

## MASTER DEVELOPMENT AGREEMENT BROWN RANCH

**THIS MASTER DEVELOPMENT AGREEMENT** (“Agreement”) is entered into as of [\_\_\_\_\_, 2024] by and between **YAMPA VALLEY HOUSING AUTHORITY**, 2100 Elk River Road, Steamboat Springs, Colorado 80477, a Colorado multijurisdictional housing authority, a public housing agency (“Authority”) and **THE MICHAELS DEVELOPMENT COMPANY I, L.P.**, 2 Cooper Street, 14<sup>th</sup> Floor, Camden, New Jersey 08102, a New Jersey limited partnership (“Developer”).

In consideration of the following provisions and the mutual covenants and agreements set forth herein, which both parties agree to be good and valuable consideration, the receipt and sufficiency of which are acknowledged, the parties agree as follows:

### PREAMBLE

A. This Agreement governs the redevelopment of a 534-acre site currently known as Brown Ranch located in Steamboat Springs, Colorado (the “Property”). The Authority is the fee owner of the Brown Ranch Project Site.

B. The Authority and Developer intend to develop the Property in multiple phases and in conformance with its Brown Ranch Community Development Plan and the Annexation Agreement entered into by the Authority and the City of Steamboat Springs, each as hereafter defined (the “Brown Ranch Project”). The Brown Ranch Project will include an estimated 2,264 residential units, 1,302 of which will be multifamily rental units. The parties anticipate **[30% of the multifamily rental units]** will be low-income units.

C. The Property will be developed by Developer in collaboration with the Authority pursuant to the terms of this Agreement.

### AGREEMENT

In consideration of the foregoing promises, covenants and agreements, the sum of Ten Dollars (\$10), and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Authority and the Developer intending to be legally bound, agree as follows:

### ARTICLE I – PREAMBLE; ENGAGEMENT OF DEVELOPER

1.01 Incorporation of Preamble. This Preamble is hereby incorporated into this Agreement.

1.02 Engagement of Developer. The Authority hereby engages the Developer to perform the obligations and services specified in this Agreement and the Developer hereby accepts such engagement on the terms and conditions set forth herein.

1.03 Definitions. Capitalized terms used herein and not otherwise defined will have the meanings set forth below.

"Annexation Agreement" means that Brown Ranch Annexation Agreement dated \_\_\_\_\_ between the City of Steamboat Springs and the Authority.

"Approval" and "Approved" have the meanings set forth in Section 3.02 hereof.

"Arrangement" means any contract, lease, purchase order or other agreement into which the Developer enters.

"Authority Affiliate" means an affiliate of the Authority.

"Authority Parties" means, collectively, the Authority, its affiliates, and/or any of their respective officers, directors, employees and agents, as set forth in Section 16.01 hereof.

"Brown Ranch Community Development Plan" means [ \_\_\_\_\_ ].

"Claims" means all claims, damages, losses, liabilities costs and expenses as set forth in Section 16.01 hereof.

"Closing" means the financial closing of a Phase.

"Closing Documents" means all documents necessary and appropriate to implement the Development Budget and scope of work for such phase.

"Code" means the Internal Revenue Code of 1986, as amended.

"Construction Services" means all construction or rehabilitation services listed on Exhibit A attached hereto.

"Design Services" means all design/planning services, including, but not limited to, the services listed on Exhibit B attached hereto.

"Developer Guarantees" means the Developer's guarantee to the Authority of the lien free completion of the construction of a Phase following a closing in

compliance with the Phase-Specific Development Schedule(s) and the Phase-Specific Development Budget(s).

"Development" means the development of the Property as described in the Preamble.

"Development Budget" means the budget for the Development which is based on estimates of the development costs of each Phase, prepared by the Developer and Approved by the Authority as set forth herein.

"Development Contingencies" has the meaning set forth in Section 15.05 hereof.

"Development Fee" means for each Phase the fees, inclusive of all overhead, that will be earned by and paid to the Developer and shared with the Authority during the development period, including any deferred amounts.

"Development Plan" means the over-all plan for the Development, specifying at a minimum the number of and scope of each Phase, the number, type and bedroom distribution of the units to be constructed in each Phase, any restrictions which will apply to each unit, the approximate rental price of various units, the approximate cost of the Development, the expected types and sources of financing, and a general schematic site plan prepared by the Developer and Approved by the Authority, as set forth in this Agreement. Development Plan shall also include the Phase-Specific Development Plans, as applicable.

"Development Schedule" means the over-all schedule for the Development, including milestones, a critical path schedule, of time and order for the performance of the Development, based upon reasonable times for review, approval and return of documents to ensure the prompt and continuing prosecution of the Brown Ranch Project prepared by the Developer and Approved by the Authority, as set forth in this Agreement. Development Schedule shall include the Phase-Specific Development Schedules, as applicable.

"Development Services" means the provision, or arranging for the provision of, all such services as are necessary for the redevelopment and construction of the Development and/or each Phase, including, without limitation, the Management and Ownership Services, the Financing Services, the Design Services, the Site Preparation Services and the Construction Services.

"Documentation" means all applications, documents, drawings, plans, specifications, studies, files, contracts, permits, approvals, grants, tax credit reservations, bond allocations and all other documents and materials, whether completed or in process, in which the Developer or a Project Entity has any right, title or interest including, but not limited to, architectural documents prepared, accumulated or

generated by or for the Developer in connection with this Agreement, or in connection with the Development Services.

"Environmental Laws" means any and all federal, state, and local laws, regulations, statutes, codes, rules, resolutions, directives, orders, executive orders, consent orders, guidance from regulatory agencies, policy statements, judicial decrees, ordinances, or any judicial or administrative interpretation of, any of the foregoing, pertaining to the protection of land, water, air, or the environment whether now or in the future enacted, promulgated or issued.

"Event of Infeasibility" has the meaning set forth in Section 15.05(c) hereof.

"Finance Agency" – means the Colorado Housing Finance Authority.

"Financing Plan" means the overall plan for the financing and equity investment necessary for the Development and each Phase, as amended from time to time.

"Financing Services" means all financing activities and services, including, without limitation, the activities and services set forth on Exhibit C hereto.

"Ground Lease" means for each Phase, a ground lease between the Authority and a Project Entity.

"Hazardous Materials" means any hazardous, dangerous, or toxic chemical, waste, pollutant, contaminant or substance within the meaning of any applicable Environmental Law prohibiting, limiting or otherwise regulating the use, exposure, release, emission, discharge, generation, manufacture, sale, transport, handling, storage, treatment, reuse, presence, or disposal or recycling of such pollutant.

"HUD" means the United States Department of Housing and Urban Development.

"LIHTC" means low-income housing tax credits allocated pursuant to Section 42 of the Code.

"Management Agent" means the qualified professional management firm approved by the Authority, and acceptable to all lenders, the Finance Agency and the Investor and the Developer with which a Project Entity enters into a management agreement.

"MBE" means minority business enterprise.

"Phase" means a portion of the Development to be acquired by a Project Entity and developed and operated as contemplated by this Agreement.

"Phase-Specific Development Budget" means the development budget prepared for the particular Phase by the Developer and Approved by the Authority as set forth in this Agreement.

"Phase-Specific Development Plan" means the plan for a Phase specifying, at a minimum, the number, type and bedroom distribution of the units to be constructed, any restrictions which will apply to each unit, the approximate rental price of various units, the approximate cost of the Phase, the expected types and sources of financing, and a general schematic site plan prepared by the Developer and Approved by the Authority as set forth in this Agreement, as amended from time to time pursuant to this Agreement.

"Phase-Specific Development Schedule" means the schedule for a Phase of the Development, including milestones, a critical path schedule of time and order for the performance of the Phase, based upon reasonable times for review, approval and return of documents to ensure the prompt and continuing prosecution of the Phase prepared by the Developer and Approved by the Authority as set forth in this Agreement, as amended from time to time pursuant to this Agreement.

"Phase-Specific Financing Plan" means a plan for the financing and equity investment necessary to construct a Phase, as amended from time to time pursuant to this Agreement.

"Project Entity" means a limited partnership or limited liability company formed by the Developer to acquire, own, rehabilitate, operate and manage a particular Phase of the Development as contemplated by this Agreement.

"Site Preparation Services" means all site preparation services, including, without limitation, the services set forth on Exhibit D hereto.

"Subcontractors" means all subcontractors working on the Development, including the general contractor, architect, and engineer and all of their subcontractors.

"Substantial Completion" means with respect to each Phase of the Development, the date that all of the following have occurred: (i) the Architect shall certify in writing that the contractor has completed the Phase in conformance with the Phase-Specific Development Plan, and that such work is deemed complete, notwithstanding minor details of construction, mechanical adjustment or cosmetic items which do not interfere with the use and occupancy of such Phase for its intended purpose (i.e., punch list items); and (ii) the Brown Ranch Project Entity has obtained temporary or permanent certificates of occupancy or certificate of approval or their equivalent from all appropriate governmental entities for such Phase, if applicable.

"Termination for Infeasibility" means the termination of this Agreement following the occurrence of an Event of Infeasibility and receipt from the Developer of written notice of the Developer's desire to terminate this Agreement.

"WBE" means women-owned business enterprise.

## **ARTICLE II – DEVELOPER SERVICES; OBLIGATIONS**

2.01 Development Plan. (a) Primary Elements. The parties have reviewed and updated the "Market Study" dated \_\_\_\_\_ and prepared by \_\_\_\_\_ to determine the appropriate unit mix and affordability distribution of the Development. The parties will agree to a planned unit mix and affordability restrictions that will be incorporated into a Development Plan as hereafter set forth.

(b) Master Development Plan. The parties have agreed on the unit mix and affordability restrictions (the "Primary Elements"). Not later than one hundred twenty (120) days following execution of this Agreement by both parties, Developer and Authority will jointly develop an overall Development Plan for the Brown Ranch Project which shall specify, at a minimum, the number, type and bedroom distribution, any affordability restrictions which will apply to each unit, the approximate rental price of various units, the approximate cost of the Development, the expected types and sources of financing, and a general concept site plan and location of the anticipated Phases within the Brown Ranch Project Site. The Development Plan shall include an overall Development Budget (as defined in Section 4.02 hereof) and an overall Development Schedule (as defined in Section 4.01 hereof). Authority's Approval of the Development Plan will confirm Authority's Approval of the proposed actions by Developer described in the Development Plan, and will permit Developer, lenders, investors and other third parties to proceed to finalize plans in reliance upon such Approval. As the lenders, investors and other third parties providing funds commit to the Development, Developer shall amend the Development Plan as necessary to take into account the requirements of such third parties and submit the same to Authority for Approval, which may be withheld if the amendment is not in conformance with the Primary Elements.

Developer acknowledges and agrees that ~~that~~ the Annexation Agreement provides that if Authority does not cause the delivery of **four hundred twenty (420)** dwelling units as contemplated by the Annexation Agreement, within six (6) years of the Effective Date of the Annexation Agreement, future City funding to the Authority is jeopardized. The Development Schedule shall provide for certain Milestones for unit deliveries as well as completion of horizontal improvements. Failure by Developer to meet the Milestones shall constitute default under this Agreement, and allow Authority to terminate this Agreement, without penalty or payment. This provision shall be incorporated in the appropriate document(s) at the Closing(s).

