

**GARAGE CONSTRUCTION AGREEMENT**  
**(COFFMAN PARKING GARAGE)**

by and among

**Boulder County Housing Authority**

**Coffman Place LLC**

**Boulder County**

and

**Longmont Downtown Development Authority**

**July [\_\_\_], 2020**

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**GARAGE CONSTRUCTION AGREEMENT**  
**(COFFMAN PARKING GARAGE)**

This Garage Construction Agreement (Coffman Parking Garage) (the “**Agreement**”) is entered into as of the last date signed below (the “**Effective Date**”), by and between the Housing Authority of the County of Boulder, Colorado, a public body, corporate and politic, doing business as Boulder County Housing Authority (“**BCHA**”); Coffman Place LLC, a Colorado limited liability company (“**Company**”); the County of Boulder, Colorado, a public body, corporate and politic (“**County**”); and the Longmont Downtown Development Authority, a Colorado downtown development authority (“**LDDA**”); 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, and legally described as shown on Exhibit A-1 (the “**County Property**”). BCHA has entered into that certain Intergovernmental Agreement Related to Acquisition of Property for the Coffman Street Parking Garage dated January 31, 2019, as amended, to buy the County Property from the County.

B. The Longmont General Improvement District (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, and legally described as shown on Exhibit A-2 (the “**GID Property**”). The GID has approved that certain LGID Resolution 2019-01 dated January 29, 2019, as amended, contemplating sale of the GID Property to BCHA for the Project (defined below) (the “**GID Purchase Agreement**”). While the GID has agreed to provide the GID Property pursuant to the GID Purchase Agreement to facilitate construction of the Project, the GID does not need to be involved during construction and is not a party to this Agreement. The LDDA is the manager of the GID.

C. RLET Properties, LLC, a Colorado limited liability company (“**RLET**”) owns certain real property addressed as 500 Coffman Street, Longmont, CO 80501, designated in the County Assessor’s records as parcel number 131503221004, and a portion of which is legally described as shown on Exhibit A-3 (the “**RLET Property**” and, collectively with the County Property and the GID Property, the “**Project Site**”). BCHA has entered into that certain purchase and sale agreement dated January 31, 2019, as amended, to buy the RLET Property from RLET (the “**RLET Purchase Agreement**”).

D. BCHA desires to develop approximately 73 units of affordable multifamily housing (the “**Affordable Housing**”) on the north end of the 500 block of Coffman Street, to be owned and operated by its affiliate, the Company.

E. Current parking facilities within the City of Longmont’s central business district are insufficient to meet all of the competing needs for parking in the area. The construction of the Affordable Housing and additional parking will facilitate the future redevelopment of, and support public access to, downtown Longmont businesses.

F. The Parties desire to develop a shared parking garage in the middle of the east side of the 500 block of Coffman Street to serve County employees and visitors, visitors to downtown Longmont, and the Company's affordable housing residents and guests (the "**Garage**"). Specifically, the Garage will consist of: (a) approximately 36 assigned parking spaces to serve approximately 73 units of affordable housing to be built, owned, and operated by the Company, with such residential units located on property adjoining the Garage to the north; (b) approximately 128 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) new ground-floor BCHA office space to be built within the Garage; (c) approximately 70 assigned public parking spaces for use by the LDDA to serve the needs of visitors to downtown Longmont; and (d) approximately 28 assigned parking spaces to serve office space to be built, owned, and operated by RLET, located on a separate parcel adjoining the Garage to the south. Construction of the Garage is referred to herein as the "**Project**."

G. Because the Parties do not expect the Garage will charge for parking, 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 desire to avoid borrowing money to finance construction of the Garage. Rather, each of the Parties desires to contribute property and/or funding for the Project on the terms and conditions stated herein.

H. The LDDA has pledged a capital contribution not-to-exceed \$2,000,000 to assist in the construction costs of the Garage in return for obtaining a designated number of spaces within the Garage to serve the needs of visitors to downtown Longmont.

I. The Parties desire to appoint BCHA as developer for the Project, and BCHA desires to accept such appointment on the terms and conditions stated herein.

J. Each Party recognizes that, by entering into this Agreement related to the development, financing, and construction of the Project, it will be better able to secure adequate parking to meet its needs.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties, intending to be legally bound, agree as follows:

### **ARTICLE 1 – Appointment of BCHA as Developer; Development Services**

1.01 Appointment. The Company, the County, and the LDDA, collectively appoint BCHA as developer and lead representative of the Parties for the Project, and BCHA accepts such appointment.

1.02 Authority. BCHA's services shall be performed in its own name. BCHA has only the authority expressly granted to it in this Agreement and such other written agreements related to the Project as one or more Parties have entered into or subsequently enter into with BCHA. BCHA does not have authority to execute any agreement or take any other action on behalf of or in the name of any other Party, unless such Party has specifically authorized BCHA to do so ahead of time, in writing. If the performance of any duty of BCHA set forth in this Agreement is beyond

the reasonable control of BCHA, BCHA shall promptly notify the other Parties that the performance of such duty is beyond its reasonable control.

1.03 Plans and Specifications.

a. “*Plans and Specifications*” means plans and specifications for the Project

(1) prepared by an architect that is selected by BCHA, unaffiliated with BCHA, licensed in Colorado, and reasonably qualified and experienced in overseeing projects similar to the Project (the “*Architect*”). As of the date of this Agreement, the Architect is RNN Architects, Inc., a Colorado corporation. The other Parties confirm that such firm complies with this section and agree that BCHA may replace the Architect at any time, subject to the replacement meeting the definition of “Architect” above;

(2) submitted in such machine-readable format as is then customary in the architectural profession, consisting of architectural plans; elevations and sections indicating principal areas, core design and location; location, number and capacity of elevators; basic structural system; minimum estimated electrical capacity and distribution system; general type of plumbing system; facade, placement, and orientation; gross and rentable square foot analysis; and principal types of HVAC systems.

b. The County, the LDDA, and the Company each approve the initial Plans and Specifications summarized on Exhibit B-2.

c. BCHA may modify the Plans and Specifications at any time or from time to time to comply with City Code, so long as such changes do not result in a material adverse conflict with the Development Criteria in Exhibit B-1. The “Plans and Specifications” shall mean the original Plans and Specifications as so modified.

d. The County, the LDDA, and the Company agree to timely review and comment on Plans and Specifications. After each of the other Parties receives any Plans and Specifications from BCHA, each such Party shall have 10 Business Days in which to notify BCHA of a material adverse conflict with the Development Criteria in Exhibit B-1. If a Party does not give such notice to BCHA within such period, then such Party shall thereby have waived any right to assert such a conflict regarding: (a) the Plans and Specifications delivered to such Party; or (b) any construction performed substantially in compliance with such Plans and Specifications, as amended, modified, or further developed in the ordinary course. If BCHA changes the Plans and Specifications, then BCHA shall, promptly upon any other Party’s request, deliver copies of such changes to such other Party for its information.

1.04 Pre-Construction Costs. BCHA will fund all pre-construction costs arising out of generation of plans and designs, environmental and geotechnical testing, creation of construction and operating budgets, legal fees, and all other activities necessary to secure all entitlements required for construction of the Project. At the construction financing closing for the Project, which shall be on or about [July 28, 2020] unless an extension is approved by all Parties in writing (the

“*Closing*”), these costs will be reimbursed to BCHA by the other Parties in accordance with Sharing Ratios. Each of the other Parties will be responsible for their own costs incurred prior to the Closing in pursuit of the Project unless expressly provided otherwise in writing.

1.05 Entitlements.

a. BCHA will make commercially reasonable efforts to secure all of the regulatory approvals necessary to have the Project entitled. Entitlement and zoning approvals may include any necessary site reviews, use reviews, public easement dedications or vacations, subdivisions pursuant to City code, zoning approvals, and any technical document review processes necessary to develop and operate the Project Site for the uses contemplated in this Agreement. The Parties anticipate that the Project will meet all Longmont zoning and building codes and standards.

b. Promptly upon BCHA’s request and without charge, each of the other Parties shall furnish all information in its possession that BCHA reasonably requests for any entitlement application. Further, upon BCHA’s request, the other Parties shall promptly join in and execute any application to the City of Longmont or other governmental entities with jurisdiction over the Project as BCHA reasonably requests, and otherwise reasonably cooperate with BCHA in obtaining all necessary approvals, provided that such application is in customary form and imposes no material obligations (beyond obligations ministerial in nature or merely requiring compliance with law) upon the other Parties, and no uncured event of default under this Agreement exists. Each of the other Parties grant to BCHA a power of attorney, coupled with an interest, and therefore irrevocable, to sign on each of the other Parties’ behalf any application that this Agreement requires the other Parties to sign.

