



**CITY OF BOULDER
CITY COUNCIL AGENDA ITEM**

MEETING DATE: November 8, 2018

AGENDA TITLE: Consideration of a motion authorizing the City Manager to execute an Intergovernmental Agreement with Boulder Housing Partners (BHP) in collaboration with the City as the joint Master Developer of the city-owned property located on the northeast corner of 30th and Pearl Streets.

PRESENTERS:

Jane S. Brautigam, City Manager
Jim Robertson, Director for Planning and Sustainability (P+S)
Kurt Firnhaber, Director Housing and Human Services (HHS)
Yvette Bowden, Director Parks and Recreation and Community Vitality
Erin Poe, Deputy City Attorney, City Attorney's Office
Charles Ferro, Development Review Manager, (P+ S)
Edward Stafford, Development Review Manager, Public Works
Beth Roberts, Housing Planner, HHS

EXECUTIVE SUMMARY

The purpose of this item is for City Council to consider a motion authorizing the City Manager to enter into an Intergovernmental Agreement (IGA) with Boulder Housing Partners (BHP) in collaboration with the city as joint Master Developer of a mixed-use development on the northeast corner of 30th and Pearl (AKA the Pollard site; 2360 30th Street).

The intent of the IGA is to ensure that outcomes for the site as established in the 2017 [Request for Proposal \(RFP\)](#), the [Boulder Valley Comprehensive Plan](#), and the [Transit Village Area Plan](#) are substantially met. The IGA will enable BHP to move forward with entitling the site to provide for infrastructure for the entire site, vertical construction for affordable housing portions of the site and entitled lots that the City will then be able to sell to support a variety of outcomes including gap financing for the affordable housing, a range of permanent affordability including for-sale middle income condominiums and co-operative housing, low/moderate income

workforce, multi-generational rental housing, very low income permanently supportive rental housing, and may include affordable commercial retail space. The development will meet or exceed the city's energy, resilience and sustainability standards.

The proposed IGA is the result of a multi-departmental city effort that included staff from Housing and Human Services, Planning and Sustainability (development review, public works, and sustainability), Community Vitality (parking and economic vitality), Parks and Recreation and the City Attorney's Office.

STAFF RECOMMENDATION

Staff recommends the following motion: Motion authorizing the City Manager to execute the IGA in substantially the form presented in this memorandum approving the development of the property at 2360 30th Street.

QUESTION FOR COUNCIL

Does council have questions about the proposed partnership with Boulder Housing Partners?

BACKGROUND

In 2000, the city initiated a planning effort for a transit-oriented development (TOD) in east Boulder. The 11.2-acre site at the northeast corner of 30th and Pearl streets (then owned by Pollard Friendly Motors) was identified through a site selection process and, in 2004, jointly purchased by the City of Boulder and the Regional Transit District (RTD).

In September 2007 the Transit Village Area Plan (TVAP) was adopted establishing a broad vision for a 160-acre area roughly surrounding 30th and Pearl and outlining a set of goals and objectives for the 30th and Pearl site. In 2012 City Council further confirmed the goals for the site and around that time approximately half of the site on the east side was developed as a hotel, 71 units of affordable housing wrapping a parking structure, a plaza, and a home for the historic train depot building.

In an October 2016 City Council [study session](#), council considered a representative range of potential redevelopment options for the remaining 5.6 acres of the 30th and Pearl site. Council was supportive of the scenario that featured a mix of uses with an emphasis on market and affordable housing.

In March 2017, a [RFP](#) for the redevelopment of the 30th & Pearl site was issued. The RFP stated that in return for transfer of the site the city would receive desired development outcomes as defined by council the 2016 study session; the "creation of a neighborhood" with a mix of tenures (ownership and rental), a variety of building types, excellent design, significant sustainability elements with an emphasis on reducing the community's impacts on climate change, a goal of 50 percent of the housing as permanently affordable and to create a new approach that would enable permanently commercial space intended to preserve and facilitate the retention of smaller, local businesses and non-profit organizations.

In July 2017, four development teams responded to the RFP and the proposal submitted by Zocalo was chosen. In September 2017, the city entered into a joint development agreement (JDA) for development of the site. However, the agreement was not successful and was mutually terminated by the parties.

PARTNERSHIP BETWEEN THE CITY AND BHP

The terminated Zocalo JDA included BHP as a key partner in development of affordable housing on the site. BHP along with the local architectural firm Coburn completed extensive design, financial and feasibility ground work for the entire 4.3 acre site (5.6 acres minus the city pocket park) and for the affordable housing. Recognition of BHP's role and familiarity with the site created a logical opening for conversations on a development scenario that would both achieve the desired outcomes and result in additional benefits to the community. As a result BHP presented a [development proposal](#) to city staff in August 2018.

The resulting plan as captured in the attached IGA achieves several outcomes beneficial to the city in addition to the community benefits outlined in the 2017 RFP:

1. The city will retain equity to support affordable outcomes that would otherwise be lost.
 - a. There will be no cost to the city for Master Developer services; a fee typical for the entitlement portion of a project. This will assist the site to achieve community benefits that otherwise would not have been financially possible.
 - b. The city will realize increased equity from the sale of entitled land sold for market development.
 - c. Equity in the sale of the market quadrants beyond what is needed to ensure the development outcomes in the IGA will be leveraged into additional community benefit primarily through the requirement for affordable commercial space and/or additional affordable housing.
2. BHP has proven financial resources to complete the project.
 - a. Continued efforts to preserve time-limited access to the qualified census tract (QCT) equity.
 - b. Authorization to issue tax-exempt private activity bonds for qualifying affordable housing projects.
3. BHP, as the city housing authority can deliver a wide range of community benefit.
 - a. Affordable housing and supportive community space to establish an independent living and work program for young adults with developmental disabilities.
 - b. The expertise to direct and close a financial transaction to build affordable housing that will enable service to households with a range of incomes from 30%-60% of AMI.
 - c. And, if approved by the BHP Board of Commissioners, affordable rental units dedicated as permanently supportive housing (PSH) for those using permanent supportive housing vouchers.

As the city's housing authority, BHP has a long successful track record developing, constructing, and operating high quality affordable housing and mixed-use communities in Boulder's market.

Their experience includes acting as a master developer for the Holiday Neighborhood. In light of BHP's experience, mission, and familiarity with the planning efforts for redevelopment of the property the engagement of BHP under this Agreement maximizes the chance of realizing the desired development outcomes and high level of community benefit anticipated on this site.

The Intergovernmental Agreement (IGA)

The IGA is a document that governs the development of 30th and Pearl through entitlements, the initial phase of infrastructure, and into construction of the affordable units. During this process the IGA is augmented by a number of agreements including deed restricting permanent affordability covenants on the affordable housing and any affordable commercial space and parking agreements.

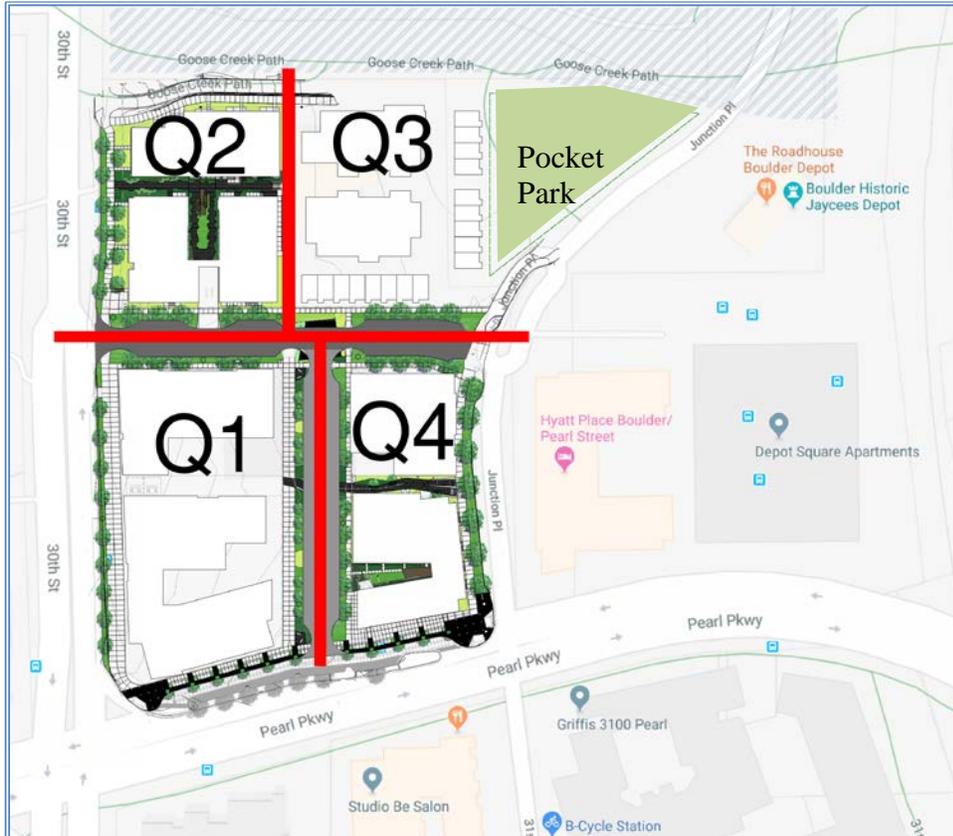
The IGA includes target goals for housing, parking and anticipated programming for the market rate parcels. However, the final amount of each will be determined through the entitlement process requirements of Form Based Code and approval by the City Manager. The following summarizes provisions of the IGA. The full IGA may be found in *Attachment A*.

1. The city will appoint BHP as joint Master Developer in collaboration with the City. As Master Developer, BHP will complete the pre-development entitlement process and initial phase of infrastructure and public improvement development for the entire 4.3 acre site. and the pre-development and construction entitlements (e.g., architectural, engineering, construction) for the affordable housing component.
2. BHP agrees to waive the fee for this work which would normally be due a developer.
3. BHP is authorized to issue tax-exempt private activity bonds for qualifying affordable housing projects.

Through the entitlement process the site will be subdivided into four quadrants (four or more parcels) two of which will be developed as affordable housing and two of which will be sold to market developers.

