

ATTACHMENT C – CO-DEVELOPMENT JOINT VENTURE AGREEMENT
(TEMPLATE)

JOINT VENTURE AGREEMENT

THIS JOINT VENTURE AGREEMENT (the “Agreement”) is entered into as of the ____ day of _____, 2020 by and between Greensboro Housing Management Corporation, a North Carolina non-profit corporation (“GHMC”) and Development Partner., a corporation (“Co-Developer”) (collectively, the “Joint Venturers”).

RECITALS

WHEREAS, the Joint Venturers have abilities or experiences in developing and operating affordable housing projects, including those eligible for Low-Income Housing Tax Credits (“LIHTCs”) under §42 of the Internal Revenue Code of 1986, as amended (the “Code”);

WHEREAS, the Joint Venturers desire to combine their skills and experiences in order to redevelop real property located on a 8.39 acre site at 800 W. Florida Street, Greensboro, North Carolina 27406, to be known as “The Arbors at South Crossing I,” formerly part of a public housing development known as Smith Homes;

WHEREAS, the Joint Venturers desire to redevelop Arbors at Smith Crossing I into 80 affordable rental housing units (the “Project”);

WHEREAS, the Joint Venturers believe that their combined experiences and skills will lead to the production of a high-quality multi-family housing development which will significantly benefit the citizens of the City of Greensboro, North Carolina.

NOW, THEREFORE, in consideration of the mutual covenants contained herein and for other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. **Purpose of Agreement.** This Agreement specifies the services that the Joint Venturers will perform or cause to be performed as joint venturers.

A GHMC.

GHMC shall be responsible for the following:

- (i) Establish The Arbors at South Crossing I, LLC as the Owner Entity;
- (ii) Obtain approvals for the Project under HUD’s Rental Assistance Demonstration Program (“RAD Program”);

- (iii) Obtain marketable leasehold title to the Project site in exchange for a capital lease payment in the amount of \$880,000 or such other amount as the parties mutually agree upon;
- (iv) Work closely with community stakeholders in the Project, including the CO-DEVELOPER representatives, and state and local entities;
- (v) Manage the development process, working with the CO-DEVELOPER as a partner and Co-Developer;
- (vi) Submit tax credit applications;
- (vii) Secure and manage consultants, if any;
- (viii) Work with consultants to secure permits;
- (ix) Secure and manage design professionals and general contractor;
- (x) Provide construction management and the construction draw process;
- (xi) Serve as Managing Member in the Owner Entity;
- (xii) Develop a viable financing plan,;
- (xiii) Serve as leader of selection process negotiations with the general contractor, lenders, and investors;
- (xiv) Arrange and secure all financing to include serving as the lead transaction manager in selecting financial partners; financing application preparation and submissions; and managing the project due diligence process;
- (xv) Lead closing activities;
- (xvi) In connection with land acquisition, obtain zoning letter and as-is appraisal;
- (xvii) Provide guaranties for construction, operating deficit, and tax credit recapture;
- (xviii) Provide GHMC representations and warranties as Managing Member of the Owner Entity;
- (xix) Work with the development team to obtain all required regulatory approvals and permits related to this development;
- (xx) Cause the Housing Authority of the City of Greensboro (“GHA”) to enter into a ground lease of the Project site with the Owner Entity upon terms and

conditions satisfactory for the syndication of LIHTCs and permanent financing from the lenders; and

- (xxi) Obtain local letters for the LIHTC application.

B. DEVELOPMENT PARTNER

Development Partner shall be responsible for the following:

- (i) Work closely with community stakeholders in the Project, including GHMC representatives, and state and local entities;
- (ii) Work with GHMC as a partner and Co-Developer in the development process, including assisting in tax credit applications and corresponding with the North Carolina Housing Finance Agency (“NCHFA”) to obtain tax credit approval;
- (iii) Serve as a Special Member of the Managing Member in the Owner Entity and remain responsible for overseeing the project and operations of the project for a period of at least two (2) years after the project has been placed in service as required by NCHFA;
- (iv) In connection with securing financing, assist in RAD conversion activities; participate in selection of financing partner; assist in project financial analysis and financing applications; assist in project due diligence; provide the CO-DEVELOPER financials; assist in closing of financing;
- (v) In connection with GHMC’s provision of guaranties, provide the CO-DEVELOPER representations and warranties as a Special Member of the Managing Member of the Owner Entity.

Each of the Joint Venturers acknowledges that staffing discrepancies and other factors may require that the parties perform services on a more active basis than the other party.

2. **Ownership of Project.** GHMC has reserved the name “The Arbors at South Crossing I Greensboro LLC” with the North Carolina Secretary of State and will file Articles of Organization creating the Owner Entity if awarded LIHTCs from NCHFA. Prior to entry of the Investor Member to the Owner Entity, a wholly owned GHMC affiliate will be the Managing Member of the Managing Member of the Owner Entity with an 80% ownership interest and a wholly owned CO-DEVELOPER affiliate entity will be the Special Member of the Managing Member with a 20% ownership interest. The Joint Venturers shall adopt an initial operating agreement reflecting these ownership interests.

