



**CITY OF BOULDER
CITY COUNCIL AGENDA ITEM**

MEETING DATE: March 20, 2018

AGENDA TITLE: Consideration of a motion authorizing the City Manager to execute a joint development agreement with Zocalo Community Development as the 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, Housing + Sustainability
Kurt Firnhaber, Deputy Director for Housing (PH+ S)
Erin Poe, Deputy City Attorney, City Attorney's Office
Charles Ferro, Development Review Manager, (PH+ S)
Edward Stafford, Development Review Manager, Public Works
Johnathan Koehn, Regional Sustainability Coordinator (PH+ S)
Michelle Allen, Inclusionary Housing Program Manager (PH+S)
Jeff Haley, Parks and Planning Manager, Parks and Recreation
Melissa Yates, Parking Manager
Beth Roberts, Housing Planner (PH+S)

EXECUTIVE SUMMARY

The purpose of this item is for City Council to consider a motion authorizing the City Manager to enter into a joint development agreement with Zocalo Community Development for the development of a mixed-use development on the north east corner of 30th and Pearl (AKA the Pollard site; 2630 30th Street) and to approve the conveyance of the approximate 4.3-acre property once certain conditions are met.

In September 2017, City Council approved a motion authorizing the City Manager to enter into negotiations with Zocalo Community Development for the development of 30th and Pearl.

In return for the city property at 30th and Pearl the proposed joint development agreement (JDA) ensures that priorities for the site, as established in the [Request for Proposal \(RFP\)](#), the [Boulder Valley Comprehensive Plan](#), [Transit Village Area Plan](#), and [Boulder Junction Access District](#) are met. These include providing a mix of housing types (e.g. stacked flats, townhomes, co-housing and cooperative housing), a range of permanently affordable for-sale and rental housing, affordable commercial space and meeting or exceeding the city's energy, resilience and sustainability goals.

The development proposal achieves an overall 54 percent housing affordability, exceeding the fifty percent that was described in the RFP, provides for a ground-breaking deed restricted affordable commercial program, includes the full suite of transportation demand management and parking management tools designed to reduce or eliminate single occupancy driving and requires that all buildings be designed and constructed to meet or exceed the city's energy efficiency standards to reduce the impact on energy consumption and greenhouse gas emissions.

The proposed JDA is the result of a multi-departmental city effort that included staff from Planning, Housing & Sustainability (development review, public works, sustainability and housing), 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 30th and Pearl joint development agreement in substantially the form presented in this memorandum and approving the conveyance of the property at 2630 30th Street.

QUESTIONS FOR COUNCIL

1. Does council have concerns about the structure or outcomes of the JDA?
2. Does council have concerns about the level of community benefit required by the JDA?
3. Does council have concerns about tying the final amount of affordable commercial space to potential increases in the commercial linkage fee?

BACKGROUND

In 2000, the city initiated a planning effort for a transit-oriented development (TOD) in east Boulder. An 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 as the preferred TOD location. In October 2004, the site was acquired jointly by the city and the Regional Transit District (RTD).

In September 2007, the plan for the area's future redevelopment, the Transit Village Area Plan (TVAP) was adopted. The plan establishes a broad vision for a 160-acre area roughly surrounding 30th and Pearl and outlines a set of goals and objectives for achieving them.

In July 2012 a City Council study session was held concerning implementation of TVAP during which council expressed a desire to exceed the then 20 percent affordable housing required through the city's Inclusionary Housing program and for the area to include a variety of housing

types and sizes with both rental and homeownership opportunities. During this 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 October 2016, a City Council [study session](#) was held to solicit council feedback on a representative range of potential redevelopment options for the remaining western 4.3 acres at 30th and Pearl. Council was supportive of the scenario that featured a mix of uses with an emphasis on market and affordable housing. There was broad support for a mix of housing types including stacked flats of various sizes, some townhomes including communal co-op/co-housing.

In March 2017, a RFP for the redevelopment of the site was issued. The RFP stated that in return for transfer of the property the city would receive desired development outcomes including the “creation of a neighborhood” with a mix of tenures (ownership and rental), a variety of unit types, excellent design and significant sustainability elements with an emphasis on reducing the community’s impacts on climate change. Additionally, the RFP called for a goal of fifty percent of the housing on the site to be 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.

During the September 2017 City Council meeting, council voted in support of Zocalo Community Development as the Master Developer of the city-owned site at 30th and Pearl and authorized the City Manager to negotiate a joint development agreement (JDA) between the city and Zocalo that would lead to the development of the property in a manner consistent with the RFP.

Zocalo Community Development, based in Denver, CO, has completed multiple LEED-certified, mixed-income, mixed-use, multifamily projects and constructed over 1,600 residential units including approximately 15 percent on-site permanently affordable housing. Zocalo has experience in developing low income housing tax credit and historic tax credit financed projects. Zocalo’s proposed project team for 30th and Pearl includes the local design firms of Coburn Partners, Shears Adkins Rockmore, and Caddis Architecture, the landscape architect firm Civitas and engineering consultants Group 14 Engineering and JVA. The affordable housing partner for the rental components of the development would be the City’s housing authority, Boulder Housing Partners.

PUBLIC FEEDBACK

Staff received some emails during the drafting of the joint development agreement. One email communicated an interest in how the developer was going to finance the development of the site, and another email expressed an interest in seeing cooperative housing on the site.

Staff presented the draft joint development agreement to the Boulder Junction Access District Commissioners during the February 21st Commissions’ meeting. The commissioners appreciated getting a preview of the JDA, requested regular updates on the project, and were interested in future community outreach efforts. They were supportive of the proposed mix of unit types and levels of affordability and pleased to learn that some affordable rental units would be made available to households with permanently supportive vouchers.

ANALYSIS

The JDA is a detailed document that governs the development of 30th and Pearl through entitlements, transfer of the property and into construction at which point it is replaced by a number of longer lasting agreements including deed restricting permanent affordability covenants on the affordable housing and affordable commercial, an affordable commercial management plan and parking agreement. The JDA includes target goals for housing, parking spaces and square feet of affordable commercial space however, the final amount of each will be determined through the entitlement process, requirements of Form Based Code and approved by the City Manager. The following summarizes sections of the JDA. The full JDA may be found in *Attachment A*.

The initial phase of infrastructure development will include all public improvements required for the entire site. Subsequently, the transfer of land ownership and development of the site, which will be divided into four quadrants, will be conducted separately. Zocalo is required to prepare and submit a phasing plan for approval by the City within ninety days after execution of the JDA. The first phase of the project will include the affordable housing in quadrants 1 and 4. Financing for the affordable projects is proposed to include the awarding of 4% Low Income Housing Tax Credits and tax-exempt bonds. As a result of changes to the Qualified Census Tract (QCT) status that occurred at the federal level, the QCT status for the site was in question impacting the ability to finance the affordable housing portion of the site. The development team took timely action and secured the previous QCT status for a limited time. This has created an accelerated entitlement process to occur for the two quadrants that provide affordable rental housing. To maximize tax credit equity, the rental affordable housing portions of the project must be in construction no later than December 1, 2019.

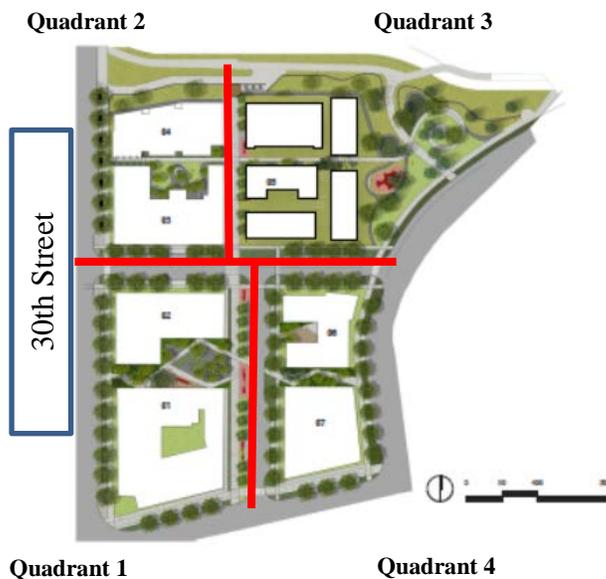
	30 th + Pearl Joint Development Agreement Executed	
Q1 2018	<ul style="list-style-type: none"> • Accept Title • Environmental 	
	<i>Agreements/Covenants/Tax Credits</i>	<i>Entitlements – 1st Phase Affordable Housing</i>
Q2 2018	<ul style="list-style-type: none"> • Phasing Plan 	<ul style="list-style-type: none"> • Pre-application • Form Based Code Submittal
Q3 2018	<ul style="list-style-type: none"> • Co-op Mgmt. Plan • Affordable Commercial Implementation Agmt. 	
Q4 2018	<ul style="list-style-type: none"> • Parking Agmt. 	
Q1 2019		
Q2 2019		
Q3 2019	Deed Restricting Affordable Covenants	Technical Doc Submittal
	First Land Transfer (Quadrants 1 & 4)	
Q4 2019	Qualified Census Tract Status (Low Income Housing Tax Credit Financing) Expires Dec. 1	Permit submittal Start Construction No later than Dec. 1

1. Site Plan / Quadrant layout

The JDA subdivides the site into four quadrants and lays out a development program for each quadrant. Zocalo will be responsible for all required public improvements for the 4.3-acre site.

The site configuration is as follows and the JDA allows limited flexibility during the entitlement process to make needed modifications to the location and types of uses on each quadrant so long as all stated uses are included in the development.