(b) Phase-Specific Development Plan. The Developer will submit to the Authority, not later than one hundred and eighty (180) days after the execution of this

Agreement for its review and approval a Phase-Specific Development Plan for the first Phase of the Development, which shall specify, at a minimum, the number, type and bedroom distribution of the units to be developed for each Phase, any restrictions which will apply to each unit, the approximate rental price of various units, the approximate cost of the specific phase, the expected types and sources of financing, and a general concept site plan for each Phase. The Phase-Specific Development Plan will include a Phase-Specific Development Budget (as defined in Section 4.02 hereof) and a Phase-Specific Development Schedule (as defined in Section 4.01 hereof). The Authority's Approval of the Phase-Specific Development Plan will confirm the Authority's Approval of the proposed actions by the Developer described in the Phase-Specific Development Plan, and will permit the Developer, lenders, investors and other third parties to proceed to finalize plans in reliance upon such Approval. As the lenders, investors and other third parties providing funds commit to such Phase, the Developer shall amend the Phase-Specific Development Plan as necessary to take into account the requirements of such third parties and submit the same to the Authority for Approval. The Developer will submit Phase-Specific Development Plans for future Phases as set forth in this Section 2.01(b) as set forth in the Development Plan.

2.02 Developer's General Obligations. (a) Subject to Section 2.02(b) and Section 15.05 hereof, the Developer shall use good faith efforts to complete a financial closing of each Phase of the Development (the "Closing") to occur in accordance with the Development Plan on or prior to the date shown in the Phase-Specific Development Schedule, subject to reasonable extensions of time, it being understood that the Phase-Specific Development Plan will contain the Developer's best estimate of time schedules and the Milestones set forth in the Development Plan.

(b) Notwithstanding any other provision of this Agreement to the contrary, Developer will not be obligated and will not be liable in any manner for the failure to:

(1) Accept any of the development risk or give any guaranty not normally accepted or given by Developer consistent with its business practice. Accordingly, the partners acknowledge that specifics regarding rules and obligations for each Phase will be memorialized in letters of intent among the investor and/or lenders.

(2) Complete a Closing for any Phase unless funding equal to budgeted uses are firmly committed or if such Closing is economically infeasible as to development and operating costs.

In addition, Authority acknowledges that Developer is not an architect, engineer or construction professional and its obligations hereunder are limited to using the reasonable skill and judgment of a prudent, experienced developer of residential housing. Therefore, Developer shall require all contractors, subcontractor, and consultants to have the proper certifications, bonding, and insurances to design and construct consistent with local codes and industry standards.

2.03 Development Services. Except for the services to be provided by the Authority pursuant to Section 3.01 hereof, the Developer or Project Entity, as applicable, will provide, or arrange for the provision of, all such services as are necessary for the acquisition and development, including, without limitation, the following services (collectively the "Development Services"):

(a) Design/Planning Services. The design/planning services listed on Exhibit B hereto (the "Design Services").

(b) Site Preparation Services. The site preparation services listed on Exhibit D hereto (the "Site Preparation Services").

(c) Financing Services. The financing activities and services listed on Exhibit C hereto (the "Financing Services").

(d) Construction Services. The construction services listed on Exhibit A hereto (the "Construction Services").

(e) Management and Ownership Services. The management services listed on Exhibit E hereto (the "Management and Ownership Services").

2.04 Progress Reports and Information. The Developer shall furnish to the Authority the following:

(a) Within ten (10) days after receipt, copies of all third-party plans, drawings, reports, and manuals obtained by the Developer or its agents and Subcontractors in connection with the planning, design, development and operation of the Development and each Phase;

(b) Within fifteen (15) days after receipt, copies of any material correspondence, notices or orders of any government agency concerning the Development and each Phase;

(c) Within fifteen (15) days after receipt, copies of any complaints, or any actions or arbitration or investigatory proceedings to which the Developer or Subcontractor is a party, or which may affect the Development and each Phase or the performance by any party;

(d) Within fifteen (15) days, or on the occurrence of the event, notice of any default or of any circumstance which with the giving of notice or passage of time would constitute a default under any loan agreement or other contract associated with the Development or any Phase thereof to which the Developer is a party.

2.05 Security for Overruns. At Closing of each Phase, the Developer will guarantee to the Authority the lien free completion of the applicable Phase of the Development in compliance with the Phase-Specific Development Schedule and Phase-



Specific Development Budget pursuant to a form of guaranty reasonably acceptable to the Authority and the Developer.

2.06 Project Guarantees. The Developer, and not the Authority or any Authority Affiliate, will provide all guarantees required by the equity investors and lenders, consistent with its business practice of providing specific, limited guarantees (collectively, the "Developer Guarantees").

### **ARTICLE III – AUTHORITY RESPONSIBILITIES**

3.01 Authority Responsibilities. The Authority shall have the responsibilities set forth on Exhibit 3.01 hereto. Reimbursement of certain of the Authority's expenses may be included as a Development expense in the Development Budget. The Authority may, but is not obligated to, provide additional grants and/or subordinate financing.

3.02 Approvals. (a) The Authority shall review any matter submitted for comment and shall do so as expeditiously as possible so as not to impede the timing contemplated in the Development Schedule and Phase-Specific Development Schedules. The actions described in this Section 3.02 shall constitute the necessary actions by the Authority to provide an "Approval" or deem a matter "Approved" in this Agreement.

(b) Except where set forth specifically herein, for all actions requiring a party's (the "Approving Party's") Approval, the other party (the "Requesting Party") shall submit the request for Approval and supporting information. The Approving Party shall have a specified number of days to respond in writing. The Approving Party's response, if not an Approval, must include a detailed basis for any objection and suggest reasonable modifications to obtain Approval. For some issues, this Agreement identifies the number of days that the Approving Party shall have to respond. For other issues, the amount of response time shall be stated in the notice and shall be proportionate to the type and magnitude of the decision, but in no event less than five (5) days. For example, but not in limitation, the time for review and Approval of construction change orders shall be shorter than the time for review and Approval of plans and specifications. If the Requesting Party does not receive a response within the specified number of days from the delivery to the Approving Party of a notice as provided in Section 23.01 hereof, the Approving Party shall be deemed to have given its Approval.

(c) In any request for Approval, consent or other determination by any party required under any provision of this Agreement, the party shall act reasonably, in good faith and in a timely manner. The parties acknowledge that if the Authority requires approval from its Board on a specific matter, that the time frame for said specific approval will be adjusted in accordance with scheduled Board meetings.

3.03 (Omitted).

3.04 (Omitted).

3.05 For Sale Units & Nonresidential Components. Authority reserves the right to develop with other development partners the for-sale units and/or nonresidential components in the Development. However, in the event Developer wishes to be the development partner for any/all of the for-sale units and/or nonresidential components and can do the same at the same or better terms as any contemplated development partner, Authority will partner with Developer for the development of the for-sale units and/or nonresidential components. Developer will work with Authority to determine whether Developer will act as developer of the for-sale units and/or nonresidential components. It is agreed and understood that reimbursement for the proportionate cost of the horizontal development attributable to the for-sale units and/or nonresidential components will be payable to **[OPEN]**. The parties will agree to the terms of said reimbursement within one hundred twenty (120) days of acceptance of the Development Plan. It is agreed and understood that Authority reserves the right to act as listing agent for the sale of for-sale units, and to act as the property manager for the for-sale units.

#### **ARTICLE IV – DEVELOPMENT ACTIVITIES**

4.01 Development Schedule. (a) Master Development Schedule. Not later than one hundred twenty (120) days after the execution of this Agreement and no later than December 31<sup>st</sup> of each subsequent year, the Developer shall prepare and submit an updated/revised Development Schedule and Phase-by-Phase schedule for review, approval and return of documents to ensure the prompt and continuing prosecution of the Brown Ranch Project. The Developer shall periodically revise and update the Development Schedule to reflect evolving events and circumstances, including actual dates of commencement and completion of Phases. The Developer shall supplement the Development Schedule with detailed schedules for submissions and responses of necessary deliverables associated with tasks covered by the Development Schedule, taking into account appropriate scheduling for submission, review and Approval by the Authority. An updated Development Schedule will be provided when deemed necessary by the Developer or when reasonably requested by the Authority. Proposed revisions to the Development Schedule will be submitted by the Developer to the Authority with identification and explanation of changes. The Authority will promptly review all such proposed revisions which, upon Approval by the Authority, not unreasonably withheld, delayed, or conditioned, will constitute the Development Schedule.

(b) Phase-Specific Development Schedule. When set forth in the overall Development Schedule, the Developer shall prepare and submit detailed Phase-Specific Development Schedule(s) for review, approval and return of documents to ensure the prompt and continuing prosecution of such Phase. Each Phase-Specific Development Schedule shall comply with all deadlines imposed by any other HUD program requirement, as applicable. The Developer shall periodically revise and update each Phase-Specific Development Schedule to reflect evolving events and circumstances, including actual dates of commencement and completion. The Developer shall supplement each Phase-Specific Development Schedule with detailed schedules for submissions and responses of necessary deliverables associated with

tasks covered by the Development Schedule, taking into account appropriate scheduling for submission, review and Approval by the Authority. Proposed revisions to each Phase-Specific Development Schedule will be submitted by the Developer to the Authority with identification and explanation of changes. The Authority will promptly review all such proposed revisions which, upon Approval by the Authority, not unreasonably withheld, delayed or conditioned, will constitute a Phase-Specific Development Schedule. Revised Schedules shall remain consistent with the applicable milestones unless the Authority approves changes in any milestones.

4.02 Development Budget. (a) Master Development Budget. Not later than one hundred twenty (120) days after the execution of this Agreement and no later than December 31<sup>st</sup> of each subsequent year, the Developer shall prepare and submit an updated/revised Development Budget and pro-forma to the Authority for Approval. The Authority shall not unreasonably withhold approval of the Development Budget and the amendments thereto and shall work with the Developer to mutually agree upon any costs in dispute. The Development Budget shall encompass all sources and uses of funds which are the cost responsibility of the Development and to be paid as Development-related expenses by each category of the Development Services and on a modified cash basis, including open accounts payable, in accordance with conventional practice consistently applied and shall detail the assumptions upon which such Development Budget is based. An updated Development Budget will be provided when deemed necessary by the Developer or when reasonably requested by the Authority. Proposed revisions to each Development Budget in excess of ~~Fifty Thousand Dollars (\$50,000) for any one change or One Five~~ Hundred Thousand Dollars (\$500,000) for any one change or Two Million Dollars (\$2,000,000) in the aggregate in any quarter will be submitted by the Developer to the Authority in the form of a proposed revised Development Budget with identification and explanation of changes, which upon Approval by the Authority, not unreasonably withheld, delayed or conditioned, shall be deemed to constitute the Development Budget. The Authority may approve or disapprove such changes in its reasonable discretion, provided that the Authority shall not withhold or delay Approval of any proposed change in the Development Budget for which the Developer has identified and secured non-Authority funds. Developer will prepare an overall Development Budget and a separate Development Budget for each Phase.