Each of the Joint Venturers acknowledges the intent to admit an Investor Member into the Owner Entity who shall own 99.99% of the ownership interests in the Owner Entity. The

remaining ownership interest - 0.01% - will be owned 0.008% by GHMC and 0.002% by CO-DEVELOPER as members of the Managing Member. The Joint Venturers shall become parties to an amended and restated operating agreement reflecting the revised ownership interests at the closing of the financing of the Project.

CO-DEVELOPER shall be obligated to transfer its ownership interest in Owner Entity to GHMC immediately upon the occurrence of the following events: (i) GHMC submits a transfer request in writing to CO-DEVELOPMENT PARTNER, with a copy to the Investor Member; (ii) GHMC has obtained the consent of the Investor Member, NCHFA, and any Project lender having a right to consent; (iii) GHMC has paid to CO-DEVELOPER funds sufficient to reimburse CO-DEVELOPER for any exit tax liabilities and/or transfer costs, including legal expenses related to the CO-DEVELOPER's exit from the Owner Entity; (iv) the minimum period required by NCHFA for CO-DEVELOPER to remain as Special Member has passed; and (v) CO-DEVELOPER shall have received all of the compensation owed to it pursuant to Section 3 below.

The Owner Entity and the members thereof shall grant GHMC or an affiliate, which is a "qualified nonprofit organization," as such term is defined in Section 42(h)(5) of the Internal Revenue Code, the following options upon terms and conditions agreed to in the amended and restate operating agreement: (i) an option to acquire the membership interests of all other members of the Owner Entity following the compliance period; (ii) an option to acquire the Project following the compliance period; and (iii) a right of first refusal option to purchase the Project following the compliance period.

3. **Compensation.** The total compensation to be earned by the members for their duties as members shall be payable to the members as set forth in a separate operating agreement.

A. Developer Fees. The total compensation to be earned for development services afforded to the Owner Entity will be as set forth in a separate development agreement, which shall provide, among other things, that: (i) GHMC and the CO-DEVELOPER will share the total developer fee, currently projected to be \$1,080,000, in accordance with the terms and conditions of the amended and restated operating agreement adopted upon admission of the Investor Member; (ii) the fee payable to the CO-DEVELOPER shall be xx% of the total developer fee; (iii) the fee payable to GHMC shall be xx% of the total developer fee; and (iv) payment of developer fees to GHMC and the CO-DEVELOPER shall be in pari passu; provided, however, that all fees payable to the CO-DEVELOPER shall be paid in full not later than five (5) business days after the Investor Member's final capital contribution has been made, whether or not any portion of the developer fee would otherwise be deferred and paid from cash flow. In no event shall any developer fee to be earned by the Joint Venturers, or their affiliates, exceed the maximum amount of developer fee that may be included in eligible basis for purposes of the LIHTCs, as set forth in the 2021 Qualified Allocation Plan of NCHFA.

B. Net Cash Flow Distributions. The parties shall use their respective best efforts to cause the amended and restated operating agreement of the Owner Entity executed upon the admission of the Investor Member to distribute Net Cash Flow as follows:

- (i) to the Investor Member in proportion to any tax liability incurred by such member;
- (ii) to the Investor Member, to make any payment of any unpaid tax credit adjuster or any tax credit shortfall or other debts owed to the Investor Member;
- (iii) to the Investor Member as payment of any unpaid asset management fee;
- (iv) to replenish the Project's operating reserve account to the balance required by the Investor Member, NCHFA, and lenders;
- (v) to the payment of any unpaid developer fee, until such fee has been paid in full
- (vi) to GHA for deferred capitalized lease payments on the ground lease;
- (vii) to the payment of any debts owed to the Guarantor under Operating Deficit Loans (as defined by the amended and restated operating agreement);
- (viii) to the payment of GHMC subordinate loans or other subordinate loans;
- (ix) 90% to the payment of any incentive management fee to GHMC or such other amount as determined by and acceptable to tax counsel; and
- (x) the balance, to each member in accordance with their ownership interests, as described in paragraph 2, or such other amount determined by and acceptable to tax counsel.

4. **Guaranties.** The Joint Venturers agree that GHMC and its affiliates shall be solely responsible for providing guaranties to the funding sources for the Project, including completion, operating deficit, and tax credit recapture guaranties, and that the parties will use their best efforts to negotiate with the funding sources so that GHA's public housing assets shall not be used as collateral for such guaranties, and that guaranties provided by GHMC shall meet the current requirements of the Internal Revenue Service for tax exempt nonprofit entities providing guaranties in LIHTC transactions, and so that the CO-DEVELOPER and its affiliates will have no guaranty obligations related to the Project.