1.06 Project Budgets. BCHA has engaged a financial consultant, S.B. Clark, Inc., a Colorado corporation, doing business as S. B. Clark Companies (“*S.B. Clark*”), to prepare construction and budgets for the Project. The construction budget is based primarily on the general contractor’s estimate of construction costs, and includes the cost of off-site work and on-site work, construction costs (including a contingency), permitting/tap fees, architectural, engineering and other design fees, construction interim costs (including the cost of insurance and payment and performance bonds), market and environmental studies, consulting fees, and legal fees. The initial construction budget is attached as Exhibit D-1, and the initial operating budget is attached as Exhibit D-6. By signing this Agreement, each Party approves both such initial budgets.

a. During the pre-construction phase of the Project, to the extent changes in one or both budgets are necessary prior to Closing, BCHA shall work with S.B. Clark to prepare an update to the relevant budget and provide it to all of the Parties for review. Upon written approval of the revision by all Parties, not to be unreasonably withheld, BCHA shall update Exhibits D-1 and D-6 to reflect the revised budget and this Agreement shall be deemed amended accordingly with no further action of the Parties required. For the avoidance of doubt, agreement to Initial Disbursement from Escrow by the Parties shall constitute evidence of approval of the then-current budgets.



b. During the construction phase of the Project, BCHA shall have authority to make adjustments between individual line items, not to exceed an increase of 10% in any given line item, without notice to or the prior approval of the other Parties, with the exception of the developer fee line item, and so long as there is no change to the total construction budget. BCHA shall inform the other Parties of such changes in the next regularly scheduled written report. To the extent an increase in the total construction budget is desired, BCHA shall work with S.B. Clark to prepare an update to such budget and provide it to all of the Parties for review, along with a brief statement including the amount of such increase, the reason for the request, and any necessary documentation. Upon written approval of the revision by all Parties, which may be withheld, conditioned, or delayed in each Party's sole discretion, BCHA shall update Exhibit D-1 to reflect the revised budget and this Agreement shall be deemed amended accordingly. If the Parties voluntarily approve the contribution of additional capital during construction to fully or partially pay for unexpected construction costs, then BCHA shall also update Exhibit D-2 accordingly and each Party shall provide its agreed-upon contribution within 30 days of the date all Parties have approved the increase in writing. If one or more Parties do not approve a proposed increase to the total construction budget and, as applicable, Exhibit D-2, BCHA shall nonetheless prosecute the work to completion consistent with its construction completion guaranty in section 4.01, and any Party that fails to approve a proposed increase shall have no right to veto a change order, use of contingency, or a budget increase during construction related to the portion of the construction budget of which they did not approve.

c. The construction budget will include a contingency line item. If cost savings are realized during the construction of the Project which result in any undrawn amounts from the contingency, such amount shall be refunded to the Parties in accordance with the Sharing Ratios reflected on the then-current version of Exhibit D-2.

1.07 Other Development Services. BCHA shall oversee the development and construction of the Project and perform the services and carry out the responsibilities with respect to the Project as are set forth herein, and such additional duties and responsibilities as are reasonably within the general scope of such services and responsibilities, including:

a. Causing a qualified party to conduct a Phase I environmental assessment survey of the Project Site prior to commencement of construction;

b. Negotiating and causing to be executed in its own name agreements for architectural, engineering, or other consulting services for the Project;

c. Negotiating and causing to be executed in its own name a guaranteed maximum price construction contract for the Garage ("**Construction Contract**") with a licensed, bonded, and insured general contractor ("**Contractor**"). As of the date of this Agreement, the Contractor is Pinkard Construction Co., a Colorado corporation, doing business as Pinkard Construction Company;

d. To the extent required by City Code and the public hearing process, communicating with neighborhood groups, local organizations, and other parties interested in the Project;

e. Establishing and implementing appropriate administrative and financial controls for the design and construction of the Project, including but not limited to:

(1) coordination of the Architect, the Contractor, and other contractors, professionals, and consultants employed in connection with the Project;

(2) administration of the Construction Contract, including as to change orders;

(3) rendering such advice and assistance as will aid in developing economical, efficient, and desirable design and construction procedures;

(4) rendering of advice and recommendations as to the selection procedures for, and selection of, subcontractors and suppliers;

(5) review and, when appropriate, approval of all requests for payment under any architectural agreement or Construction Contract;

(6) submission of suggestions or requests for changes which could in any reasonable manner improve the design, efficiency, or cost of the Project;

(7) applying for and maintaining in full force and effect any and all governmental permits and approvals required for the lawful construction of the Project;

(8) ensuring all prevailing wage requirements applicable to the Project are complied with;

(9) complying with all terms and conditions applicable to the Project contained in any governmental permit or approval required or obtained for the lawful construction of the Project, or in any insurance policy affecting or covering the Project;

(10) keeping the other Parties informed on a monthly basis of the progress of the design and construction of the Project, including the distribution of an updated critical path schedule, financial accounting reports, all proposed changes or modifications to the Development Budget and Development Schedule, a summary of any material meetings relating to the Project, information on contracts, including changes under consideration or proposed contract changes, actions taken when the requirements of any contract are not being satisfied, and such other information as may be reasonably be requested by the other Parties, all of which may be satisfied as part of the monthly construction draw process;

(11) furnishing copies of any work product prepared by BCHA or its consultants (not including attorney work product) in connection with the Project; and

(12) taking such actions as may be required to obtain any Certificate(s) of Occupancy required to permit the occupancy of the parking areas, commercial space, and other space in the Project;

f. Inspecting the progress of the course of construction of the Project, including verification of the materials and labor being furnished to and on such construction so as to be fully competent to approve or disapprove requests for payment made by the Architect and the Contractor, or by any other parties with respect to the design and construction of the Project, and in addition to verify that the same is being carried out substantially in accordance with the Plans and Specifications approved by the other Parties and constructed with due diligence, in a good and workmanlike manner, using new and high quality materials;

g. Obtain and maintain insurance coverage for the Project during the development and construction phase in the amounts and with the terms described in Exhibit G, with the County, the LDDA, and the Company named as additional insureds on each policy where such coverage is commercially available;

h. During the construction and development period of the Project, complying with all Laws. BCHA shall likewise ensure that all agreements between the other Parties and independent contractors comply with all Laws;

i. Assembling and retaining all contracts, agreements and other records and data as may be necessary to carry out BCHA's functions hereunder;

j. Using its best efforts to accomplish the timely completion of the Project in accordance with the approved Plans and Specifications and the time schedules for such completion approved by the Parties; and

k. Performing and administering any and all other services and responsibilities of BCHA which are set forth in any other provision of this Agreement or which are requested to be performed by the other Parties and are within the general scope of the services described herein.

1.08 Development Fee. Subject to the provisions of this Section and in consideration of the performance by BCHA of the services described herein, BCHA shall receive from the other Parties, as its full and complete compensation for its services in connection with the development of the Project, a total fee in the amount shown in the construction budget (the "***Development Fee***"), which shall be earned as follows:

a. BCHA shall earn 25% of the Development Fee for performing the following services:

(1) Obtaining local approvals for the construction of the Project;

(2) Engaging an architect to design the Project, negotiation of the architectural contract, and providing complete design drawings and the Plans and Specifications in a form approved by the other Parties;

(3) Negotiating a guaranteed maximum price construction contract with the Contractor;

(4) Preparing a construction and operating budget for the Project in a form approved by the other Parties; and

(5) Completion of the Closing.

b. BCHA shall earn the remaining 75% of the Development Fee upon:

(1) Issuance of a certificate of occupancy or final inspection (or the functional equivalent) from the City of Longmont (a “*Certificate of Occupancy*”);

(2) Production of written evidence that all third party development costs have been paid; and

(3) Receipt from the title company of a ‘date down’ (or functionally equivalent) endorsement demonstrating lien-free completion.

c. Upon receipt of written confirmation from each of the other Parties that the applicable conditions have been satisfied, BCHA may request that the Title Company or the Construction Disbursement Agent, as applicable, disburse payment of the applicable portion of Development Fee earned.

1.09 Representations, Warranties, and Covenants of Developer. BCHA represents, warrants, and covenants to the other Parties:

a. All material building, zoning, health, safety, business and other applicable certificates, permits, and licenses necessary to permit the construction, use, occupancy and operation of the Project have been or will, at the time required, be obtained and maintained (other than prior to completion of the construction of the Project or such portion thereof); BCHA has not received any notice nor has any knowledge of any violation with respect to the Project of any Laws which would have a material adverse effect on the Project or the construction, use, or occupancy thereof, except for violations which have been cured and notices or citations which have been withdrawn or set aside by the issuing agency or by an order of a court of competent jurisdiction.

b. BCHA shall during construction of the Project: (a) comply with Environmental Laws and, to the extent Environmental Laws require, clean up any Hazardous Substance Discharge; (b) make all submissions to, deliver all information required by, and otherwise fully comply with all requirements of any government under Environmental Laws; (c) if any government requires any clean-up plan or clean-up because of a Hazardous Substances Discharge, prepare and submit the required plans and all related bonds and other financial assurances; (d) promptly and diligently carry out all such clean-

up plans; (e) to the extent permitted by law, indemnify the other Parties against any Hazardous Substances Discharge or violation of Environmental Law, including all matters described in clauses “a” through “d” adjudicated to have been caused by BCHA, but only to the extent caused by BCHA; (f) keep the other Parties fully informed of any actions necessary or appropriate for BCHA to take to comply with this Section; (g) give the other Parties copies of all documents, notices, and other written communications that BCHA or its consultant(s) sends or receives regarding the matters described in this Section; and (h) permit the other Parties to inspect the Project Site (in such manner as they reasonably require) at any time to determine the status of any matters described in this Section. Any Party’s obligations under this section shall not limit that Party’s rights against third parties.

1.10 Timely Approvals. BCHA’s ability to perform hereunder depends in part on the other Parties’ timely responsiveness. Each of other Parties agrees to give reasonably timely attention to submissions and requests made to such Parties by BCHA under the terms of this Agreement and shall review such admissions and requests on a timely basis. In furtherance of the foregoing, unless a different deadline is expressly stated elsewhere in this Agreement, each of the other Parties shall provide its approval or denial of the submissions and requests for approvals by BCHA required under this Agreement, including proposed Development schedules, development budgets, or revisions thereto within seven days of receipt of the request. If another Party does not approve or deny approval of the proposed submissions or requests within seven business days of receipt of the submission or the request, such failure to respond will constitute an approval of the submission or the request.

1.11 Selection of Consultants. Each of the other Parties acknowledges that BCHA shall have the sole right to select any party that will be providing any services in connection with the Project including, without limitation, attorneys, accountants, contractors, subcontractors, engineers and consultants. All contracts entered into shall conform to the requirements of this Agreement.

1.12 Public Statements. The Parties agree to cooperate and consult with each other regarding any public statements or publication made regarding the Project.

## **ARTICLE 2 – Assembly of Capital and Property for the Project**

2.01 Initial Conveyances into BCHA. At the close of the pre-construction phase, defined as the same date as the Closing, the County will contribute the County Property to BCHA for the Project, and BCHA will use commercially reasonable efforts to cause the GID to contribute the GID Property to BCHA for the Project in accordance with the terms of the GID Purchase Agreement. These parcels are depicted on Exhibit A-4 to this Agreement.