(b) Phase-Specific Budget. Not later than one hundred twenty (120) days after the execution of this Agreement and no later than December 31<sup>st</sup> of each subsequent year, the Developer shall prepare and submit an updated/revised Development Budget and pro-forma to the Authority for Approval. The Authority shall not unreasonably withhold Approval of the Development Budget and the amendments thereto and shall work with the Developer to mutually agree upon any costs in dispute. The Development Budget shall encompass all sources and uses of funds which are the cost responsibility of the Development and to be paid as Development-related expenses by each category of the Development Services and on a modified cash basis, including open accounts payable, in accordance with conventional practice consistently applied and shall detail the assumptions upon which such Development Budget is based. An

updated Development Budget will be provided when deemed necessary by the Developer or when reasonably requested by the Authority. Proposed revisions to each Development Budget in excess of Fifty Thousand Dollars (\$50,000) for any one change or One Hundred Thousand Dollars (\$100,000) in the aggregate in any quarter will be submitted by the Developer to the Authority in the form of a proposed revised Development Budget with identification and explanation of changes, which upon Approval by the Authority, not unreasonably withheld, delayed or conditioned, shall be deemed to constitute the Development Budget. The Authority may approve or disapprove such changes in its reasonable discretion, provided that the Authority shall not withhold or delay Approval of any proposed change in the Development Budget for which the Developer has identified and secured non-Authority funds. Developer will prepare an overall Development Budget and a separate Development Budget for each Phase.

4.03 Infrastructure. Subject to the availability of funding and the execution of a “Supplemental Agreement” to be entered into by the parties or their affiliates or designees, to the extent that the Development Plan calls for infrastructure to be designed and constructed other than as a part of any Phase (“Infrastructure Work”), the Developer or Developer Affiliate shall perform the Infrastructure Work in accordance with plans and specifications and a budget for such Infrastructure work that are approved by the Authority, and make best efforts to ensure that appropriate third-parties, including government entities or utilities, perform such work in accordance with the Development Schedule.

## **ARTICLE V – THE DEVELOPMENT ACTIVITIES AND DOCUMENTS**

5.01 Formation of Owner Entity. For each Phase, the Developer shall cause the formation of a Colorado limited liability company (the "Project Entity") to lease the land, acquire the existing improvements, rehabilitate, operate, and manage the applicable Phase of the Development. An affiliate of the Developer will act as the “Managing Member” of the Brown Ranch Project Entity ("Developer Member"); and an Affiliate of the Authority will be admitted as a nominal limited partner. The remaining equity interest in the Brown Ranch Project Entity will be owned by an investor or investors (“Owner Equity”). The Developer Member will be responsible for the day-to-day development and management of the Project Entity.

5.02 Management Agents. Not later than concurrently with the Closing, each Project Entity shall enter into a management agreement (the “Management Agreement”) with either Michaels Management Services LLC or Michaels Management-Affordable LLC, affiliates of the Developer (a "Management Agent"). The Management Agent will be paid the maximum management fee approved by the Finance Agency. ~~The parties agree to formulate a mutually agreeable plan whereby current property management personnel at any property comprising the Development may either be considered for employment under Michaels Management Affordable, LLC or a sub-agent management agreement will be utilized with Authority or its affiliate as the sub-agent manager. Further, parties acknowledge that certain services may be provided by the Authority or~~

~~its affiliate as mutually agreed upon by the parties~~ if applicable, and if not applicable, the fees and charges established in the then-market by experienced and professional property manager of similar property.

5.03 Ground Lease; Sale of Improvements. (a) At the Closing, the Authority will enter into the Ground Lease for the land comprising the development on an "as-is, where-is" basis with the Brown Ranch Project Entity, for a term of no less than ninety-nine (99) years. The Ground Lease will provide for nominal rent in and contain such other provisions typical of similar ground leases between housing authorities and developers. The Ground Lease will contain affordability restrictions as set forth in the Master Development Plan. If the Development Plan contemplates the rehabilitation of the existing improvements, the Authority will ground lease the land to the Brown Ranch Project Entity and sell the Brown Ranch Project Entity a fee interest in the existing improvements at their appraised value. In such case, the rent under the ground lease will be nominal. The purchase price for the improvements will be its appraised value as approved by the Finance Agency, the Lender, and the Investor, and will be by the applicable Project Entity delivering a cash flow only, subordinate note and mortgage with a term of at least thirty (30) years.

5.04 Right of First Refusal. At the Closing of each Phase, the Authority or the Authority Affiliate and the Brown Ranch Project Entity shall enter into a Right of First Refusal Agreement(s). Subject to the investor's approval and subject to the requirements of the Agreement(s) recorded on the Property in favor of the Finance Agency (if any), the Authority (or its designee) will receive a right ~~of first refusal~~ to acquire any Phase of the Development any time after the 15th year (a) for Phases funded with low-income housing tax credits of ~~the LIHTC compliance period~~ a right of first refusal for an amount equal to all the outstanding amounts under all of the Brown Ranch Project's loans (including member and affiliate loans) plus the amount of all federal, state and local taxes which the members and their affiliates would be obligated to pay arising out of such sale; and (b) for Phases not funded with low-income housing tax credits, ~~such Phases~~ a right of first offer for an amount equal to ~~its~~ such Phases then-fair market value.

## **ARTICLE VI – THE DEVELOPMENT FEE; DISBURSEMENTS**

6.01 Development Fee. Developer and the Authority shall be entitled to receive a fee for each Phase for carrying out the Development Services, which shall consist of Developer's Overhead Costs and Profit (together, the "Development Fee"), which shall be calculated based upon Total Eligible Development Costs, hereafter defined and be the maximum fee permitted by the Finance Agency if applicable, and if not applicable, the fees and charges established in the then-market by experienced and professional developers of similar property. The Development Fee will be shared eighty percent (80%) to Developer and twenty percent (20%) to the Authority. The Development Fee will be paid to Developer in accordance with the schedule set forth in each Phase-Specific Development Budget. The parties acknowledge that the developer fee may be modified upward in those instances where the property management services are

conducted by the Authority or its affiliate and the Authority or its affiliate assumes the commensurate guaranty.

With respect to each Phase of the Development, the term "Total Eligible Development Cost" means all hard and soft costs associated with the Development, as such costs are itemized and set forth in the Developer Budget, but expressly excluding the following costs: (i) third-party costs paid by Authority under contracts entered into directly by Authority and third-parties, and which costs will not be reimbursed to Authority at a mixed finance closing; and (ii) the Development Fee.

6.02. Cash Flow. Subject to approval of the Investor, cash flow will be dedicated first to operating expenses, then to the funding of any operating reserves, if any, then to items required by the Investor, then to payment of any deferred Development Fee(s), then to other Development advances and then to all operating deficit loans. All remaining cash flow ("Surplus Cash") will be paid twenty percent (20%) to the Authority or the Authority Affiliate and eighty percent (80%) to the Developer Member, *pari passu*. The Authority's share of cash flow may be characterized as lease payments, loan payments, or otherwise, as the parties jointly determine is most advantageous to the Brown Ranch Project Entity and as permitted by tax counsel and applicable law. Surplus Cash will not be reduced by other fees payable to the Developer or its Affiliates, other than management fees payable to the Management Agent.

6.03. Development Costs. Proceeds from the Development debt and equity financing ~~and equity investment raised by the tax credit syndication~~ shall reimburse both the Developer and the Authority for all direct development costs associated with the Development and each applicable Phase, including, in the case of the Authority, the Authority's legal fees estimated for each subsequent Phase at an amount to be negotiated for each Phase, as and to the extent set forth in the approved Development Budget. The Authority on not less than a quarterly basis, in those instances when the fees are not billed on a flat fee basis, shall provide an accounting on the expended legal fees. Each Party will bear its own costs incurred in connection with the negotiation of this Agreement. All reasonable development costs and related legal costs will be deemed Project Costs, to be reimbursed at Closing. In the event the Closing does not occur, then except as set forth herein, the Authority and the Developer will each be responsible for their respective costs.

6.04. Pre-Development Costs. (a) Except as described herein, all predevelopment costs included in the Approved Predevelopment Budget will become project costs and will be reimbursed at the Closing. The Predevelopment Budget shall include, but is not limited to, all expenses and fees related to any funding applications for the Development, third-party studies and drawings, necessary site tests, supporting studies, and other documentation, and all legal fees incurred by the Developer and/or Project Entity in the negotiation of financing documents, equity investment documents, and any other documents required in connection with the Brown Ranch Project. In no event will Developer be obligated to expend more than Five Million Dollars (\$5,000,000) outstanding and unpaid at any time.

(b) Upon receipt of invoices and appropriate documentation, the Authority agrees to pay seventy-five percent (75%) of all Predevelopment Costs incurred by Developer pursuant to the Approved Predevelopment Budget to the extent it has grant funds that may be applied to such costs and expenses. The parties acknowledge that in some cases there shall be a cap on the amount of predeveloped budget obligation to be borne by the Authority. Each request for payment shall (a) identify the source of funds and budget and line item in the Predevelopment Budget against which such payment is to be applied, and (b) shall attach thereto such invoices or other evidence of obligation due and owing. No request for a draw shall be in excess of the line item in the approved Predevelopment Budget. The Authority will make the disbursement under each draw request within thirty (30) days after receipt of a draw request with all necessary supporting documentation. The draw request shall be in a form containing sufficient detail and with sufficient supporting documentation to permit the Authority to confirm that the predevelopment costs to be funded by the draw request have been performed.

(c) All amounts advanced by the Authority and the Developer will be repaid to them as and when set forth in Phase-Specific Development Budgets. Notwithstanding anything to the contrary, if this Agreement terminates for any reason other than a Default by Developer pursuant to Section 15.02 hereof, then within thirty (30) days of termination of this Agreement, the Authority will reimburse the Developer for the Developer's Advances, and upon such reimbursement the Developer will assign and set over to the Authority all documents and work product relating to the predevelopment work paid for in whole or in part by the Authority pursuant to this Section 6.04. Any amount due Developer pursuant to this Section 6.04(c) that is not paid within such thirty (30) day period shall be the PNC Bank Prime Rate from time to time plus 2% (200 basis points). This Section 6.04 will survive the termination of this Agreement.

## **ARTICLE VII - SELECTION OF PROFESSIONALS, CONTRACTORS AND CONSULTANTS**

7.01 Design Professionals. Developer will provide copies of all design professional qualification packages to Authority for its review. Authority will provide its input regarding the selection of the design professionals. Developer will have the final decisions but will consider Authority's input in good faith. Developer will provide copies of all design professional qualification privileges to Authority. Notwithstanding the foregoing, Landmark, Consulting, Mithun, and Page, which have been working on the Brown Ranch Project on the parties' behalf, may not be terminated without the consent of Authority.