4. The city will realize increased equity from the sale of the entitled parcels identified for market development. Subject to annual appropriations, the city intends to fund BHP's financing gap for the Affordable Housing through the sale of the entitled, market quadrants. The city intends to source the gap funding from the net proceeds of sales but retains the right to elect another source of funding in its sole discretion.
5. Equity in the market quadrants above what is needed for gap funding will be leveraged into additional affordability on the market parcels through the requirement for affordable commercial space and/or affordable for-sale housing.
6. The city will own the entire site throughout the entitlement process. BHP will be granted a purchase option. Once entitled and subdivided, the transfer of land ownership of the site will be conducted separately.

Site Plan / Quadrant layout



- **Quadrant 1.** Approximately 75 market condominiums. Ground level, site activating commercial along 30th and Pearl. Sold entitled to private market rate developer. Additional community benefit may include affordable commercial space and/or affordable for-sale middle income housing.
- **Quadrant 2.** Approximately 80 Affordable apartments. BHP will develop and own this quadrant. Proposed affordable housing geared towards a mix of household types including mixed generation single adults and families.
- **Quadrant 3.** Approximately 55 market for-sale condominiums and townhomes. Sold entitled to private developer for market rate development.
- **Quadrant 4.**
North. Approximately 15 - 25 affordable for-sale units. Contemplated as some or all for middle income and/or co-housing. Sold entitled to private market or non-profit developer for affordable housing development.
South. Approximately 40 affordable rental units & 3,000 sq. ft. supportive community space. BHP will develop and own approximately 20 units as an

independent living program (ILP) for young adults with developmental disabilities. A portion of the community space will be dedicated to this program. The building will also contain an additional 20 1/BR apartments.

- **Parking**

Quadrant 1 - Parking will be provided below ground.

Quadrant 2 & 3 – A shared parking garage will be provided below ground.

Quadrant 4 - No parking would be provided; parking may be leased or purchased from excess provided in the other two garages. The north portion of quadrant 4 will be last parcel to develop and will be used as parking for the south portion of quadrant 4 until additional parking is complete.

Affordable Housing

Affordable housing is anticipated to be provided in several ways in multiple buildings. These include affordable rental apartments on quadrant 2. Affordable rental apartments on the south portion of quadrant 4 and the opportunity for affordable for-sale middle income condominiums on the north portion of quadrant 4 subject to the availability of funds through the sale of portions of the site.

Affordable Rental Apartments

BHP will own all the permanently affordable rental units constructed on the property (+/-120). The affordable rental units will serve households earning 30 to 60 percent of the area median income (AMI) and will include a mix of studio, 1-, 2- and 3-bedroom units.

Of these, approximately 20 are proposed to be dedicated to an independent living program for young adults with developmental disabilities (to be confirmed with market study and CHFA approval).

If approved by the BHP Board of Commissioners and dependent on the availability of outside funding for supportive services, BHP will set aside project-based vouchers to serve hard to house populations at the site that may include individuals exiting homelessness and the developmentally disabled residents living in the ILP program units.

Affordable For-sale Condominiums

The north side of quadrant 4 will be sold or dedicated to a market or non-profit developer to construct condominiums affordable to middle income households. The intent is to attract a developer who will develop the site as co-housing.

Pilot Affordable Commercial Program

Opportunity for affordable commercial space on the quadrant 1, earmarked for market development, exists if the entitled land value provides sufficient equity in excess of that needed to provide gap funding to support the affordable outcomes on the site.

Leasing priorities will create an active, vital neighborhood and will include one or more local independent small businesses and non-profits supporting the residents in the TVAP area.

An Affordable Commercial Implementation Agreement will be required that will include specific provisions for the mix of uses (e.g., retail, restaurant and office users), the tenant selection process, city approval of leasing terms, affordability requirements, renewal policies, and subleasing. The Agreement will also include reporting requirements needed to accurately review and analyze the affordable commercial outcomes.

The affordable commercial space will be secured with permanent deed restricting covenants that run with the land. The covenants and agreement will be recorded prior to transfer of the land and will include, in addition to affordable leasing terms, a price limitation formula should the developer/owner choose to sell the commercial space in the future.

Parking, Access, and Management

The Pollard site is located within the Boulder Junction Access District (BJAD). Parking in BJAD is guided by BJAD polices including SUMP principles (shared, unbundled, managed and paid), the Transit Village Area Plan (TVAP), and the city's Access Management and Parking Strategy (AMPS). BHP, and future market rate or non-profit developers will work with the city to comply with the parking requirements to the extent that affordability outcomes are not compromised.

Most parking will be in below grade parking structures to enhance the pedestrian experience. Surface parking spaces will be publicly managed and regulated by the city and BJAD.

Eco Passes, car-share and bike-share programs will be provided. Bicycles are encouraged as the primary mode of transportation through the inclusion of bike parking and storage spaces and participation with Boulder B-Cycle.

Energy, Resilience and Sustainability

The development will be designed in conformance with the form-based code as a healthy and adaptable environment infused with sustainability and resiliency throughout construction and in its operations. Buildings will meet or exceed the city's energy efficiency standards. Specific design features include:

1. To support the city's transition from fossil fuels to clean energy, the project will be designed with the development goal of using an all-electric energy supply while maximizing on-site, renewable energy generation options. A possible exception could be for a coffee shop or food establishment that relies on gas cooking methods.
2. Aggregated annual energy demand will be generated, to the degree and based on the capacity allowed by on-site renewable generation, from on-site sources utilizing renewable electricity generation and clean energy sources. Where rooftop solar capacity remains, the development will factor in the latest energy code requirements for "Solar Ready" buildings such as pre-wiring for solar, location of penetrations in the roof.

3. BHP anticipates that each residential and commercial unit will contain customer-sited technologies and strategies aimed at reduced plug loads including end-use metering and energy monitoring systems that support occupants to monitor and control their energy use.
4. The project will meet or exceed city standards for inclusion of electric vehicle (EV) charging stations.

City Pocket Park

The city owns and will continue to own the northeast portion of the project site, containing approximately 0.75 acres for use as a park (Boulder Junction Park). The Boulder Junction Park project is budgeted and under the management of the city's department of Parks and Rec which will be responsible for review, approval and payment of all park improvements therein. Parks and Rec will coordinate the design of Boulder Junction Park with the design, planning and entitlement process for the other areas of the project. Upon completion of the Boulder Junction Park Project Improvements, the city shall assume full responsibility for the park and will either provide maintenance of the park or explore an agreement with the Master Association to determine the most cost-effective and functional approach to maintenance.

ENTITLEMENT PHASING OWNERSHIP AND LAND CONVEYANCE

Ownership and Entitlements. The city will retain ownership of the site through the initial entitlements. The first phase of entitlements will include submittals for Form Based Code and Preliminary Plat, followed by Tec Docs and Final Plat for the design and infrastructure of the entire site and Form Based Code and Tec Doc submittals for the architecture and building details for the affordable rental housing to be constructed by BHP (Q2 & the south portion of Q4). Once the site has a final subdivision plat the remaining parcels may be sold or conveyed. The new owners will then complete phase two of the entitlements submitting Form Based Code and Tec Docs for the architecture and building details for those parcels. The two phases are expected to be completed no later than the end of 2019.

Conveyance. The affordable housing parcels (Q2 & the south portion of Q4) will be conveyed to BHP in return for permanently affordable covenants. The market parcels (Q1 and Q3) will be sold to market buyers. The affordable parcel not being developed by BHP (the north portion of Q4) will be sold or conveyed to a market or non-profit affordable housing developer. The conveyance/sale of the properties is expected to be completed by mid-2019. Staff will request authorization from council to convey any portion of the property before it is sold.

NEXT STEPS

- Fourth Quarter 2018 - BHP submits for Form Based Code review for the first phase quadrants (site plan, infrastructure, public improvements for the entire site & BHP owned affordable housing)
- Fourth Quarter 2018 - city and BHP will develop a process for determining the selection of developers for the remaining parcels

- 2019 - the City Manager and BHP finalize supporting documents, agreements and management plans
- 2019 - BHP builds a financial plan for the development of infrastructure and affordable housing for the property. The city, with the assistance of BHP will engage in public information outreach
- Second Quarter 2019 - BHP submits building permit application(s) for the first phase quadrants (BHP owned affordable housing)
- Fourth Quarter 2019—BHP closes on the tax credit financial transaction for the property to preserve the QCT and begin infrastructure construction.

ATTACHMENTS

A. 30th and Pearl IGA

INTERGOVERNMENTAL AGREEMENT ON CITY PROPERTY AT 30TH & PEARL

This Intergovernmental Agreement on City Property at 30th & Pearl (“Agreement”) is entered into as of November ____, 2018, (the “Effective Date”) by and between the City of Boulder, Colorado, a home rule city (“the City”) and the Housing Authority of the City of Boulder, Colorado, a body corporate and politic, doing business as Boulder Housing Partners (“BHP”) (each a “Party” and together the “Parties”).

Background

A. The City owns property approximately 5.63 acres in size, addressed as 2360 30th Street, Boulder, CO 80304, legally described as Lot 3 Boulder Transit Village Subdivision Replat A, the City of Boulder, Colorado. This Agreement concerns this City property less the northeastern half-acre to be used for a City park (the “Property”) the metes and bounds of which will be determined once the Property is surveyed.

B. Consistent with the adopted Transit Village Area Plan (“TVAP”), the City desires to redevelop the Property into a mixed-use, pedestrian-oriented neighborhood which complies with the City’s form-based code and includes access to transit, a high percentage of affordable housing, and public spaces that benefit the entire community (the “Entire Site”). Within the Entire Site, the portion of the property to be developed for affordable housing shall be referred to as the “Affordable Housing.” The City’s goals for redevelopment of the Property are described in more detail in Exhibit A (“Anticipated Development Outcomes”).

C. As the City’s housing authority, BHP has a long track record of success developing, constructing, and operating high quality affordable housing and mixed-use communities in the City.

D. BHP is authorized to issue tax-exempt private activity bonds for qualifying affordable housing projects. BHP, in its role as issuer, approved an application for an allocation of private activity bonds dated December 1, 2017 (the “2017 Bond Application”) for this property. The application was submitted jointly by BHP and a partner. As of the Effective Date, BHP holds all rights and obligations with respect to the 2017 Bond Application.

E. The Property is located within a federally-designated 2017 Qualified Census Tract (“QCT”). Under the rules of the federal low-income housing tax credit program, additional equity investment is available to an owner who builds a qualifying affordable housing project on the Property (the “QCT Equity”), provided that bonds are issued for such project no later than 730 days after the date of the 2017 Bond Application (the “QCT Deadline”), which is November 30, 2019.

