP Laws.

3. **BORROWER’S REPRESENTATIONS, COVENANTS AND WARRANTIES.**

In order to induce the Lender to enter into this Agreement and to award the Loan, Borrower makes the following representations, warranties and covenants as of the date hereof, which representations, warranties and covenants shall survive the delivery hereof and the making of the initial and all subsequent advances of Loan proceeds hereunder, and shall be deemed remade by Borrower in full upon the submission by Borrower of each request for an advance of Loan proceeds:

(a) Borrower is or shall be the owner of the leasehold interest in the Property, subject to only such matters as set forth in the Title Policy or in connection with the Closing.

(b) Borrower has the necessary power to borrow money and receive loans subject to such obligations and liabilities as may be required for the purposes, in the manner and to the extent contemplated herein.

(c) Borrower has the legal capacity, power and right to execute and deliver this Agreement, the Security Deed, and the other Loan Documents to which it is a party and to observe and perform all of the provisions of such documents to which it is a party.

(d) Borrower’s execution and delivery of this Agreement, the Security Deed, the other Loan Documents and Borrower’s performance or observance of the provisions of any such documents do not violate and shall not violate any existing provision in any law

applicable to Borrower. Borrower's entering into and performance under the terms of this Agreement is not a violation or a default under any existing contract or obligation binding on Borrower.

(e) This Agreement, the Security Deed, and the other Loan Documents are legally binding upon Borrower and are enforceable in accordance with their respective terms.

(f) The officer or officers executing and delivering this Agreement and the other Loan Documents have been duly authorized to execute this Agreement and the other Loan Documents on behalf of Borrower.

(g) Borrower shall timely pay any indebtedness and timely satisfy and perform all other obligations of Borrower as provided for hereunder and in any other Loan Document (all such indebtedness and obligations are hereinafter collectively referred to as the "Obligations"). The payment and performance of the Obligations shall be secured by the Security Deed.

(h) Borrower shall not sell, transfer or convey all or any part of its interest in the Property, or any legal or beneficial interest in the Property, by operation of law or otherwise, without Lender's prior written consent and so long as any Obligations are outstanding, except for any other security deeds described in the Title Policy, in connection with the Closing.

4. BORROWER'S COVENANTS REGARDING FEDERAL LAWS AND REGULATIONS.

(a) ***ARP Requirements.*** The Borrower hereby agrees and covenants that it shall comply with the requirements, terms and conditions of the ARP Laws and as reasonably interpreted by Lender.

(b) ***Other Federal Requirements.*** All other Federal laws and regulations concerning the use of Federal funds are hereby made a part of this Agreement and Borrower hereby agrees and covenants that it will comply with all applicable terms, conditions and requirements of such Federal laws and regulations.

5. EVENTS OF DEFAULT; REMEDIES.

(a) ***Events of Default.*** Each of the following shall constitute an Event of Default hereunder:

(i) Borrower's failure to utilize Loan proceeds within the time periods required under the ARP Laws or if the use of the Property ceases to be used as housing for low-income households in accordance with the ARP Laws.

(ii) If any representation or warranty made under this Agreement, or any of the other Grant Documents, or in any certificate or statement furnished or made to Lender by Borrower pursuant hereto or in connection herewith or with the Grant

hereunder, shall prove to be untrue or inaccurate in any material respect as of the date on which such representation or warranty is made by Borrower;

(iii) (omitted);

(iv) Borrower defaults in the observance or performance of any of the covenants or agreements (other than representations or warranties or compliance with time periods), contained in this Agreement to be kept or performed by Borrower, and such default continues without remedy satisfactory to Lender for a period of thirty (30) days after written notice thereof being given by Lender to Borrower;

(v) If any mechanics', materialman's or other similar lien or encumbrance is filed against the Property, or the fixtures, materials, machinery and equipment to be used in the Property or other collateral that secures the Obligations, and the same is not cancelled or discharged by bond within fifteen (15) business days following written notice thereof from the Lender to Borrower,

(vi) Subject to Section 3(h) above, if the Security Deed is subordinated, without Lender's consent, to any other deed to secure debt or similar instrument, not identified in the Title Policy, or the Security Deed otherwise fails to be a lien on the Property;

(vii) (omitted); or

(viii) The Borrower is adjudged as bankrupt, files a petition in bankruptcy or has a petition in bankruptcy filed against it or makes an assignment for the benefit of its creditors.

(b) ***Remedies Upon Default.***

(i) Upon any Event of Default, the Lender, without further notice to the Borrower may proceed to initiate any or all remedies set forth in this Agreement and/or the other Grant Documents or otherwise available at law or in equity, including, but not limited to, seeking the reimbursement of the entire amount of Grant funds advanced and the foreclosure of the Security Deed.

(ii) All of the rights and remedies of the Lender shall be cumulative to the fullest extent permitted by law and shall be in addition to all those rights and remedies afforded the Lender at law or equity or in bankruptcy.