2.02 No Known Contamination. All property contributed for the Project shall be cleared of structures and without any known environmental contamination the remediation of which has not been included in the final Plans and Specifications and construction budget approved by the Parties. Where requested by BCHA, any Party contributing property shall furnish reports dated within six months of the date of conveyance characterizing the property’s environmental condition. BCHA shall be solely responsible for obtaining all required reports or documentation from the GID or related to the GID Property.

2.03 Capital Contributions. All capital required for the Project, as identified on Exhibit D-2, shall be available for transfer and deposit by each respective contributing Party at the time of Closing. All fees, assessments, contributions, charges, or otherwise identified financial obligations for any Party required by this Agreement shall be deducted from each Party's respective capital contributions and in accordance with the Sharing Ratios identified in Exhibit D-2, as may be amended from time to time. In no event shall any Party be required to contribute capital beyond the amount identified in the original iteration of Exhibit D-2 attached to this Agreement at the time of execution. Any amendments to Exhibit D-2 must be clearly identified as such, dated, and appended to this Agreement in sequential order.

2.04 Parking Leases. As part of the consideration received for contributing its property and/or capital, each contributing Party will obtain rights under a 99-year lease ("Parking IGA") 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 stated in the recitals.

2.05 Detailed Development Plan; Call Option.

a. BCHA shall submit a copy of the final construction budget, schedule, and Plans and Specifications (the "*Detailed Development Plan*") to the County and the LDDA prior to the Closing for review and approval. Each such Party's acceptance of the Detailed Development Plan no later than Closing will confirm the Party's acceptance of the proposed actions by BCHA described in the Detailed Development Plan and will facilitate BCHA and its lenders, investors and other third parties to proceed to finalize plans in reliance upon the Detailed Development Plan.

b. If the LDDA decides not to approve such construction budget, schedule, and Plans and Specifications prior to Closing, then, to facilitate timely completion of the Project with the other Parties, the LDDA agrees that BCHA may elect to continue the Project without the LDDA's contribution, and this Agreement shall be terminated as to the LDDA.

2.06 Reconveyance Deadline. If BCHA has not issued notice to proceed with the Project to the Contractor within 90 days of conveyance of the last parcel necessary for the Project, BCHA shall immediately (a) reconvey the County Property to the County and the GID Property to the GID, in each case by the same form of deed as BCHA received from each such Party; and (b) instruct the Title Company or the Construction Disbursement Agent, as applicable, to return each Party's cash contribution in the amount shown on Exhibit D-2 and, thereafter, close the Escrow Account.

### **ARTICLE 3 – Roles and Responsibilities during Construction**

3.01 Site Access. BCHA shall permit authorized representatives of the County, the LDDA, and the Company reasonable access to the construction site during regular business hours, subject to reasonable prior notice to BCHA, accompaniment by a representative of the Contractor, and compliance with all site safety requirements, solely to: (a) ascertain whether BCHA is complying with this Agreement; (b) cure BCHA's defaults; (c) inspect the Project Site and any

construction; or (d) perform any tests, borings, and other analyses as such other Party reasonably determines necessary or appropriate relating to (non)compliance with any Law or possible Hazardous Substances Discharge. In entering the Project Site, each Party shall not unreasonably interfere with operations on the Project Site and shall comply with BCHA's reasonable instructions. To the extent permitted by law, any such Party shall indemnify BCHA against any claims arising from such other Party's entry upon the Project Site.

3.02 Owner-Architect-Contractor Meetings. BCHA shall permit one authorized representative of each Party to observe regularly scheduled Owner-Architect-Contractor meetings occurring subsequent to the hiring of the Contractor. Each Party shall be entitled to receive minutes of such meetings from BCHA upon request.

3.03 Liability during Construction. Once all of the Project Site property has been conveyed to BCHA: (a) BCHA is and shall be in exclusive control and possession of the Project Site and the Project; and (b) the other Parties shall not be liable for any injury or damage to any property (of BCHA or any other person) or to any person occurring on or about the Project Site, unless caused by such Party's intentional act, omission, or negligence. Each of the other Parties' right to enter and inspect the Project Site is intended solely to allow such other Party to ascertain whether BCHA is complying with this Agreement and (to the extent this Agreement allows) to cure any default. Such provisions shall not impose upon the other Parties any liability to third parties, but nothing in this Agreement shall be construed to mean BCHA exculpates, relieves, or indemnifies any of the other Parties from or against any liability of such other Parties: (y) to third parties existing at or before the Effective Date; or (z) arising from intentional acts or omissions or negligence.

#### **ARTICLE 4 – BCHA's Construction Completion Guaranty**

4.01 Obligation to Complete Construction and to Pay Development Costs. Once BCHA commences construction of the Project, it shall prosecute such work with reasonable diligence and shall complete the construction of the Project or cause the same to be completed by the Completion Date (defined below) in a good and workerlike manner, free and clear of all unbonded mechanic's, materialmen's or similar liens, and shall equip the Project or cause the same to be equipped with all necessary and appropriate fixtures, equipment and articles of personal property, all in substantial accordance with the Plans and Specifications forming a part of the Construction Contract. If the funds available to BCHA from (i) the Escrow Account, which shall have an initial balance of the total amount shown in the construction budget approved as of the Closing attached as Exhibit D-1, or (ii) additional cash contributions from the other Parties, are insufficient to pay all costs to complete construction of the improvements according to the Plans and Specifications free and clear of all unbonded mechanic's, materialmen's or similar liens, BCHA shall advance or cause to be advanced all funds as are required to pay such deficiencies. Unless otherwise approved in writing by the Parties, excess development costs shall be borne solely by BCHA in its capacity as the developer of the Project.

4.02 Mechanic's Liens. Concurrent with payment made to the Contractor or to any subcontractors, architects, structural or professional engineers, surveyors or any other parties entitled to file mechanic's liens in Colorado, waivers of liens from such parties shall first be secured by, or caused to be secured by, BCHA. If any mechanic's or materialman's liens should

be filed, or should attach with respect to the Project by reason of the construction undertaken pursuant to this Agreement, BCHA shall cause the removal of, or fully bond over, such liens within 60 days after the recording thereof, or post or deposit security against the consequences of possible foreclosure of such liens, and procure title insurance policies or endorsements insuring the Project against the consequences of the foreclosure and enforcement of such liens. To the extent permitted by law, BCHA shall defend, indemnify, and save harmless the other Parties from the claims, suits, or demands of any person, contractor, subcontractor, materialmen, or supplier who shall claim any amount with respect to work performed or materials supplied to the Project beyond the total cost of construction.

4.03 BCHA's Financial Condition. As of the date hereof, and after giving effect to the obligations evidenced hereby, BCHA represents, warrants, and covenants that it (i) is, and will be, solvent, (ii) has and will have assets which, fairly valued, exceed its obligations, liabilities (including contingent liabilities) and debts, and (iii) has and will have property and assets sufficient to satisfy and repay its obligations, liabilities (including contingent liabilities) and debts, including its obligations under this Agreement. All of the financial information provided by BCHA to the other Parties is true and correct in all material respects as of the date hereof.

4.04 Financial Covenants. BCHA hereby covenants and agrees, as a material inducement to the other Parties to enter into this Agreement, to the following:

a. Liquidity Covenant: BCHA shall, at all times until the Certificate of Occupancy is issued for the Project, own and maintain minimum Liquid Assets of at least \$1,000,000.00 as determined by the other Parties and shall provide to the other Parties evidence of such minimum Liquid Assets upon the request of the other Parties.

b. Net Worth Covenant: BCHA shall, at all times until the Certificate of Occupancy is issued for the Project, maintain a minimum Net Worth of at least \$5,000,000.00 and shall provide to the other Parties evidence of such minimum Net Worth upon the request of the other Parties.

4.05 Statements and Reports. During the term of this Agreement, BCHA agrees to deliver to the other Parties the following statements and reports upon request:

a. Quarterly, unaudited financial statements of BCHA within 45 days after the end of each March, June and September (and accurate as of the last day of each such period), which shall include a balance sheet and income statement, together with a detailed schedule of all contingent liabilities, which financial statement and related materials shall be prepared by BCHA in accordance with acceptable accounting principles for Colorado housing authorities ("**Acceptable Accounting Standards**") and certified by an appropriate officer of BCHA;

b. Annual unaudited financial statements, balance sheets and income statements of BCHA within 90 days after the end of each calendar year, prepared in accordance with Acceptable Accounting Standards and certified to by an appropriate officer of BCHA;



c. Copies of all state and federal tax returns prepared with respect to BCHA within 30 days of such returns being filed with the Internal Revenue Service or applicable state authority, if any; and

d. Copies of extension requests or similar documents with respect to federal or state (if applicable) income tax filings for BCHA within 30 days of such documents being filed with the Internal Revenue Service or applicable state authority.

The other Parties acknowledge that although the financial statements heretofore delivered by the BCHA have not been prepared on a GAAP basis, the other Parties approve the basis upon which such statements have been prepared, and each of the other Parties agrees that the accounting basis upon which such statements have been prepared shall constitute a sound and accepted accounting standard for future statements delivered with respect to BCHA, provided that such statements contain an acceptable basis for the fair market value all assets listed in such statements.

### **ARTICLE 5 – Closing Escrow; Initial Disbursement**

5.01 Appointment of Closing Escrow Agent. The Parties appoint First American Title Insurance Company as closing escrow and initial disbursement agent (“*Title Company*”) and will sign one or more agreements confirming the same as may be reasonably requested by the Title Company.