- a) Quadrant 1 primarily for affordable rental residential housing with first floor affordable commercial space, and public parking located primarily an underground parking structure;
- b) Quadrant 2 primarily for market rate and affordable for-sale condominiums with first floor affordable commercial space, and public parking located primarily in the quadrant 2 underground parking structure;
- c) Quadrant 3 will be developed primarily for market rate and affordable for-sale condominiums and townhomes including a 12-bedroom townhome style co-op; and
- d) In Quadrant 4, one of the two buildings will be permanently affordable rental co-housing and the second building intended primarily for market rate, for-sale condominiums and first floor affordable commercial space.



Zocalo will prepare a phasing plan for approval by the city within ninety days following the effective date of the JDA. The phasing plan will establish the project timeline and completion date for each quadrant.

The city will transfer the land for each quadrant to Zocalo providing that the following conditions are satisfied prior to the transfer:

- a) The entitlements process has been completed for each quadrant.
- b) Zocalo and development partners are in good standing with the city under the terms of the JDA.
- c) All affordability covenants, agreements, and management plans have been executed and the developers are in compliance with all other obligations of the JDA.

2. Housing

The 30th and Pearl development will include 54 percent permanently affordable housing with a mix of rental and for-sale homes, unit types, number of bedrooms, and levels of affordability. The exact number of units and therefore affordable units will be determined through the entitlement and Form Based Code process and approved by the City Manager. All rental housing including a co-operative townhome and 12 for-sale units will be permanently affordable as shown in **Attachment B**. Permanently affordable rental units will be affordable to households with incomes ranging from 30 percent to 60 percent Area Median Income (AMI). Permanently affordable for-sale condos and townhomes will be affordable to households earning 80 up to 150 percent AMI and priced to maximum of 120 percent of AMI furthering city middle income goals.

The co-housing and co-operative housing portion of the development will offer residents a progressive co-living experience in a diverse, intergenerational living environment intended to be an alternative to traditional separate apartment living. Community space in the co-housing building includes a communal kitchen and dining pavilion, common outdoor spaces with roof gardens and decks, and ground floor shared common spaces that open to paseos, courtyard and streets, with spaces for gathering, co-working, and events.

Co-Housing: Boulder Housing Partners (BHP) will own and manage the permanently affordable rental and co-housing inspired units. The distinction between co-housing and co-housing “inspired” is provided because, as tax credit financed housing, any HUD rules in conflict with co-housing will apply. However, BHP is confident these units will create a unique community based on the co-housing model. To clarify the co-housing intent of the building, BHP and Caddis Architecture, which has experience in co-housing design and management, will conduct at least eight community building workshops during the first two years of building occupancy that will focus on building capacity for residents to use their common facilities to create long-term community including intentional community living, shared meal systems, conflict resolution, affordable building management practices, meeting facilitation techniques, socially just housing, decision making, sustainability and energy/water efficient occupancy, and communication.

Co-operative Housing (Co-op): It is anticipated that Boulder Housing Coalition will purchase two townhomes which will be combined to create one 12-bedroom affordable co-op. A co-op management plan that specifies cooperative living rules and requirements, leasing goals, tenant mix, fair marketing and tenant selection procedures, lease terms, restrictions, subleasing and re-leasing parameters is required by the JDA.

To further the city's long-term homelessness strategy, BHP will set aside 20 affordable rental units as permanently supportive housing (PSH) for those using permanent supportive housing vouchers so long as outside funding for support services is available. BHP will work with local partners of the long-term homelessness strategy to pair units with these voucher holders and allow for the provision of services.

3. Parking, Access, and Management

Parking management within the Boulder Junction Access District (BJAD) is guided by TVAP, the city's Access Management and Parking Strategy (AMPS), and SUMP (shared, unbundled, managed and paid) and the JDA requires that Zocalo follow these principles. Most parking will be located in below grade parking structures to enhance the pedestrian experience. Surface parking spaces will be publicly managed and regulated by the city and BJAD.

The JDA requires the execution of a parking management agreement and the Master Declaration for the development and the specific condominium declarations will be responsible for implementing parking requirements not managed by the city.

For-sale condominiums will have a designated block of limited common element parking use spaces that the condo owners have the right, but not the obligation to buy into. If those condo parking spaces are not acquired or used, there will be a management agreement in place that would allow other users within the development to use those spaces. Separate and dedicated parking will be allocated to the for-sale townhomes that will be located within or below the townhome units.

Eco Passes, car-share and bike-share programs will be provided. Bicycles are encouraged as a primary mode of transportation through the inclusion of bike parking and storage spaces. All residents and employees will receive a Boulder B-Cycle shared bicycle station membership. The project is anticipated to include a minimum of 290 underground parking spaces, however the final number of parking spaces will be confirmed and finalized during the entitlement process.

4. Affordable Commercial Space

The 30th and Pearl JDA includes a pilot program for deed restricted permanently affordable commercial space. The space will be developed, owned and managed by Zocalo and located on the ground floor of most buildings. Leasing priorities include providing below-market rents for local independent small businesses and non-profits supporting the residents in the TVAP area and creating an active, vital neighborhood.

Initial commercial rents will be set at 75 percent of market rents and increases will be limited to no more than the change in the Consumer Price Index, annually. The JDA includes an anticipated 21,000 square feet of affordable commercial space. However, as with the final unit

and parking space count the exact square footage will be determined through the entitlement process and approved by the City Manager.

Details on the affordable commercial program will be documented in an Affordable Commercial Implementation Agreement that will include specific provisions for the mix of uses (e.g., retail, restaurant and office users), the tenant selection process, which includes a city approval right (e.g. small, local independent business and non-profit organizations), leasing terms, renewal policies, and subleasing. The Agreement will also include reporting requirements needed to accurately review and analyze the affordable commercial program.

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

Affordable Commercial Space and the Commercial Linkage Fee

In order to facilitate the development of the affordable commercial space and limit uncertainty for the developer the JDA provides that if the linkage fees in effect as of the date of the agreement increase, the city will reduce the required square footage of the permanently affordable commercial space. For every \$1.00 increase (compared to the fee amounts in effect as of the date of the agreement) to the amount of the commercial space linkage fees, there will be a corresponding reduction in the required square footage of affordable commercial space by 170 square feet; this space then becomes market-rate commercial space.

5. Energy, Resilience and Sustainability

A key element of the proposed development at 30th and Pearl requires that the development be designed as a healthy and adaptable environment infused with sustainability and resiliency throughout construction and in its operations. Buildings will be designed and constructed to meet or exceed the city's energy efficiency standards and reduce the impact on energy consumption and greenhouse gas emissions. Specific design features include:

- The project will achieve a minimum 'Silver' level certification through USGBC's LEED standard for construction. This will be achieved through increased efforts to ensure highly insulated building envelopes. All housing project improvements will be designed with principles of the WELL Building Standard and "Passive Haus" standards as guides.
- 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.
- 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. Boulder

- 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.
- The project will include car-charging conduit to 25 percent of parking spaces, both on-street and in parking structures. Of those, roughly half will be DC fast-charge technology. Additionally, the project will include the installation of twelve high-amperage Level 2 chargers and six DC Fast Charge units. If there is engineering and financial support available, the project will be designed towards future bi-directional feeding of electricity “vehicle-to grid”.
- Additionally, the city and Zocalo agree to jointly explore long-term sustainability options such as additional public/private partnerships that could lead to grant or other funding programs to meet or exceed city energy efficiency and sustainability goals.

6. City Park

The development will include a pocket park within the development – designed, developed, and paid for by Zocalo. In addition, the northeast .75-acre portion of the project site will continue to be owned by the city and be developed as the “Boulder Junction Park” budgeted and under the management of the city’s department of Parks and Recreation which will be responsible for review, approval and payment of all park improvements made. Zocalo will work with Parks and Recreation to coordinate the design of Boulder Junction Park with the design, planning and entitlement process for the paseos and outside walkway and interior pocket park(s) areas of the 30th and Pearl project.

NEXT STEPS

- Second Quarter 2018 Zocalo submit for Form Based Code review for the first phase quadrants (affordable housing)
- 2018 the City Manager and Zocalo finalize supporting documents, agreements and management plans
- 2018 Zocalo leads public outreach with the support of city staff
- Third Quarter 2019 Zocalo submits building permit application(s) for the first phase quadrants (affordable housing)

ATTACHMENTS

- A. 30+Pearl Joint Development Agreement
- B. Housing & Parking Chart

JOINT DEVELOPMENT AGREEMENT

by and between

ZOCALO COMMUNITY DEVELOPMENT, AS MASTER DEVELOPER

and

CITY OF BOULDER, COLORADO

and

CERTAIN DEVELOPMENT PARTNERS NAMED HEREIN

Dated _____, __ 2018

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SCHEDULE OF DEFINITIONS

EXHIBIT A	LEGAL DESCRIPTION OF THE PROJECT PROPERTY
EXHIBIT B	SITE PLAN/QUADRANTS
EXHIBIT C	HOUSING UNITS / PARKING DESCRIPTION
EXHIBIT D	BHP APPLICATION AND RESOLUTION
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EXHIBIT J	LIVABILITY STANDARDS FOR PERMANENTLY AFFORDABLE HOUSING
EXHIBIT K	SAMPLE ACCESS LICENSE FORM
EXHIBIT L	HOUSING INSPECTION REQUIREMENTS

JOINT DEVELOPMENT AGREEMENT

THIS JOINT DEVELOPMENT AGREEMENT (this “Agreement”) is entered into effective as of [_____, 2018] (the “Effective Date”), by and between ZOCALO COMMUNITY DEVELOPMENT, INC., a Colorado corporation (“Master Developer”), the CITY OF BOULDER, COLORADO (the “City”), and certain Developer Partners (as defined below) who are joining this Agreement for the purpose of agreeing to certain obligations and covenants applicable thereto as outlined below. Master Developer, the City and the specified Master Developer Partners are each referred to in this Agreement, individually, as a “Party,” and, collectively, as the “Parties”.