F. Prior to conveyance to third parties, the City also desires to install certain public infrastructure on the Property to increase the value and reduce risk (the “Infrastructure Development”).

G. In light of its experience, mission, familiarity with the planning efforts for redevelopment of the Property, continued efforts to preserve time-limited access to the QCT

Equity, and commitment to invest the net proceeds of sale of the market-rate parcels within the Property into the Affordable Housing to increase the community benefit from redevelopment, the City has determined that the engagement of BHP under this Agreement maximizes the chance of realizing the Anticipated Development Outcomes.

H. The Parties desire to enter into this Agreement, which amends and restates any and all prior agreements on the same subject.

Therefore, the Parties agree as follows:

General Provisions

1. Appointment. The City appoints BHP, as joint Master Developer, in collaboration with the City, to perform the Pre-Development Services for the Entire Site, the Pre-Development Services for Affordable Housing, and the Infrastructure Development Services (each as defined below and, collectively, the “Services”) for the redevelopment of the Property in accordance with the terms of this Agreement. BHP accepts the engagement. The City desires a mutually beneficial relationship to honor the financial commitment made by BHP in furtherance of the goals for the Property.

2. Standard of Performance. BHP shall perform the Services diligently, competently, and in a timely manner, and at all times in accordance with the standards of care and diligence provided by independent contractors that perform similar services for projects of like size and kind in the same locality. The City acknowledges that BHP is not a licensed architect, engineer, accountant, or attorney, and nothing in this Agreement shall be deemed to require BHP to perform any act which would constitute the practice of architecture, engineering, accounting, or law. The Services provided by BHP under this Agreement shall not be deemed to constitute the performance of licensed professional services. The City further acknowledges that in no event shall BHP have any liability whatsoever for the services or work of any other party on the Entire Site, including the construction contractor, architect, subcontractors, material suppliers, or consultants.

3. Budget; Accounting Records; Cost Allocation. Throughout the term of this Agreement, BHP shall keep accurate and complete accounting records of its expenditures related to this Agreement, with expenditures allocable to the Affordable Housing distinguishable from those allocable to the Entire Site and to the Infrastructure Development. Exhibits D-1, D-2, and D-3 reflect the expected Budget for each component of the redevelopment. Accounting records shall be made available to the City upon request.

4. Coordination and Communication.

a. BHP Representative. BHP shall make its lead project manager under this Agreement and other key personnel available for communications with the City, will keep the City advised of matters affecting redevelopment of the Property, and will provide regular updates regarding the status of the redevelopment of the Property. BHP shall facilitate the coordination and communication between the City, architect, contractor, consultants and other development team members.

b. City Representative. The City agrees to designate a representative authorized to act on the City's behalf and communicate with BHP with respect to redevelopment of the Property as BHP may reasonably require to perform the Pre-Development Services. The City Representative shall be the Director of Housing and Human Services until such time as the City provides notice to BHP of a replacement or alternate.

5. Insurance. For so long as this Agreement remains in effect and the City owns the Property, BHP shall procure and maintain, at its sole cost and expense, with a company or companies authorized to do business in the State of Colorado, the following insurance: (a) commercial general liability insurance in the amount of at least \$1,000,000 combined single limit, (b) automobile liability insurance in the amount of at least \$1,000,000 combined single limit, and (c) all worker's compensation insurance required by Colorado law. BHP shall deliver to the City, upon execution of this Agreement and at least 10 days prior to the renewal date of each insurance policy, a certificate of insurance evidencing such coverages. BHP shall cause all members of the design and construction team to carry insurance appropriate to the type of work performed before such parties are allowed to commence work on the Property, with terms reasonably satisfactory to BHP, with all insurance policies naming the City as Additional Insured (and, after exercise of the Option, naming BHP as Additional Insured) with the exception of worker's compensation coverage.

6. Right of Entry. Subject to compliance with the Insurance section of this Agreement, the City grants to BHP, its agents, its contractors, and subcontractors the right to access and enter upon or pass through the Property at any reasonable time for the purpose of performing due diligence and other Pre-Development Services, including site surveys, environmental assessments, and geotechnical testing deemed necessary or desirable by BHP to plan, design, and finance the redevelopment of the Property.

7. QCT Deadline; Cooperation.

a. The Parties share the goal of preserving access to the QCT Equity and agree that time is of the essence in the performance of this Agreement. This will require acting expeditiously to secure all necessary contracts, property rights, entitlements, and commitments for other sources of construction and permanent financing for redevelopment of the Property. To this end, the Parties agree to use their best efforts to work together to timely meet each milestone in the Schedule of Development Milestones attached as Exhibit C (the "Schedule"). BHP shall keep the City advised on a regular basis as to progress under the Schedule and any acceleration or delay with respect to a particular stage. Plans and documents submitted by BHP for review by the City of Boulder Planning and Development Services department shall be complete, organized, and accurate. City shall as promptly as reasonably possible review and comment on all budgets, schedules, plans, and other correspondence, reports, or documents received from BHP related to redevelopment of the Property that require comments. The Parties agree that the Schedule may need to be adjusted during the project if there are unexpected delays in the approval process or other

unforeseen events. The Parties agree to work collaboratively to make any necessary Schedule adjustments.

b. Notwithstanding the foregoing, failure to obtain the QCT Equity by the QCT Deadline shall not alone form the basis for termination of this Agreement. The Parties are committed to working together to pursue all available sources for the project and using the value of the entitled Property to complete the Affordable Housing portion of the project as described in this Agreement as the priority even if the QCT Deadline cannot be met due to unforeseen events or unexpected delays. The City acknowledges that several applications for tax credit funding may be needed over more than one year in order to obtain an award. As long as BHP's efforts to obtain this funding continue in good faith, this Agreement shall continue to remain in effect.

8. City's Police Powers Reserved. The Parties acknowledge that, as of the Effective Date of this Agreement, the City owns the Property and is also the locality with land use jurisdiction over the Property and its redevelopment. No promises, terms, conditions, or obligations other than those contained herein and in the Option (defined below) exist with respect to the retention of BHP by the City for services related to redevelopment of the Property. The rights granted herein and in the Option shall not limit or otherwise restrict the right of the City to exercise its police power with respect to its land use regulatory powers, control of its property, control of its rights-of-way, or otherwise. This Agreement shall not be construed as an approval by the City of redevelopment of the Property for the purpose of any City land use approvals required under the City's adopted Land Use Code.

9. BHP's Fee for Services. BHP waives any fee for its performance of the Pre-Development Services and the Infrastructure Development Services under this Agreement. The fee for services which would normally be due a developer as well as the increase in the property value after the Property is taken through the entitlements process will be invested by the City into the Affordable Housing to increase the community benefit from development.

10. Deliverables. BHP's deliverables under this Agreement are included in Exhibit C, Schedule of Development Milestones.

11. Term. This Agreement shall remain in effect for a term commencing as of the Effective Date and delivery of a fully executed Option and, unless terminated by mutual agreement of the Parties or otherwise in accordance with the terms hereof prior to such date, continuing through (a) as to the Affordable Housing, the issuance of a building permit for the first building within the Affordable Housing, and (b) as to the Entire Site, the conveyance by the City of the last parcel of land within the Property intended for development by a third party.

12. Termination. Either the City or BHP shall have the right to terminate this Agreement at any time for any default by the other Party in the performance of its duties hereunder with respect to redevelopment of the Property, subject to a notice and cure period, as follows. The Party alleging a default shall give the other Party written notice. The Party receiving notice of default shall have a period of 30 days after receipt of notice of a monetary

default or 60 days after receipt of notice of a nonmonetary default to cure the default prior to exercise of remedies by the non-defaulting Party. If the default is such that it is not reasonably capable of being cured within 30 or 60 days, as applicable, and if the defaulting Party (i) initiates corrective action within said period, and (ii) diligently, continually, and in good faith works to effect a cure as soon as possible, then the defaulting Party shall have such additional time as is reasonably necessary to cure the default prior to the exercise of any remedies by the non-defaulting Party. If the breaching party fails to correct a breach within the relevant cure period, the non-breaching party may, in addition to any other rights and remedies available to the non-breaching party at law or in equity, terminate this Agreement.

BHP's rights hereunder shall not be terminated by the City except for cause as finally determined by a court of competent jurisdiction. For purposes hereof, "cause" shall mean fraud, dishonesty, reckless disregard for customary practices, or intentional misconduct. If the City terminates this Agreement for cause and BHP waives or otherwise abandons any right it may have to dispute such termination, BHP agrees that it will not exercise the Option.

Pre-Development Services for Entire Site

13. Scope of Work. BHP shall complete or cause to be completed the pre-development services for the Entire Site described in Exhibit B-1 (the "Entire Site Pre-Development Services").

14. Contracts. To the extent contracting with one or more third parties is necessary to complete any of the Entire Site Pre-Development Services, BHP shall enter into such contracts in its own name (the "Entire Site Pre-Development Contracts").

15. Reimbursement of Costs. As to expenditures allocable to the Entire Site, the City shall reimburse BHP as agreed by the Parties in separate funding agreements entered into pursuant to standard City funding procedures (the "Entire Site Reimbursements"). Entire Site Reimbursements shall occur within 30 days of receipt of a written request from BHP, accompanied by sufficient supporting documentation of expenses (or in accordance with such other payment arrangement mutually agreed upon by the Parties), but no more frequently than once per month.

16. Ownership of Deliverables. The City shall own the reports, studies, models, plans, specifications, drawings, site plans, and other deliverables produced under the Entire Site Pre-Development Contracts, except for such portions as relate to the Affordable Housing, which will be owned by BHP.

Pre-Development Services for Affordable Housing

17. Scope of Work. BHP shall complete or cause to be completed the pre-development services for the Affordable Housing described in Exhibit B-2 (the "Affordable Housing Pre-Development Services" and, together with the Entire Site Pre-Development Services, the "Pre-Development Services").

18. Contracts. To the extent contracting with one or more third parties is necessary to complete any of the Affordable Housing Pre-Development Services, BHP shall enter into such contracts in its own name (the “Affordable Housing Pre-Development Contracts”).