6. **COOPERATION.** The Borrower agrees to reasonably cooperate with the Lender, the Department of Treasury and any other necessary parties as may be reasonably necessary or desirable to accomplish the purpose and intent of this Agreement, including without limitation, as necessary for compliance with the ARP Laws and any other requirements of the Lender or Department of Treasury Rules.

7. **INDEMNIFICATION.** The Borrower agrees to protect, defend, indemnify, and hold harmless the Lender, its commissioners, officers, agents and employees from and against any and all liability, damages, claims, suits, liens, and judgments, for whatever nature, including claims for contribution and/or indemnification, for injuries to or death of any person or persons, or damage to the Property or other rights of any person or persons to the extent arising out of and attributed to the negligent errors, acts, or omissions of the Borrower. The Borrower's obligation to protect, defend, indemnify, and hold harmless, as set forth hereinabove shall include any matter arising out of any patent, trademark, copyright, or service mark, or any actual or alleged unfair competition disparagement of product or service, or other business tort of any type whatsoever, or any actual or alleged violation of trade regulations. The Borrower further agrees to protect, defend, indemnify, and hold harmless the Lender, its commissioners, officers, agents, and employees from and against any and all claims or liability for compensation under the Worker's Compensation Act arising out of injuries sustained by any employee of the Borrower or any employee of the Borrower's contractors, subcontractors, agents or representatives.

8. **MISCELLANEOUS PROVISIONS.** The following conditions and provisions shall be applicable throughout the term of the Grant:

(a) ***Binding Effect.*** This Agreement shall be binding upon the parties, their heirs, personal representatives, successors and assigns.

(b) ***Waiver.*** Advances of Loan proceeds hereunder shall not constitute a waiver of any of the conditions of Lender's obligations to make further advances nor, in the event Borrower is unable to satisfy any such condition, shall any such waiver have the effect of precluding Lender from thereafter declaring such inability to be an Event of Default as herein provided.

(c) ***Notices.*** All notices required under this Agreement shall be in writing and addressed to the other party at the address set forth in this Section. All such notices shall be deemed to have been given and received as follows: three (3) business days from the date of deposit in the U.S. mail, certified mail, return receipt requested, postage-prepaid; or when hand delivered by the party, an overnight service (such as FedEx), or a courier service. The following addresses shall be used:

Lender: Columbus Consolidated Government
Community Reinvestment Department
Attn: ARP Project Analyst
420 10th Street
Columbus, Georgia 31901

Borrower: BTW South I, L.P.
c/o Housing Authority of Columbus
Attn.: Executive Director
1000 Wynnton Road
Columbus, GA 31906

(d) ***Amendments to be in Writing.*** This Agreement or any provision hereof may be changed, waived, discharged or terminated only by an instrument in writing signed by the parties hereto.

(e) ***Severability.*** If any provision of this Agreement or any Loan Document shall be determined to be invalid, void or unenforceable, said determination shall not affect the validity or enforceability of any other valid provision of this Agreement.

(f) ***Jurisdiction.*** Borrower hereby consents to the jurisdiction of the State and Federal courts in the State of Georgia for all disputes relating to the construction, interpretation, enforcement, and performance of this Agreement, the Security Deed and the other Loan Documents, hereby waiving all defenses based on jurisdiction, venue, or convenience of forum.

(g) ***Incorporation of Exhibits.*** **Exhibit A** attached hereto is hereby incorporated herein and made a part hereof. **Exhibit B** attached hereto is hereby incorporated herein and made a part hereof.

(h) ***Survival of Covenants, Agreements, Warranties and Representations.*** All covenants, agreements, warranties and representations made by Borrower herein shall survive the making of the Loan and each advance thereof hereunder and the execution and delivery of this Agreement, the Security Deed, and all of the other Loan Documents, and shall be deemed to be continuing covenants, agreements, representations and warranties and shall be deemed to be remade and restated by Borrower each time Borrower requests an advance hereunder.

(i) ***Interpretation.*** No course of dealing in respect of, nor any omission or delay in the exercise of, any right, power, remedy or privilege by Lender shall operate as a waiver thereof, nor shall any right, power, remedy or privilege of Lender be exclusive of any other right, power, remedy or privilege referred to herein or in any related document or now or hereafter available at law, in equity, in bankruptcy, by statute or otherwise. Each such right, power, remedy or privilege may be exercised by Lender, either independently or concurrently with others and as often and in such order as Lender may deem expedient. No waiver or consent granted by Lender or the Borrower, as applicable, in respect to this Agreement, the Security Deed or any other Grant Document or related writing shall be binding upon Lender or the Borrower, as applicable, unless specifically in writing by a duly authorized representative of Lender or the duly authorized representative of the Borrower, which writing shall be strictly construed. The parties hereto hereby agree that this Agreement and the other Loan Documents shall be so interpreted to give effect and validity to all the provisions hereof to the fullest extent permitted by law. A determination made by a court that a specific term or condition hereunder is unenforceable shall not terminate this Agreement and it shall continue in full force and effect as to all other terms and conditions hereunder.

(j) ***Choice of Law.*** This Agreement, the Loan Documents and the related writings and the respective rights and obligations of the parties hereto shall be construed in accordance with and governed by the laws of the State of Georgia.