RECITALS:

A. The City owns certain real property consisting of an approximate 4.3 acres located at 30th and Pearl Streets in Boulder, Colorado more specifically described on Exhibit A hereto (the “Project Property”). The Project Property is a part of a larger transit oriented development site within the 2007 Transit Village Area Plan (“TVAP”) and the Boulder Junction Access District (the “BJAD”), the Project Property was acquired by the City from the Pollard Friendly Motor Company in 2004 (“Pollard”), the Project Property and a portion thereof was subject to a lease-back to Pollard (the “Pollard Lease”), which Pollard Lease has expired as of the date of this Agreement.

B. The City desires to contribute title to the Project Property for use in connection with a coordinated mixed-use development project meeting specific City goals, including, without limitation, increasing expanded affordable housing and affordable commercial space options in a manner consistent with the City’s goals in the BJAD and in a manner consistent with the TVAP.

C. The City conducted an extensive process to identify a master development partner under a Request for Proposal issued March 10, 2017 (the “RFP”). The RFP process included the articulated goals of the City and responses received were evaluated by a selection committee (the “RFP Committee”) comprised of City staff from the following City departments: (i) the Planning, Housing and Sustainability department (the “Planning and Housing Department”); (ii) the division of the Planning and Housing Department focused on Climate and Sustainability (the “Energy Division”); (iii) the Public Works department (“Public Works”); (iv) the Parks and Recreation department (“Parks and Rec”); (v) the Community Vitality department (“Community Vitality”); (vi) the City Attorney’s Office; and (vii) the City Finance Department (the “Finance Department”) (each a “City Department” and collectively, the “City Departments”). Master Developer was selected following public presentations and recommendations that were made by the RFP Committee to City Council on July 14, 2017. The selection of Master Developer was approved by City Council on September 26, 2017.

D. Master Developer’s response to the RFP¹ and the supplemental information provided pursuant to requests for clarification made by various City Departments (collectively, the “RFP Response”) served as the basis for the City’s selection of Master Developer and, based thereon and resulting from the City’s subsequent negotiations with Master Developer, includes the

¹ https://www-static.bouldercolorado.gov/docs/Zocalo_Community_Development_William_Shutkin-1-201707130937.pdf?_ga=2.212545172.1801374596.1512411096-48778020.1507318495

following summary of the project description and the components thereof (the “**Project**”) as such Project and components thereof are more specifically set forth in this Agreement:

(a) Except for possible changes in the number of units as contemplated pursuant to Section 2.12 or as otherwise may be modified in the Entitlements Process, the Project shall include housing consisting of no fewer the number of residential units set forth on Exhibit C hereto. The total number of units will be determined during the Form-Based Code review process during the Entitlements Process. The Project shall contain a majority of affordable housing units (which shall include for-sale units priced to be affordable to middle income households). The remainder shall be rental units with rents set to be affordable to households earning from thirty percent (30%) to sixty percent (60%) of AMI. The Project shall also include market rate for-sale units. There shall be no market rate rental housing units without the City’s prior written consent; provided that nothing herein shall be deemed to prevent an owner of a market rate for-sale unit from renting his or her unit. The housing unit mix is set forth on Exhibit C hereto. The housing unit mix shall be confirmed and finalized during Form-Based Code review during the Entitlements Process; provided, however, that, except for possible changes contemplated pursuant to Section 2.12, the percentages of affordable housing units compared to the total number of housing units and the housing unit mix as shown on Exhibit C may be modified only with the prior written consent of the City.

(b) Except for possible changes in the square footage amount as contemplated pursuant to Section 2.12, the Owner agrees to design and propose approximately 21,000 square feet of commercial space in the Project. The Parties agree that the exact amount of commercial square footage will be determined through the Entitlement Process and that the Project shall include deed restricted affordable commercial space meeting the requirements of Section 5.03.

(c) Except for possible changes in the number of spaces determined in the Entitlements Process, the Project shall include the number of underground parking spaces as set forth on Exhibit C. Such underground parking shall be privately owned and managed and, except with respect to parking associated with the For-Sale Condominiums and the Townhomes as described in Section 5.04 below, restricted to management requirements meeting the City’s “SUMP” principles, meaning that such parking shall be shared, unbundled, managed and paid and meeting, as the same is more specifically described in Section 5.04. The number of parking spaces shall be confirmed and finalized during Entitlements Process.

(d) All Project improvements shall be required to meet the City’s “Energy Sustainability Strategy” as described in Section 2.11.

(e) The Project shall implement an urban design plan conforming to the City’s Form-Based Code as described in Section 2.08 and including diverse building designs with integrated pedestrian-oriented public spaces.

(f) The Project shall include internal garden and green spaces and shall also include coordination on improvement of the adjacent “pocket park” owned by the City as described in Section 5.07.

E. As a part of the RFP Response, Master Developer has included the following development joint venture partner entities and key members of Master Developer team which will be involved in implementation of the Project and, during the Entitlements Process, Master Developer shall identify other partners who will be involved in the Project (the “**Developer Partners**”). Certain of such Development Partners and key development team members are identified below. Master Developer shall have the right to supplement the development team with additional or replacement Development Partners or key team members; provided that any replacement shall require the prior written consent of the City, which consent shall not be unreasonably withheld so long as such replacement member is of the same quality (in terms of its experience and familiarity with the City Form-Based Code and related code requirements) and has the same capacity and financial strength to carry out the terms of this Agreement applicable to it.

(a) Architectural Design Firms (as key members of Master Developer’s implementation team): (i) Coburn Development, Inc., a Colorado corporation; (ii) Shears Adkins Rockmore Architects, LLC, a Colorado limited liability company whose address is 1550 Wynkoop Street, Suite 100, Denver, CO 80202; and (iii) Caddis P.C. (architecture), a Colorado professional corporation, whose address is 1510 Zamia Avenue, Suite 103, Boulder, CO 80304, with expertise in co-housing and co-op housing (“**Caddis**”).

(b) Landscape architect (as a key member of Master Developer’s implementation team): Civitas, Inc., a Colorado corporation, whose address is 1200 Bannock St., Denver, CO 80204 (“**Civitas**”).

(c) Engineering consultants (as key members of Master Developer’s implementation team): (i) Group 14 Engineering, PBC, a Colorado public benefit corporation (a woman-owned certified B corp.); and (ii) Civil Engineering consultant: JVA, Incorporated, a Colorado corporation.

(d) The lead consultant and primary point of contact for Master Developer is William Shutkin.

F. The Housing Authority of the City of Boulder, CO d/b/a Boulder Housing Partners (“**BHP**”) will enter into such agreements with Master Developer or its affordable housing developer Affiliate, Zocalo Community Development, for the purpose of developing, owning and operating the LIHTC Affordable Housing Project as described herein.

G. The City desires to enter into this Agreement to confirm the terms, conditions and requirements for the Transfer by the City of all or any portion of the Project Property to Master Developer and/or the Development Partners for development of the Project.

AGREEMENT

NOW, THEREFORE, for good and valuable consideration, and in consideration of the promises, covenants, and agreements contained herein and for Ten Dollars and other good and

valuable consideration, the receipt and adequacy of which are acknowledged, the Parties agree as follows:

ARTICLE I

INCORPORATION OF RECITALS; ATTACHMENTS; DEFINITIONS

Section 1.01. Incorporation of Recitals. The foregoing Recitals are hereby incorporated as material terms of this Agreement.

Section 1.02. Attachments. The exhibits and schedules described herein and itemized in the Table of Contents of this Agreement shall be deemed to be a material part of this Agreement and are incorporated herein.

Section 1.03. Definitions. In addition to the capitalized terms defined parenthetically elsewhere in this Agreement (the document locations of which are included in the Schedule of Definitions attached hereto and incorporated herein (the “*Schedule of Definitions*”)) additional defined terms are included in the Schedule of Definitions and shall have the meanings set forth therein.

ARTICLE II

THE PROJECT GENERALLY; OVERALL DEVELOPMENT CONDITIONS AND REQUIREMENTS

Section 2.01. Purpose: Contractual Relationship of the Parties; No Partnership. The purpose of this Agreement is to set forth the contractual terms and conditions for the joint and coordinated development of the Project as a unified real estate development on Quadrants of the Project Property. Except with respect to the LIHTC Partnership described herein between BHP and Master Developer’s affordable housing Affiliate, Zocalo Community Development, as further described herein, the Parties are not forming any joint venture or partnership, nor are they making any agreement to undertake any other project, activity, or business other than to plan, develop, finance, construct, complete and provide for the future operation of the Project in accordance with the terms of this Agreement. The Project shall not constitute a separate enterprise or unincorporated entity for accounting, income tax, or other purposes. The Parties do not intend to share profits and losses, and each Party shall maintain control over its own assets and resources. The relationship between Master Developer and/or any Development Partner and the City is that of independent contracting parties with the City owning and contributing/transferring the Project Property for the specific purposes and on the conditions set forth herein and Master Developer and/or any Development Partner developing, constructing and operating the Project thereon in accordance with the terms of this Agreement. Neither Master Developer nor any Development Partner shall be deemed to be, nor shall any of such Parties represent itself as, employee, partner, or joint venture with the City. No employee or officer of the City will supervise Master Developer or any Development Partner or its activities hereunder.

Section 2.02. Name. The name of the Project for the purpose of this Agreement shall be the “30th & Pearl Mixed Use Project” or such other name as the Parties may agree to from time to time.