19. Reimbursement of Costs. As to expenditures allocable to the Affordable Housing, the City shall reimburse BHP as agreed by the Parties in separate funding agreements entered into pursuant to standard City housing funding procedures (the “Affordable Housing Reimbursements”). Affordable Housing Reimbursements shall occur within 30 days of receipt of a written request from BHP, accompanied by sufficient supporting documentation of expenses (or in accordance with such other payment arrangement mutually agreed upon by the Parties), but no more frequently than once per month. If BHP successfully closes on construction financing for the Affordable Housing, the Affordable Housing Reimbursements by the City shall be treated as a grant to BHP.

20. Ownership of Deliverables. BHP shall own the reports, studies, models, plans, specifications, drawings, site plans, and other deliverables produced under the Affordable Housing Pre-Development Contracts; provided, however, that if BHP does not exercise the Option, upon request from the City, BHP shall assign its rights under (or, in its reasonable discretion, grant a license to the City to use materials produced under) any or all of the deliverables produced under the Pre-Development Contracts paid for by the City.

Infrastructure Development Services for Entire Site

21. Scope of Work. BHP shall complete or cause to be completed the infrastructure development services described in Exhibit B-3 (the “Infrastructure Development Services”).

22. Contracts. BHP shall contract with one or more third parties as necessary to complete the Infrastructure Development Services in its own name (the “Infrastructure Development Contracts”), in conformance with BHP’s purchasing policy, which is based on U.S. Department of Housing and Urban Development procurement standards.

23. Reimbursement of Costs. The City shall reimburse BHP for all out-of-pocket costs incurred for the Infrastructure Development (the “Infrastructure Development Reimbursements”), according to the terms and conditions of separate funding agreements entered into pursuant to standard City housing funding procedures, up to a total amount to be agreed upon by the Parties once there is sufficient information about the design and construction plan for the site to formulate a reasonably accurate estimate of costs. Infrastructure Development Reimbursements shall occur within 30 days of receipt of a written request from BHP, accompanied by sufficient supporting documentation of expenses (or in accordance with such other payment arrangement mutually agreed upon by the Parties), but no more frequently than once per month.

24. Ownership of Public Infrastructure Plans. The City shall own the reports, studies, models, plans, specifications, drawings, site plans, and other deliverables produced under the Infrastructure Development Contracts related to the public infrastructure (the “Public Infrastructure Plans”). The City shall grant BHP a license (or such other rights as BHP’s

financing partners may require) to use the Public Infrastructure Plans that relate to the Affordable Housing as part of the development, construction, and operation of the Affordable Housing.

25. Ownership of Infrastructure. Each non-City party that takes title to a given portion of the Property shall own and maintain the private infrastructure improvements located within such portion. The City shall own and maintain the public infrastructure within the Property. The Parties anticipate that the City will retain title to the north-south right of way and the east-west right of way to be constructed within the Property, both to be re-platted as part of the City entitlement process, in which rights of way BHP or its affiliate will, upon receipt of all required City permits, build the majority of the public infrastructure.

Site Control for Affordable Housing; Use Covenants for City

26. Site Control. The City acknowledges that, in order to submit complete and competitive applications for low-income housing tax credits and construction and permanent financing with enough time to receive financing commitments prior to the QCT Deadline, BHP must be able to demonstrate site control over the property on which the Affordable Housing will be built. To facilitate timely submittal of these applications, the City agrees to execute the Purchase Option Agreement in the form attached hereto as Exhibit D (the "Option") concurrently with this Agreement. To the extent the Colorado Housing and Finance Authority or any other project funder requires the City to consent to an application for project financing, the City's consent shall not be unreasonably withheld, conditioned, or delayed. The City shall retain ownership of the property to be developed as a park in the northeastern corner of the City's parcel, as well as the portions of the project designated for construction of market-rate development. The City shall have the right to transfer such parcels after subdivision and retain the sales proceeds to create additional community benefits on the Property.

27. Allocation of Property for Affordable Housing and Other Uses. The Parties acknowledge that the Purchase Option Property (as that term is defined in the Option) encompasses more land than is expected to be required for the Affordable Housing. If the Parties can identify the exact locations on which the Affordable Housing will be built on the Property prior to exercise of the Option (whether through City approval of a plat, creation of a metes and bounds description, or some other approach), the Parties agree to amend the Option to adjust the legal description of the Purchase Option Property accordingly. If, on the other hand, the Parties cannot identify the exact locations on which the Affordable Housing will be built on the Property prior to exercise of the Option, on or before the date BHP closes on the acquisition of the Purchase Option Property, BHP agrees to execute a binding agreement in a form satisfactory to the City to convey back to the City (or such third party as the City approves in writing) all property within the Purchase Option Property not necessary for the Affordable Housing.

28. City Livability Standards. For residential improvements in the Project, the City Livability Standards for Permanently Affordable Housing, as amended and found on the City's website www.boulderaffordablehomes.com, shall apply to residential unit unless otherwise approved by the City.

29. Use Covenants. As consideration for the deed to the Property, BHP agrees to execute one or more affordability covenants running in favor of the City, the form of which is attached as Exhibit B to the Purchase Option Agreement, defining allowable uses on the Property, such covenant(s) to be recorded in the Boulder County real estate records and run with the land.

Proceeds from Sales of Market-Rate Parcels; Gap Funding for Affordable Housing

30. City Receives Market-Rate Parcel Sales Proceeds. The City shall be entitled to the net proceeds from the sale of any parcel within the Property (the “Net Proceeds of Sales”).

31. City Commitment to Gap Funding. Subject to annual appropriations, the City agrees to fund BHP’s financing gap for the Affordable Housing in an amount to be memorialized in one or more separate funding agreements entered into pursuant to standard City housing funding procedures (the “Gap Funding”). The City intends to source the Gap Funding from the Net Proceeds of Sales, but retains the right to elect another source of funding in its sole discretion.

32. Parking. The Parties have a shared assumption that the City will require, either as a condition of entitlements approval or conveyance of title, that (a) the future owner of the southwestern portion of the Property (“Quadrant 1”) will lease parking spaces to the owners of the parcels adjacent to the east (“Quadrants 4A and 4B”) in a total number and with an appropriate allocation across quadrants as is determined during the entitlements process to be sufficient for the Quadrant 1, 4A, and 4B owners to satisfy City code requirements on parking, and (b) the future owner of the northeastern portion of the Property (“Quadrant 3”) will be responsible for funding its proportionate share of the construction and operation of a parking facility with the owner of the parcel adjacent to the west (“Quadrant 2”), with the result that the owners of Quadrants 2 and 3 both satisfy City code requirements on parking, as determined during the entitlements process. The final decision regarding parking on the Property will be informed by the shared goal of the parties to optimize the use of the Property to achieve the Anticipated Development Outcomes.

Miscellaneous Provisions

33. Further Agreements. Each Party agrees to execute and deliver to the other such reasonable and appropriate additional documents, instruments, or agreements as may be necessary or appropriate to effectuate the purposes of this Agreement.

34. Notices. All notices provided for herein shall be in writing and shall be sent to the address set forth below (or such other address as a Party may hereafter designate for itself by notice to the other Party as required hereby) of the Party for whom such notice or communication is intended:

If to the City:	The City of Boulder Attn: Director of Housing and Human Services 1300 Canyon Blvd.
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Boulder, CO 80302
FirnhaberK@bouldercolorado.gov

If to BHP: Boulder Housing Partners
Attn: Executive Director
4800 Broadway
Boulder, CO 80304
DurhamJ@boulderhousing.org

All notices shall be deemed sufficient (i) upon receipt after dispatch by registered or certified mail, (ii) upon confirmation of receipt when transmitted by electronic mail, (iii) by hand delivery, or (iv) by overnight courier service. Any such notice shall be effective the earlier of (x) the date when received by the addressee, or (y) the date sent if sent by overnight courier for next business day delivery and actually received on the next business day.

35. Assignment. This Agreement shall be binding upon the parties hereto and their respective successors and permitted assigns. Neither the City nor BHP shall have the right to assign this Agreement to any person or entity without the prior written consent of the other.

36. Waiver of Claims; Limitation of Liability. Notwithstanding anything to the contrary in this Agreement, except with respect to gross negligence or willful misconduct, the parties hereby waive any and all claims for any indirect, incidental, special or consequential damages of any nature whatsoever. Notwithstanding anything to the contrary in this Agreement, BHP's total aggregate liability to the City in connection with this Agreement or any of the Services, whether based upon contract, strict liability, civil liability, tort, negligence or any other legal theory, shall in no event exceed the amount available under the commercial general liability insurance policy BHP is required to maintain under this Agreement.

37. Independent Contractor. The Parties recognize and agree that BHP is an independent contractor for all purposes, both legal and practical, in performing services under this Agreement.

38. No Joint Venture. Nothing herein shall be deemed to create a partnership or joint venture between BHP and the City.

39. Consent; Approval. Whenever in this Agreement the consent or approval of any Party is required, such consent or approval shall be in writing only, shall not be unduly delayed and shall only be effective if given by a duly authorized officer or agent for the Party granting such consent or approval. Consent by electronic writing such as email or similar means of electronic communication shall suffice.

40. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Colorado.

41. Interpretation. Headings used in this Agreement are for convenience only and are not to be considered in the interpretation of this Agreement. The word “including” in this Agreement means “including without limitation.”

42. Exhibits. Each Exhibit attached hereto is incorporated into this Agreement by this reference.

43. No Implied Waiver. The failure of any Party to seek redress for violation of, or to insist upon the strict performance of, any covenant, agreement, provision, or condition of this Agreement shall not constitute a waiver thereof nor prevent any subsequent act, which would have originally constituted a violation, from having all the force and effect of an original violation.

44. Remedies. In the event of any breach of any covenant or agreement contained in this Agreement by the other party, each of the parties hereto shall be entitled to any remedy available at law or in equity.

45. Severability. If any provision of this Agreement is found to be invalid, illegal or unenforceable, the validity and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

46. No Waiver of Immunity. Nothing in this Agreement shall be construed in any way to be a waiver by BHP or the City of immunity protection under the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, et seq., as amended.

47. No Third-Party Beneficiary. The enforcement of the terms and conditions of this Agreement and all rights of action relating to such enforcement shall be strictly reserved to BHP and the City. Nothing contained in this Agreement shall give or allow any claim or right of action whatsoever by any other or third person. It is the express intent of the Parties that any person receiving services or benefits under this Agreement shall be deemed an incidental beneficiary only.