7.02 General Contractor. Developer will, to the greatest extent possible, obtain three (3) competitive bids for the construction of the improvements for each Phase by trade, and provide copies of all such bids to Authority. Authority will provide its input regarding the selection of the design professionals. Developer will have the final decisions but will consider Authority's input in good faith. Developer will select the

general contractor with the best qualifications, bid price and terms in its sole discretion, the parties acknowledging that the general contractor selected may not be the lowest bidder.

7.03 Selected Team Members. The Developer, with the Authority's Approval, has initially selected the following team members:

- (a) Steamboat Springs Lawyers Group, Jason Lacey, Land Use Legal;
- (b) Landmark Consultants, Ryan Spaustat, Civil Engineering;
- (c) Native Excavating, Charlie MacArthur, Excavation/Site Contractor, Horizontal Construction;
- (d) Partner Energy, Lance Collins, Energy Modeling and Sustainability;
- (e) SunWorks, Jonathan Harvey, Solar Photovoltaic Contractor based in Provo, Utah; and
- (f) Eric Dickstein, Local team representative based in Steamboat Springs.
- (g) **MITHUN (DESIGN)**

## **ARTICLE VIII - REPRESENTATIONS AND WARRANTIES**

8.01 Developer's Representations. The Developer hereby represents and warrants as follows:

- (a) It has the legal and financial capacity to enter into this Agreement and to perform all of the undertakings set forth herein.
- (b) The Developer is a duly organized and validly existing legal entity under the laws of the State of New Jersey.
- (c) This Agreement has been duly and validly executed and delivered by the Developer and constitutes a valid and legally binding obligation of the Developer enforceable in accordance with its terms.
- (d) The Developer is not subject to any charter or other legal restriction of any kind which materially and adversely affects the business, property or assets, or the condition, financial or otherwise, of the Developer. Neither the execution and delivery of this Agreement, nor compliance with the terms, conditions and provisions hereof, will conflict with or result in a breach of the terms, conditions or provisions of, or constitute a default under any law or any regulation, order or decree of any court or governmental agency, or any indenture or other agreement or instrument to which the



Developer is subject, or will result in the creation or imposition of any lien, charge or encumbrance of any nature whatsoever upon any of the property or assets of the Developer pursuant to the terms of any such indenture or agreement or instrument, and will not require the approval of any federal regulatory body or of any state or local commission or authority having jurisdiction with respect thereto, unless such approval has been obtained and is in full force and effect on the date hereof.

(e) There is no action, proceeding or investigation now pending before any court or any governmental department or agency nor any basis therefor, known or believed to exist which: (i) questions the validity of this Agreement or any action or act taken or to be taken by the Developer pursuant to this Agreement, or (ii) is likely to result in a material adverse change in the authority, property, assets, liabilities or condition of the Developer which will materially and substantially impair its ability to perform pursuant to the terms of this Agreement.

(f) There has been no administrative action taken nor is any administrative action pending against the Developer, its members or, to the best of the Developer's knowledge, parties serving as Subcontractors relating to Limited Denial of Participation, suspension or debarment.

8.02 Authority's Representations. The Authority hereby represents and warrants as follows:

(a) It has legal capacity to assume responsibility for compliance with all applicable laws, regulations, rules, programs and agreements and to enter into this Agreement and to perform all the undertakings set forth herein.

(b) The Authority is a duly organized and validly existing legal entity under laws of the State of Colorado.

(c) This Agreement has been duly and validly executed and hereby binds the Authority and constitutes a valid and legally binding obligation enforceable in accordance with its terms.

(d) The Authority is not a party to any contract or agreement or subject to any charter or other legal restriction of a kind which materially and adversely affects the business, property, or assets, or the condition, financial or otherwise, of the Authority. Neither the execution and delivery of this Agreement, nor compliance with the terms, conditions and provisions hereof will conflict with or result in a breach of the terms, conditions or provisions of, or constitute a default under any law or any regulation, or decree of any court or governmental agency, or of any indenture or other agreement or instrument to which the Authority is subject, or result in the creation or imposition of any lien, charge or encumbrance of any nature whatsoever upon any of the property or assets of the Authority pursuant to the terms of any such indenture or agreement or instrument and, except as expressly set forth herein, will not require the approval of any federal regulatory body or of any state or local commission or authority

having jurisdiction with respect thereto, unless such approval has been obtained and is in full force and effect on the date hereof.

(e) There is no action, proceeding or investigation now pending before any court or any governmental department or agency nor any basis therefor, known or believed to exist which: (i) questions the validity of this Agreement or any action or act taken or to be taken by the Authority pursuant to this Agreement, or (ii) is likely to result in a material adverse change in the authority, property, assets, liabilities or condition of the Authority which will materially and substantially impair its ability to perform pursuant to the terms of this Agreement.

## **ARTICLE IX - COOPERATION AND COMPLIANCE**

9.01 The Authority and the Developer agree to cooperate with one another in good faith in assisting each other in the performance of their respective duties and obligations under this Agreement in order to successfully complete the Development. Such cooperation shall include, but not be limited to reasonable efforts by each party to respond as expeditiously as possible to each party's request for information or approvals required hereby and where approval is required, and such appraisal is not given such communication as is necessary under the circumstances to resolve the issues.

## **ARTICLE X – INSURANCE**

10.01 Insurance. The Developer shall maintain and keep in force insurance, naming the Authority and Authority Affiliates as additional insured, if applicable, in the type and for the amounts specified on Exhibit 10.01 hereto. The Developer shall furnish the Authority and Authority Affiliates certificates of insurance annually and they shall state that a thirty (30) day notice of prior cancellation or change will be provided to the Authority and Authority Affiliates. Notwithstanding the foregoing, the Developer shall notify the Authority and the Authority Affiliates (a) simultaneously with any notice sent by the Developer to its insurance carrier terminating all or any portion of its insurance coverage; or (b) within five (5) days following receipt by the Developer of notice of cancellation or nonrenewal from its insurance carrier. Immediately upon receipt or provision of notice terminating any insurance coverage, the Developer shall obtain new coverage in such types and for such amounts as required by this Section 10.01. The Developer promptly shall provide to the Authority and Authority Affiliates copies of such new policies and comply in all respects with this Section 10.01.

## **ARTICLE XI – ACCOUNTING RECORDS**

11.01 Books and Records. The Developer's books and records pertaining to the Development shall, prior to the applicable Closing, be kept on a modified cash basis, including open accounts payable, in accordance with conventional practice, and consistently applied and after such Closing shall be kept in accordance with generally

accepted accounting principles. All books and records must conform to all regulatory and investor requirements.

## **ARTICLE XII - RESPONSIBILITY FOR EMPLOYEES**

12.01 The Developer agrees to provide a competent staff for the proper administration, coordination, and supervision of the Development. All officers and employees of the Developer shall be compensated by the Developer and shall be under the control of the Developer. The Authority shall not have any liability or obligation whatsoever with respect to any employment Arrangement between the Developer and any of its officers and employees. All matters concerning the employment, supervision, compensation, promotion and discharge of such officers and employees shall be the sole responsibility of the Developer. The Developer shall fully comply with all applicable laws and regulations with respect to workers' compensation, social security, unemployment insurance, hours of labor, wages, working conditions, licensing, and other employer-employee related matters, including, without limitation, all laws, rules and regulations with respect to non-discrimination based on race, sex or otherwise.

## **ARTICLE XIII HAZARDOUS MATERIALS AND ENVIROMENTAL CONDITIONS.**

13.01 Pre-Existing Conditions. (a) Existing Development and Pre-existing Conditions. The Authority intends to transfer the Development "as-is" on a Phase per Phase basis to the Developer or the Owner Entity for construction and operation of the new or rehabilitated on-site Development of each Phase. If Developer determines in its sole and absolute discretion, that the environmental condition of the Development is not suitable for Developer to satisfy its obligations under this Agreement, then Developer may terminate this Agreement and not proceed with the Development by delivering to the Authority written notice thereof. In the event Developer terminates this Agreement as set forth in this Section 13.01(a), then neither Party shall have any further rights or obligations hereunder except for those rights and obligations of this Agreement that expressly survive the termination thereof. **[MDC—OPEN]**

(b) Remediation Costs and Responsibilities Prior to Closing. The parties will work in good faith to modify the Development Budget as required address remediation costs (excluding those arising from a breach of Section 13.01(f) hereof), provided that both Parties will reserve the right to consider such costs as giving rise to infeasibility and termination in accordance with Section 15.05 hereof.

(c) Discovery of Hazardous Materials Prior to Closings. Prior to the financial closing for the Development, in the event that the Developer or the Authority knowingly encounters any Hazardous Materials (as herein defined) on the Property not previously identified through testing, the discovering party shall promptly notify the other party in writing and shall comply with all laws, ordinances, regulations and orders of all governmental, regulatory and other public and quasi-public agencies, authorities and entities having jurisdiction over the same. Unless the Developer is responsible for such

Hazardous Materials as a result of the application of Section 13.01(f) hereof, the Developer shall have no responsibility for remediation of such Hazardous Materials and the parties agree to address their presence in accordance with Section 13.01(d) hereof. Unless the Authority is responsible for such Hazardous Materials as a result of the application of Section 13.01(f) hereof, the Authority shall have no responsibility for remediation of such Hazardous Materials and the parties agree to address their presence in accordance with Section 13.01(d) hereof.

(d) Covenant Regarding Hazardous Materials. After the date of the execution of this Agreement neither the Developer nor the Authority shall bring onto the Property, or permit its agents, contractors or employees to bring onto the Property any (i) asbestos or asbestos-containing material or polychlorinated biphenyl material, or (ii) hazardous substances or hazardous waste as defined under any federal, state or local law, that may require remediation under applicable law (other than quantities of such substances, including gasoline, diesel fuel and the like as are customary and necessary to prosecute construction of the Developments), or (iii) soil containing volatile organic compounds (collectively (i)-(iii) are the “Hazardous Materials”). Each party shall be liable for the consequences of, and responsible for proper removal and lawful disposal, at its sole expense, of any Hazardous Materials brought onto the site resulting from a violation by such party of this Section 13.01(e) and shall be responsible for any conditions caused by the negligent failure of such party or its agents, contractors or employees to protect against any further harm caused by any Hazardous Materials already on the site. Each party further covenants and agrees to indemnify, defend and hold the other party free and harmless from and against any and all losses, liabilities, penalties, claims, fines, litigation, demands, costs, judgments, suits, proceedings, damages, disbursements or expenses, including reasonable attorneys’ fees which may at any time be imposed upon, reasonably incurred by or asserted or awarded against the other party in connection with or arising from a violation of this Section 13.01(e). The provisions of this Section 13.01(e) shall survive the Closing of the Development and the termination of this Agreement relative only to any claims that arise from an event that occurs prior to Closing regardless of when the claim is presented.