5.02 Deposits into Escrow. On or before the Closing, the following items shall be deposited into escrow with the Title Company:

a. The County will deposit a signed Special Warranty Deed for the County Property, from the County, as grantor, to BCHA, as grantee (the “*County Deed*”);

b. BCHA will use commercially reasonable efforts to cause the GID to deposit a signed Special Warranty Deed for the GID Property, from the GID, as grantor, to BCHA, as grantee, according to the terms of the GID Purchase Agreement (the “*GID Deed*”);

c. BCHA will use commercially reasonable efforts to cause RLET to deposit a signed Special Warranty Deed for the RLET Property, from RLET, as grantor, to BCHA, as grantee, according to the terms of the RLET Purchase Agreement (the “*RLET Deed*” and, together with the County Deed and the GID Deed, the “*Deeds*”);

d. Each of the County, the LDDA, and the Company shall deposit its respective Cash Contribution in the amount shown on Exhibit D-2;

e. BCHA shall deposit the signed The Spoke at Coffman Small Planned Community Declaration in substantially the form attached as Exhibit H-1 and the signed The Spoke at Coffman Small Planned Community Map in substantially the form attached as Exhibit H-2 (together, the “*SPC Documents*”).

f. BCHA shall deposit the signed Parking IGAs or a Memorandum of Parking Agreement (County) and Memorandum of Parking Agreement (LDDA) (together, the “*Memorandums of Agreement*”).

5.03 Conditions to Initial Disbursement from Escrow. Upon satisfaction of all of the following conditions, (i) the Title Company shall record the Deeds, and (ii) each of the County, the LDDA, and the Company shall provide written authorization to Title Company to release from escrow its share of the initial disbursement, calculated as the product of its Sharing Ratio and the total amount of the Initial Draw Request shown on Exhibit D-5:

- a. Each Party has approved in writing the Plans and Specifications for the Project, a summary of which is attached as Exhibit B-2;
- b. Each Party has approved in writing the Construction Schedule for the Project in the form attached as Exhibit C;
- c. Each Party has approved in writing the Construction Budget for the Project in the form attached as Exhibit D-1;
- d. Each Party has received a copy of the final executed version of this Agreement with all exhibits;
- e. Each Party has received a copy of the final executed contract between BCHA and the Architect;
- f. Each Party has received a copy of the final executed guaranteed maximum price contract between BCHA and the Contractor;
- g. The Title Company has confirmed in writing that it has received (i) all funds listed on Exhibit D-2, (ii) the Deeds, (iii) the SPC Documents, and (iv) the Memorandums of Agreement, all in recordable form;
- h. The City has confirmed in writing that all permits or other approvals required by the City or other authorities whose approval is necessary to entitle the Project Site for the Project have been obtained, and all permits required for the Project have been issued or will be issued upon payment of the permit fee;
- i. The County has received a signed copy of its Parking IGA with BCHA;
- j. The LDDA has received a signed copy of its Parking IGA with BCHA;
- k. BCHA shall have delivered to the other Parties evidence that all insurance required by this Agreement is in place;
- l. BCHA shall have delivered to the other Parties a copy of the signed payment and performance bond required by the Construction Contract in the full amount of such contract;

5.04 Title Company's Obligations at Closing. Upon receiving written authorization from all of the Parties as provided in Section 5.03 above, BCHA shall cause the Title Company to complete the following:

- a. Record the Deeds in the Boulder County real estate records (the “**Records**”);
- b. Record the SPC Documents in the Records;
- c. Record the Memorandums of Agreement in the Records;
- d. Disburse funds out of escrow in the amounts shown and to the parties listed on Exhibit D-5; and
- e. Issue an owner’s policy of title insurance to BCHA.

and BCHA shall commence construction of the Project.

**ARTICLE 6 – Construction Disbursements; Final Disbursement and Termination**

6.01 Appointment of Construction Disbursement Agent. The Parties appoint Citibank, N.A., a national banking association, as construction disbursement agent (“**Construction Disbursement Agent**”) and will sign such agreements confirming the same as may be reasonably requested by the Construction Disbursement Agent, including the Construction Administration and Disbursement Agreement in substantially the form attached hereto as Exhibit I.

6.02 Conditions to Disbursements from Escrow during Construction. During construction of the Project, and no more frequently than monthly, each Party shall be notified that each of the following conditions has been satisfied, and its share of the disbursement, calculated as the product of its Sharing Ratio and the total amount shown on the Draw Request, has been released from escrow to pay the Contractor or other approved vendors:

- a. Each Party has received from BCHA a copy of the corresponding draw request;
- b. The Construction Disbursement Agent and the title company have received conditional lien waivers from all parties with lien rights for the period prior to the date of the draw request; and
- c. The title company has issued an endorsement showing no unpermitted liens recorded against title to the Project Site.

6.03 Conditions to Final Disbursement from Escrow. Upon BCHA’s request and receipt of confirmation that each of the following conditions has been satisfied, each Party shall authorize in writing release from escrow of its share of the final disbursement, calculated as the product of its Sharing Ratio and the total amount of the final Draw Request, to pay the Contractor or other approved vendors (the “**Final Disbursement**”):

- a. final signed unconditional lien waivers from all parties with lien rights;
- b. issuance of a Certificate of Occupancy;

- c. recordation of an amended SPC Map to reflect the as-built survey of the Project;
- d. an endorsement to the owner's policy of title insurance reflecting no unpermitted liens; and
- e. Written approval of final disbursement by each of the other Parties.

6.04 Closure of the Escrow Account; Termination of this Agreement. Upon Final Disbursement, BCHA shall cause the Construction Disbursement Agent to close the Escrow Account, provide written notice of the same to all Parties and, with no further action required by any of the Parties, this Agreement shall terminate, with no Party having any further duties or obligations hereunder.

6.05 Conflicts. To the extent the terms of the Construction Administration and Disbursement Agreement conflict with the terms of this Agreement, the former controls.

### **ARTICLE 7 – Casualty and Condemnation**

7.01 Prompt Notice. If any Party becomes aware of any Casualty or actual, contemplated, or threatened Condemnation, such Party shall promptly so notify the other Parties.

7.02 Right to Rebuild the Project. In the event that any portions of the Project or the Project Site are damaged or destroyed by fire or by any other casualty after the date the Project Site is conveyed to BCHA and prior to the Completion Date, or are the subject of a “de minimis” condemnation (for purposes of this section, the term “de minimis” shall mean an amount, as determined by BCHA in its reasonable discretion, which does not materially and adversely affect the contemplated use of the improvements) during the same period, and such damage, destruction, or Condemnation results in the need for Restoration, the other Parties shall not object to BCHA using the amount by which the proceeds of all insurance policies, judgments, settlements, or awards collected with respect to such damage, destruction or Condemnation exceed the cost, if any, to the other Parties for the recovery of such proceeds (said net amount defined as the “**Reconstruction Funds**”), and assign to BCHA the right to receive all Loss Proceeds to perform the Restoration, so long as the following conditions have been met:

- a. All Loss Proceeds have been deposited with Construction Disbursement Agent, to be disbursed by Construction Disbursement Agent in a manner consistent with the terms of this Agreement;
- b. No default beyond any applicable cure period exists under this Agreement;
- c. BCHA shall have delivered evidence reasonably satisfactory to the other Parties that the improvements may be reconstructed in accordance with applicable zoning and building codes, and all rules, regulations, and ordinances of governmental authorities and that, upon completion of the Restoration, the condition of the improvements will be at least equal in value and general utility to those which existed immediately prior to such casualty or condemnation;

d. BCHA shall have delivered evidence reasonably satisfactory to the other Parties that sufficient funds, including the Reconstruction Funds, are available to perform the Restoration and that the Restoration is capable of completion prior to the Completion Date, as the same may have been extended by agreement of the Parties, such approval not to be unreasonably withheld;

e. BCHA shall execute and deliver to the other Parties a copy of a contract with a licensed contractor reasonably acceptable to the other Parties setting forth a fixed price for the Restoration and a completion date reasonably acceptable to the other Parties;

f. BCHA shall demonstrate to the other Parties that the Reconstruction Funds are at least equal to the fixed price of the Restoration as set forth in said contract or shall deposit with the Construction Disbursement Agent funds in the amount by which such fixed price exceeds the Reconstruction Funds;

g. The Restoration shall be supervised by an architect or engineer and performed in accordance with plans and specifications prepared by such architect or engineer and reasonably approved by the other Parties;

h. The Reconstruction Funds, plus any additional funds deposited by BCHA, shall be received and held by the Construction Disbursement Agent and disbursed to BCHA in an amount commensurate with the amount of Restoration completed and in accordance with the terms and conditions of the Escrow Agreement, and the Parties shall reimburse the Construction Disbursement Agent for actual, reasonable costs and expenses incurred in connection with such disbursements;

i. Upon completion of and final payment for the Restoration, any remaining Reconstruction Funds shall be treated in the same manner as excess contingency funds are treated under this Agreement; and

j. BCHA shall otherwise comply with the terms and conditions of this Agreement during the performance of the Restoration.

7.03 Restoration Impossible. If, after the date the Project Site is conveyed to BCHA and prior to the Completion Date, the Project Site cannot be Restored to the same bulk and for the same use(s) as before a Casualty, or if a Substantial Condemnation occurs, then BCHA shall collect all available insurance or condemnation proceeds and use them to exercise its abandonment right under section 8.04 (except that no interest on cash contributions shall be owed to the non-BCHA Parties in such circumstance).

7.04 Continuation of Agreement. Except as this Agreement expressly provides, this Agreement shall not terminate, be forfeited, or be affected in any other manner, and BCHA waives any right to quit or surrender the Project Site or any part of the Project Site, because of any Loss. Unless and until this Agreement has been validly terminated, BCHA's obligations under this Agreement shall continue unabated.

## ARTICLE 8 – Default; Remedies; Dispute Resolution

8.01 Notice of Default; Opportunity to Cure. In the event that any Party fails to comply with any of the provisions of this Agreement applicable to such Party, then such Party shall be notified of such default in writing by one or more other Parties. The Party in default shall have 30 days from receipt of such notice to cure such default. If such default cannot be cured within such 30-day period, but the defaulting Party commences the cure within such period and diligently pursues such cure thereafter, then the cure may be completed within the lesser of: (a) 90 days of receipt of such notice, or (b) such lesser period as is reasonably necessary to cure such default. The investor member in the Company shall receive notice of a default by the Company, and shall have the right to cure any of the Company's defaults under this Agreement within the same time period and subject to the same terms and conditions as a cure by the Company.