Section 2.03. Term. The term of this Agreement shall commence on the Effective Date of this Agreement and shall continue in full force and effect until the date that Stabilization has occurred for all Project Improvements for each Phase on each Quadrant of the Project Property or until earlier terminated accordance with the provisions of Article VII of this Agreement. The Parties intend that certain of the terms and conditions of this Agreement shall continue to bind the Project Property and the Parties and their successors and assigns pursuant to, among other things, the Master Declaration, any Affordability Covenants, Commercial Affordability Covenants, any Deed Restrictions and the other documents and instruments contemplated herein that, by their terms, extend beyond Completion and Stabilization of the Project Improvements on each Quadrant. Notwithstanding the foregoing, certain restrictions may terminate following Stabilization of the applicable Project Improvements, as such termination provisions may be approved by the City in accordance with the terms and conditions of the applicable recordable documents, including, without limitation, as may be set forth in any Deed Restrictions applicable thereto.

Section 2.04. Other Interests; No Conflicts of Interest. Each Party may have other business interests and may engage in any other business, trade, professions, or employment whatsoever, on its own account, or partnership or joint venture with any other person, firm, or corporation, or any other capacity, including, without limitation, the ownership, financing, leasing, operation, management, syndication, brokerage, or development of any real property whether or not in the vicinity of the Project Property. In addition, the departments of the City involved in plan approvals, permitting and construction oversight will be acting independently of the City in connection with the City’s rights and obligations under this Agreement and the Parties understand and agree that there are no conflicts of interest as a result of any City Department performing in a manner that may or may not facilitate the development of the Project in a manner consistent with this Agreement.

Section 2.05. Project Description; Components. The Project Property shall be divided into four (4) quadrants (each a “*Quadrant*”) as the same are generally identified on the Site Plan/Quadrant layout attached hereto as *Exhibit B* (the “*Site Plan*”). Each Quadrant shall have a primary development use as described below; provided that Master Developer shall have the right to confirm the exact use to be located on each Quadrant and to change such location of which uses shall be developed on which Quadrant during the Form-Based Code review process so long as the uses are included in the Project, it being the intent that Master Developer shall have flexibility in determining which of the uses shall be included in each Quadrant. Subject to Master Developer’s rights of relocation of such uses as set forth in the preceding sentence, the initial configuration reflected in the RFP Response is as follows:

- (a) ***Quadrant 1:*** Quadrant 1 as shown on the Site Plan shall be developed primarily for affordable, for rent residential housing (“***Affordable Rental Housing***”) with the possible inclusion of first floor Affordable Commercial space;

(b) **Quadrant 2:** Quadrant 2 as shown on the Site Plan shall be developed primarily for market rate, for-sale condominiums (“**Market Rate For-Sale Condominiums**”) and including permanently affordable for-sale condominiums (“**Affordable For-Sale Condominiums**”) and, collectively with the Market Rate For-Sale Condominiums, the “**For-Sale Condominiums**”) as shown on Exhibit C with the possible inclusion of first floor Affordable Commercial space;

(c) **Quadrant 3:** Quadrant 3 as shown on the Site Plan shall be developed primarily for market rate For-Sale Condominiums, market rate for-sale townhomes (“**Market Rate For-Sale Townhomes**”) and affordable for-sale townhomes (“**Affordable For-Sale Townhomes**”) of which one shall be designed and designated a twelve bedroom co-operative townhome (“**Affordable Co-operative Townhome**”) and together with the Affordable For-Sale Townhomes and the Market-Rate For Sale Townhomes, collectively, the “**Townhomes**”) as shown on Exhibit C. In the event that financing for the Affordable Co-operative Townhome cannot be secured through the Boulder Housing Coalition or through other sources reasonably available to Master Developer or the applicable Development Partner by the end of the Entitlements Process for that portion of the Project, then Master Developer shall alter and reconfigure the plans for the Affordable Co-operative Townhome to include, instead thereof, two separate two-bedroom Affordable For-Sale Townhomes permanently affordable to households earning 100% of the AMI and otherwise meeting the requirements of Section 5.01(d)(ii) below; and

(d) **Quadrant 4:** Quadrant 4 as shown on the Site Plan shall be developed with the two buildings, one of which is intended for Affordable Housing Units through the LIHTC Partnership and one of which may contain affordable co-housing (“**Affordable Co-housing**”) units with the possible inclusion of first floor Affordable Commercial space and a second building intended primarily for market rate, For-Sale Condominiums with possible first floor Affordable Commercial space.

Collectively, the Affordable Rental Housing, the Affordable For-Sale Condominiums, the Affordable For-Sale Townhomes, the Affordable Co-operative Townhome and the Affordable Co-housing are referred to herein as the “**Affordable Housing Units.**”

Section 2.06. Project Property Development Structure; Coordinated Elements. The Project Property shall be developed by Master Developer under a coordinated plan of development that shall include restrictions as to the development and future use thereof, including without limitation, the following:

(a) **Master Declaration.** The entire Project Property shall be subjected to a Master Declaration of Covenants, Conditions and Restrictions (the “**Master Declaration**”) in form and substance reasonably acceptable to the City. The City’s review of the Master Declaration shall be limited to confirming that the Master Declaration includes provisions to implement the following provisions of this Agreement: (i) requiring the Quadrants to be developed in a coordinated manner consistent with the requirements of this Agreement, (ii) allowing for cross access and other easements for pedestrian access and use for all outside amenities constructed within the paseos (as defined in and regulated under Title 9, Appendix M-1-10 of the Form Based Code) as a part of the Project Improvements

constructed on each of such Quadrants in a unified and connected fashion; (iii) requiring all residents and occupants of the Project to participate in a master association (the “***Master Association***”) formed pursuant to the Master Declaration, whether directly through assessments made by or through the Master Association or through any Subassociation relating to one or more buildings comprising a part of the Project Improvements on a Quadrant in a manner to address the provisions of this Agreement, (iv) implementing and enforcing any Parking Management Requirements applicable to the Project Property or any portion thereof in a manner consistent with Section 5.04, (v) providing for programmatic activities for the benefit of all residents and occupants of the Project Property (“***Community Programming***”), including, without limitation and only for illustration, health fairs, community garden activities, athletic activities, coordinated arts, musical or theatre events and any other activities intended to provide for a robust community living and working environment within the Project, and (vi) addressing maintenance and operation of common Project Property elements including, without limitation, stormwater infrastructure. The Master Declaration shall allow the Master Developer to include provisions to accommodate the tax and development requirements associated with the LIHTC Affordable Housing Project and the LIHTC Partnership.

(b) ***Subdeclarations.*** Any Quadrant or any building constructed within a Quadrant shall be entitled to form a planned community or condominium community under a separate and subordinate Declaration of Covenants, Conditions and Restrictions (each a “***Subdeclaration***”) managed by a subassociation (each a “***Subassociation***”) for the purpose of, among other things, complying with CCIOA in connection with the development thereon including, without limitation, in connection with the For-Sale Condominiums or the For-Sale Townhomes. Any Subdeclaration and Subassociation so formed shall be required to comply with the requirements of the Master Declaration and pay assessments issued by the Master Association and shall address the parking requirements applicable to the For-Sale Condominiums as set forth in Section 5.04.

(c) ***Restricted Use Covenants Applicable to Project Property or Quadrants.*** The City may require that the entire Project Property or any Quadrant thereof be deed restricted in connection with the transfer thereof by the City to Master Developer or the applicable Development Partner to confirm that the Project Property and each Quadrant thereof shall be developed and used solely for the purposes and under the restrictions contemplated by this Agreement (the “***Deed Restrictions***”). Such Deed Restrictions shall implement the requirements of this Agreement as to such portion of the Project Property to be transferred from time to time and shall be recorded prior to any Transfer of a Quadrant thereunder. The form of the Deed Restrictions applicable to any Quadrant shall be finalized by the Parties on or before residential or commercial building permit submittal but in no case later than Transfer of the property for any such use or Quadrant. Notwithstanding the foregoing, in the event that any of the Affordable Housing Unit financing structures require a land use restriction agreement or other covenant restriction documents that are consistent with the intended Deed Restrictions, the City shall work cooperatively with the applicable Project Lender and/or tax credit investors for such Affordable Housing Units to conform the Deed Restrictions or, in the alternative, allow such Affordable Housing Unit covenant restrictions required by the Project Lenders and/or tax credit investors to satisfy the Deed Restriction requirements of this Agreement

as to any Quadrant affected thereby so long as the same include the material covenants and restrictions contained in this Agreement. There are anticipated to be separate covenants and Deed Restrictions applicable to the LIHTC Affordable Housing Project and the LIHTC Partnership.

Section 2.07. Access Streets; Public Dedication. The Entitlements Process shall include identification of internal and public rights of way across and through the Project Property, including (i) the public street to be dedicated to the City running east and west through the middle of the Project Property Quadrants as depicted on the Site Plan connecting to 30th Street on the west and 33rd Street on the east (the “E/W Dedicated Street”), (ii) the public street to be dedicated to the City running north and south between Quadrants 1 and 4 from Pearl Parkway on the south running north to meet the E/W Dedicated Street as depicted on the Site Plan (the “N/S Dedicated Street”), and (iii) the private access drive running north and south between Quadrants 2 and 3 from the E/W Dedicated Street to the north Project Property line as depicted on the Site Plan (the “Private Drive”). The E/W Dedicated Street and the N/S Dedicated Street shall be reserved to or otherwise dedicated to the City as a part of the Entitlements Process. Each of the E/W Dedicated Street, N/S Dedicated Street and the Private Drive collectively, the “Access Streets”) shall include reservations for Utilities necessary to serve the Project Property, in such configuration and meeting such requirements as set forth in Section 5.06 and as otherwise required or determined by the applicable City Departments with authority therefor. From and after completion of public improvements in accordance with City requirements, regulations, policies and procedures (including, without limitation, any Entitlement Process requirements) for the E/W Dedicated Street and the N/S Dedicated Street, the City shall accept such improvements and thereafter provide all normal and customary City owned public street operations and maintenance practices in accordance with the City’s SUMP principles. The Master Association shall be responsible for all operations and maintenance of the Private Drives.