(e) Authority Responsibilities After Closings. After the Closing for a given Phase, the Authority shall be liable for the following environmental conditions on the site of such Phase: (i) environmental conditions caused by the Authority or its agents, contractors or employees after the Closing, (ii) pre-existing environmental conditions which the Authority had knowledge but failed to disclose the same to the Developer in writing before the Closing or (iii) Hazardous Materials brought onto the Development by the Authority or any of its agents, contractors or employees after the Closing. After Closing for a given Phase, the Authority will work in good faith with the Developer and the Owner Entity(ies) to identify third-party funding sources to pay for any unforeseen remediation costs (without limiting the responsibilities of the Authority, the Developer or the Owner Entity under otherwise applicable provisions of this Section 13.01). If no third-party sources are identified and awarded to fund the unforeseen remediation costs, Authority agrees to defer developer fee pro rata with Developer to pay for such costs.

(f) Developer and Owner Entity Responsibilities After Closings. At the Closing, the Owner Entity (through a Ground Lease) and the Developer (through a guaranty) will covenant and agree to indemnify, defend and hold the Authority free and harmless from and against any and all losses, liabilities, penalties, claims, fines, litigation, demands, costs, judgments, suits, proceedings, damages, disbursements or expenses, including reasonable attorneys' fees which may at any time be imposed upon, reasonably incurred by or asserted or awarded against the Authority (excluding those matters for which the Authority is responsible in accordance with Section 13.01(e) hereof) in connection with or arising from:

i. The existence of any Prohibited Substance first placed on, in, or under all or any portion of the Development site on or after the Closing; or

ii. Any violation of any federal, state, or local environmental laws by the Developer or any Owner Entity at or relating to the Development that arises out of their respective acts or omissions after the Closing.

#### **ARTICLE XIV – DISPUTE PROCEDURE**

14.01 Disputes. If the Members are unable to agree upon any matter or matters arising under this Agreement for which consent or approval is required, such matter shall, upon the request of either be submitted to, and settled by, arbitration as follows:

(a) The dispute shall be resolved by arbitration in accordance with and under the Expedited Procedures of the Commercial Arbitration Rules of the American Arbitration Association and this Section 14.01.

(b) An arbitrator shall be selected by the Members but shall in all events be an attorney with at least ten (10) years' experience in affordable housing development, and shall be independent as to the parties hereto. If the Members cannot agree on an arbitrator, they shall each select one arbitrator and the two arbitrators shall select a third independent arbitrator who shall act as the arbitrator.

(c) Consistent with the expedited nature of arbitration, each party will, upon the written request of the other party, promptly provide the other with copies of all documents relative to the matter in dispute. Any dispute regarding discovery, the relevance or scope thereof, shall be determined by the arbitrator. All discovery shall be completed within forty-five (45) days following appointment of the arbitrator.

(d) The arbitrator shall be directed to promptly conduct the arbitration and shall be directed to give notice of its determination within ninety (90) days of its appointment.

(e) The arbitrator shall be required to strictly adhere to state and local law and the terms of this Agreement. The arbitrator will have no authority to award

punitive or other damages not measured by the prevailing party's actual damages. The arbitrator shall not award consequential damages.

(f) The award of the arbitrator shall be accompanied by a reasoned opinion including findings of fact and conclusions of law.

(g) The arbitrator will award attorney's fees and costs to the prevailing party, provided that in the absence of such award, each party shall bear its own cost and expenses of the arbitration and an equal share of the arbitrator's and administrative fees.

(h) The award rendered by the arbitrator shall be final, and judgment may be entered upon it in accordance with any court having jurisdiction thereof.

## **ARTICLE XV – DEFAULT AND REMEDIES; TERMINATION**

15.01 Term. This Agreement shall commence upon the execution hereof and shall terminate as of Closing with respect to the Development, unless sooner terminated in accordance with this Article XV and subject to Section 15.09 hereof.

15.02 Termination Following a Default. By the Developer or the Authority, if a default in the performance of this Agreement (a "Default") by a party is not cured within thirty (30) days after receipt of written notice from the non-defaulting party, or if such Default cannot reasonably be cured within thirty (30) days, then such additional time as is reasonably necessary to cure the Default as long as the defaulting party acts diligently to do so, the non-defaulting shall then have the right to terminate this Agreement and seek damages or other relief as may be available at law or equity; provided, however, that no party shall be liable for special, consequential or punitive damages.

15.03 Termination by Parties. This Agreement may be terminated as follows:

(a) By Developer and the Authority by written agreement.

(b) By the Authority, if Developer ceases doing business as a going concern, makes an assignment for the benefit of creditors, files a voluntary petition seeking for itself any reorganization, Arrangement, composition, readjustment, liquidation, dissolution or similar Arrangement under the federal bankruptcy laws or any similar federal or state statute, law or regulation, or files an answer admitting the material allegations of such a petition or consents to or acquiesces in the appointment of a trustee, receiver or liquidator of all or any part of its assets or properties.

15.04 Termination for Convenience by Authority. (a) The Authority may terminate the Development Services or this Agreement in whole (and not in part), for the convenience of Authority whenever Authority determines in good faith that it is infeasible or contrary to the interests of the Authority to proceed with the Development. Any such

termination shall be effected by delivery to Developer of a written notice of termination specifying the extent to which the performance of the work under the Agreement is terminated, and the date upon which such termination becomes effective, which shall not be less than twenty (20) days following delivery of all such notices.

(b) In the event of a termination for convenience under this Section 15.04, Authority shall be liable to Developer for reasonable and proper costs resulting from such termination which costs shall be paid to Developer within sixty (60) days of receipt by Authority of a properly presented claim setting out in detail: (i) the total cost of all third-party costs incurred to date of termination; (ii) the reasonable cost of settling and paying claims under subcontracts and material orders for work performed and materials and supplies delivered to the site, or for settling other liabilities of Developer incurred in performance of its obligations hereunder; (iii) the cost of preserving and protecting the work already performed until the Authority or its assignee takes possession thereof or assumes responsibility therefor; (iv) the actual cost of legal and accounting services reasonably necessary to prepare and present the termination claim to the Authority if the amount of the claim is refuted by the Authority; and (v) fair compensation to Developer for all tasks performed to date. “Fair compensation” as used herein shall be an amount equal to a portion of the total Development Fee expected to be earned by Developer hereunder, taking into consideration the percentage of completion of work, pursuant to the schedule attached hereto as Exhibit 15.04.

(c) Delivery of Plans and Agreements. If this Agreement is terminated, the Developer, at no additional cost to Authority but subject to the payment required by Section 15.04(b) hereof if applicable, will deliver to Authority copies of any plans in the Developer’s possession or which the Developer has obtained for the Development and shall obtain from the architect, engineer or consultant who produced such plans and studies any approvals required for copies of same to be provided to the Authority.

15.05 Termination for Infeasibility. (a) The parties agree that the following matters are conditions precedent to the Authority’s and Developer’s ability to proceed with the Development or any Phase and to fulfill the terms and conditions of this Agreement. The parties’ ability to perform responsibilities hereunder is substantially contingent upon actions by third parties over which the Developer and the Authority have limited or no control, or upon factual circumstances which cannot be determined as of the date of this Agreement (“Development Contingency or Contingencies”). Accordingly, the Agreement is subject to the satisfaction of the following Development Contingencies unless waived by a party in writing:

i. The allocation of low-income housing tax credits or the allocation of tax-exempt bond volume cap in the amounts required, after the Developer in consultation with the Authority makes all reasonable diligent effort to secure such allocations consistent with the budget and schedule.

ii. The investment of equity at projected rates.

iii. The making of private loans under projected terms and conditions.

iv. The provision of all projected assistance, including grants, loans and land transfers from other governmental bodies.

v. The successful elimination from the Property of Hazardous Materials or the successful elimination or control of adverse geotechnical conditions.

vi. The receipt of all necessary governmental approvals and permits, in final and non-appealable form.

vii. The continuation of law, regulations and policy at least as favorable to mixed finance development in general, and to the Development in particular as they current exist.

viii. The receipt of the various financing commitments in the amounts required and on terms and conditions that would normally be acceptable to a prudent developer of affordable housing in a similar marketplace and for a project similar to the Development.

ix. The provision by Developer, and approval of the Authority, of a financially feasible Development Plan that includes terms that are reasonable to the Developer.

(b) If a Development Contingency is not satisfied after reasonable efforts by the Developer and the Authority to cause it to occur in a manner generally consistent with this Agreement, the parties will consider, in good faith, a revision of the Development Plan and/or a Phase-Specific Development Plan by extending deadlines, revising budgets or goals or as otherwise agreed. If a Development Contingency described above is not satisfied due to causes beyond the reasonable control of the Developer and the Authority and the parties cannot, after a good faith effort, agree on the means to remedy it, then the Developer or the Authority may opt to withdraw from this Agreement with regard to any or all of the Development which has not yet reached Closing, by written notice delivered to the other party. Such withdrawal shall not be a Default by either Authority or Developer, and the parties shall have such rights and remedies pursuant to this Section 15.05.

(c) If the parties cannot, within one hundred twenty (120) days after the Developer provides the Authority with written notice that a Development Contingency has not been satisfied, agree to amend the Development Plan(s), it shall be deemed an "Event of Infeasibility." Upon the occurrence of an Event of Infeasibility, this Agreement may be terminated by the Authority or the Developer by written notice, one to the other, of its desire to terminate this Agreement and delivery to the Authority of all work products produced under or in connection with this Agreement ("Termination for Infeasibility").



(d) If the Termination for Infeasibility relates to one Phase, the Developer, at the Developer's option, may maintain its rights under this Agreement by demonstrating to Authority that a future phase is feasible. For the terminated Phase, the Developer shall promptly vacate the Phase site and cooperate in good faith with the Authority to achieve an orderly transition of management.

(e) If the Termination for Infeasibility relates to more than one Phase, all subsequent Phases shall also be deemed terminated under this Section 15.05. Notwithstanding the foregoing, Developer shall have a period of sixty (60) days from the date of the Termination of Infeasibility to provide a revised Development Plan which the Authority may approve. Following a Termination for Infeasibility, the Developer shall promptly thereafter vacate the terminated Phase sites and cooperate in good faith with the Authority to achieve an orderly transition of management.

(f) In the event of a Termination for Infeasibility as provided herein, neither party shall have any liability to the other pursuant to this Agreement except that (i) the Developer shall deliver all work product produced in connection with this Agreement to the Authority; (ii) the Developer shall assign all right, title and interest to all Documentation (as defined in Section 15.06 hereof) to the Authority as set forth in Section 15.06 hereof; and (iii) all indemnifications contained in this Agreement herein shall continue in effect with regard to acts or omissions prior to termination. If and when the Authority determines in its reasonable discretion that it is able to use such work product or Documentation in the performance of any future work on the Development, then the Authority shall reimburse the Developer the amount of any actual third-party costs expended by the Developer for such usable work product and Documentation delivered to the Authority, which obligation will survive termination of this Agreement. In no event shall the Authority reimburse the Developer for any work product or Documentation that it is unable to use in the performance of any future work on the Development.