48. Annual Appropriation. Nothing in this Agreement shall be deemed or construed as creating a multiple fiscal year obligation on the part of the City within the meaning of Colorado Constitution Article X, Section 20 or any other constitutional or statutory provision, and the City’s obligations hereunder are expressly conditional upon annual appropriation by the City Council, in its sole discretion; provided, however, that for each fiscal year during which this Agreement remains in effect, the City Manager shall cause the City Finance Department to include any funds due and owing under this Agreement as a line item in an annual budget request to City Council, so that City Council may consider appropriating that amount. If City Council in its discretion makes such appropriation, payment will be made to BHP by January 31 of the fiscal year for which the appropriation was made. BHP shall refer to this annual appropriation limitation in each of the contracts that it enters into with architects, engineers, contractors, and other design and construction team members related to this Agreement.

49. Entire Agreement; Amendments. This Agreement contains the entire agreement between the Parties respecting the matters set forth herein. It supersedes all prior agreements between the Parties hereto respecting such matters. It may not be modified, amended or revised, except by written instrument signed by each of the parties.

(Signature pages follow.)

ACCEPTED AND AGREED TO as of the first date written above. This Agreement may be executed in several counterparts, each of which shall be an original but all of which, taken together, shall constitute one and the same agreement.

CITY OF BOULDER

City Manager

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney's Office

Date: _____

**THE HOUSING AUTHORITY OF THE CITY OF
BOULDER, A COLORADO HOUSING AUTHORITY, D/B/A BOULDER
HOUSING PARTNERS**

By _____
Valerie Soraci
Chair, Board of Commissioners

Attested to this ____ day of November, 2018 by:

By _____
Jeremy Durham
Executive Director

Summary of Exhibits

- A – Anticipated Development Outcomes for the Property
- B-1 – Summary of Pre-Development Services for the Entire Site
- B-2 – Summary of Pre-Development Services for the Affordable Housing
- B-3 – Summary of Infrastructure Development Services
- C – Schedule of Development Milestones
- D – Form of Purchase Option Agreement

30th & Pearl Development Agreement – Exhibit A

Anticipated Development Outcomes for the Property

1. Advance the City’s long-range vision for a mixed-use, pedestrian-friendly, transit-oriented development at Boulder Junction that includes substantial public investment in multimodal transportation, infrastructure improvements, and affordable housing and otherwise furthers the goals defined in the Transit Village Area Plan
2. Create a development with predominantly residential uses and supporting commercial uses as determined by a market study, due diligence results, and public outreach, with access to regional and local transit connections and high quality public spaces
3. Create a neighborhood including a diversity of income levels, tenure (ownership and rental) and unit types and design; encourage development of housing serving a full range of households (singles, couples, families with children and other dependents, extended families, non-traditional households, seniors); integrate permanently affordable and permanently supportive housing, and a balance of housing units to offer ownership and rental opportunities with the inclusion of co-housing or cooperative housing options
4. Increase the number of affordable rental and homeownership opportunities in the City, with a total of between 110 and 150 units on the Property
5. Secure the maximum allocation/reservation of low-income housing tax credits to help fund the affordable housing on the Property and related infrastructure
6. Create TVAP complementary commercial and retail space in the Boulder Junction area and explore creative affordable retail models within the project scope
7. Create a development with high quality design, compliant with Form-Based Code
8. To the extent feasible under the rules of the low-income housing tax credit financing program and other financing sources available to the project, create district parking that aligns with SUMP principles, Shared, Unbundled, Managed and Paid and in compliance with City parking regulations

Anticipated Number and Type of Affordable Rental Housing Units				
Quadrant 2 & the South Portion of Quadrant 4				
<i>Bedroom</i>	<i>Baths</i>	<i>% AMI</i>	<i># of Units</i>	<i>Sq Ft/Unit</i>
0	1	30	12	400
0	1	40	1	400
0	1	50	1	400
0	1	60	3	400
1	1	30	3	670
1	1	40	8	670
1	1	50	10	670
1	1	60	28	670
2	1	30	2	850
2	1	40	3	850
2	1	50	15	850
2	1	60	23	850
3	2	30	3	1150
3	2	40	1	1150
3	2	50	2	1150
3	2	60	5	1150
Total			120	

<i>Area Median Income</i>	<i># of Units</i>	<i>Percentage</i>
30%	20	17%
40%	13	11%
50%	28	23%
60%	59	49%
Total	120	

Anticipated Number and Type of Affordable For-Sale Housing Units	
<i>Quadrant</i>	<i># of Units</i>
North Portion of Quadrant 4 (middle-income affordable co-housing)	15-25
Total	15-25

Anticipated Number and Type of Market-Rate Housing Units		
<i>Quadrant</i>	<i># of Units</i>	<i>Percentage</i>
1 (southwest parcel)	75	56%

3 (northeast parcel)	59	44%
Total	134	

Anticipated Number of Parking Spaces	
<i>Quadrant</i>	<i># of Spaces</i>
1 (southwest)	100
2 and 3 (northwest and northeast, respectively)	170
4 (southeast)	0
Total	270

30th & Pearl Development Agreement – Exhibit B-1**Summary of Pre-Development Services for Entire Site
(excluding affordable housing component)**

1. Negotiate and execute agreements for architectural, engineering, construction, financial, legal, or other consulting services for the Entire Site, containing the scope of work necessary to prepare the Entire Site Entitlements Applications (as defined below), and to otherwise assist with the development, refinement, and furtherance of the Entire Site business plan;
2. Evaluate the economic feasibility and optimal financial structure of the Entire Site through generation of financial projections, including pre-development costs, construction costs, and operational expenses for the various components of the Entire Site, as well as analysis of the available debt, equity, grant, and other possible financing sources;
3. Analyze site use and improvements, selection of materials, building systems, and equipment and methods of Entire Site delivery; evaluate plans and specifications (the “Plans and Specifications”) during their development for consistency with Entire Site budget requirements and design parameters; consult with the design and construction team on the availability and costs of alternative systems and materials and other “value engineering” opportunities; provide cost evaluations and feasibility assessments of alternative construction methods, materials, and systems; assess availability of materials and labor, time requirements for procurement, installation and construction, and possible economies;
4. Coordinate efforts to obtain all necessary approvals, licenses, easements, and other entitlements required for a third party to commence the construction, use and occupancy of the Entire Site; attend meetings with governmental authorities and other persons and entities in connection therewith as required; prepare presentations, reports, and data for such meetings; prepare written applications and Plans and Specifications at the level of detail required to submit complete applications for all planning, zoning, subdivision, planned unit development, and other applicable approvals necessary to permit a third party to commence the lawful construction, use, occupancy, and operation of projects within the Entire Site (the “Entire Site Entitlements Applications”);
5. Review proposed construction schedules and advise the City on the feasibility of, and potential alternates to, such schedules; generate and update the proposed schedule for overall development and construction of the Entire Site;
6. Procure an ALTA survey of the Property, title searches, environmental assessments, appraisals, and such other studies or reports conducted by qualified parties as may be necessary to prepare the Entire Site Entitlements Applications;
7. Procure studies, reports, or applications required to ensure the Entire Site can be adequately served by public or private utilities providing water, sewer, electric, gas, and other utilities, in appropriate capacities;
8. Adhere to economical, efficient, and desirable design and construction procedures, as well as any measures necessary to comply with terms and conditions contained in governmental permits or approvals required for the lawful construction by a third party of projects within the Entire Site;

9. Propose and agree upon a public and private infrastructure plan for the Property, whether as part of or in addition to the proposal to dedicate portions of the Property for public improvements and amenities;
10. Work with the City to coordinate communications related to the planning, funding, development, construction, and operation of the Entire Site with the public, regulatory agencies, and funding partners;
11. Assemble and retain all contracts, agreements, and other records and data as may be necessary to carry out BHP's functions hereunder;
12. Perform and administer any and all other services and responsibilities of BHP that are set forth in any other provisions of this Agreement or that are requested to be performed by the City and are within the general scope of the services described herein.

30th & Pearl Development Agreement – Exhibit B-2**Summary of Pre-Development Services for Affordable Housing**

1. Negotiate and execute agreements for architectural, engineering, construction, financial, legal, or other consulting services for the Affordable Housing, containing the scope of work necessary to prepare the Affordable Housing Entitlements Applications and the Affordable Housing Financing Applications (both as defined below), and to otherwise assist with the development, refinement, and furtherance of the Affordable Housing business plan;
2. Procure a market study conducted by a qualified party to assess market demand for and inform the design of the Affordable Housing;
3. Prior to submission of the CHFA application for an allocation of low-income housing tax credits, consult with the City regarding appropriate restricted rent levels and income qualification levels for low-income housing tax credits and other funding sources, implications of alternative placement-in-service dates, optimal developer and long-term ownership structures to achieve the Anticipated Development Outcomes, and anticipated regulatory and lender constraints;
4. Evaluate the economic feasibility and optimal financial structure of the Affordable Housing through generation of financial projections, including pre-development costs, construction costs, and operational expenses for the Affordable Housing, as well as analysis of the available debt, equity, grant, and other possible financing sources;
5. Analyze site use and improvements, selection of materials, building systems, and equipment and methods of Affordable Housing delivery; evaluate plans and specifications (the “Plans and Specifications”) during their development for consistency with Affordable Housing budget requirements and design parameters; consult with the design and construction team on the availability and costs of alternative systems and materials and other “value engineering” opportunities; provide cost evaluations and feasibility assessments of alternative construction methods, materials, and systems; assess availability of materials and labor, time requirements for procurement, installation and construction, and possible economies;
6. Work to obtain all necessary permits, approvals, licenses, easements and other entitlements required for the construction, use and occupancy of each portion of the Affordable Housing, attend meetings with governmental authorities and other persons and entities in connection therewith as required; prepare presentations, reports, and data for such meetings; prepare written applications and Plans and Specifications at the level of detail required to submit complete applications for all planning, zoning, subdivision, planned unit development, site review, building, health, safety, and other applicable approvals, permits, and licenses necessary to permit the lawful construction, use, occupancy, and operation of the Affordable Housing (the “Affordable Housing Entitlements Applications”);
7. Review proposed construction schedules produced by the contractor and advise the City on the feasibility of, and potential alternates to, such schedules; generate and update the proposed schedule for overall development and construction of the Affordable Housing;
8. Apply for equity, debt, grant, and other sources of construction and permanent financing in an amount sufficient to fund the construction of the Affordable Housing pursuant to the budget and the Plans and Specifications (the “Affordable Housing Financing Applications”);