Section 2.08. Form-Based Building Code. The Project Property and all Project Improvements thereon shall conform to and meet all requirements of the City 2016 Form-Based Zoning Code and any amendments in effect as of the date of the RFP Response, including alternate methods of compliance and exceptions as contemplated by and allowed under the 2016 Form-Based Zoning Code and the accompanying review process. If such Form-Based Code provisions and requirements are modified between the date of the RFP Response and the applicable City review dates for the Project Improvement planning and permitting approvals such that the impact of such modifications materially and negatively increases the cost and/or development timing for such Project Improvements, then the City agrees to work with Master Developer to adjust or otherwise address the Form-Based Code requirements of this Agreement in order to realize, as close as possible, the reasonable expectations of both Master Developer and the City under the terms of this Agreement. The resolution of the negative impact resulting from the modifications in Form-Based Code requirements may include (by way of example and not limitation), City waivers, variances or other accommodations and/or providing City or other funding available to offset the negative impact of such changes (the “Form-Based Code”).

Section 2.09. Phasing; Phasing Plan. At the start of the Project, an initial phase shall include all public improvements required in the Entitlements Process. Subsequently, the Quadrants of the Project Property may be developed and the Project Improvements thereof constructed separately and in Phases (each a “Phase”) on the condition that the development and

Transfer of each such Quadrants shall be subject to the terms and conditions of this Agreement, the Master Declaration and any Deed Restrictions. Master Developer shall prepare a phasing plan (the “***Phasing Plan***”) for approval by the City within ninety (90) days following the Effective Date of this Agreement setting forth, among other things, the Project timeline, Development Partners and Outside Completion Deadline for each Phase. The Phasing Plan applicable to the LIHTC Affordable Housing Project shall be drafted to accommodate the tax and development requirements associated with the LIHTC Partnership, including identifying the costs of infrastructure for which the LIHTC Partnership will be responsible.

Section 2.10. Implementation Time Frame. Master Developer shall provide a development time-line for approval by the City within ninety (90) days following the Effective Date, which shall include the Phasing Plan and the commitment for Completion of all Phases on or before the Outside Completion Deadline. The rights of the City and the obligations of Master Developer and the Development Partners hereunder shall be implemented through incorporation into one or more documents including, without limitation, the Master Declaration, Deed Restrictions, Affordability Covenants, Commercial Affordability Covenants, guarantees and any separate development agreements required to be executed by the applicable Parties and recorded against the applicable Phase or Quadrant as a part of the Entitlements Process such that they will be covenants and agreements running with the applicable portions of the Project Property, binding on all successors and assigns thereof.

Section 2.11. Energy/Resilience and Sustainability Requirements. Master Developer shall include in the overall development plan and in the requirements of the Master Declaration a requirement that all Project Improvements on the Project Property be designed and constructed to meet or exceed the City’s energy efficiency standards set forth in the City’s building codes, as the same may be amended from time to time, including meeting or exceeding building design and construction standards required to reduce the Project’s impact on energy consumption and greenhouse gas emissions. The City and Master Developer agree to explore long-term sustainability options such as additional public/private partnership options that could lead to grant or other funding programs to meet the energy efficiency and sustainability goals set forth in this Agreement. The energy efficiency requirements shall include, without limitation, the systems described on *Exhibit I* attached hereto and incorporated herein.

Section 2.12. Material Hardship Upon Modifications of Assumed Conditions. The Parties understand and agree that this Agreement is predicated on certain assumptions existing as of the Effective Date and that certain material changes in the conditions on which such assumptions were predicated may impact the ability of the Parties to effectuate the terms and conditions of this Agreement or otherwise impose upon Master Developer a material hardship. Accordingly, in the event that the following conditions occur and, as a result thereof, Master Developer is not able to comply with all of the terms, provisions and conditions of this Agreement or comply with such terms, provisions and conditions of this Agreement without substantial financial hardship, the Parties agree to work in good faith to adjust the terms, provisions and/or conditions of this Agreement to address a resolution that would allow the Parties to realize, as close as possible, the reasonable expectations of both Master Developer and the City under the terms of this Agreement. A material modification resulting in a resulting anticipated hardship condition shall include the following circumstances:

(a) ***Flatirons View-shed.*** It shall be deemed a material hardship condition if, during the Entitlements Process, the Form-Based Code or other requirements of the City are determined to require lower building height limits on the Project Property in order to accommodate the Flatirons view-shed than the building height limits contemplated herein (resulting in a decreased number of developable units and square footage of inhabitable space.)

(b) ***BHP Application Requirements and Assumptions.*** It shall be deemed a material hardship condition if, through no fault of Master Developer, BHP or the City, factors are presented the result of which is to materially and substantially decrease the public or private funds available for the development of the LIHTC Affordable Housing Project including (i) the BHP Application is not timely processed under the qualified census tract data as included in the BHP Application, or (ii) the amount of funds to be raised through a sale of low income housing tax credits declines below a price resulting in the project no longer being financially feasible or sustainable, or (iii) the results of an independent market study demonstrate market conditions which do not support the programming of the Permanently Affordable units set forth in *Exhibit C*.

(c) ***Increase in Linkage Fees for Affordable Commercial. Increase in Linkage Fees for Affordable Commercial.*** The Parties acknowledge that, as of the date of this Agreement, the linkage fees that would be due to the City with respect to the permitting of the Affordable Commercial space would range from \$8.16 to \$12.24 per square foot of such commercial space depending on the use category. In order to facilitate the development, construction and operation of the Affordable Commercial space in the Project, the City agrees that, if the linkage fees in effect as of the date of this Agreement increase prior to the date such linkage fees are required to be paid with respect to the Affordable Commercial Project Improvements, then the City agrees to reduce the required square footage of such Affordable Commercial such that, for every \$1.00 increase to the amount of the commercial space linkage fees, there will be a corresponding reduction in the required square footage of Affordable Commercial by 170 square feet, which would become market-rate commercial space. The Parties agree to modify the exact amount of market-rate commercial space, either up or down, to create a reasonable physical configuration of the commercial space. Any market-rate commercial space created under this provision would not be subject to Section 5.03 of this Agreement.

(d) ***Other Unforeseen Hardship Conditions.*** It shall be deemed a material hardship condition if any other condition exists that the City (in its sole but reasonable discretion) acknowledges and agrees would constitute a material modification of the assumed conditions relied upon by Master Developer as of the Effective Date of this Agreement that would result in an unreasonable impediment to Master Developer's ability to perform hereunder or that would cause a substantial financial hardship to Master Developer in meeting such modified conditions. In such event, if the parties are not able to reach a resolution for a modification of the terms of this Agreement to resolve the hardship within sixty (60) days after identification thereof, then either Party shall have the right, by written notice to the other Party, to terminate this Agreement; provided, however, in the event of termination, the Master Developer shall have an obligation to reconvey the applicable Quadrant or Quadrants which have been Transferred to Master Developer but

which have not reached Substantial Completion together with a quitclaim deed as to any entitlements and any Project Improvements located thereon, free and clear of any liens.

ARTICLE III

CITY PROJECT PROPERTY OBLIGATIONS; TRANSFERS; CONTINGENCIES AND PERMIT REQUIREMENTS

Section 3.01. Condition of Project Property; Environmental Matters.

(a) ***Title Matters.*** Within twenty (20) Business Days following the Effective Date, the City shall provide Master Developer with a title commitment issued by First American Title Company (the “***Title Company***”) for the Project Property showing the condition of title to the Project Property (the “***Title Commitment***”). The Title Commitment shall confirm that there are no encumbrances, encroachments or title exceptions that would impede development of the Project Property in accordance with this Agreement (the “***Title Condition***”). Master Developer shall have ten (10) Business Days following receipt of the Title Commitment to identify any material concerns regarding the Title Condition, setting forth such concerns with particularity as to the impact or effect on the Project Property and the intended use thereof. If Master Developer so notifies the City of any concerns regarding the Title Condition of the Project Property, then the Parties agree to meet within ten (10) Business Days to resolve any such concern to Master Developer’s reasonable satisfaction. If the Parties are unable to resolve Master Developer’s concerns regarding the Title Condition, then either Party may terminate this Agreement by written notice to the other Party within such ten (10) Business Day resolution period. If no concerns are identified or if they are resolved to the Parties’ reasonable satisfaction such that neither Party has terminated this Agreement, then Master Developer shall be deemed to accept the Title Condition and all matters listed in the Title Commitment shall be deemed “***Permitted Exceptions.***” Except with respect to those matters contemplated herein including, without limitation, matters arising out of the Entitlements Process, the Master Declaration and the Deed Restrictions, the City shall not allow additional exceptions to title to affect the Project Property without Master Developer’s prior written consent, which consent shall not be withheld or delayed for any customary and necessary utilities required for the Project Property.