### 8.02 Remedies; Dispute Resolution.

a. In the event of a dispute arising under this Agreement, the Parties shall, without delay and in good faith attempt to amicably resolve such dispute through negotiation. Should the Parties be unable to resolve any dispute between themselves within 10 business days of written notice of such dispute ("**10-Day Dispute Period**") the parties will, within three business days following the 10-Day Dispute Period select a neutral mediator experienced in mediation and in matters customarily related to the area of dispute. The dispute will be submitted to the mediator for non-binding mediation, the decision of such mediation not to extend beyond 60 days from the conclusion of the 10-Day Dispute Period. If the Parties do not reach a resolution to their dispute within the period referenced above, then, upon written notice by any Party to BCHA, all disputes, claims, questions, or differences shall be submitted to a court of competent jurisdiction, and each party shall have any and all remedies provided for by law or in equity, including: (a) subject to section 8.02(b) below, damages, (b) injunctive relief, and (c) specific performance of the covenants in this Agreement. All remedies available to a Party in this Agreement are cumulative and in addition to every other remedy provided by Law. The Parties consent, agree and stipulate that the exclusive forums and jurisdiction for maintaining any civil actions shall be in either the state or federal courts located in the County of Boulder, State of Colorado, and the Parties agree to submit to the personal and exclusive jurisdiction and venue of these courts. Reasonable attorneys' fees and other costs and expenses resulting from resolution of any dispute shall be paid to the prevailing party by the party against whom a judgment is rendered. Each Party acknowledges that a default by one Party under this Agreement shall not excuse the failure by any other Party to perform its covenants under this Agreement.

b. Whenever any Party may seek or claim damages against another Party (whether by reason of a breach of this Agreement by such party, in enforcement of any indemnity obligation, for misrepresentation or breach of warranty, or otherwise), no Party shall seek, nor shall there be awarded or granted by any court or other adjudicator, any speculative, consequential, collateral, special, punitive, or indirect damages, whether such breach shall be willful, knowing, intentional, deliberate, or otherwise. The Parties intend that any damages awarded shall be limited to actual, direct damages sustained by the aggrieved Party. No Party shall be liable for any loss of profits suffered or claimed to have been suffered by another.

8.03 Scrape Option. Without limiting the other Parties' other rights and remedies, except as this section states, if all of the other Parties decide to terminate the Agreement because of an uncured default by BCHA before the Completion Date, then the other Parties may in their sole and absolute discretion jointly notify BCHA (a "**Scrape Notice**") that BCHA is required to take any one or more of these actions, as the other Parties jointly designate (collectively, "**Scrape**") all at BCHA's expense and in compliance with Laws: (a) demolish and remove all complete and incomplete improvements above grade on the Project Site; (b) remove all foundations and footings that BCHA constructed; (c) restore the Project Site to vacant, level and unimproved land in substantially its condition on the Date BCHA took title to the County Property or the GID Property, as applicable; (d) compact, level and grade the surface of the Project Site; (e) cause the physical condition of the Project Site to comply with all Laws on vacant land, including construction of a perimeter fence if Law requires; (f) secure the release of all unpermitted liens and other unpaid costs of Project development; (g) perform all unperformed obligations of BCHA under the Agreement on any Hazardous Substances Discharges or noncompliance with Environmental Laws; and (h) physically correct and pay any fines associated with any violations of Laws at the Project Site. If the other Parties jointly give BCHA a Scrape Notice, then BCHA shall: (x) within 60 days confirm in writing that BCHA will promptly Scrape (a "**Scrape Confirmation**") and (y) actually Scrape within 180 days after the Scrape Notice, subject to extension for up to 60 days for Unavoidable Delay (the "**Scrape Period**"). If BCHA fails to timely give a Scrape Confirmation or fails to timely Scrape, then the other Parties may at their option: (a) withdraw the Scrape Notice, in which case the parties shall have the same rights and obligations as if the other Parties had never given a Scrape Notice; or (b) Scrape and BCHA shall immediately on demand reimburse the other Parties for all costs of doing so. If BCHA timely confirms BCHA will Scrape, then the other Parties shall give BCHA and its contractors reasonable access to the Project Site for the Scrape Period (but otherwise in compliance with the Agreement requirements, such as insurance and indemnification), so they can Scrape. Upon completion of the Scrape, BCHA shall convey the County Property back to the County, the GID Property back to the GID, and this Agreement shall terminate. The rights granted by this section expire automatically upon issuance of a Certificate of Occupancy.

8.04 Abandonment. BCHA may, at BCHA's option, abandon the Project at any time until the Completion Date has occurred, provided that: (a) BCHA gives the other parties notice of BCHA's election to abandon; and (b) BCHA with reasonable diligence completes Construction Substitute Performance within a reasonable time after the notice of abandonment. "**Construction Substitute Performance**" means BCHA's performance of only these actions: (a) demolish all improvements on the Project Site to grade; (b) remove all debris resulting from "a"; (c) convey the County Property back to the County, and the GID Property back to the GID, in each instance as vacant and compacted land free of improvements, free of significant excavations, and reasonably level; (d) pay all costs of "a" through "c"; (e) pay, discharge, or bond all mechanics' liens and other claims arising from "a" through "c"; (f) terminate this Agreement and all rights under it; and (g) pay each of the other Parties an amount equal to the total of such Party's actual cash contributions for the Project to date plus 5% of such amount, as agreed consideration to terminate this Agreement and compensate the other Parties for the time, effort, and lost opportunities resulting from having entered into this Agreement with BCHA.

8.05 Investor Rights. Notwithstanding anything to the contrary herein: (a) copies of any notice of default sent to BCHA shall be sent to the investor member of the Company, Wincopin

Circle LLLP, a Maryland limited liability limited partnership (the “*Investor*”) at this address: c/o Enterprise Community Asset Management, Inc., 70 Corporate Center, 11000 Broken Land Parkway, Suite 700, Columbia, Maryland 21044, with a copy to Kenneth S. Gross, Esq., Gallagher Evelius & Jones LLP, 218 North Charles Street, Suite 400, Baltimore, Maryland 21201; (b) if an event of default by BCHA shall have occurred hereunder, the other Parties shall afford the Investor the right, but not the obligation, to cure any such defaults within a reasonable period, and each of the other Parties agrees to accept such performance as if it were undertaken by BCHA itself.

## ARTICLE 9 – Representations and Warranties

Each Party represents and warrants that:

9.01 Due Authorization and Execution. (a) Execution and delivery of this Agreement and its performance of the covenants under this Agreement have been duly authorized by all actions required under the documents governing its organization and operations, (b) this Agreement constitutes a valid, binding, and enforceable obligation of such Party, (c) neither the execution of this Agreement nor the consummation of the transactions it contemplates violates any agreement, contract, or other restriction to which such Party is a party or is bound. The Parties’ representations and warranties in this section shall continue to apply in full force and effect throughout the term of this Agreement as if made continuously during the term.

9.02 No Litigation. There is no existing or, to any Party’s knowledge, pending or threatened litigation, suit, action, or proceeding before any court or administrative agency affecting any Party, or the Project Site that would, if adversely determined, materially adversely affect any Party, the Project Site, this Agreement, or BCHA’s ability to develop and operate the Project Site for the Project.

9.03 No Pending Condemnation. There is no existing or, to any Party’s knowledge, pending or threatened Condemnation affecting any portion of the Project Site or any pending public improvements in, about, outside or appurtenant to the Project Site that will materially adversely affect the use and operation of the Project Site for the Project, the value of the Project Site, or access to the Project Site or that will create additional cost to any owner of the Project Site by means of special assessments or otherwise.

9.04 No Pending Construction or Liens. With the exception of the Construction Contract, no Party is a party to any contract for any construction on any portion of the Project Site. No person has the right to claim any mechanic’s or supplier’s lien arising from any labor or materials furnished to the Project Site before the Effective Date.

9.05 No Investigations. No Party has received notice of and nor has any knowledge of any existing violations of, or pending investigations into violations of, any Laws affecting the Property. To each Party’s knowledge, neither the Project Site nor any portion thereof is in violation of any Laws.

9.06 No Third Party Rights. At the time of Closing, no Party has or will have granted or created, nor have any knowledge of any third parties who may have the right to claim or assert any



easement, right-of-way or claim of possession not shown by record, whether by grant, prescription, adverse possession or otherwise, as to any part of the Project Site. No Party has entered into any agreement with any private person or entity or with any governmental or quasi-governmental entity with respect to the Project Site that may result in liability or expense to BCHA upon BCHA's acquisition of the Project Site. There are no outstanding contracts or other written or oral agreements with adjacent or nearby property owners or lessees, or other third parties, which will be binding on BCHA.

9.07 No Special Assessments. There are no special assessments which now burden or encumber the Project Site and no Party has any knowledge of any special assessments currently proposed as to the Project Site.

### **ARTICLE 10 – General Provisions**

10.01 Termination. This Agreement may be terminated:

- a. As provided in Article 8 or elsewhere in this Agreement;
- b. By the mutual agreement of all Parties; or
- c. By BCHA or another Party if there has been a default in the performance or observance of any term or condition of this Agreement by another Party that is not cured as provided in Section 8.01.

Other than as provided above, BCHA's duties, responsibilities and rights hereunder shall not be terminated prior to that time by the other Parties except for "cause" as finally determined by a court of competent jurisdiction. For purposes hereof, "cause" shall mean fraud, dishonesty, reckless disregard for customary practices, or intentional misconduct.

10.02 Authorized Representative of each Party. BCHA shall designate an experienced professional with relevant experience to act as "***Developer's Representative.***" BCHA shall not change the Developer's Representative without the prior written consent of the other Parties; provided that in no event shall BCHA be in default if the Developer's Representative changes as a result of the Developer's Representative no longer being employed by BCHA. Each Party authorizes the following individual(s) to act on its behalf for purposes of this Agreement:

BCHA:	Norrie Boyd, Deputy Director
County:	Jana Peterson, County Administrator
LDDA:	Kimberlee McKee, LDDA Executive Director

Any Party may update its designee at any time by providing written notice to all other Parties.