9. Procure an ALTA survey of the Property, title searches, environmental assessments, appraisals, and such other studies or reports conducted by qualified parties as may be necessary to prepare the Affordable Housing Entitlements Applications and the Affordable Housing Financing Applications;
10. Procure studies, reports, or applications required to ensure the Affordable Housing can be adequately served by public or private utilities providing water, sewer, electric, gas, and other utilities, in appropriate capacities;
11. Adhere to appropriate administrative and financial controls for the design and construction of the Affordable Housing, including coordination and administration of the Affordable Housing's architect, engineers, construction contractor, and other professionals employed in connection with the Affordable Housing;
12. Adhere to economical, efficient, and desirable design and construction procedures, as well as any measures necessary to comply with terms and conditions contained in governmental permits or approvals required for the lawful construction of the Affordable Housing, as well as in any insurance policy affecting or covering the Affordable Housing;
13. Employ the most advantageous selection procedures for construction contractors, subcontractors, and suppliers;
14. Obtain quotes for the insurance coverage and surety bonds necessary for the Affordable Housing during the development phase;
15. Propose and agree upon a public and private infrastructure plan for the Property, whether as part of or in addition to the proposal to dedicate portions of the Property for public improvements and amenities;
16. Work with the City to coordinate communications related to the planning, funding, development, construction, and operation of the Affordable Housing with the public, regulatory agencies, and funding partners;
17. Assemble and retain all contracts, agreements, and other records and data as may be necessary to carry out BHP's functions hereunder;

30th & Pearl Development Agreement – Exhibit B-3

Summary of Infrastructure Development Services

1. Negotiate and execute agreements for architectural, engineering, construction, financial, legal, or other consulting services for the Infrastructure Development, containing the scope of work necessary to prepare the Infrastructure Entitlements Applications (as defined below), and to otherwise assist with the development, refinement, and furtherance of the Infrastructure Development business plan;
2. Evaluate the economic feasibility and optimal financial structure of the Infrastructure Development through generation of financial projections, including pre-development costs, construction costs, and operational expenses for the Infrastructure Development, as well as analysis of the available debt, equity, grant, and other possible financing sources;
3. Evaluate plans and specifications for the Infrastructure Development (the “Plans and Specifications”) during their development for consistency with Infrastructure Development budget requirements and design parameters; consult with the design and construction team on the availability and costs of alternative systems and materials and other “value engineering” opportunities; provide cost evaluations and feasibility assessments of alternative construction methods, materials, and systems; assess availability of materials and labor, time requirements for procurement, installation and construction, and possible economies;
4. Obtain all necessary permits, approvals, licenses, easements and other entitlements required for the construction and use of each portion of the Infrastructure Development, attend meetings with governmental authorities and other persons and entities in connection therewith as required; prepare presentations, reports, and data for such meetings; prepare written applications and Plans and Specifications at the level of detail required to submit complete applications for all applicable approvals, permits, and licenses necessary to permit the lawful construction and use of the Infrastructure Development (the “Infrastructure Entitlements Applications”);
5. Review proposed construction schedules produced by the contractor and the feasibility of, and potential alternates to, such schedules; generate and update the proposed schedule for overall development and construction of the Development;
6. Procure an ALTA survey of the Property, title searches, environmental assessments, appraisals, and such other studies or reports conducted by qualified parties as may be necessary to prepare the Infrastructure Entitlements Applications;
7. Procure studies, reports, or applications required to ensure the Infrastructure Development can be adequately served by public or private utilities providing water, sewer, electric, gas, and other utilities, in appropriate capacities;
8. Adhere to appropriate administrative and financial controls for the design and construction of the Infrastructure Development, including coordination and administration of the Infrastructure Development architect, engineers, construction contractor, and other professionals employed in connection with the Infrastructure Development;
9. Adhere to economical, efficient, and desirable design and construction procedures, as well as any measures necessary to comply with terms and conditions contained in governmental

permits or approvals required for the lawful construction of the Infrastructure Development, as well as in any insurance policy affecting or covering the Infrastructure Development;

10. Determine most advantageous selection procedures for construction contractors, subcontractors, and suppliers;
11. Obtain the insurance coverage and surety bonds necessary for the Infrastructure Development during the development phase;
12. Propose and agree upon an allocation of public versus private ownership of the Infrastructure Development;
13. Work with the City to coordinate communications related to the planning, funding, development, construction, and operation of the Infrastructure Development with the public, regulatory agencies, and funding partners;
14. Assemble and retain all contracts, agreements, and other records and data as may be necessary to carry out BHP's functions hereunder;
15. Upon execution of a guaranteed maximum price contract with the construction contractor for the Infrastructure Development, supervise the installation of the Infrastructure Development as necessary and appropriate to achieve lien-free, timely completion;
16. Perform and administer any and all other services and responsibilities of BHP that are set forth in any other provisions of this Agreement or that are requested to be performed by the City and are within the general scope of the services described herein.

30th & Pearl Development Agreement – Exhibit C**Schedule of Development Milestones**

<i>Milestones (including BHP Deliverables, where applicable)</i>	<i>Target Date</i>
Execution of City-BHP Agreement on Entire Site	November 2018
Entitlements application submitted to City	October 2018
Financing Application submitted to CHFA and CDOH	January 2019
Hearing or action by Planning Board	April 2019
Preliminary Financing Approval by CHFA and CDOH	May 2019
Hearing or action by City Council	May 2019
Final Plat; Infrastructure construction documents and Affordable Housing construction documents review process completed	August 2019
Transfer of Title to Property to BHP; Restrictive Covenants for City	TBD
Building Permits issued for Infrastructure and Affordable Housing	October 2019
Financial Closing	November 6, 2019

30th & Pearl Development Agreement – Exhibit D

Form of Purchase Option

(see attached)

PURCHASE OPTION AGREEMENT

This Purchase Option Agreement (the “Option”) is entered into as of November ____, 2018 (the “Effective Date”) by and between the City of Boulder, Colorado, a home rule the City (“the City”) and the Housing Authority of the City of Boulder, Colorado, a body corporate and politic, doing business as Boulder Housing Partners (“BHP” or “Purchaser”).

1. **Grant of Purchase Option.** Subject only to the terms and conditions stated herein, the City hereby grants BHP an irrevocable, exclusive option to purchase all of the City’s rights and interests in (a) the property owned by the City located at the northeast corner of 30th Street and Pearl Street in the City of Boulder, Colorado, legally described on Exhibit A, attached hereto and incorporated herein by this reference (the “Purchase Option Property”), and (b) all architecture, engineering, construction, and other design or construction contracts entered into by the City on or after the Effective Date related to the Affordable Housing (the “Affordable Housing Pre-Development Contracts” and, together with the Property, the “the City Property”).

2. **Consideration for the Option.** The City acknowledges that it has received \$100.00 and other good and valuable consideration for this Option, including BHP’s agreement to waive its fee for acting as master developer for redevelopment of the Property.

3. **Purchase Price for the City Property.** As consideration for the deed to the City Property, BHP agrees to execute one or more affordability covenants running with the land for the benefit of the City defining allowable uses on the Property, to be recorded in the Boulder County real estate records. Such covenant shall be in substantially the form attached hereto as Exhibit B.

4. **Option Period.** This Option shall commence on the Effective Date and shall, unless sooner exercised by BHP, remain in effect until 5:00 p.m. on December 31, 2023 (the “Option Period”). If BHP is awarded an allocation or reservation of low-income housing tax credits for an affordable housing project on the Property during the initial 5-year term of this Option, upon receipt of a \$100.00 extension fee from BHP, the City shall extend the term of the Option for so long as necessary to facilitate BHP’s use of such award, such extension not to exceed two additional years.

5. **Exercise of Option.** The Option may be exercised by BHP at any time during the Option Period by written notice to the City, delivered or mailed by certified mail to the address set forth below, or electronic mail to the Director of Housing and Human Services, stating that BHP desires to acquire the Property (the “Exercise Notice”). In the event this Option is exercised, this instrument and the provisions hereof shall constitute the Contract of Sale between the City and BHP. Upon receipt of Exercise Notice, the City shall execute and deliver to BHP a good and sufficient special warranty deed conveying clear title to the Property, free and clear of all liens, encumbrances, restrictions, and easements except those permitted by BHP, and a special warranty bill of sale conveying all of the City’s rights and interests in the Affordable Housing Pre-Development Contracts. The City agrees to deliver the deed promptly upon delivery by BHP of the affordability covenant(s) described in paragraph 3 above, with closing to occur at a reasonable time and place mutually agreed upon by the parties, but no later than 180 days after the date of the Exercise Notice. All notices, tenders, and deliveries hereunder shall be served and

made at the City of Boulder, 1300 Canyon Blvd., Boulder, CO 80302, Attn: Director of Housing and Human Services, or such other address provided to BHP by the City. The Option may be exercised by BHP at any time during the Option Period by written notice to the City, delivered or mailed by certified mail to the address set forth below, or electronic mail to the Director of Housing and Human Services, stating that BHP desires to acquire the Property (the "Exercise Notice"). In the event this Option is exercised, this instrument and the provisions hereof shall constitute the Contract of Sale between the City and BHP. Upon receipt of Exercise Notice, the City shall execute and deliver to BHP a good and sufficient special warranty deed conveying clear title to the Property, free and clear of all liens, encumbrances, restrictions, and easements except those permitted by BHP, and a special warranty bill of sale conveying all of the City's rights and interests in the Affordable Housing Pre-Development Contracts. The City agrees to deliver the deed promptly upon payment or tender by BHP of the entire balance of the Purchase Price, in cash, lawful money of the United States, or a cashier's check, with closing to occur at a reasonable time and place mutually agreed upon by the parties, but no later than 180 days after the date of the Exercise Notice. All notices, tenders, and deliveries hereunder shall be served and made at the City of Boulder, 1300 Canyon Blvd., Boulder, CO 80302, Attn: Director of Housing and Human Services, or such other address provided to BHP by the City.

6. **Failure to Exercise.** If BHP does not exercise this Option, the consideration paid for this Option shall be retained by the City, and neither party shall have any further right or claim against the other party.

7. **City's Title to the Property.** The City represents and warrants to BHP that it is the current fee simple owner of the Property. The City will furnish a copy of the warranty deed or an informational title commitment dated within 30 days of the request showing the City as owning good and marketable title to the Property.

8. **Assignability.** BHP's rights of purchase under this Option may not be assigned without the written consent of the City, except that BHP may without such consent assign this Option to an entity controlled by BHP or one of its affiliates. This Option shall be binding upon and inure to the benefit of the City and BHP and their respective permitted assigns.