**15.06 Termination for Failure to Meet Certain Development Milestone Dates.** The following critical Development Milestones and their Outside Dates set forth below shall be adhered to by the Developer in accordance with the terms and conditions of this Agreement. Failure to meet these dates by Developer will result in the termination of this Agreement by the Authority unless otherwise agreed and extended by the Authority. In such event, the parties shall have no further rights or obligations hereunder except for those rights and obligations of this Agreement that expressly survive the termination thereof.

CRITICAL DEVELOPMENT MILESTONE	ANTICIPATED DATE	OUTSIDE DATE


15.07 Assignment of Documents. If this Agreement is terminated, the Developer and/or Project Entity shall assign, to the extent same are assignable, its right, title and interest in and deliver to the Authority, originals of all or, if no original exists, copies of all applications, documents, drawings, plans, specifications, studies, files, contracts, permits, approvals, grants, tax credit reservations, bond allocations and all other documents and materials, whether completed or in process, including, but not limited to architectural documents, prepared, accumulated or generated by or for the Developer in connection with this Agreement, or in connection with the Development Services (the "Documentation").

The cost of such Documentation, if unpaid at the time of termination, shall not be included in any claim made by the Developer pursuant to Section 15.05 hereof. The Developer shall include in all third-party contracts a provision conditionally assigning all of the Developer's or Project Entity's interest in the Documentation to the Authority and giving the Authority the right to use all Documentation upon full payment to such third-party for the work performed. The Developer shall include in the partnership agreement or operating agreement of each Project Entity a provision requiring such Project Entity to execute and deliver to the Authority an assignment of its right, title and interest in all Documentation. The foregoing assignment shall be subordinate to the requirements of the lenders and the Investor(s).

15.08 Forced Delay. Subject to specific provisions of this Agreement, the time for performance by any party of each specific obligation hereunder shall be automatically extended for the period of time corresponding to the period of any delay in such performance caused by: war; insurrection; strikes; terrorism; riots; floods; earthquakes; acts of God; fires; casualties; unusually severe weather; pandemic including COVID-19; governmental restrictions; litigation (including suits filed by third-parties concerning or arising out of this Agreement); acts or failure to act of any public or government agency or entity (other than the acts or failure to act of the Authority); or any other causes beyond the control of the party claiming an extension of the time to perform. Notwithstanding the foregoing, the Authority may terminate the Agreement if such forced delay exceeds one hundred eighty (180) days and in that event such termination shall be deemed a Termination for Infeasibility.

15.09 Survival. Once Closing has occurred for a Phase of the Development, the Closing Documents for such Phase will govern the rights and remedies of the parties and this Agreement shall have no effect with regard to such Phase of the Development. The execution and delivery of the Closing Documents will constitute and evidence each party's acceptance of the other party's performance under this Agreement, except as may be specified in the Closing Documents. No default by either party under this Agreement, in and of itself, shall release the other party from the obligations it has undertaken in the Closing Documents, nor increase the rights and remedies it may have under such documentation, unless expressly set forth in any such Closing Document.

## **ARTICLE XVI - INDEMNIFICATION**

16.01 General. (a) The Developer shall indemnify, defend and hold the Authority (and its Board of Commissioners and employees) and any Authority Affiliate, and any of their respective officers, directors, employees and agents (collectively, the "Authority Parties") harmless from and against any and all claims, damages, losses, liabilities, costs and expenses ("Claims") arising from (a) any breach of this Agreement by the Developer, and (b) any bodily injury, sickness, disease or death, or to injury to or destruction of tangible property during the performance of this Agreement caused by the Developer's negligence or willful misconduct. Such indemnity shall apply only to Claims to the extent caused by an act or omission by the Developer, its affiliates, joint venture partners, agents or employees of any of them or anyone for whose acts they may be liable. This Section 16.01(a) will survive the expiration or termination of this Agreement for one year. Developer shall require its Subcontractors in their contracts to provide this same Indemnification to the Authority.

(b) The Authority shall indemnify, defend and hold the Developer and each Developer Affiliate, and any of their respective officers, directors, employees and agents (collectively, the "Developer Parties") harmless from and against any and all Claims arising from (a) any breach of this Agreement by the Authority, and (b) any bodily injury, sickness, disease or death, or to injury to or destruction of tangible property during the performance of this Agreement caused by the Authority's negligence or willful misconduct. Such indemnity shall apply only to Claims to the extent caused by an act or omission by the Authority, its affiliates, joint venture partners, agents or employees of any of them or anyone for whose acts they may be liable. This Section 16.01(b) will survive the expiration or termination of this Agreement for one year. Authority shall require its Subcontractors in their contracts to provide this same Indemnification to the Developer.

## **ARTICLE XVII - INDEPENDENT CONTRACTOR**

17.01 It is expressly agreed and understood between the Authority and the Developer that the Developer, in entering into this Agreement and carrying out its obligations hereunder, is an independent contractor working for itself and is not, shall not be deemed to be and shall not hold itself out as an agent, joint venture, legal representative or employee of the Authority or HUD. The Developer is not granted any right or authority to assume or to create any obligation, liability or responsibility, express or implied, on behalf of or in the name of the Authority or HUD, to bind the Authority or HUD in any manner to any contractual or other undertaking whatsoever or to accept payment from any party of any obligation owing to the Authority or HUD. The Developer shall be responsible for all costs it incurs in performing its obligations under this Agreement, and except as explicitly set forth herein, neither the Authority nor HUD shall have any liability for any debts or other obligations which the Developer may incur in rendering such performance.

## **ARTICLE XVIII – DISCLAIMER OF RELATIONSHIPS**

18.01 Disclaimer of Relationships. Nothing contained in this Agreement shall be deemed or construed to create any relationship of third-party beneficiary, principal and agent, joint venture or any association or relationship involving HUD or the Authority.

## **ARTICLE XIV – CONFLICT OF INTEREST**

19.01 Conflicts of Interest. No employee, officer, or agent of the Authority or the Developer shall participate in selection, or in the award or administration of a contract supported by federal funds if a conflict of interest, real or apparent would be involved. Such a conflict would arise when (a) the employee, officer or agent, (b) any member of his or her immediate family, (c) his or her parents or (d) an organization that employs, or is about to employ, any of the foregoing, has a financial or other interest in the firm selected for the award. The Authority's and the Developer's officers, employees or agents will neither solicit nor accept gratuities, favors or anything of monetary value from contractors. The Authority may set minimum rules where the financial interest is not substantial or the gift is an unsolicited item of minimal intrinsic value. To the extent permitted by state or local law or regulations, such standards or conduct will provide for penalties, sanctions, or other disciplinary actions for violations of such standards by the Authority's and the Developer's officers, employees, or agents or by contractors or their agents. HUD may in regulation provide additional prohibitions relative to real, apparent or potential conflicts of interest.

Neither the Authority, the Developer nor its contractors shall enter into any contract, subcontract or agreement in connection with the Development in which any member, officer or employee of the Authority, or any member of the governing board of the locality in which the Development is situated, or any member of the governing body of the locality in which the Authority was activated or in any other public official of such locality or localities who exercises any responsibilities or functions with respect to the Development during such person's tenure or for one year thereafter has any interests, direct or indirect.

If any such present or former member, officer, or employee of the Authority, or any such governing body member or such other public official of such locality or localities involuntarily acquires or had acquired prior to the beginning of such person's tenure any such interest, and if such interest is immediately disclosed to the Authority and such disclosure is entered upon the minutes of the Authority, the Authority may waive the prohibition; provided that any such present member, officer or employee of the Authority, shall not participate in any action by the Authority relating to such contract, subcontract, or Arrangement.

No member, officer or employee of the Authority, no member of the governing body of the locality in which the Development is situated, no member of the governing body of the locality in which the Authority was activated, and no other public official of such locality or localities who exercises any functions or responsibilities with

respect to the Development, during his tenure or for one year thereafter shall have any interest, direct or indirect, in the Development or the proceeds thereof.

In addition to those requirements specifically set forth in this Section 19.01, the Authority, the Developer and their respective officers, employees, agents and/or contractors shall comply with all applicable laws and regulations governing conflicts of interest.

19.02 Waiver of Conflict. The Authority may, at its option, approve a waiver of any conflict described in Section 19.01 hereof. Such waivers shall be granted within the scope of the statutes and applicable regulations governing the Authority and the Development. Such a waiver must be requested by the Developer and a proposed method of treating the conflict must be reviewed and approved by the Authority. The Developer shall take all appropriate steps reasonably possible to identify conflicts on the part of its team members and subcontractors and to propose methods for treating these conflicts prior to the execution of this Agreement. Similarly, the Authority will take any steps it deems appropriate to consider the waiving of conflicts identified by the Developer that are brought to the Authority's attention.

## **ARTICLE XX – NO LIENS; NO ASSIGNMENT**

20.01 Liens and Encumbrances. Neither the Developer nor any Project Entity shall place, or allow to be placed, any lien or encumbrance on the ground, structures or any improvements on the Development site owned by the Authority, or any portion thereof, including any lien for work or labor done or materials furnished prior to the execution of a Ground Lease and, thereafter, no liens or encumbrances other than a mortgage or other financing instrument permitted by the Ground Lease shall be placed or allowed to be placed on a Development site by or on behalf of the Developer or a Project Entity. In furtherance of the foregoing, the Developer shall require the construction contractor to provide customary performance and payment bonds.

20.02 Discharge. If any mechanic's, laborer's, or materialman's lien shall at any time be filed against the Development or any part thereof, prior to execution of the Ground Lease, the Developer or the applicable Project Entity, shall take all necessary action to cause such lien to be discharged of record by payment, deposit, lien bond transfer, order of court of competent jurisdiction or otherwise in accordance with and in conformance with the time periods for responding under Colorado construction lien laws. The Developer or such Project Entity shall notify the Authority in writing of its action to either satisfy or contest the lien and, if contested, of the matter's status on a monthly basis until concluded. If the Developer or such Project Entity shall fail to cause such lien to be discharged by failing to follow any and all prescribed remedies afforded it under Colorado construction lien laws, then, in addition to any other right or remedy, the Authority may, but shall not be obligated to, discharge the same either by paying the amount claimed to be due or by procuring the discharge of such lien by deposit or by bonding. Any amount so paid by the Authority and the costs and expenses incurred by

the Authority in connection therewith, shall be payable by the Developer and shall be paid by the Developer to the Authority on demand.

20.03 Consent. Nothing contained in this Agreement shall be deemed or construed in any way as constituting the Authority's expressed or implied authorization, consent or request to any contractor, subcontractor, laborer or materialman, architect, or consultant, for the construction or demolition of any improvement, the performance of any labor or services or the furnishing of any materials for any improvements, alterations to or repair of the Development or any part thereof. In any request, approval, consent or other determination by any party required under this Agreement, the party shall act reasonably, in good faith and in a timely manner unless a different standard is explicitly stated.

20.04 Assignment. The Developer shall not assign, subcontract or transfer any services, obligations, or interests in this Agreement without the prior written consent of the Authority, such consent shall not be unreasonably withheld.