10.03 Further Assurances. Each party shall do and perform, or cause to be done and performed, all such further acts and things, and shall execute and deliver all such other agreements, certificates, instruments, documents, and consents as another party may reasonably request in order

to carry out the intent and accomplish the purposes of this Agreement and the consummation of the transactions contemplated hereby.

10.04 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 venturer with any other party except the Company.

10.05 Recording. This Agreement shall not be recorded.

10.06 Binding on Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and permitted assigns. No Party may assign its rights or its obligations under this Agreement to any person or entity without the prior written consent of each of the other Parties.

10.07 Principles of Interpretation. No inference in favor of or against any Party shall be drawn from the fact that such Party has drafted any part of this Agreement. The Parties have participated substantially in its negotiation, drafting, and revision, with advice from counsel and other advisers. A term defined in the singular may be used in the plural, and vice versa, all in accordance with ordinary principles of English grammar, which also govern all other language in this Agreement. The words “include” and “including” shall be construed to be followed by the words: “without limitation.” Every reference to any document, including this Agreement, refers to that document as modified from time to time by agreement of all the Parties, and includes all exhibits, schedules, and riders to that document. The word “or” includes “and.” Captions of the articles and sections of this Agreement are for convenience only and shall not be considered to expand, modify or aid in interpretation, construction or meaning.

10.08 Colorado Law Governs. This Agreement, and the application or interpretation hereof, shall be governed by and construed in accordance with the laws of the State of Colorado. Any claim relating to this Agreement or breach thereof may only be brought exclusively in the Courts of the 20th Judicial District of the State of Colorado and the applicable Colorado Appellate Courts.

10.09 Third-Party Beneficiary. Enforcement of the terms and conditions and all rights and obligations of this Agreement are reserved to the Parties. Any other party receiving services or benefits under this Agreement is an incidental beneficiary only and has no rights under this Agreement.

10.10 No Waiver of Immunity. Nothing in this Agreement shall be construed as a waiver of governmental immunity under the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, et seq., as amended, by any Party to which such Act applies.

10.11 Notices. All notices and other communications required or permitted under this Agreement shall be in writing, signed by the Party giving the same, and shall be deemed sufficiently given when personally delivered; when delivered by registered or certified United States mail, return receipt requested, postage prepaid; or overnight courier service to the address shown on Exhibit F; or when delivery is refused. Any Party, by notice to all of the other Parties

given as above, may change the address to which future notices or other communications intended for such Party shall be sent.

10.12 Severability. If any term or provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Agreement shall be valid and be enforced to the extent permitted by law. To the extent permitted and possible, the invalid or unenforceable term shall be deemed replaced by a term that is valid and enforceable and that comes closest to expressing the intention of such invalid or unenforceable term.

10.13 No Waiver. The failure to enforce any provision of this Agreement shall not constitute a waiver thereof or of the right to enforce such provision thereafter.

10.14 Reasonableness. Wherever this Agreement states that a party shall not unreasonably withhold approval: (a) that party shall not unreasonably delay or condition that approval; (b) no withholding of approval shall be deemed reasonable unless withheld by notice specifying reasonable grounds, in reasonable detail, for that withholding, and indicating specific reasonable changes in the proposal under consideration that would make it acceptable; and (c) if a party grants its consent (or fails to object) to any matter, that shall not waive its rights to withhold consent to any further or similar matter.

10.15 Unavoidable Delay. Each Party's obligation to perform or observe any nonmonetary obligation under this Agreement shall be suspended during such time as such performance or observance is prevented or delayed by Unavoidable Delay.

10.16 Waiver of Jury Trial. THE PARTIES IRREVOCABLY WAIVE ALL RIGHTS TO TRIAL BY JURY IN ANY ACTION, PROCEEDING, COUNTERCLAIM, OR OTHER LITIGATION ARISING OUT OF OR RELATING TO THIS AGREEMENT, THE PARTIES' RELATIONSHIP REGARDING THE PROJECT SITE, ENFORCEMENT OF THIS AGREEMENT, OR ANY CLAIM OF INJURY OR DAMAGE ARISING BETWEEN THE PARTIES.

10.17 Counterparts; Electronic Signatures. This Agreement may be executed in counterpart originals which, when taken together, will constitute but one and the same instrument. The Parties approve the use of electronic signatures, governed by the Uniform Electronic Transactions Act, C.R.S. §§ 24-71.3-101 et seq. The Parties will not deny the legal effect or enforceability of this Agreement solely because it is in electronic form or because an electronic record was used in its creation. The Parties will not object to the admissibility of this Agreement in the form of electronic record, or paper copy of an electronic document, or paper copy of a document bearing an electronic signature, because it is not in its original form or is not an original.

10.18 Integration. This Agreement contains the entire agreement between the Parties and supersedes any and all prior written and/or oral agreements. This Agreement may not be modified, amended, or revised other than by a writing signed by all Parties.

## ARTICLE 11 – Definitions

11.01 “Business Day” means any weekday on which banks are open to conduct regular banking business with bank personnel.

11.02 “Casualty” means any damage or destruction of any kind or nature, ordinary or extraordinary, foreseen or unforeseen, affecting any or all improvements on the Project Site, whether or not insured or insurable.

11.03 “Completion Date” means the earlier of (a) December 31, 2022, unless such date has been extended by reason of an Unavoidable Delay, and (b) the date upon which BCHA obtains a Certificate of Occupancy.

11.04 “Condemnation” means: (a) any temporary or permanent taking of (or of the right to use or occupy) any portion of the Project Site by condemnation, eminent domain, or any similar proceeding; or (b) any action by any government not resulting in an actual transfer of an interest in (or of the right to use or occupy) any Project Site but creating a right to compensation.

11.05 “Environmental Law” means any Law about these at, in, under, above, or upon the Project Site: (a) air, environmental, ground water, or soil conditions; or (b) clean-up, control, disposal, generation, storage, release, transportation, or use of, or liability or standards of conduct concerning, Hazardous Substances.

11.06 “Hazardous Substances” includes flammable substances, explosives, radioactive materials, asbestos, asbestos-containing materials, polychlorinated biphenyls, chemicals known to cause cancer or reproductive toxicity, pollutants, contaminants, hazardous wastes, medical wastes, toxic substances or related materials, explosives, petroleum and petroleum products, and any “hazardous” or “toxic” material, substance or waste that is defined by those or similar terms or is regulated as such under any Law, including any material, substance or waste that is: (i) defined as a “hazardous substance” under Section 311 of the Water Pollution Control Act (33 U.S.C. § 1317), as amended; (ii) defined as a “hazardous waste” under Section 1004 of The Resource Conservation and Recovery Act of 1976, 42 U.S.C. § 6901, et seq., as amended; (iii) defined as a “hazardous substance” or “hazardous waste” under Section 101 of The Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Reauthorization Act of 1986, 42 U.S.C. § 9601 et seq. or any so-called “superfund” or “superlien” law, including the judicial interpretations thereof; (iv) defined as a “pollutant” or “contaminant” under 42 U.S.C.A. § 9601(33); (v) defined as “hazardous waste” under 40 C.F.R. Part 260; (vi) defined as a “hazardous chemical” under 29 C.F.R. Part 1910; or (vii) subject to any other Law regulating, relating to or imposing obligations, liability or standards of conduct concerning protection of human health, plant life, animal life, natural resources, property or the enjoyment of life or property free from the presence in the environment of any solid, liquid, gas, odor or any form of energy from whatever source; provided, however, that reasonable quantities of commercially available fuels, lubricants, cleaning materials and other materials and substances used in connection with the construction and operation of a project like the Project shall not be deemed “Hazardous Substances.”

11.07 “Hazardous Substances Discharge” means any deposit, discharge, generation, release, or spill of Hazardous Substances that occurs or occurred at, on, under, or from the Project Site, or into the Project Site from adjacent or nearby land with or without fault by the Parties, or that arises at any time from the use, occupancy, or operation of the Project Site or any activities conducted therein or any adjacent or nearby real property, or resulting from seepage, leakage, or other transmission of Hazardous Substances from other real property to the Project Site, whether or not caused by a party to this Agreement and whether occurring before, on, or after the Effective Date.

11.08 “Laws” means all laws, ordinances, requirements, orders, proclamations, directives, rules, and regulations of any government affecting the Project Site, this Agreement, or any construction in any way, including any use, maintenance, taxation, operation, or occupancy of, or environmental conditions affecting, the Project Site, or relating to any real estate taxes, or otherwise relating to this Agreement or any party’s rights and remedies under this Agreement, or any transfer of any of the foregoing, whether in force at the commencement date or passed, enacted, or imposed at some later time, subject in all cases, however, to any exemption, waiver, or variance that applies.

11.09 “Liquid Assets” means cash funds in lawful money of the United States of America and assets of the following types and nature so long as such cash and assets are not pledged, encumbered, hypothecated, subject to rights of offset or otherwise restricted: readily marketable obligations issued or directly and fully guaranteed or insured by the United States of America or any agency or instrumentality thereof having maturities of not more than 360 days from the date of acquisition thereof; provided that the full faith and credit of the United States of America is pledged in support thereof; time deposits with, or insured certificates of deposit or bankers’ acceptances of, any commercial bank that is organized under the laws of the United States of America, any state thereof or the District of Columbia or is the principal banking subsidiary of a bank holding company organized under the laws of the United States of America, any state thereof or the District of Columbia, and is a member of the Federal Reserve System, in each case with maturities of not more than 180 days from the date of acquisition thereof; money market accounts or similar investments classified in accordance with GAAP as current assets of BCHA, in money market investment programs registered under the Investment Company Act of 1940, which are administered by financial institutions that have the highest rating obtainable from either Moody’s or S&P; and other readily marketable securities listed on recognized national exchanges in the United States so long as the trading volume and nature of such security is such that they would be available for “same day” liquidation at the value given such securities in the determination of the amount of liquid assets.

11.10 “Loss” means any Casualty or Condemnation.