(k) **Assignment.** Borrower may not assign any of its rights or obligations under this Agreement to any other party without the prior written consent of the Lender.

(l) **Time of Essence.** Time shall be of the essence in the performance of all of the Lender's and Borrower's obligations under this Agreement and the other Loan Documents and the instruments related hereto or thereto.

(m) **No Third-Party Beneficiaries.** All conditions of the obligations of Lender to make advances hereunder are imposed solely and exclusively for the benefit of Lender and its assigns and Borrower, and no other person shall have standing to require satisfaction of such conditions in accordance with their terms or be entitled to assume that Lender will not refuse to make advances in the absence of strict compliance with any or all thereof and no other person shall, under any circumstances be deemed to be a beneficiary of such conditions, any or all of which may be freely waived in whole or in part by Lender at any time if in its sole discretion it deems it advisable to do so.

(n) **Relationship of Parties.** Nothing contained in this Agreement shall be deemed or construed, either by the parties hereto or by any third party, to create the relationship of principal and agent or create any partnership, joint venture or other association between the Lender and the Borrower.

(o) **Counterparts.** This Agreement may be executed in several counterparts, each of which may be deemed an original, and all of such counterparts together shall constitute one and the same instrument.

IN WITNESS WHEREOF, Lender and Borrower have executed this Agreement, under seal, as of the day and year first written above.

LENDER:

COLUMBUS, GEORGIA

By: _____
Isaiah Hugley
City Manager
Columbus Consolidated Government

Attested by: _____
Sandra Davis
Clerk of City Council

BORROWER:

BTW South I, L.P.

By: HACG BTW South I GP, Inc.

By: _____

Lisa Walters

Its President

Tax ID Number:

EXHIBIT A

Legal Description

BTW South Phase I Legal Description All that lot, tract or parcel of land lying and being in Columbus, Muscogee County, Georgia, being shown and identified as "PARCEL 'D', 2.26 AC. +, 98,474 SQ. FT." on that certain plat of survey entitled "REPLAT OF BOOKER T. WASHINGTON APARTMENTS, CITY LOTS 607 through 614, COLUMBUS, MUSCOGEE COUNTY, GEORGIA FOR HOUSING AUTHORITY OF COLUMBUS," last revised January 27, 2023, prepared by Becker Surveying Company, Inc. and being more particularly described according to said plat of survey as follows: To locate the POINT OF BEGINNING, commence at a drill hole which marks the intersection of the northern right-of-way line of Victory Drive with the eastern right-of-way line of 5th Avenue; thence run along the eastern right-of-way line of 5th Avenue North 00 degrees 44 minutes 52 seconds East for a distance of 268.04 feet to a point which marks the POINT OF BEGINNING; from said POINT OF BEGINNING, thence continue to run along the eastern right-of-way line of 5th Avenue North 00 degrees 44 minutes 52 seconds East for a distance of 329.40 feet to a drill hole; thence, leaving the eastern right-of-way line of 5th Avenue, run South 89 degrees 27 minutes 39 seconds East for a distance of 298.95 feet to a rebar located on the western right-of-way line of 6th Avenue; thence run South 00 degrees 44 minutes 52 seconds West along the western right-of-way line of 6th Avenue for a distance of 329.40 feet to a point; thence, leaving the western right-of-way line of 6th Avenue, run North 89 degrees 27 minutes 39 seconds West for a distance of 298.95 feet to the point on the eastern right-of-way line of 5th Avenue that marks the POINT OF BEGINNING.

EXHIBIT B

Definition of Qualified Renter

1. Purpose: This policy outlines the Definition of Qualified Renter for the development of affordable housing utilizing American Rescue Plan (ARP) funding. It defines the qualifications necessary for individuals to be considered as qualified renters under this program, as well as the requirements of subrecipients to ensure renters are qualified.

2. Scope: This definition applies to individuals and households benefitting from the development of affordable housing under the American Rescue Plan (ARP) funding within the City of Columbus.

3. Eligibility Criteria: A qualified renter under the American Rescue Plan (ARP) funding must meet the following criteria:

a. **Income Threshold:** The individual or household's income must be below 80% of the area median income (AMI) based on household size. This threshold is determined annually by the United States Department of Housing and Urban Development (HUD).

b. **Certification of Income:** Prior to entering into a lease agreement, the individual or household must have their income certified. Certification of income involves providing documentation or proof of income to verify eligibility.

c. **Documentation of Eligibility:** Documentation of eligibility, including proof of income, must be provided to demonstrate compliance with the income threshold requirements.

4. Verification Process:

a. **Income Certification:** Qualified renters must undergo a process of income certification conducted by the subrecipient who is responsible for administering the ARP funded development.

b. **Documentation Submission:** Applicants must submit all required documentation to verify eligibility as outlined by the subrecipient. This may include, but is not limited to, pay stubs, tax returns, or statements from relevant government agencies.

5. Confidentiality: All information provided by applicants for the purpose of eligibility determination shall be treated with utmost confidentiality and in accordance with applicable privacy laws and regulations.