(b) ***Environmental Matters.***

(i) ***Environmental Reports; Mitigation if Required.*** The City shall, on or before twenty (20) Business Days following the Effective Date, deliver to Master Developer copies in the City’s possession of all reports, soil studies, environmental and wetlands studies, written notices or communications received by the City or Pollard under the Pollard Lease (if any) from governmental agencies relating to environmental matters, geological studies and all other studies, tests and documents related to the Project Property in the actual physical possession of or known to exist and reasonably susceptible to being obtained by the City and/or delivered to the City by Pollard under and pursuant to the Pollard Lease. The City shall deliver to Master Developer as and when available any additional or updated environmental

studies, reports and environmental mitigation implementation plans applicable to the environmental conditions of the Project Property (individually or collectively, the “**Environmental Report**”) obtained by the City pursuant to the Pollard Lease conducted by one or more environmental consultants approved by the City (each, an “**Environmental Consultant**”) using standards and specifications which will satisfy the “all appropriate inquiry” standards of CERCLA Section 101 (35)(B) (collectively, the “**Environmental Study Standards**”). The Environmental Report shall include an evaluation of (i) pollutants, contaminants and Hazardous Substances (as defined below) and asbestos, radon and lead-based paint, (ii) any environmental cleanup requirements and specifications for the cleanup of environmental contaminants on the Project Property, separately identifying environmental cleanup issues (relating to the separate Quadrants if applicable), using a “clean” standard for such cleanup as defined by the Environmental Consultant and consistent with state and federal law and necessary to meet the then applicable requirements to obtain a determination of and subsequent issuance by the Colorado Department of Health and Environment that no further action is necessary with no restrictions or use limitations (the “**Clean Determination**”), (iii) estimate the total cleanup costs therefor, if any. The City shall be responsible for (or shall cause Pollard under the terms of the Pollard Lease) to be responsible for conducting any mitigation to achieve a Clean Determination of the Project Property and shall be responsible for any ongoing monitoring that may be required following Transfer of the Project Property to Master Developer. Master Developer agrees to accept the Environmental Report and any documents evidencing the Clean Determination as confirmation of the environmental condition of the Project Property. Following Transfer of the Project Property to Master Developer, Master Developer shall notify the City of any sub-surface environmental contamination arising from the Project Property discovered by Master Developer during construction of the Project Improvements or other actions of Master Developer to develop the Project, whereupon the City shall remediate the newly discovered contamination or, at the City’s election, reimburse Master Developer for the cost of such remediation, the specific terms of which shall be confirmed in a separate contract for such remediation. The obligations of the City pursuant to this Section 3.01(b) shall survive any Transfer for a period of eight months following the last Quadrant Transfer made to Master Developer pursuant to this Agreement. The City shall have the right, but not the obligation, to provide environmental insurance for the benefit of the City, Master Developer and the applicable Development Partner to address potential risks of any ongoing environmental risks on the Project Property.

(ii) *Representation by City of Environmental Condition.* To the best of the City’s current actual knowledge based solely on the Environmental Report, and except as may be set forth in the Environmental Report, the Project Property (including land, surface water, ground water and improvements) is now and will be at the time of any Transfer to the applicable Master Developer or Developer Partner, free of all contamination except as set forth in the Environmental Report, including (i) any “hazardous waste”, “underground storage tanks”, “hydraulic lifts” “petroleum”, “regulated substance”, or “used oil” as defined by the Resource

Conservation and Recovery Act of 1976 (42 U.S.C. § 9601, et seq.) as amended, or by any regulations promulgated thereunder; (ii) any “***Hazardous Substance***” as defined by the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. § 9601, et seq.) as amended, or by any regulations promulgated thereunder (“***CERCLA***”) (including, but not limited to, asbestos and radon); (iii) any “oil, petroleum products, and their byproducts”, as defined by C.R.S. 1973 § 25-17-101 et seq., as amended, or by any regulations promulgated thereunder; (iv) any “hazardous waste” as defined by the Colorado Waste Act, C.R.S. 1973 § 25-15-101, et seq., or by any regulations promulgated thereunder; (v) any substance the presence of which on, in or under the Project Property is prohibited by any law similar to those set forth above or relating to the presence or release of any hazardous materials in or to the air, soil, surface waters or groundwater; and (vi) any other substance which by law, regulation or ordinance requires special handling in its collection, storage, treatment or disposal.

(c) ***Site Preparation Status.*** The Parties acknowledge that, as of the Effective Date, the Project Property shall be in an undeveloped condition, with no improvements thereon with the exception of the asphalt paving and fencing currently in place. Grading of the Project Property shall be at the sole cost and expense of Master Developer. The City shall conduct a program of weed and soil erosion containment for the Project Property from the Effective Date through the date of Transfer of any portion thereof from the City to the applicable Master Developer or Development Partner. The City shall have the right (but not the obligation) to place recycled asphalt in areas of the Project Property where prior improvements have been demolished.

(d) ***Unforeseen Conditions; Costs.*** Except with respect to environmental matters addressed in Section 3.01(b) above, Master Developer agrees to use commercially reasonable efforts to confirm the condition of the Project Property within ninety (90) days following the Effective Date in order that all conditions of the Project Property are known and confirmed during such period. Any such non-environmental unforeseen conditions in connection with the development of the Project discovered by Master Developer or the applicable Development Partners, such matters the “***Unforeseen Conditions***” shall be addressed by Master Developer and the City shall bear no risk or cost associated therewith.

Section 3.02. Transfer of Project Property by City. The City shall transfer all or Quadrants of the Project Property by special warranty deed subject to Permitted Encumbrances and subject in all respects to the obligations under this Agreement, any Affordability Covenants, Commercial Affordability Covenants and any Deed Restrictions applicable thereto (each a “***Transfer***”). All water rights, minerals and mineral rights shall be retained by the City. The City agrees to Transfer the Quadrants of the Project Property to Master Developer or the applicable Development Partner or the LIHTC Partnership (with respect to the LIHTC Affordable Housing Project) from time to time in a manner consistent with the development and construction requirements of each of the Quadrants and in connection with the Phasing Plan for the Project; provided, however, that the following conditions shall be satisfied as of each such requested Transfer:

(a) **Entitlements Finalized.** The Entitlements Process shall be completed sufficient to allow each Quadrant to be Transferred separately from the other Quadrants and including the requirement that all public rights of way and easements therein have been retained or otherwise dedicated by plat, regardless of whether the improvements thereon have been completed and regardless of whether permits for construction therefor have been issued. Notwithstanding the foregoing, the City shall have no obligation to Transfer any Quadrant or Quadrants of the Project Property to Master Developer or any Development Partner until Master Developer has provided evidence to the City (which shall be included in its request for Transfer) that the Quadrant or Quadrants of the Project Property requested to be Transferred shall be developed, constructed and operated consistent with the requirements of this Agreement.

(b) **No Default.** Master Developer and any obligated Development Partner shall be in good standing under this Agreement and there shall be no Event of Default hereunder and no facts shall exist which, with the giving of notice or the passage of time or both, would constitute an Event of Default under this Agreement or under any Deed Restriction, Affordability Covenant, Commercial Affordability Covenant or other development agreement applicable to the Party seeking the Transfer of the applicable Quadrant.

(c) **Title Insurance.** Master Developer shall cause the Title Company to issue to Master Developer or the applicable Development Partner an owner's policy of title insurance subject to the Permitted Exceptions and subject in all respects to the obligations under this Agreement and any Deed Restrictions applicable thereto (each a "**Title Policy**"). Master Developer shall pay or cause to be paid all title premiums necessary in connection with the issuance of each Title Policy.

(d) **Deed Restrictions; Affordability Covenants and Commercial Affordability Covenants.** The City shall have the right to implement the obligations of Master Developer or any Developer Partner hereunder that are intended to run with and be binding upon the Quadrant or Quadrants of the Project Property so Transferred by recording against such Quadrant of the Project Property a document containing the Deed Restrictions and/or any Affordability Covenants or Commercial Affordability Covenants applicable thereto, in form and substance described herein and otherwise in form reasonably acceptable to the City in all respects; provided, however, that any other obligations or restrictions not contemplated herein shall be subject to agreement by Master Developer.

(e) **Master Declaration.** The Master Declaration has been approved by the City and has been recorded against the Quadrant or Quadrants of the Project Property.

(f) **Affordable Commercial.** An implementation program for the Affordable Commercial requirements herein have been agreed to by the City as reflected in the Deed Restrictions therefor or, with the City's written consent, by separate agreement relating thereto.

(g) **Financing Plan.** Master Developer has provided to the City evidence of financing for the Project Improvements to be constructed on the Quadrant or Quadrants of the Project Property requested to be Transferred.

(h) **LIHTC Partnership Documents.** With respect to the LIHTC Affordable Housing Project, all of the documents and instruments necessary to evidence the agreements between and among Master Developer's affordable housing Affiliate, Zocalo Community Development, and BHP shall be executed and delivered to BHP and all documents and instruments have been completed in order to complete the LIHTC Financing and develop, construct, own and operate the LIHTC Affordable Housing Project have been completed to the satisfaction of BHP and in accordance with the BHP Application.