5. **Pre-Development Expenses.** Each party shall be responsible for its own corporate direct and indirect expenses pertaining to this venture. Subject to the preceding sentence, GHMC shall be solely responsible for all pre-development expenses associated with due diligence and closing on this project and the CO-DEVELOPER shall have no responsibility to pay any pre-development expense. To the extent either party intends to seek reimbursement of a Project expense, the parties shall first receive approval of the expenditure from the other party, in which case, the approval of all normal and customary Project expenses shall not be unreasonably withheld. The reimbursement of all approved expenses shall occur at closing of equity and construction loan. If NCHFA does not award the Project 9% LIHTCs in 2021, and/or the Project does not close by December 31, 2022, this agreement and all agreements related hereto shall be terminated and all of the obligations of the parties to each other shall become null and void.

6. **Roles and Responsibilities during Stabilized Operations.** The parties agree that during stabilized operations:

- A. GHMC shall be responsible for the following:
 - a. Oversight of ongoing operating performance and activity;

- b. Management of investor reporting and requirements;
- c. Management of NCHFA reporting and requirements;
- d. Management of the budgeting process;
- e. Obtaining budget approval of investor and special member;
- f. Management of audit tax returns, and owner entity financial reporting;
- g. Calculation and release of annual surplus cash;
- h. Management of reserve funding and draw requirements, including obtaining necessary approvals;
- i. Management of media communications;
- j. Timely response to any Guarantor requirements;
- k. Ongoing support from GHMC Construction management regarding warranty or major maintenance concerns;
- l. Management of local concerns, e.g., local approvals, political concerns; and
- m. Lead in media communications.

B. CO-DEVELOPER shall be responsible for the following:

- a. Asset management activities to include review and approval of ongoing operating activity, reporting, budgeting, etc.;
- b. Timely response to any Special Member requirement/approvals.

7. **Property Management.** The Joint Venturers acknowledge that GHMC Property Management, LLC will be the property manager.

8. **Property Transfer.** The Joint Venturers acknowledge that GHMC has entered into an Option To Ground Lease the Real Estate dated January 21, 2020, granting GHMC, as the Co-Developer and future Managing Member of the Owner Entity, an option to lease the land, which option shall terminate on December 31, 2022.

9. **Assignment of Agreement.** No assignment of the rights or benefits and no delegation of the duties provided in this Agreement may be made without the written consent of the non-assigning or non-delegating party, whose consent shall not be unreasonably withheld; provided, however, that the Joint Venturers may subcontract certain of the services to be performed by and under this Agreement, but such subcontract shall not be construed to constitute a novation of this Agreement and any subcontracting party shall still retain responsibility for its performance under this Agreement.

10. **Acknowledgment of Other Obligations.** Each of the Joint Venturers recognizes that it may incur obligations under other agreements to provide services to the Project and/or the Owner Entity. Each of them shall devote such time and effort as is necessary to carry out its responsibilities under this Agreement, but shall not be required to devote its full time, attention, or energies to the performance of such duties.

11. **Saving Clause.** If one or more provisions of this Agreement or any application of any provision shall be deemed or declared to be invalid, illegal, or unenforceable in any respect, the validity, legality or enforceability of the remaining provisions of this Agreement shall in no

way be affected or impaired. This Agreement shall be governed by the laws of the State of North Carolina.

12. **Modification.** This Agreement shall not be changed, modified, or amended except by a writing signed by the parties hereto.

13. **No Third-Party Beneficiaries.** There shall be no actual or intended third-party beneficiaries to this Agreement.

14. **No Continuing Waiver.** The waiver of either party of a breach of any provision of this Agreement shall not operate or be construed to be a waiver of any subsequent breach. No waiver shall be effective unless in writing and signed by the party against whom it is sought to be enforced.

15. **Binding Nature.** This Agreement shall bind and inure to the benefit and burden of the parties, their personal representatives, successors, and assigns.

16. **Term of Agreement.** The term of this Agreement shall begin on the date hereof and end when each of the Joint Venturers has fully and satisfactorily performed the services described herein, or if NCHFA fails to award LIHTC's in 2021.

17. **Due Diligence Product.** In the event that the Project has not been awarded LIHTCs in 2021 or the parties agree the Project, as contemplated by this Agreement, will not close by December 31, 2022, the CO-DEVELOPER shall hereby agrees to assign to GHMC all due diligence documents and materials produced or procured by the CO-DEVELOPER upon full reimbursement to the CO-DEVELOPER by GHMC of the costs of such due diligence, which reimbursement shall be paid to the CO-DEVELOPER within sixty (60) days of the request for such reimbursement.

[SEPARATE SIGNATURE PAGE FOLLOWS]

The parties hereto have executed this Agreement as of the date first set forth in the beginning hereof.

GREENSBORO HOUSING MANAGEMENT CORPORATION

By: _____
Name: James Cox
Title: President/CEO

CO-DEVELOPER

By: _____
Name:
Title: