

**DRAFT 5-18-18 MEMORANDUM OF UNDERSTANDING**

**REGARDING**

**DEVELOPMENT AND OPERATION OF THE COFFMAN PARKING GARAGE**

This nonbinding Memorandum of Understanding (“MOU”) is entered into as of the last date signed below, by and between the Housing Authority of the County of Boulder, Colorado, a public body, corporate and politic (“BCHA”); the County of Boulder, Colorado, a public body, corporate and politic (“County”); the Longmont General Improvement District, a Colorado general improvement district (“GID”), managed by the Longmont Downtown Development Authority, a Colorado downtown development authority (“LDDA”); and RLET Properties, LLC, a Colorado limited liability company (“RLET”) (each a “Party” and, collectively, the “Parties”).

**Background**

A. The County owns certain real property addressed as 518 Coffman Street, Longmont, CO 80501, designated in the County Assessor’s records as parcel number 131503221002, currently used for surface parking.

B. The GID owns certain real property addressed as 0 Coffman Street, Longmont, CO 80501, designated in the County Assessor’s records as parcel number 131503221003, currently used for surface parking.

C. RLET owns certain real property addressed as 500 Coffman Street, Longmont, CO 80501, designated in the County Assessor’s records as parcel number 131503221004, currently occupied by commercial offices.

D. BCHA desires to develop, own, and operate approximately 75 units of affordable multifamily housing on the north end of the 500 block of Coffman Street, subject to approval by Longmont City Council.

E. The Parties desire to develop a shared parking garage in the middle of the 500 block of Coffman Street to serve County employees and visitors, RLET office tenants and guests, visitors to downtown Longmont, and BCHA affordable housing residents and guests (the “Garage”).

F. Each Party recognizes that, by working collaboratively with the other parties, each will be better able to achieve its goals. The purpose of this MOU is to confirm the intent of all Parties to continue good faith discussions directed toward the creation of one or more binding joint development agreements or other agreements (the “Definitive Agreements”) related to the development, financing, and construction of the Garage (the “Project”).

NOW THEREFORE, the Parties agree to work together in good faith as follows.

**1. Project Description.** The Parties agree that the Garage will consist of: (a) approximately 75 assigned parking spaces to serve approximately 75 units of affordable housing to be built, owned, and operated by a to-be-created Low-Income Housing Tax Credit LLC controlled by BCHA (the “LIHTC LLC”), with such residential units located on a separate parcel adjoining the Garage to the north; (b) approximately 100 assigned parking spaces for use by the County to serve the needs of employees and visitors at (i) existing County office space at the St. Vrain

Community Hub located across Coffman Street to the west, and (ii) approximately 10,000 square feet of new ground-floor County office space to be built within the Garage; (c) approximately 80 assigned parking spaces for use by the GID to serve the needs of visitors to downtown Longmont; and (d) approximately 80 assigned parking spaces to serve approximately 30,000-40,000 square feet of new office space to be built, owned, and operated by RLET, located on a separate parcel adjoining the Garage to the south.

### **Pre-Construction Phase**

**1. Developer.** BCHA will act as developer and lead representative of the Parties (as to the Project only) during the pre-construction phase. BCHA will not have authority to execute any agreement on behalf of or in the name of any other Party, unless such Party specifically authorizes BCHA to do so ahead of time, in writing.

**2. Review of Plans and Budgets.** The County, the GID, and RLET agree to collaborate with BCHA in reviewing and commenting on plans, designs, and construction and operating budgets for the Garage. Each Party will get the opportunity to review and approve the Garage construction budget prior to closing.

**3. Pre-Construction Costs.** BCHA will fund all pre-construction costs arising out of generation of plans, designs, and construction and operating budgets, as well as obtaining all necessary entitlements for the Project. These costs will be reimbursed to BCHA at construction financing closing. Should the Project never come to fruition, BCHA will not be entitled to receive reimbursement of costs or a developer fee for its work on the Project during the pre-construction phase. Otherwise, prior to execution of the Definitive Agreements defined below, each Party will be responsible for its own costs incurred in pursuit of the Project.