11.11 “Net Worth” means, on any applicable date of determination, (i) the fair market value of all assets of each BCHA, after all appropriate deductions in accordance with Acceptable Accounting Standards, less (ii) all liabilities of each BCHA (including a fair valuation of contingent or indirect liabilities), all as determined in accordance with Acceptable Accounting Standards.

11.12 “Restoration” means, after a Loss, the alteration, clearing, rebuilding, reconstruction, repair, replacement, restoration, and safeguarding of the damaged or remaining improvements, substantially consistent with their condition before the Loss, subject to such construction as BCHA shall perform in conformity with this Agreement, subject to any changes in Law that would limit the foregoing.

11.13 “Restore” means accomplish a Restoration.

11.14 “Sharing Ratio” means the percentage specified for a Party as its Sharing Ratio on Exhibit D-2. The total of all Sharing Ratios shall always equal 100 percent.

11.15 “Substantial Condemnation” means any Condemnation that (a) takes the entire Project Site; or (b) in BCHA’s reasonable determination renders the remaining Project Site Uneconomic.

11.16 “Unavoidable Delay” means delay in performing any obligation under this Agreement (except payment of money) arising from or on account of any cause whatsoever beyond the obligor’s reasonable control, despite such obligor’s reasonable diligent efforts, including industry-wide strikes, labor troubles or other union activities (but only to the extent such actions affect similar premises at that time and do not result from an act or omission of the obligor), the obligor’s inability to obtain required labor or materials after commercially reasonable efforts to do so, litigation (unless caused by the obligor), Loss, accidents, Laws, governmental preemption, war, or riots. Unavoidable Delay shall exclude delay caused by the obligor’s financial condition, illiquidity, or insolvency. Any obligor claiming Unavoidable Delay shall Notify the obligee: (a) within 30 days after such obligor knows of any such Unavoidable Delay; and (b) within 10 days after such Unavoidable Delay ceases to exist. To be effective, any such notice must describe the Unavoidable Delay in reasonable detail. Where this Agreement states that performance of any obligation is subject to Unavoidable Delay(s) or words of similar import, such Unavoidable Delay(s) shall extend the time for such performance only by the number of days by which such Unavoidable Delay(s) actually delayed such performance.

11.17 “Uneconomic” means that the Project Site or any substantial part of the Project Site: (1) is materially diminished in value or utility; (2) cannot be used for its previously intended purpose; (3) is subject to material impairment of access to, parking facilities benefiting, or any material service(s) necessary or appropriate for economic operation; (4) cannot reasonably be operated as a Garage; or (5) cannot be developed or operated in a commercially reasonable manner.

*[Signature pages follow]*

**BCHA**

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

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

Norris Boyd, Interim Director

**COMPANY**

Coffman Place LLC, a Colorado limited liability  
company

By: Coffman Place GP LLC, a Colorado limited  
liability company, its managing member

By: Housing Authority of the County of Boulder,  
Colorado, a public body, corporate and politic,  
doing business as Boulder County Housing  
Authority, its sole member and manager

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

Norris Boyd, Interim Director

**COUNTY**

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

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

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

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



**LONGMONT DOWNTOWN DEVELOPMENT  
AUTHORITY**, a Colorado downtown development  
authority

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

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

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

**Exhibit A-1**

**Legal Description of County Property**

Lots 1-11 and North half of Lot 12, Block 39, City of Longmont, State of Colorado.

**Exhibit A-2**

**Legal Description of GID Property**

South half of Lot 12 and Lots 13-14, Block 39, City of Longmont, State of Colorado.

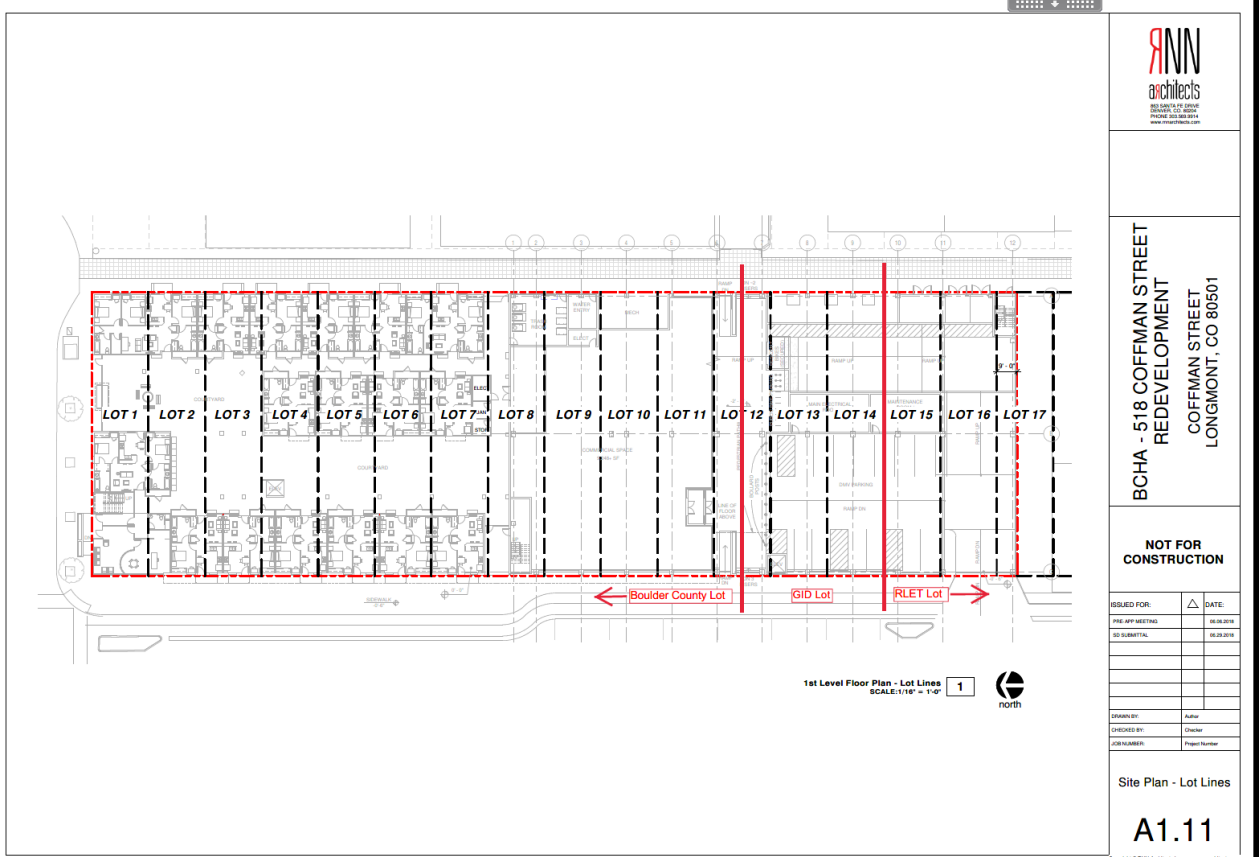
**Exhibit A-3**

**Legal Description of RLET Property**

Lot 15, Lot 16, and the northern 9 feet of Lot 17, Block 39, City of Longmont, County of Boulder, State of Colorado.

# Exhibit A-4

## Depiction of the Project Site



**Exhibit B-1**

**Development Criteria**

- A. Total construction cost of the Garage shall not exceed [\$\_\_\_\_] million.
- B. Total number of spaces within the Shared Garage shall not be fewer than 260 spaces.
- C. The allocated number of parking spaces within the Shared Garage shall be:

<i>Party</i>	<i>Minimum # parking spaces</i>	<i>% of parking spaces</i>
Boulder County	90 + 8 ADA spaces	37%
Longmont DDA	65 + 5 ADA spaces	27%
RLET	26 + 2 ADA spaces	11%
BCHA	28 + 2 ADA spaces	11%
Company	33 + 3 ADA spaces	14%
<b>Total</b>	<b>262 (including ADA)</b>	<b>100%</b>

- D. The construction schedule reflects a substantial completion date for the Garage of no later than December 31, 2022.
- E. Total construction cost of the Commercial Space shall not exceed [\$\_\_\_\_] million.
- F. The total size of the Commercial Space shall not be less than [8,000] square feet.
- G. The construction schedule reflects a substantial completion date for the Commercial Space of no later than December 31, 2022.

**Exhibit B-2**

**Summary of Plans and Specifications for the Project**

*[insert table or bullets or reference to plan set on file with City]*

**Exhibit C**

**Construction Schedule for the Project**

*(attached)*



**Exhibit D-1**

**Construction Budget for the Project**

*(attached)*

**Exhibit D-2**

**Cash Contributions from each Party for the Garage Construction Project**

<i>Party</i>	<i>Minimum # parking spaces</i>	<i>% of parking spaces</i>	<i>Cash Deposited in Escrow</i>	<i>Garage Construction Project Sharing Ratio</i>
Boulder County	98	37%	\$4,100,000	33%
Longmont DDA	70	27%	\$2,000,000	19%
RLET	28	11%	\$0	0%
BCHA	30	11%	[\$4,340,505]	35%
Company	36	14%	[\$1,582,832]	13%
<b>Total</b>	<b>262</b>	<b>100%</b>	<b>[\$12,323,337]</b>	<b>100%</b>

**Exhibit D-3**

**Anticipated Draw Schedule for the Project**

*(attached)*

**Exhibit D-4**

**Form of Draw Request for the Project**

*(attached)*

**Exhibit D-5**

**Initial Draw Amount**

*(attached)*

**Exhibit D-6**

**Operating Budget for the Project**

*(attached)*

**Exhibit E**

**Form of Notice of Completion for the Project**

*(attached)*

**Exhibit F**  
**Notice Addresses**

**BCHA:** Attn: Executive Director  
1313 25<sup>th</sup> St., Suite 200  
Boulder, CO 80304

with a copy to: Bryan Cave Leighton Paisner LLP  
Attn: Ben Doyle, Esq.  
One Boulder Plaza, 1801 13th Street, Suite 300  
Boulder, CO 80302-5386

**County:** Boulder County  
Attn: County Administrator  
P.O. Box 471  
Boulder, CO 80306

with a copy to: Boulder County Attorney's Office  
Attn: Ben Pearlman  
P.O. Box 471  
Boulder, CO 80306

**LDDA:** Attn: Executive Director  
320 Main St  
Longmont, CO 80501

with a copy to: Lyons Gaddis, PC  
PO Box 978  
Longmont, CO 80502

**Company:** c/o BCHA  
Attn: Executive Director  
1313 25<sup>th</sup> St., Suite 200  
Boulder, CO 80304

with a copy to: Bryan Cave Leighton Paisner LLP  
Attn: Ben Doyle, Esq.  
One Boulder Plaza, 1801 13th Street, Suite 300  
Boulder, CO 80302-5386

with a copy to: [Wincopin Circle LLLP]  
c/o Enterprise Community Asset Management, Inc.  
70 Corporate Center  
11000 Broken Land Parkway, Suite 700  
Columbia, MD 21044  
Attention: General Counsel

with a copy to: Gallagher Evelius & Jones LLP  
218 N. Charles Street, Suite 400  
Baltimore, Maryland 21201  
Attention: Kenneth S. Gross, Esq.



**Exhibit G**

**Insurance Requirements for the Project**

*(attached)*

## **Insurance Requirements**

*[Exhibit under review with BCHA Risk Management team]*

### **A. Construction Phase**

1. *Owner's Commercial General Liability (Bodily Injury and Property Damage) Insurance* of the real estate development class in amounts not less than \$1,000,000 per occurrence, \$2,000,000 in the aggregate, and \$5,000,000 umbrella for structures with 1-10 stories or \$10,000,000 umbrella for structures with 11 or more stories. A per location aggregate endorsement should be included on an unlimited basis for any policy that has multiple locations. Maximum deductible is \$10,000 and the deductible should be issued on a per occurrence basis in lieu of a per claim basis. Policy shall not contain an exclusion for loss or damage caused by mold, fungus, moisture, microbial contamination, or pathogenic organisms, unless such insurance without the exclusions is either unavailable or is not available at a reasonable cost and the potential risk for loss or damage is minimal. Policy must be primary and provide that any such insurance maintained by non-BCHA Parties or any other additional insured is excess and non-contributory. BCHA and insurers must waive their rights of subrogation against non-BCHA Parties. BCHA is to be named as a Named Insured. Non-BCHA Parties are to be named as Additional Insured(s) via CG 2026, CG 2027, or carrier's equivalent.
  
2. *General Contractor's Commercial General Liability (including Broad Form Property Damage) and Property Damage Insurance* of the construction exposure class in the same amounts set forth above. Automobile liability insurance with a \$1,000,000 combined single limit per accident for owned, hired and non-owned autos, Employer's Liability with a \$1,000,000 limit, and workers' compensation in the statutory amount. A per location aggregate endorsement should be included on an unlimited basis for any policy that has multiple locations. Maximum deductible is \$10,000 and the deductible should be issued on a per occurrence basis in lieu of a per claim basis. Completed operations coverage should be maintained a minimum of three years after project completion. Policy must be primary and provide that any such insurance maintained by non-BCHA Parties or any other additional insured is excess and non-contributory. General Contractor and insurers must waive their rights of subrogation against the Parties. The Parties are to be named as Additional Insureds via CG 2026, CG 2027, CG 2010 AND 2037 or carrier's equivalent.
  
3. *All-Risk Builder's Risk Insurance* ("All-Risk" or "Special" form, NOT "NAMED PERIL" POLICY; Non-Reporting, completed value form). Full limits of insurance coverage must be purchased to include and not be limited to the perils of sinkhole (see C.1), windstorm and, if applicable, named storm (see C.2), flood (see C.3), and earthquake (see C.4) and any other applicable insurance based upon the exposures to the location as well as those found in the "Special" form. The policy shall provide 100% replacement cost coverage in an amount equal to completed construction value, including, and soft cost coverage, a permission to occupy endorsement, an agreed amount endorsement calculated in accordance with the methodology set forth in the attached worksheet, and a Waiver of Coinsurance or Agreed Amount clause. For rehabilitation projects, the building acquisition cost is to be included in the Builder's Risk policy. Maximum deductible is \$10,000, but

may be higher on a case-by-case basis. BCHA and insurers must waive their rights of subrogation against non-BCHA Parties. BCHA is to be named as a Named Insured. The non-BCHA Parties are to be named as Additional Insured(s)/Additional Named Insured(s).

4. *Architect's [and Engineer's] Errors and Omissions Insurance* in amounts not less than \$1,000,000 on Projects. Architect [and Engineer] shall maintain coverage for a minimum of three years after the Completion Date. Non-BCHA Parties to be Certificate Holder at address listed below.

## **B. Catastrophic Risk and Additional Insurance Coverage**

1. *Sinkhole/Mine Subsidence Insurance* in an amount equal to 100% replacement cost if the project is located in an area that is prone to sinkhole/mine subsidence.
2. *Windstorm Coverage* if “all-risk” property damage insurance excludes wind-related events in an amount equal to 100% of replacement cost. Maximum deductible is 5% of the total insured value and the deductible shall be applied on a per building basis (in lieu of a per location basis). The policy shall be written on a per occurrence form. Required in special hazard areas (ZONE III, IV or carrier’s equivalent; *Named Storm* required in coastal counties listed by NOAA Office of Coastal Management).
3. *Flood Insurance* in an amount equal to 100% of the full replacement cost using insurance available through NFIP and, if necessary, excess coverage if the project is located in a Special Flood Hazard Area. Maximum deductible is 2% of the total insured value per building. Proper evidence of flood insurance coverage is either: an actual flood insurance policy that shows the flood risk zone is insured or a flood insurance declaration page that includes the flood risk zone on the flood hazard determination form.
4. *Earthquake coverage* – Property specific seismic reports are required for all projects located in Zones 3 or 4. If the seismic Scenario Expected Loss (SEL) using a probabilistic 475-year Design Basis Earthquake event (DBE) is 20% or greater before construction, the planned construction/retrofit should seek to bring the projected seismic SEL-DBE as low as economically feasible below 20%. Projects with post-renovation SEL-DBE higher than 40% will be considered only on an exception basis.

During construction, all projects with seismic SEL-DBE rating 20% or higher pre-construction must carry earthquake insurance. Earthquake coverage must be replacement cost times the SEL-DBE percentage times 150%. The maximum deductible is 5% of the required insurance amount, but may be higher on a case-by-case basis.

All projects with seismic SEL-DBE rating 20% or higher post construction must carry earthquake insurance. Earthquake coverage must be equal to the replacement cost times the SEL-DBE percentage times 150%. The maximum deductible is 5% of replacement cost, but may be higher on a case-by-case basis.

## **C. Evidence of Insurance**

*Insurance coverage must be evidenced by Certificates of Insurance and properly endorsed policies*

*certified as true and correct by the insurance agent, but may not be evidenced solely by Certificates and Enterprise reserves the right to be provided with binders, endorsements, and full policy copies as it deems necessary. All Liability insurance to be evidence on form ACORD 25; all Property/Builder's Risk/Catastrophic Perils to be evidenced on form ACORD 28. All evidence of insurance must satisfy the following requirements:*

1. Housing Authority of the County of Boulder, Colorado, a public body, corporate and politic, doing business as Boulder County Housing Authority should be the named insured.
2. Coffman Place LLC, a Colorado limited liability company; County of Boulder, Colorado, a public body, corporate and politic; and Longmont Downtown Development Authority, a Colorado downtown development authority, should be named as an additional insured(s) and should appear in the certificate holder box with the following address:

BCHA:                   Attn: Executive Director  
                              1313 25<sup>th</sup> St., Suite 200  
                              Boulder, CO 80304

County:                 Boulder County Administrative Services Department  
                              Attn: Director  
                              P.O. Box 471  
                              Boulder, CO 80306

LDDA:                   Attn: Executive Director  
                              320 Main St  
                              Longmont, CO 80501

Company:              c/o BCHA  
                              Attn: Executive Director  
                              1313 25<sup>th</sup> St., Suite 200  
                              Boulder, CO 80304

3. Policies must be written with an A.M. Best rated company of “A VIII” or better.
4. All binders and policies should contain a cancellation clause stating that the policy will not be canceled without at least **thirty (30)** days prior written notice to the non-BCHA Parties, ten (10) days for non-payment of premium. No policy can be cancelled without the prior written consent of the non-BCHA Parties. The non-BCHA Parties will require a copy of any Reinstatement notice, if applicable.
5. Certificates must document the amount of all deductibles.
6. All binders and policies must be accompanied by evidence of premium payment.
7. At least seven (7) days prior to the expiration of the applicable policy, BCHA shall provide the non-BCHA Parties the required evidence of coverage to reflect that such policy has been renewed (or replaced, as applicable).

**Builder's Risk Insurance  
Replacement Cost Restorationsheet**

**A. *Completed Construction Value***

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Site Restoration	\$ XXXX
New construction (commercial)	\$ XXXX
General Requirements	\$ XXXX
Contractor Overhead	\$ XXXX
Contractor Profit	\$ XXXX
Furniture, Fixtures, Equipment	\$ XXXX
Construction Contingency	\$ XXXX
Other (specify)	\$ XXXX

*Subtotal* \$ XXXXXX

**B. *Plus Soft Cost Coverage***

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Architect Design (to the extent needed to reconstruct)	\$ XXXX
Architect Supervision (100%)	\$ XXXX
Construction Management Fees	\$ XXXX
Hazard and Liability Insurance	\$ XXXX
Legal Fees: Real Estate Development	\$ XXXX
Soft Cost Contingency	\$ XXXX
Construction Period Interest	\$ XXXX
Other (specify)	\$ XXXX

*Subtotal* \$ XXXXXX

**Total Replacement Cost** \$ XXXXXX

**Exhibit H-1**

**Form of Small Planned Community Declaration**

*(attached)*

**Exhibit H-2**

**Form of Small Planned Community Map**

*(attached)*

**Exhibit I**

**Form of Citibank Construction Administration and Disbursement Agreement**

*(attached)*