## **ARTICLE XXI - WRITTEN MATERIALS AND PUBLIC STATEMENTS**

21.01 The parties agree to cooperate and consult with each other regarding any public statements or publication made regarding the Brown Ranch Project and the revitalization of the Development. The Developer shall provide the Authority with drafts of any written material prepared in connection with the Brown Ranch Project and the Development for a government agency or other third-party prior to submission. The Developer shall revise such drafts in accordance with reasonable Authority requests. In addition, the Developer shall provide the Authority with any changes to documents that affect the activities or understandings reflected by this Agreement and final versions of all written submissions.

## **ARTICLE XXII – MISCELLANEOUS**

22.01 Notices; Contact.

(a) All notices, requests, demands, approvals, or other formal communications given hereunder or in connection with this Agreement shall be in writing and shall be deemed given when sent by registered or certified mail, return receipt requested, postage prepaid, addressed as follows:

**If to the Developer:**

The Michaels Development Company I L.P.  
P.O. Box 90708  
Camden, New Jersey 08101  
Attn: John J. O'Donnell

**With a copy to:**

Levine, Staller, Sklar,

Chan & Brown, P.A.  
3030 Atlantic Avenue  
Atlantic City, New Jersey 08401  
Attn: Arthur M. Brown

**If to the Authority:**  
Yampa Valley Housing Authority  
2100 Elk River Road  
Steamboat Springs, Colorado 80477  
**[Attn: \_\_\_\_\_]**

**With a copy to:**  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
**[Attn: \_\_\_\_\_]**

(b) Each party will designate a contact person for all general communications during the term of this Agreement, which may be changed by either party by written notice to the other party in the manner set forth above. Until further notice, the contact persons will be those individuals identified in Section 22.01(a) hereof.

22.02 Counterparts. This Agreement may be executed in counterparts and all such counterparts shall be deemed to be originals and together shall constitute one and the same instrument.

22.03 Further Assurances. Each party shall execute such other and further documents as may be reasonably necessary or proper for the consummation of the transactions contemplated by this Agreement.

22.04 Interpretation and Governing Law. This Agreement shall be given effect and construed by application of the law of the State of Colorado, and any action or proceeding arising hereunder shall be brought in the courts of the State of Colorado; provided, however, that if any such action or proceeding arises under the Constitution, laws or treaties of the United States of America, or if there is a diversity of citizenship between the parties thereto, so that it is to be brought in a United States District Court, it may be brought in the United States District Court for the District of Colorado or any successor federal court having original jurisdiction.

22.05 Severability. If any term or provision of this Agreement is declared by a court of competent jurisdiction to be invalid or unenforceable such term or provision shall be deemed severed from this Agreement and the remaining parts shall continue in full force as though such invalid or unenforceable term or provision had not been part of this Agreement.

22.06 Parties Bound. No officer, director, shareholder, employee, agent, or other person authorized to act for and on behalf of either party shall be personally liable for any obligation, express or implied, hereunder.

22.07 Final Agreement. This Agreement, its Exhibits, the Authority's [RFQ] and Developer's response thereto, and the required federal and state forms constitute the final understanding and agreement between the parties with respect to the subject matter hereof and thereof and is in full force and effect, and this Agreement supersedes all prior negotiations, understandings, and agreements between the parties, whether written or oral, with respect to the subject matter hereof. Notwithstanding anything to the contrary, in the event of an inconsistency between this Agreement and the Authority's RFQ and/or Developer's response thereto, this Agreement and its Exhibits will control. This Agreement may not be amended except upon the execution of a written instrument by the Authority and the Developer with, if required, the prior written approval of HUD.

22.08. Waivers. No delay or omission by either party to insist upon the strict performance of any of the other party's obligations under this Agreement or to exercise any right or remedy available hereunder shall impair any such right or remedy or constitute a waiver thereof in the event of any subsequent occasion giving rise to such right or availability or remedy or obligation, whether of a similar or dissimilar nature.

22.09. Successors. The terms, covenants, agreements, provisions, and conditions contained herein shall bind and inure to the benefit of the parties hereto, their successors and permitted assigns.

22.10. Non-Recourse. No partner, member, officer, director, shareholder, employee or agent of the Developer, or any affiliate thereof, shall be personally liable to the Authority, or any successor in interest or person claiming by, through or under the Authority for any default or breach, or for or on account of any amount that may become due, or in any claim, cause or action whatsoever under the terms of this Agreement.

22.11 Waiver of Trial by Jury. The parties hereto waive their right to trial by jury in any action arising hereunder or related hereto.

**[SIGNATURES APPEAR ON FOLLOWING PAGE]**



**[MASTER DEVELOPMENT AGREEMENT SIGNATURE PAGE]**

**YAMPA VALLEY HOUSING AUTHORITY**

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**THE MICHAELS DEVELOPMENT COMPANY I, L.P.**

By: The Michaels Development Holding  
Company, LLC, its general partner

By: \_\_\_\_\_  
John J. O'Donnell, President

## EXHIBIT A

### CONSTRUCTION SERVICES

Subject to Section 2.02(b) and Section 15.05 of this Agreement, the Developer shall perform or cause the Brown Ranch Project's contractors and design professionals to perform the following:

1. Preparing all construction plans, budgets, schedules, and contracts, including those with the architect, contractors and other parties working on the Development. All such plans, budgets, schedules and contracts and any material change thereto shall be subject to the review and approval of the Authority. All site plans submitted must include: (i) positioning of all improvements; (ii) identification of setbacks from lot lines; (iii) grading plans; (iv) drainage plans; and (v) utility locations. The construction plans and all revisions and modifications thereto, shall be certified by an architect duly registered under the laws of the State of Colorado. The construction plans must conform to all applicable legal requirements, including the City of Steamboat Springs' ordinances, all Environmental Laws, the Uniform Construction Code, the Uniform Fire Code, and the Fair Housing Act.

2. Select and supervise the construction manager and/or the general contractor.

3. Preparing bidding package strategy all with the advice and consent of the Authority.

4. Selecting the construction contractor or construction manager (at risk) with the advice and consent of the Authority.

5. Administering contracts with all architects, engineers, general contractors, materials suppliers and other contractors, professionals, and consultants. The Developer shall place in all such contracts, provisions whereby each Subcontractor warrants its work from any and all potential construction defects.

6. Applying for and obtaining all permits (including building and construction permits), licenses, easements, and approval necessary for the physical improvements contemplated by the Development.

7. Preparing and submitting all construction plans, critical path schedules, cost estimates, budgets, schedules, specifications, life cycle analysis and design and construction documents to the Authority for review and approval.

8. Submitting suggestions or requests for changes to the construction plans which could in any reasonable manner improve the design, efficiency or cost of the Development.

9. On an ongoing and timely basis, advising the Authority as to the status of the processing of all applications necessary to obtain all governmental approvals required for the Development. Advising the Authority as to any hearings regarding the Development with sufficient advance notice to enable the Authority to attend such hearings.

10. Inviting the Authority or its representative to all meetings with the construction contractor, architect, and other contractors. The Developer shall also ensure that the Authority or its representative has access to the Development at all times to inspect the Development and the progress thereof.

11. Subject to Section 2.02(b) and Section 15.05 of this Agreement, causing the construction or rehabilitation and completion of the Development in accordance with this Agreement, the Development Schedule(s) and the Development Budget(s).

12. Monitoring the performance of all persons and entities that are to provide materials, equipment or services to the Development and shall take such actions as are necessary to maintain adherence to quality standards, safety standards, production schedules, shipping dates, and job-site requirements.

13. Monitoring the approved construction budget(s). The Developer shall develop and submit to the Authority monthly cash flow reports and forecasts showing actual costs for activities in process and estimates for uncompleted work and monitoring, reviewing and certifying construction draw schedules.

14. Submitting written construction progress reports to the Authority monthly, in such form as may be reasonably required.

15. Upon Substantial Completion, six months and eleven (11) months after Substantial Completion of the Development, the Developer and the architect shall inspect the work to determine and record the condition of the work. The Developer shall notify the Authority of such inspection and shall allow the Authority representatives to accompany it on any such inspection. The Developer shall require the construction contractor to replace or correct faulty work.

16. Requiring the construction contractor to provide to each Project Entity in form, insurance of the type and in the amount set forth on Exhibit 10.01 of this Agreement, performance, and payment bonds, and, upon completion, warranties of good title to the work and workmanship. The warranties shall continue for a period of not less than one year from the date of final acceptance of the work.

17. The Developer will cause any contractor or construction manager that performs all or any part of the construction work to take reasonable steps to minimize disruption of the normal use of neighboring properties (including those belonging to Authority or to parties related to Authority). The Developer shall cause any contractor that performs all or part of construction work to take reasonable steps to avoid excessive rubble or odors from construction work. Construction work shall be performed

in accordance with all applicable legal requirements. The general contractor will be required to perform all work in good and workmanlike manner, free and clear of all mechanic's, materialman's, or similar liens and in accordance with good construction practices.

18. As a part of all construction work, the Brown Ranch Project Entity shall equip any dwelling units or cause the same to be equipped with all equipment and articles of personal property necessary and appropriate for legal occupancy, including refrigerators and ranges, all in accordance with the construction plans approved by the Authority.

19. The Developer shall take and/or cause others to take reasonable precautions for the safety of, and shall provide reasonable protection to prevent damage, injury, or loss to, employees and other persons on and off-site where construction activities are underway. The Developer shall take reasonable precautions for the safety and protection of the improvements, materials, and equipment to be incorporated therein, whether in storage on or off-site, under care, custody or control of the Developer, contractors, or any subcontractor. The Developer shall further take precautions to protect the property of the Authority or others, whether or not forming part of the improvements, located at a construction site or adjacent thereto in areas to which the Developer has access.

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

i. participating in conferences and rendering such advice and assistance as will aid in developing economical, efficient, and desirable designs and construction procedures in connection with the Development;

ii. reviewing all requests for payment under any architectural agreement, general contractor's agreement or loan agreements with any lending institutions providing funds for the benefit of the Authority for the design or construction of the Development;

iii. complying with all terms and conditions applicable to the Development contained in any governmental permit or approval required or obtained for the lawful construction or operation of the Development or in any insurance policy affecting or covering the Development, or in any surety bond obtained in connection with the Development;

iv. furnishing such consultation and advice relating to the Development as may be reasonably requested from time to time by the Authority;

v. giving or making approvals and payments provided for in the agreements with any architect, general contractor, or other contractor, professional or consultant retained for the Development;

vi. identifying local providers for the Development and Construction Services; and

vii. filing any notices of completion required or permitted to be filed upon the completion of any the Development and taking such actions as may be required to obtain any certificates of occupancy or equivalent documents required to permit the occupancy of units.