**4. Entitlements.** BCHA will seek and obtain at its sole cost all of the zoning, building, and other approvals necessary to have the Project entitled. Entitlement and zoning approvals may include without limitation any necessary site reviews, use reviews, public easement dedications or vacations, subdivisions pursuant to Longmont land use codes, and technical document review processes necessary to approve the property for the uses contemplated for the Project. The Parties will cooperate with BCHA to the extent necessary in the preparation of such zoning approval applications in connection with the Project. The Parties anticipate that the Project will meet all Longmont zoning and building standards and do not, at this time, anticipate a need to request modifications from such regulations.

**5. Contribution of Property for the Project.** At the close of the pre-construction phase, marked as the closing of construction financing for the Project, the following parties shall contribute the following property on which the Garage will be built: (a) the County will contribute Lots 1-11 and North half of Lot 12, Block 39, City of Longmont, (b) the GID will contribute the south half of Lot 12 and Lots 13-14, Block 39, City of Longmont, and (c) RLET will contribute Lots 15-16, Block 39, City of Longmont. Together these parcels are the "Project Site," as depicted on Attachment A to this MOU. All property contributed for the Project shall be cleared of structures and without any environmental contamination. Where requested by BCHA, any Party contributing property shall furnish reports characterizing the property's environmental condition prior to conveyance. As part of the consideration received for contributing its property, each contributing Party will obtain rights under a long-term lease with BCHA to use a specified number of spaces in the Garage and associated common areas (stairwells, elevators, ramps, etc.)

consistent with the expectations of each Party as recited in paragraph 1 of this MOU. By “long-term,” the Parties intend a term of 99 years.

### Construction Phase

**6. Ownership of the Project Site during Construction.** Upon assembling all property required for the Project, BCHA will convey fee simple title to the LIHTC LLC. The LLC will own all property for the Project throughout construction.

**7. Construction Costs.** Because the Parties do not expect the Garage will charge visitors to park, there will not be a future revenue stream to pledge to a construction lender as collateral. For this reason and to minimize transaction costs, complexity, and delay, the Parties seek to avoid borrowing money to finance construction of the Garage to the greatest extent possible.

a. Prior to the close of the pre-construction phase, BCHA shall engage an independent consultant(s), the selection of which shall be subject to the approval of all Parties, to determine an equitable pro-rata sharing of Garage construction costs and of Garage operations and maintenance costs. The consultant(s) determination of pro-rata sharing shall be subject to the reasonable approval of all Parties.

b. In addition to contributing their property to the project, the County, the GID, and RLET will contribute their pro-rata share of Garage construction costs, including the developer fee defined below, at the time of construction financing closing, based on an agreed-upon formula, to be held in escrow and disbursed during construction according to achievement of agreed-upon milestones. At the same time, the LIHTC LLC will likewise be bound to contribute its share of Garage construction costs, using the same procedure and agreed-upon formula.

c. The Parties intend that each be similarly financially invested in the success of the Project. To this end, at any point during construction, each Party and the LIHTC LLC will have funded its pro rata share of construction costs to date, given its anticipated proportional allocation of space in the Garage, as detailed in a disbursement or other agreement executed at construction financing closing.

d. The Garage construction contract will include a guaranteed maximum price.

e. To the extent that at the desired date for closing of construction financing, insufficient funds are available from the County, the GID, and RLET to fully fund construction of the Garage, BCHA reserves the right to either abandon the Project without penalty or use its own equity or any other source of financing to pay for the costs of construction.