Section 3.03. Deed Enforcement Rights; Right of Reversion. Each Transfer deed or, in the alternative at the City's election, the Deed Restrictions shall contain remedies available to the City to enforce its rights under this Agreement and any other covenants and requirements arising under the Entitlements Process or contained in any Deed Restrictions. Such remedies shall include typical remedies of the City contained in any site improvements or other development agreement including any remedies and enforcement actions that would allow the City to enforce the obligations of the transferee by seeking any and all rights and remedies available at law or in equity, including seeking specific performance, writ of mandamus, and, for default by Master Developer or the Developer Partner constituting material misrepresentations, fraud or material intentional violations of the development restrictions of this Agreement or any attempt to sell or transfer the Project Property for a land profit or to another developer that has not been approved by the City, enforcing a right of reversion. In such event, the City shall enforce its rights under this Section by notifying the Master Developer or the applicable Development Partner to reconvey the applicable Quadrant or Quadrants together with a quitclaim deed as to any entitlements and any Project Improvements located thereon, free and clear of any liens. Failure of the Master Developer or Development Partner to comply with such reconveyance request within thirty (30) days shall result in reversion of the applicable Quadrant or Quadrants and the City shall have the immediate right to take any and all action under law and equity to enforce its rights of reversion hereunder. Upon issuance of a Certificate of Occupancy for the applicable Project Improvements for each Quadrant of the Project Property, the right of revision shall be deemed void and of no further force and effect as to such Quadrant; provided, however, that the enforcement rights of the City shall continue in full force and effect under any separate or other development agreements typically required by the City in connection with such Project Improvements or under any applicable Deed Restrictions contemplated hereunder. **The right of reversion described herein shall be a limited and extreme remedy applicable for the limited events described in this Section 3.03 and not as a remedy for any other Event of Default.**

Section 3.04. Building Permit Eligibility. A building permit for the construction of any Project Improvements to be constructed in any Quadrant will be eligible to be issued when the following are completed, recognizing that certain of the following requirements shall be due at the time of permit submission:

(a) all requirements for building permit eligibility for the Project Improvements are met in accordance with this Agreement;

(b) Form-Based Code and technical document reviews by the City are completed for the Quadrant in which the applicable units are located;

(c) For residential improvements in the Project, the City Livability Standards for Permanently Affordable Housing attached hereto as Exhibit J apply; provided, however, that the City agrees to work with Master Developer to adjust such requirements with respect to those Affordable Housing Units that are structured as co-op Affordable Housing Units. The City approves the completed “Livability Standards Checklist I & II” for each type of Affordable Housing Unit in accordance with such requirements of such City Livability Standards;

(d) Master Developer or the applicable Development Partner shall have funded when due all permit costs and provided funds equal to the estimated cost of the housing inspector to the City;

(e) the Master Declaration and all Master Association documents are approved by the City, executed and recorded against the Project Property;

(f) City has reviewed and approved (if applicable to the Quadrant being developed) the proposed street furniture and fitness equipment plan; and

(g) An Affordability Covenant is executed for all Affordable Housing Units;

(h) Deed Restrictions, Commercial Affordability Covenants and such other covenants and implementation plans acceptable to the City are executed for the applicable Quadrant, including without limitation, those for the Affordable Commercial space in accordance with Section 5.03; and

(i) The applicable Quadrant has been Transferred to Master Developer or the applicable Development Partner.

Section 3.05. BHP Project Financing Requirements. Notwithstanding the foregoing, if the Entitlements Process is ongoing but the financing structure for the LIHTC Affordable Housing Project described below requires that the portion of the Project Property to be included in the LIHTC Affordable Housing Project to be under the control of BHP or the LIHTC Partnership in order to maintain the validity of or comply with timing requirements of the BHP Application, then the City agrees to work with Master Developer and BHP to facilitate transfer of control of the applicable Quadrant to BHP or the LIHTC Partnership pursuant to a ground lease or other structure necessary to meet the requirements of the BHP Application. Such ground lease structure shall include the obligation to Transfer such Quadrant to BHP or the LIHTC Partnership as and when the conditions for Transfer are met hereunder.

Section 3.06. Access Rights; Right of Use Pending Transfer. Until the conditions of Transfer have been completed, the City agrees to allow Master Developer and its contractors and subcontractors the right of access to other portions of the Property for the purpose of testing, construction staging, parking and such other uses as the City may agree; provided, however, that prior to such use, Master Developer shall execute and deliver to the City an Access Agreement

applicable for such intended use in form and substance agreeable to the City, a sample of which is attached hereto as Exhibit K.

ARTICLE IV

PLANNING AND ENTITLEMENTS; CONSTRUCTION STANDARDS

Section 4.01. Zoning. The Parties acknowledge that zoning for the Project Property is MU-4 and is sufficient for the Project scope, size and uses described herein. No modification of the zoning for the Project Property is anticipated or will be sought by Master Developer or any Development Partner.

Section 4.02. Entitlements; Submittals. The Parties intend that the Project Property be subdivided and replatted in a manner consistent with the Site Plan attached hereto as Exhibit B, identifying each Quadrant thereof as a separately described parcel of the Project Property and containing such public street and easement dedications as may be necessary in connection therewith, including, without limitation, the Access Streets generally described in Section 2.07 of this Agreement and the utilities easements generally described in Section 5.06 of this Agreement (the "Entitlements Process"). In connection with the Entitlements Process, Master Developer shall prepare a Survey of the Property to the City prior to the filing for a replat of the Project Property. The Parties acknowledge that Master Developer and/or certain Development Partners shall be entitled to submit pre-applications for the platting and site plan Entitlements Process of the Project Property subject to this Agreement and the City agrees to cooperate with Master Developer in such Entitlements Process, including providing authorization for Master Developer to submit such applications on behalf of the City as the Project Property owner, subject in all respects to the terms and conditions of this Agreement. In addition, each Quadrant Development Partner shall be authorized to work with Master Developer and the City to design the Project Improvements to be constructed thereon and to begin the design Entitlements Process review with the applicable City Departments and continuing through the Project Improvements planning and construction documentation review process necessary for the applicable Quadrant Project Improvements construction documents to be processed through permitting of such Project Improvements; provided, however, that no building permits shall be issued prior to the date of Transfer of the applicable Quadrant to the applicable Master Developer or Development Partner. The City agrees to work with Master Developer to create a review and processing schedule and will use reasonable diligence in implementing such schedule and addressing resubmittals made by Master Developer in connection with the Entitlements Process so long as documents submitted are in proper and acceptable form and substance.

Section 4.03. Completion of Approved Plans; Construction Documents. When the initial Entitlements Process for the site plan for the Project have been approved by applicable City Departments pursuant to Section 4.02 above, then Master Developer shall prepare the construction documents for approval by the City and applicable City Departments. All construction documents shall implement the requirements herein for the construction quality and energy efficiency of the Project Improvements as set forth in this Agreement. Master Developer shall, from time to time, provide an update to the City regarding the status of construction documents and the intended submission thereof for permitting approvals. No permit shall be issued for any construction

documents unless and until the applicable Quadrant of the Project Property has been Transferred to Master Developer or the applicable Development Partner.

Section 4.04. Financing. On or before the date which is 30 days prior to the date of Transfer for any Quadrant, Master Developer shall prepare a financing sources and uses budget for each portion of the Project Improvements being separately developed thereon, including all estimated development and construction costs necessary to reach Completion (“**Project Costs**”) and Stabilization. The financing of each Phase of the Project development and the applicable construction Project Costs shall be independent obligations of the applicable Master Developer or Development Partner, it being understood that there will not be one single finance structure for the entire Project and that each Quadrant may have separate financing with a different equity partner and different construction lender (each a “**Project Lender**”). Master Developer agrees to take any and all reasonable actions in connection with the efforts to obtain sufficient financing for the Project Costs. Each Party shall be solely responsible for any obligations, liabilities, expenses, and costs of any kind or character assumed by or charged to such Party in connection with its respective financing of its Project Costs. Prior to any Transfer of applicable portion of the Project Property to Master Developer and/or the applicable Development Partner, the City shall have received confirmation from Master Developer (including a loan commitment or other confirmatory documentation from the Project Lender) that all Project Costs for the Project Improvements are in place and adequate and commercially reasonable contingencies have been included in the budget to ensure timely Completion of the Project Improvements and for Stabilization thereof.

ARTICLE V

USE COVENANTS; PROJECT REQUIREMENTS

Section 5.01. Affordable Housing. Except for possible changes in the number of units as contemplated pursuant to Section 2.12 or as otherwise may be modified in the Entitlements Process, the Affordable Housing Units to be constructed on the Project shall contain the number of Affordable Housing Units, some of which shall be affordable to middle income households, as set forth on Exhibit C. Master Developer agrees to include two additional For-Sale Condominiums or Townhomes (one one-bedroom and one two-bedroom) affordable to 100% AMI middle income households in the Project on the following conditions: (i) if the Master Developer or the applicable Development Partner is successful in securing a State Tax Credit allocation for the Affordable Housing Units, (ii) if, during the Entitlements Process, the Master Developer is able to design and entitle four additional For-Sale Condominiums or Townhomes, or; (iii) if Master Developer’s investors approve the reconfiguration to include two to four additional middle income units. The Affordable Housing Units will be subject to all requirements of Chapter 9-13, B.R.C. 1981 (Inclusionary Housing) unless otherwise provided in this Agreement. All requirements of this Agreement and those applicable provisions of Chapter 9-13, B.R.C. (Inclusionary Housing) make up the obligations of Master Developer and the applicable Development Partners (collectively, the “**Affordable Housing Obligations**”). The Affordable Housing Units are to be located in all four Quadrants as shown on the Quadrant Use Diagram attached hereto as Exhibit F. The Affordable Housing Units shall be developed, constructed and owned as follows (subject to the rights of Master Developer to modify the location of uses on the Quadrants as set forth in Section 2.05):

(a) **Quadrants 1 and 4 - Boulder Housing Partners; LIHTC.** The Affordable Rental Housing to be developed in Quadrants 1 and 4 will include Affordable Rental Housing Units (with sizes, number of bedrooms and levels of affordability) indicated on Exhibit C. The Affordable Rental Housing, the Affordable Co-housing and no less than twenty units of Permanently Supportive Housing, to serve residents using Permanent Supportive Housing vouchers (to the extent there are sufficient outside sources of funding for the supportive services associated therewith), to be developed in Quadrants 1 and 4 to be known as the “**LIHTC Affordable Housing Project**” and will be developed through a limited liability limited partnership (the “**LIHTC Partnership**”) between Master Developer’s affordable housing affiliate, Zocalo Community Development or an approved Development Partner and BHP, in its capacity as a special limited partner in the LIHTC Partnership. The LIHTC Affordable Housing Project will be developed through issuance of private activity bonds in an amount up to approximately \$34,000,000 using S.B. Clark Companies as the financial consultant (“**SB Clark**”) under an application submitted to BHP on December 1, 2017 and the resolution dated December 11, 2017 copies of which is attached as Exhibit D (the “**BHP Application**”). The BHP Application includes the development pro forma prepared by Master Developer under assumptions made as to current development costs, funding sources and market conditions and assumes an issuance of bonds for construction of the LIHTC Affordable Housing Project in the fall of 2018. The BHP Application contemplates that the LIHTC Affordable Housing Project rents will be restricted to be affordable to households earning 30%, 40%, 50% and 60% AMI rents using 4% low-income housing tax credits (“**LIHTC Financing**”) and private activity bond financing, coupled with Master Developer equity contributed by the Master Developer or its Affiliates from anticipated profits of the Market Rate For-Sale Condominiums and the Market Rate For-Sale Townhomes. Subject to the provisions of the LIHTC Partnership agreements and the related LIHTC Affordable Housing Project documents in form and substance required by BHP, BHP will be the majority interest partner of the LIHTC Partnership and will operate the LIHTC Affordable Housing Project upon the issuance of a Certificate of Occupancy and filing of form 8609 with the IRS with respect to the completed LIHTC Affordable Housing Project.