9. **No Marketing.** For so long as this Option remains in effect, the City agrees it will not market the Property for sale or lease.

10. **Possession and Risk of Loss.** The City shall continue in possession of the Property until closing occurs, and shall maintain the Property in its present condition, reasonable wear from ordinary use excepted. Possession shall be transferred to BHP at the closing. Risk of loss from fire or other casualty to the Property shall be the City's until transfer of possession as provided in this Option. The City shall maintain adequate insurance against loss, including extended coverage, during such period. All policies of insurance on the Property shall be transferred to purchaser at the close of escrow, at BHP's option.

11. **Remedies.** In recognition of the consideration received from BHP and the fact that BHP cannot be adequately compensated by monetary damages in the event of any default hereunder, the City agrees and consents that, for any breach of the provisions hereof, in addition to any

other remedies provided by law or in equity, BHP shall be entitled to enforce specific performance by the City of its obligations under this Option.

12. **Recording.** A memorandum agreement of this Option or this Option itself may, at BHP's election and expense, be recorded in the real estate records of the Boulder County Clerk & Recorder's Office.

(Signature pages follow.)

This Purchase Option is executed as of the Effective Date.

THE CITY OF BOULDER, a home rule the City

STATE OF COLORADO)

)ss.

COUNTY OF BOULDER)

The foregoing Purchase Option Agreement was acknowledged before me this ____ day
of _____, 2018, by _____ as
_____ of the City of Boulder,
Colorado, a home rule the City.

Witness my hand and official seal.

(SEAL)

Notary Public

My Commission Expires: _____

Accepted and agreed to as of the Effective Date.

HOUSING AUTHORITY OF THE CITY OF BOULDER, COLORADO, a body corporate and politic, doing business as Boulder Housing Partners

By: _____

Name: _____

Title: _____

STATE OF COLORADO)

)ss.

COUNTY OF BOULDER)

The foregoing Purchase Option Agreement was acknowledged before me this ____ day of _____, 2018, by _____ as _____ of the Housing Authority of the City of Boulder, Colorado, a body corporate and politic, doing business as Boulder Housing Partners.

Witness my hand and official seal.

(SEAL)

Notary Public

My Commission Expires: _____

Exhibit A to Purchase Option Agreement

Legal Description of the Property

Lot 3 Boulder Transit Village Subdivision Replat A, City of Boulder, State of Colorado, less the northeastern half-acre to be used for a City park

Exhibit B to Purchase Option Agreement

Form of Restrictive Covenant

(attached)

LIMITATIONS ON RENTS AND TENANT INCOME

Compliance with the provisions of this Covenant shall be deemed to be a requirement of title.

LOW AND MODERATE INCOME RENTAL HOUSING COVENANT

This Covenant (“Covenant”) is entered into as of the [] day of [], 2018 (the “Effective Date”), by and between *TBD*, LLLP, a Colorado limited liability limited partnership (the “Owner”), and the City of Boulder, a Colorado home rule city (“City”).

This Covenant applies to the real property commonly known as 30th and Pearl, (the “Property”) Boulder, Colorado; the legal description of which is attached hereto as Exhibit A.

RECITALS

WHEREAS, Owner is the fee simple owner of the Property;

WHEREAS, pursuant to the terms and conditions of that certain Local Funding Agreement for *the project*, by and between the City and the Housing Authority of the City of Boulder, Colorado d/b/a Boulder Housing Partners, a Colorado housing authority (“BHP”), dated as of [], 2018 (the “Funding Agreement”), the City has provided *TBD* in Affordable Housing Funds (“AHF”) in (the “Funds”) to BHP, to loan to Owner to fund development costs related to the development of the affordable multifamily housing project on the Property, to be known as *TBD* Apartments;

WHEREAS, BHP has loaned the Funds to Owner;

WHEREAS, Owner has benefited from these funds;

WHEREAS, Owner has agreed to permanently limit the rents charged and income requirements for the occupancy of the Property;

WHEREAS, subsequent residents will benefit from the rent limitations which this Covenant requires;

WHEREAS, the intent of the City is to permanently preserve through this Covenant and these funds the affordability of the Property for persons of low and moderate income, and to assign to the City the right to enforce compliance with this Covenant.

NOW THEREFORE, in consideration of the benefits received by the parties, the sufficiency of which is hereby acknowledged, the parties agree as follows:

DEFINITIONS

The following terms shall have the meanings defined herein:

- A. "Area Median Income" means the Area Median Income reported annually for single persons and households of various size by the United States Department of Housing and Urban Development, or by any successor United States Government department, agency, or instrumentality, for the Primary Metropolitan Statistical Area "PMSA" which includes the City of Boulder, Colorado.
- B. "HUD" means the United States Department of Housing and Urban Development, or any successor governmental agency.
- C. "HUD Low Income Limit" means the maximum gross household income that allows a household to be considered "low income" for the purposes of HUD financial assistance. These limits are reported annually by HUD and reflect the low-income limit for a particular area. For the City of Boulder, the incomes reported for the Boulder Primary Metropolitan Statistical Area (PMSA) apply.
- D. "Income" means the definition of income under Section 8 of the United States Housing Act of 1937, codified at 42 U.S.C.S. § 1437a(b)(1990), as further determined by the United States Secretary of Agriculture in 24 CFR § 813.106 (1997). In the event that Section 8 is repealed or the definition of income under Section 8 is substantially modified, then "income" shall mean the anticipated total income for the next twelve month period received from all sources by each member of the household, excluding, however, temporary or non-recurring income (including gifts), income from the employment of children under age 18, payments for the care of foster children or foster adults, and amounts received specifically for the reimbursement of medical expenses for a member of the household.
- E. "Over-Income" means a combined household income that exceeds 140% of 60% of the area median income for each permanently affordable rental housing unit.
- F. "Assets" means the cash and non-cash items that can be converted to cash, including real property, retirement accounts, pension funds, life insurance payout, taxable interest, checking, savings, stocks, bonds and other forms of capital investment.
- G. "Non-Renewal of Lease" means the end of a lease or rental agreement without an option to renew the lease.

- H. "Termination of Tenancy" means a termination of the lease or rental agreement prior to the end of the lease term.
- I. "Institutional Lender" means any bank, savings and loan association, or any other institutional lender which is licensed to engage in the business of providing purchase money mortgage financing for residential real property.
- J. "Real Property" means land and improvements or common interest ownership and improvements.
- K. "Rent," as used in this Covenant shall include without limitation, all customary charges and fees to manage the rental units including water, sewer and trash service. Rent shall include the total rent including the established monthly Utility Allowance.
- L. "Rental Compliance Manual" means the City of Boulder Division of Housing, Rental Compliance Manual as it may be amended. The current Manual and all updates are available at www.boulderadffordablehomes.com.
- M. "Transfer" means any sale, assignment or transfer, voluntary, involuntary or by operation of law (whether by deed, contract of sale, gift, devise, bequest, trustee's sale, deed in lieu of foreclosure, or otherwise) of any interest in the Property, including but not limited to a fee simple interest, a joint tenancy interest, a tenancy in common, a life estate, a leasehold interest (other than with respect to a lease in the ordinary course of rental of apartment units), or any interest evidenced by a land contract by which possession of the Property is transferred and Owner retains title.
- N. "Utilities" means the average monthly cost of services for electricity and heating. Utilities do not include water, sewer, and trash services.
- O. "Utility Allowance" is the reasonable estimate cost of utilities in the area, given the type of building, and the size of the unit. Annually, the City will establish monthly Utility Allowances for Boulder.

COVENANTS

1. Rental Housing: Owner shall maintain the Property and use the *number of units to be inserted* permanently affordable units only for residential housing for rent.
2. Rental Compliance Manual: Owner agrees to all City rental requirements found in the Rental Compliance Manual, as it may be amended. The Manual and any updates are available at www.boulderadffordablehomes.com.
3. Maximum Income: No single household in the specified permanently affordable rental housing units of the Property shall have an income which is greater than 60% of the AMI. However, the above notwithstanding, a person, or household,

whose income increases above the limits set forth above after initial occupancy may be allowed to renew the lease, provided that the person or household's gross income does not exceed 140% of 60% AMI or other income limits as approved by the Rental Compliance Manual.

4. Income Verification & Annual Recertification: At the time of initial occupancy and every other year thereafter Owner shall verify the combined household income through third party source documentation. For intervening years, the Owner may use alternative recertification process per City policy as outlined in the Rental Compliance Manual.
5. Maximum Assets: No household in the specified permanently affordable units of the Property shall have assets which exceed the asset limitations specified in the Division of Housing Income and asset Limit Policy as established by the City Manager.
6. Maximum Rents: Annually, the City will publish the maximum rents for the city of Boulder based upon the number of bedrooms and 60% of the AMI. The City will use the maximum rents published annually by the Colorado Housing and Finance Authority ("CHFA") for Boulder. In the event that the CHFA maximum rent calculation is substantially changed, re-named, or abandoned, then the City shall have the discretion to substitute an alternative index which shall be published annually. It is a violation of this Covenant if the Owner charges rents with the utility allowance that exceed the maximum rents for the City that are applicable to a specific apartment unit type as described above. The City's use of CHFA's annually published rents is not an adoption of CHFA's rental compliance requirements.
7. Rent Increases: Rent may be increased no more than once each year up to the applicable maximum rents for Boulder described in this Covenant. The Owner must provide tenants with at least thirty (30) days' written notice before any rent increases are implemented.
8. Additional Funding: No additional funding for building maintenance or any other purpose shall be provided by or through the City of Boulder without a reduction of the Maximum Income, as specified in Subparagraph 3 of this Covenant.
9. Capital Reserves: Owner shall contribute a minimum of *TBD* annually towards a capital replacement reserve for the property, provided that at no time shall the balance of such reserve be required to exceed *TBD*.
10. Transfer: Except for the sale of the Commercial Unit (as defined in the Funding Agreement and the Definition Section), Owner shall not Transfer its interest in the Property to any successor in interest without the express written agreement of the City that the City's affordable housing interest in the Property will not be jeopardized by such transfer. To that end, no Transfer shall occur unless a successor in interest qualifies as a "housing authority" or "similar agency," as

those terms are utilized in Colorado Revised Statutes § 38-12-301, or to any other party as a result of a signed and recorded voluntary agreement, pursuant to which such successor shall agree to be legally bound by rent restrictions.