## **EXHIBIT B**

### **DESIGN/PLANNING SERVICES**

The Developer, in consultation with the Authority, shall cause a Subcontractor to perform the following, if necessary:

1. Oversee all master planning services for the Development. The master planning services shall, to the extent applicable, include, without limitation:

a. Collecting existing site data as required for adequate due diligence and in support of Design Services, such as, survey, geotechnical, topographical, ownership of adjacent properties, etc.

b. Coordinating master grading, street abandonments or dedications and construction of private utilities.

c. Conducting regular planning meetings with the professional consultants on the revision of the existing master plan.

d. Preparing alternative Development Plans and present them to the Authority for their review and selection of the best approach.

e. Meeting with the residents, the surrounding neighborhood organizations and others the Authority requests to present the revised plan and obtain feedback.

f. Making revisions to the plan, based upon community input and as required by comments from regulatory and permitting agencies reviewing said plans, secure final Approval from the Authority and use the revised master plan going forward to revitalize the Development.

g. Preparing and submitting a preliminary site plan to the City of Steamboat Springs for approval.

2. Preparing all budgets, schedules, and contracts, including those with the architect, contractors and other parties working on the Development. All such budgets, schedules and contracts shall be subject to the review and Approval of the Authority.

3. Identifying and negotiating a contract with the architect and preparing bidding package strategy all with the advice and consent of the Authority.

4. Identifying and negotiating contracts with such architects, engineers, general contractor, materials suppliers, and other contractors, subcontracting professionals and consultants as may be necessary to carry out the Development.

5. Applying for all permits (including building and construction permits), licenses, easements and approval necessary for the physical improvements contemplated by the Development and maintaining in full force and effect any and all such permits and approvals.

6. Preparing and submitting all design documents (as defined by AIA document A-201, B-108, or other AIA form document(s) deemed applicable by the parties), and Development Plans, critical path schedules, cost estimates, budgets, schedules, specifications, life cycle analysis and design and the Development documents to the Authority for review and Approval.

7. On an ongoing and timely basis, advising the Authority as to the status of the processing of all applications necessary to obtain all governmental approvals required for the Development. Advising the Authority as to any material hearings or meetings regarding the Development with sufficient advance notice to enable the Authority to attend such hearings.

8. Monitoring the performance of all persons and entities that are to provide Design Services to the Development and take such actions as are necessary to maintain adherence to quality standards, the Development Budget(s) and the Development Schedule(s).

9. Monitoring the approved Development Budget(s). The Developer shall develop and submit to the Authority monthly cash flow reports and forecasts showing actual costs for activities in process and estimates for uncompleted work. Monitoring, reviewing and certifying draw schedules.

10. Submitting written design and development progress reports to the Authority monthly, in such form as may be reasonably required, including all reports as may reasonably be requested by Authority and which are of a nature generally requested or expected of construction managers or similar owner's representatives on similar projects.

## EXHIBIT C

### FINANCING SERVICES

The Developer will use its best efforts to apply for and obtain on behalf of the Brown Ranch Project Entity all project financing. The Developer shall prepare for the Authority's review and approval of an overall plan for the financing and equity investment necessary for the revitalization of the Development ("Financing Plan"). The Financing Plan shall set forth, inter alia, the debt and equity to be raised, the sources for all funds and expected uses. Once the Financing Plan is approved by the Authority, the Developer will use good faith efforts to implement the Financing Plan. Such implementation shall include the following:

1. Applying for and obtaining from issuing agencies such tax-exempt bond volume cap and/or LIHTCs as necessary to (a) attract equity investments; (b) ensure such allocations are preserved through the Closing and (c) ensure the making of such equity investments.
2. Providing legal counsel for tax credit syndication and/or bond issuance, the cost of which shall be a Development expense.

The parties agree that Berkadia Capital, LLC ("Berkadia"), a partially related affiliate of the Developer, will syndicate any low-income housing tax credit equity required for the Development. Berkadia will be directed to invite proposals from at least three (3) potential equity investors (each, a "Respondent"). The Authority may identify one or more additional Respondents from which Berkadia will seek a proposal. All Respondents will be advised to address the rights of the Authority as noted in Sections 5.01, 5.02 and 5.04 hereof and any additional requirements to be provided to address specific business points with respect to each phase such as the right of first refusal, no consents to exercise purchase options, and the like.

The Developer will consult with the Authority regarding the Developer's assessment of proposals received and recommendation, and the Authority will provide consent to the Developer's recommendation, a consent which will not be unreasonably withheld, with respect to the final selection of an Investor. The Developer will provide information during the assessment to include information on demonstrated competitiveness of the selected proposal under then-current market conditions in terms of pricing and related terms and conditions, including pay-in schedule, required guaranties, and bridge financing, demonstrated reliability of performance in comparable transactions. If the Developer shall determine that no proposal received in response to its solicitation is acceptable, the Developer shall re-solicit proposals from the same or additional respondents in accordance with the foregoing procedures. If fewer than three (3) Investors provide proposals following the initial solicitation, the Developer will seek pricing one more time from no fewer than three (3) reputable investors.



The Developer shall ensure that all investors solicited are aware of the Developer's possible exit upon Project Stabilization of the Development as set forth in Section 5.01 of this Agreement.

3. Subject to Section 2.02(b) and Section 15.05 of this Agreement, procuring all construction or development financing for the Development including any public funding.

4. Subject to Section 2.02(b) and Section 15.05 of this Agreement, procuring all permanent financing of the Development, including public funding.

5. Subject to Section 2.02(b) and Section 15.05 of this Agreement, procuring all necessary funding or financing for infrastructure improvements, including seeking assistance from the City of Steamboat Springs, Colorado and other governmental agencies to pay for all or a portion of the water, sewer, paving, grading and other infrastructure improvements.

6. Maintaining all development books of account and financial records in accordance with lender and Investor requirements, and the filing of required reports with funding agencies.

7. Preparing and submitting to the Authority such financial reports relating to the Development as the Authority may reasonably request.

## **EXHIBIT D**

### **SITE PREPARATION SERVICES**

Subject to Section 2.02(b) and Section 15.05 of this Agreement, the Brown Ranch Project Entity will, or will cause its contractors to perform the following:

1. Preparing complete design and technical specifications services through the completion of construction documents and a project manual that includes agreements, general requirements, and technical specifications.
2. Undertaking all necessary environmental studies, including test borings, soil samples, geotechnical analysis, and other similar investigations in connection with the Development, and remediation, removal and/or abatement of hazards on the property.
3. Performing bidding and negotiation services and retaining a contractor to perform the proposed construction or rehabilitation scope of work and provide contract administration services for this work in conformance with standards and recommendations described in the civil engineering drawings and other applicable site construction or rehabilitation documents.
4. Preparing the property as necessary to perform its obligations hereunder.
5. Obtaining all necessary construction and/or temporary easements, rights of entry and any other approvals required for development and infrastructure.

## **EXHIBIT E**

### **MANAGEMENT AND OWNERSHIP SERVICES**

The Developer in consultation with the Authority as its Co-Developer shall be responsible for the following:

1. Preparing the Development Plan.
2. Developing and implementing plans to encourage participation in the Development of Section 3 residents, Section 3 small business concerns, MBEs and WBEs. All such plans shall be submitted to the Authority for its review and approval.
3. Subject to Sections 2.02(b) and 15.05 of this Agreement, causing the Development to proceed and close in accordance with the Development Schedule and the Development Budget.
4. Assuring that all Development activities performed are provided in accordance with generally accepted standards for quality development and construction of affordable housing in Opelika and Camp Hill, Alabama.
5. Furnishing the skill and judgment necessary to perform the Development Services in a quality, expeditious and economical manner consistent with the best interests of the Development.
6. Causing the Project Entity to enter into a management agreement, including management policies, with a Management Agent approved by the Authority.

## **EXHIBIT 3.01**

### **AUTHORITY RESPONSIBILITIES**

The Authority's responsibilities shall generally include, but not be limited to:

1. Reviewing matters submitted by the Developer and advising the Developer, if required, of the Authority's approval or why its approval is being withheld;
2. The Authority shall seek to arrange all reasonable assistance for the Development Plan from applicable parties for whom such responsibility is assigned to the Authority pursuant to this Agreement. The Authority shall, at the Authority's cost and expense, provide all reasonable support requested by the Developer in obtaining licenses, approvals, clearances, or other cooperation from local, state, and federal agencies and local governing bodies, and shall support and seek the support of others for any financing application submitted by the Developer. To the extent available, the Authority shall make available to the Developer all previous relevant schedules, plans, designs, and budgets prepared for the Development.
3. Negotiating the successful annexation of Brown Ranch in the City of Steamboat Springs;
4. post-annexation land use approvals;
5. public financing or grant funding;
6. and ensuring compliance with affordability restriction;
7. determining unit mix and affordability requirements;
8. geothermal system;
9. homeowners' associations;
10. design and program final decision-making.

The Authority has received and will apply, directly or indirectly, the following grants to the Project or for its benefit:

- \$750,000 – for Neighborhood A infrastructure design and engineering
- \$5,000,000 – for construction of geothermal heating and cooling grid for Neighborhood A
- \$1,932,964 – for construction of wastewater infrastructure for Neighborhood A
- \$4,000,000 – Strong Communities grant program

To the extent available, the Authority will apply the following assistance to the Project:

- Prop 123 – Concessionary Debt, including Multifamily and LIHTC Gap Finance.
- Prop 123 – Equity Financing.
- Colorado Division of Housing – grants and loans

**EXHIBIT 10.01**

**INSURANCE**

## EXHIBIT 15.04

### SCHEDULE OF FAIR COMPENSATION UNDER TERMINATION FOR CONVENIENCE BY AUTHORITY

The parties agree to the following compensation with respect to each Phase of the Brown Ranch Project. The compensation shall be paid cumulatively in the event of a Termination for Convenience by the Authority.

1. Completion of schematic site plan design - \$~~150,000~~-1,000,000
2. Completion of approval of platting – the amount payable pursuant to the previous Section 1, plus \$~~300,000~~-500,000
3. Completion of design development drawings - the amounts payable pursuant to the previous Sections 1 and 2, plus \$500,000
4. Completion of construction documents - the amounts payable pursuant to the previous Sections 1, 2 and 3, plus \$800,000

Summary Report	
Title	<b>compareDocs Comparison Results</b>
Date & Time	2/16/2024 3:40:00 PM
Comparison Time	8.03 seconds
compareDocs version	v5.1.700.3

Sources	
Original Document	[#00143597.DOC] [v5] Brown Ranch MDA.DOC
Modified Document	[#00143597.DOC] [v6] Brown Ranch MDA.DOC

Comparison Statistics	
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Deletions	5
Changes	23
Moves	0
Font Changes	0
Paragraph Style Changes	0
Character Style Changes	0
TOTAL CHANGES	34

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<del>Deletions</del>	
<u>Moves / Moves</u>	
Font Changes	
Paragraph Style Changes	
Character Style Changes	
Inserted cells	
Deleted cells	
Merged cells	
Changed lines	Mark left border.

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Character Level	Word	False
Include Comments	Word	False
Include Field Codes	Word	True
Flatten Field Codes	Word	False
Include Footnotes / Endnotes	Word	True
Include Headers / Footers	Word	True
Image compare mode	Word	Insert/Delete
Include List Numbers	Word	True
Include Quotation Marks	Word	False
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Include Text Boxes	Word	True
Show Reviewing Pane	Word	True
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Detail Report	Word	Separate (View Only)
Document View	Word	Print