**8. Liability during Construction.** The LIHTC LLC will own all property necessary for the Garage as of start of construction and will procure, contract with, and supervise all design and construction firms necessary to build the Garage. The LIHTC LLC will obtain all builder’s risk, commercial general liability, and other insurance necessary and appropriate to protect the interests of all Parties during construction. BCHA will provide a guaranty of lien-free completion of construction and all other required guarantees of the LIHTC LLC’s obligations required by its lenders and investors. The County, the GID, and RLET shall be named as an additional insureds on such policies. No party that has governmental immunity (the County, the GID) will be required to waive such immunity in a joint development agreement or any other document at any point during the life of the Project. RLET will have no role whatsoever in ownership,

management, or construction during the construction phase, provided, however, that a representative of RLET shall be entitled to be present during, and receive minutes of, all Owner-Architect-Contractor meetings occurring subsequent to the hiring of the Contractor.

**9. Management during Construction.** The LIHTC LLC will procure and supervise all design, engineering, and construction firms, and any other third parties to ensure the Garage is designed, permitted, and constructed with due diligence, in a good and workmanlike manner, using new and high quality materials, free of any defects or liens in accordance with the Garage construction contract, the approved plans, all applicable laws, and the terms and conditions of this MOU, and only after having procured and paid for, so far as the same are required, all municipal and other governmental permits and authorizations. The LIHTC LLC will control access to the Project Site during construction, obtain all necessary insurance, and handle all other construction administration. The LIHTC LLC will provide regular updates on construction progress to the County, the GID, and RLET. The representatives of the County, the GID, and RLET shall be entitled to reasonable access to the construction site for inspection purposes, subject to prior notice to BCHA, accompaniment by a representative of the Contractor, and compliance with all site safety requirements.

**10. Warranties.** The LIHTC LLC will receive all warranties for the work completed under the construction contract(s) it enters into to build the Garage for direct enforcement by the LIHTC LLC.

### Operations Phase

#### **11. Ownership of the Project Site during Operations.**

a. The LIHTC LLC will retain fee simple ownership of the entire Garage throughout the life of the Project.

b. At construction financing closing, the LIHTC LLC will execute a master lease with BCHA for the Garage. The master lease will only apply to the parking spaces for the County, the GID, and RLET. The LIHTC LLC will retain sole control over those parking spaces allocated for exclusive use of the LIHTC tenants, staff, and visitors, and associated common areas (stairwells, elevators, ramps, etc.). In return, BCHA will guarantee the LIHTC LLC receives an agreed-upon minimum rental revenue stream.

c. At construction financing closing, as to the portion of the Garage to which it has rights as master lessee, BCHA will enter into sub-leases with the County, the GID, and RLET (each a "Sub-Lessee") for each entity's allocated portion of the Garage. Each Sub-Lessee will receive 99-year lease rights to certain allocated parking spaces and all necessary common areas of the Garage. Each Sub-lessee shall be entitled to rent or license the use of its allocated parking spaces, for parking purposes only, to such users and for such consideration as it shall determine in its reasonable discretion. BCHA will also long-term lease the office space on the ground floor of the Garage to the County.

d. BCHA will secure a purchase option and a right of first refusal to buy the Garage from the LIHTC LLC approximately 15 years after issuance of a certificate of occupancy (or final inspection, as applicable). Any successor owner of the Garage (whether BCHA or any other party) will take subject to existing long-term leases.

**12. Liability during Operational Period.** Each Sub-Lessee will be responsible for liability arising out of its own actions or omissions, or as liability is otherwise customarily allocated

between landlord and tenant in a lease of parking garage space. Liability attributable to the LIHTC LLC as owner, or BCHA as master lessor, will likewise be allocated to those entities as is reasonable and customary in a lease of parking garage space. To the extent a master lessee or Sub-Lessee has governmental immunity, it will retain such immunity during the operation of the Garage. To the extent a Sub-Lessee does not typically enjoy immunity (RLET), it will not gain access to immunity simply by leasing space within the Garage. The foregoing notwithstanding, BCHA shall, pursuant a provision in its sublease agreement with RLET, to the extent permitted by law, indemnify and hold harmless RLET from any claim or liability arising from BCHA's management of the Garage.