Owner shall inform the City, in writing or via e-mail within thirty (30) days prior to any Transfer.

City Manager with copy to:
Deputy Director of Housing
City of Boulder
P.O. Box 791
Boulder, CO 80306
Housing Fax: 720-564-2188
CMO Fax: 303-441-4478

Owner acknowledges that failure provide the City with at least thirty (30) business days in advance of any Transfer could result in enforcement actions as described in Paragraph 13.

11. City's Right to Acquire Owner's Interest: In the case of potential or actual foreclosure, the City shall reserve the option to acquire the Property. The parties agree to the following provisions related to foreclosure or foreclosure prevention:

- A. Owner shall give immediate notice to the City upon the first to occur of: (a) the date any notice of foreclosure is provided to the Owner or any foreclosure is commenced against the Property under any first deed of trust, or (b) the date when the Owner becomes 21 days late in making a payment on any indebtedness encumbering the Property required to avoid foreclosure of the first deed of trust.
- B. At any time within sixty (60) days after receipt of any notice described in Subparagraph 11A above, the City may (but shall not be obligated to) proceed to make any payment required in order to avoid foreclosure or needed in order to redeem the Property after a foreclosure. Upon making any such payment, the City shall succeed to all rights of the Owner to the Property and shall assume all of the Owner's rights and obligations under the first deed of trust, subject to the terms of this Covenant. In such event, Owner shall forthwith quit the Property and relinquish possession thereof to the City.

City's rights above to assume all of the Owner's rights to the Property may only be exercised after the commencement of foreclosure proceedings with respect to Owner's interest in the Property, which are not dismissed within ninety (90) days.

- C. Owner shall repay to the City of all sums paid by the City in connection with the redemption of the first deed of trust, and all other sums reasonably expended by the City in relation to the Property, plus one percent simple

interest from each date of expenditure. This redemption may only occur within one of the following time periods from the date when the City made the first of any payments due pursuant to Subparagraph 11B, whichever period is longer: (1) twelve months; or (2) the period of time allowed by Section 38-38-302 C.R.S., or any successor statute, for redemption by the foreclosed-upon Owner of real property that has been sold pursuant to the foreclosure of a deed of trust or mortgage. As of the date of such redemption, Owner shall re-assume all of its rights and obligations under the collateral assignment of note and deed of trust. At the end of such twelve-month period, if the Owner's interest has not been so redeemed, all right, title and interest of the Owner in the Property shall be extinguished, and Owner shall execute a warranty deed to the City to evidence transfer of the Property to the City. If the Owner fails or refuses to execute such warranty deed after being sent a written request therefor by the City, the City may execute it on behalf of the Owner as the Owner's attorney-in-fact.

12. Enforcement Actions: This Covenant may be specifically enforced against the Owner or any successor in interest of the Owner. Venue for such action shall be proper in Boulder County. Enforcement actions may include, without limitation, repayment of City-determined overcharges to tenants, eligibility for future funding, or lawsuit.
13. Indemnification: Owner shall defend, indemnify and save harmless the City from and against all losses, claims, suits, judgments or liabilities incurred as a result of the Owner's actions or failures to act in connection with this Covenant, and as part of such indemnification obligation shall pay all costs and attorney's fees, if any, incurred by the City as a result of any such claims or suits; provided, however, that the Owner shall not be required to indemnify the City from any losses, claims, suits, judgments or liabilities arising from the gross negligence or intentional misconduct of the City or its agents or employees. The time of attorneys and legal assistants in the Boulder City Attorney's Office spent on any such claims or suits shall be paid for in accordance with generally prevailing attorney's fees charged in Boulder County for similar services.
14. Compliance with Laws: Owner shall comply with all applicable laws and regulations of the City, State, and Federal governments.
15. Property Standards: Owner shall maintain the Property in good, safe, and habitable condition in all respects, except for normal wear and tear, and in full compliance with all applicable laws, ordinances, rules, and regulations of any governmental authority with jurisdiction over matters concerning the Property including but not limited to applicable housing quality standards, Uniform Physical Conditions Standards and City code requirements.
16. Reporting Requirements: Owner shall comply with annual reporting requirements of the Division of Housing, or any successor City of Boulder department or

agency and agrees to all City rental requirements found in the Rental Compliance Manual.

- A. Quarterly Progress Reports: Reports shall be due January 31, April 30, July 31 and October 31 until all funds have been fully expended.
- B. Annual Tenant Reports: Owner shall submit an annual tenant report upon completion of lease-up and annually thereafter, due January 31 each year. The report shall include but not limited to:
 - i. Ethnic characteristics
 - ii. Racial characteristics
 - iii. Age of head of household
 - iv. Female head of household
 - v. Household size
 - vi. Combined household income
 - vii. Combined household assets
 - viii. Source of all assets
 - ix. Student status
 - x. Disabled household: “Disabled Household” is a household composed of one or more persons at least one of whom is an adult who has a disability. A person is considered to have a disability if the person is determined to have a physical, mental or emotional impairment that:
 - a) Is expected to be of long, continued and indefinite duration;
 - b) Substantially impedes their ability to live independently; and
 - c) Is of such a nature that the ability could be improved by more suitable housing conditions; OR
 - d) Has a developmental disability defined in Section 102 of the Developmental Disabilities Act and Bills of Rights Act.

Notwithstanding the foregoing, the Owner shall not be required to submit any of the data above to the extent that collection and submission of such data is in violation of federal, state or local law.

17. Records & Retention Requirements:

- A. Retention: Owner shall retain complete records for the most recent five-year period showing the extent to which applicants have applied for or participated in the program. The documentation retained shall be sufficient to support the information provided by the Owner to the City.
- B. Records: Owner shall require documentation to verify the income status of all residents of the affordable rental units. Documentation may include, but is not limited to, third party income verification, W-2's, Supplemental

Security Income, Social Security Disability Income, child support and pay stubs.

- C. Access: Owner shall allow access to these records at any time during normal business hours by the City upon reasonable advance notice (for which 48 hours advance notice shall be deemed to be reasonable). These records will be kept in the Owner's local office.

18. Lease Requirements: Owner shall ensure that leases between the Owner and tenants of the specified permanently affordable units must be for not less than one year unless mutually agreed upon by the Owner and tenant. The form of lease and any subsequent form of addenda must be reviewed and approved by the City prior to execution.

19. Prohibited Lease Terms: No residential lease for the Property or any part thereof may contain any of the following provisions:

- A. Agreement by the tenant to be sued, to admit guilt, or to a judgment in favor of the owner in a lawsuit brought in connection with the lease;
- B. Agreement by the tenant that the owner may take, hold or sell personal property of household members without notice to the tenant and a court decision on the rights of the parties. This prohibition does not apply to an agreement by the tenant concerning disposition of personal property remaining in the housing unit after the tenant has moved out of the unit. The Owner may dispose of this personal property in accordance with state law;
- C. Agreement by the tenant not to hold the Owner or the Owner's agents legally responsible for any action or failure to act, whether intentional or negligent;
- D. Agreement of the tenant that the Owner may institute a lawsuit without notice to the tenant;
- E. Agreement by the tenant that the Owner may evict the tenant or household members without instituting a civil court proceeding in which the tenant has the opportunity to present a defense, or before a court decision on the rights of the parties;
- F. Agreement by the tenant to waive any right to a trial by jury;
- G. Agreement by the tenant to waive the tenant's right to appeal or to otherwise challenge in court a court decision in connection with the lease; and
- H. Agreement by the tenant to pay attorney's fees or other legal costs even if the tenant wins in a court proceeding by the Owner against the tenant. The tenant may be obligated to pay costs if the tenant loses.

20. Termination of Tenancy: Owner shall not terminate the tenancy of a tenant of the Property except for serious or repeated violation of the terms and conditions of the lease; for violation of applicable federal, state or local law; or for other good cause. Any termination must be preceded by not less than thirty (30) days' notice by service upon the tenant from the Owner specifying the grounds for the action.
21. Affirmative Marketing: Owner shall affirmatively market the residential units to all people, regardless of sex, handicap and familial status, consistent with the City of Boulder's Affirmative Marketing Plan for Permanently Affordable Units, as it may be amended.
22. Tenant Selection Plan: Owner shall adopt written tenant selection policies and procedures for the residential units that are consistent with the City of Boulder's Tenant Selection Policies, as it may be amended.
23. Wait List Requirement: Owner shall create and maintain a waiting list for the residential units that is consistent with the City of Boulder's Tenant Selection Plan for Permanently Affordable Units, as it may be amended.
24. If any provision of this Covenant shall be held by a court of proper jurisdiction to be invalid, illegal or unenforceable, the remaining provisions shall survive and their validity, legality or unenforceability shall not in any way be affected or impaired thereby.
25. Nothing in this Covenant shall be deemed to create an agency, partnership, joint venture or employment relationship between the City, BHP and the Owner.
26. Except as otherwise provided in this Covenant, and provided that Owner has failed to cure its breach of any of its non-monetary covenants, agreements and obligations set forth in this Covenant within sixty (60) days after receipt of written notice from the City of the same, or longer if such cure cannot reasonably be made within sixty (60) days, the City shall have the right (but not the obligation) to enforce by a proceeding at law or in equity, or by mediation if the parties so agree, all restrictions, conditions, covenants and charges now or hereafter imposed by the provisions of this Covenant. Failure by the City or owner to enforce any covenant or restriction contained in this Covenant shall not be deemed a waiver of the right to do so thereafter. The prevailing party in any judicial proceeding shall be entitled to reimbursement from the non-prevailing party or parties, for all reasonable costs and expenses, including attorneys' fees in connection with such judicial proceeding.
27. The City Manager, or his or her designee, shall have the right, with the Owner's prior approval, which shall not be unreasonably withheld or delayed, to modify the conditions of this Covenant to deal with exigent circumstances. The City will notify the Owner of any proposed changes and provide a sixty (60) day response period to any proposed changes.

(signature page follows)

DRAFT

CITY OF BOULDER

City Manager

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney's Office

Date: _____

STATE OF COLORADO)
) ss.
COUNTY OF BOULDER)

The foregoing instrument was acknowledged before me this _____ day of _____, 2018, by _____, the _____ of the City of Boulder, Colorado, a Colorado municipality.

WITNESS my hand and official seal.

Notary Seal

My commission expires: _____

Exhibit A

DRAFT