**13. Cost Allocation during Operational Period.** The LIHTC LLC and each Sub-Lessee will be responsible to pay their pro rata share of common expenses, with such share to be based on each entity's allocated parking spaces and areas within the Garage. For any period during which BCHA sub-leases all of the Garage space it has rights to under its master lease with the LIHTC LLC, no expenses will be allocated to BCHA. For any period during which BCHA has not sub-leased all of the Garage space it has rights to under its master lease with the LIHTC LLC, BCHA will bear any expenses associated with the un-leased space for so long as it remains un-leased. The LIHTC LLC, BCHA, the County, and the GID are exempt from property taxes per statute. RLET's leasehold rights in the garage space will be subject to property taxes to the extent required by state law.

**14. Management during Operational Period.** As part of its master lease with BCHA, or via separate agreement, the LIHTC LLC will contract with BCHA for day-to-day management of the Garage. As detailed in each sub-lease, BCHA will be reimbursed by the Sub-Lessees, pro rata, for expenses incurred in operating the Garage, including a commercially reasonable management fee.

#### Other Provisions

**15. Definitive Agreements.** The Parties anticipate that, to implement the intent set forth herein, they will enter into various future binding agreements including, without limitation, the following:

- a. joint development agreement among the Parties;
- b. design and development documents, including architect and construction contracts entered into by BCHA and assigned to the LIHTC LLC at construction financing closing;
- c. any rezoning, subdivision, planned unit development, or other development agreements required by the City or other authorities whose approval is necessary to entitle the Project Site for the Project;
- d. joint construction disbursement agreement among the Parties and the LIHTC LLC;
- e. the BCHA construction completion guaranty;
- f. master lease between the LIHTC LLC and BCHA;
- g. sub-leases between BCHA and the County, the GID, and RLET;
- h. permanent easements between neighboring property owners;

- i. temporary construction easements; and
- j. such other documents and agreements required pursuant to this MOU to fully address the rights and obligations of the Parties as to one another regarding the development, construction, and operation of the Project.

**16. Cooperation.** Each Party agrees to take any and all reasonable actions to cooperate with the other Parties to enable the Project to move forward as described herein, to include meeting as needed to review Project feasibility and approvals and documents needed to develop and operate the Project.

**17. Independent Contractors.** At all times during the life of the Project, the relationship between the Parties will be that of independent contractors. BCHA shall not be deemed to be, nor shall it represent itself as, employee, partner, or joint venture with any other party except the LIHTC LLC.

**18. Term and Termination.** This MOU shall remain in effect until terminated in writing by any of the Parties, which may occur at any time, without penalty.

**19. Counterparts.** This MOU may be executed in counterpart originals which, when taken together, will constitute but one and the same instrument.

**20. Amendment.** This MOU may not be amended other than by a writing signed by all Parties.

**21. Non-Binding.** Notwithstanding anything to the contrary set forth herein, the Parties acknowledge that this MOU is not intended to be binding in any respect. There shall be no binding contract on any other provision of this MOU unless and until the Definitive Agreements are executed and delivered by both Parties and approved by all applicable governmental action, including approval thereof by the Longmont City Council and the Boulder County Board of Commissioners, as required. This MOU is only an expression of interest and may not become part of any eventual contracts. This MOU is not intended to impose any obligation to bargain other than in good faith but at arm's length. Each Party will be responsible for its own attorneys' fees and other costs in connection with this MOU and until the Definitive Agreements are executed and delivered.

*[Signature pages follow]*

By affixing their signatures below, the Parties intend to take all appropriate next steps towards execution of the necessary Definitive Agreements to complete the Project.

**BCHA**

Housing Authority of the County of Boulder,  
Colorado, a public body, corporate and politic

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

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

Date: \_\_\_\_\_

**COUNTY**

County of Boulder, Colorado, a public body,  
corporate and politic

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

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

Date: \_\_\_\_\_

**LONGMONT GENERAL IMPROVEMENT  
DISTRICT**, a Colorado general improvement  
district

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

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

Date: \_\_\_\_\_

**RLET PROPERTIES, LLC**, a Colorado limited liability company

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

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

Date: \_\_\_\_\_