(b) **Quadrant 4 – Co-housing.** Master Developer will develop Affordable Co-housing units in a portion of a four-story, approximately 26,500-square foot building to be constructed in Quadrant 4 of the Project dedicated to cooperative, intentional community living with unit sizes, number of bedrooms and level of affordability as indicated on Exhibit C. Co-housing shall be for-rent only offering a range of living options, from small studios to two-bedroom units. This portion of the Project shall offer residents a progressive co-living experience in a diverse, intergenerational living environment intended to be an alternative to traditional completely separate apartment living. The co-housing portion of the building will include one and two-bedroom self-contained rental units with a communal shared kitchen and gathering space to encourage communal dinners and responsibilities, but not shared daily communal living, typical of other types of co-housing communities. Common community spaces provided in the building with the Affordable Co-housing will include, on the fourth floor thereof, a communal kitchen, dining room or dining pavilion, a powder room and roof top deck. Community space on the first floor will include a co-working space and lobby that opens up to the paseo, street and courtyard, and a management office with mail and recycling

locations. Common spaces located in the basement will include long-term bicycle parking, laundry facilities and an exercise room.

(c) ***Quadrant 2 & 3.*** The Affordable Housing Units to be developed in Quadrant 2 and 3 will contain Affordable For-Sale Condominiums, one Affordable For-Sale Townhome and one 12 bedroom Affordable Co-operative Townhome, with unit sizes, number of bedrooms and levels of affordability as indicated in *Exhibit C*. The Affordable Co-operative Townhome will include individual bedrooms with access to a first floor shared kitchen and living space and will be managed to encourage daily interaction and communal living as typically found in a co-operative. In the event that financing for the Affordable Co-operative Townhome cannot be secured through the Boulder Housing Coalition or through other sources reasonably available to Master Developer or the applicable Development Partner by the end of the Entitlements Process for that portion of the Project, then Master Developer shall alter and reconfigure the plans for the Affordable Co-operative Townhome to include, instead thereof, two separate two-bedroom Affordable For-Sale Townhomes permanently affordable to households earning 100% of the AMI and otherwise meeting the requirements of Section 5.01(d)(ii) below.

(d) ***Affordable Housing Unit Requirements.*** The Affordable Housing Units shall be subject to the following requirements:

(i) ***Permanent Affordability Required.*** The covenants for the Permanently Affordable Units (the “***Affordability Covenants***”) shall be in a form acceptable to the City and recorded to restrict the Permanently Affordable Units as required by Chapter 9-13, B.R.C. 1981 and such Chapter’s implementing regulations and policies. The Affordability Covenants shall have priority over any debt encumbrance on the Permanently Affordable Units. Master Developer shall provide the City a written Ownership and Encumbrance report showing the Affordability Covenants has first priority with respect to the Permanently Affordable Units.

(ii) ***Affordable For-sale Units.*** The Affordable For-Sale Condominiums and Affordable For-Sale Townhomes will be priced to be affordable to households earning 80%, 100% and 120% of the AMI as shown on *Exhibit C* and shall be sold to households screened and selected in accordance with City policy. Permanently Affordable For-Sale Condominiums and Affordable For-Sale Townhomes may only be transferred to a person who has met the Homeownership Program requirements, has received program certification approval by the City and has been qualified by an institutional lender for a mortgage to be used to buy the applicable Affordable For-Sale Condominiums or Affordable For-Sale Townhome.

(iii) ***Affordable Rents.*** Rental Affordable Housing Units, including the co-op and co-housing units or rooms shall have rents affordable to a range of incomes at or below 60% of the area median income in accordance with the rent table published periodically by the City of Boulder. Permanently Affordable Units that are rental units must meet all requirements in the City of Boulder Rental

Compliance Manual as it may be amended (the “*Manual*”) and, with respect to the LIHTC Affordable Housing Project, shall also comply with the requirements of the Colorado Housing Finance Authority. The current Manual and updates are available at www.boulderaffordablehomes.com. The City will provide prior written notice to Master Developer with respect to any proposed substantive amendments to the Manual as applicable to the Project and shall provide Master Developer the opportunity to comment thereon, which comments the City shall take into consideration.

(iv) *Declarations*. In order to preserve the long-term affordability of the Permanently Affordable Units, Master Developer, acting as the Declarant of a common interest community created under the Colorado Common Interest Ownership Act, C.R.S. 38-33.3-101 et. seq. (“*CCIOA*”) shall separately categorize the Permanently Affordable Units, as appropriate, from the balance of the Project solely for purposes of calculating assessments for general common expenses. Subject to the CCIOA requirements, the Master Declaration for the Project Property shall contain a formula for determining the assessments for the Permanently Affordable Units, as appropriate. The Master Declaration and any Subdeclaration shall be subject to the limited review and approval by the City of Boulder prior to recordation with the Boulder County Clerk and Recorder in accordance with the review standards set forth in Section 2.06(a). It is anticipated that, subject to CCIOA requirements, the assessment formula will be based on the size of the units or a fraction or percentage of the rate of assessment for the common expenses of the community for portions of the Project that are not Affordable Housing Units and that voting rights will be fairly allocated. The purpose of the assessment formula and voting rights protections are to assure that the Permanently Affordable Units are not adversely affected.

(v) *Master Association*. Pursuant and subject to Section 2.06(a), the Master Association shall be created pursuant to the Master Declaration and any Subassociation shall be created pursuant to Subdeclarations for applicable portions of the Project. The Master Declaration and any Subassociation for the Permanently Affordable Units will be subject to the following:

(A) such documents are subject to City review and approval in accordance with the review standards set forth in Section 2.06(a);

(B) Master Developer will provide, at its expense, City-approved homeowner association training to the buyers of the Permanently Affordable Units within one month of final buyer’s closing on the initial sales of such Affordable Units; and

(C) Subject to the provisions of CCIOA, the initial budgets and management plans set forth in the Master Declaration and any Subassociation and any budgets therefor shall be based on reserve studies to determine reasonable and accurate reserve levels.

(vi) *Concurrent Construction.* The Phasing Plan shall address the timing of construction of the Permanently Affordable Units with the timing of construction of the Market Rate For-Sale Condominiums and the Market Rate For-Sale Townhomes, so that no fewer than half of the Affordable Units are scheduled to be completed concurrently therewith.

(vii) *Housing Inspections.* The City will retain a Housing Construction Inspector (the “***Inspector***”) at Master Developer’s cost to inspect and monitor construction of the interior of the Affordable Units. These inspections are intended to ensure the Permanently Affordable Units comply with the requirements of this Agreement and the City’s Livability Standards for Permanently Affordable Housing Obligations dated September 6, 2016 and attached hereto as *Exhibit J* and to ensure throughout construction that materials, installation and workmanship are of good quality as considered acceptable by industry standards. The City housing inspections shall include a review of all construction and other documents applicable to confirming compliance with this Agreement (other than the construction contract); site visits; problem identification and resolution; and provision of reports verifying compliance with this Agreement. The housing inspection requirements include those required under applicable City regulations and shall include, without limitation, those requirements set forth on *Exhibit L* hereto.

(viii) *Co-op Management Plan.* Master Developer and the Development Partner developing the co-op units agree to work with the City or a City-designated third party (such as a Boulder Housing Coalition) to establish a “***Co-op Management Plan***” that includes, but is not limited to, ownership models, cooperative living rules and requirements, leasing goals, tenant mix, fair marketing and tenant selection procedures, lease terms, restrictions, subleasing and re-leasing parameters. The Co-op Management Plan is intended to encourage a diverse intergenerational living environment intended to be an alternative to traditional completely separate apartment living that encourages daily interaction and communal living as found in a co-operative. The Co-op Management Plan is intended to provide programmatic details that may be reviewed and amended periodically as the co-op and co-housing programs develop, subject to City Manager approval. The initial Co-op Management Plan must be in place and approved by the City within 180 days following the Effective Date and, in any event, prior to the Transfer of any Project Quadrant.

(ix) *Affordable Co-housing Operations.* To the extent allowed under the LIHTC Financing, Master Developer and the Development Partner developing the Affordable Co-housing units agree to work with a City-approved third party (such as Caddis or Boulder Housing Coalition) to provide a set of eight community building workshops during the first two years of building occupancy, beginning at the time of initial resident move-in. Master Developer will provide funding in an amount up to \$8,000 for payment of such third party provider workshop/training programs. The focus of the workshops will be to train residents to use their common co-housing facilities to create long-term community and shall address

topics such as intentional community living, shared meal systems, conflict resolution, affordable building management practices, meeting facilitation techniques, social justice in housing, decision-making, sustainability and energy/water efficient occupancy, and communication. Subsequent to each workshop, the third party trainer will be required to provide a brief written report back to the City to document the training process, including a copy of workshop materials and an analysis of community outcomes.

Section 5.02. Market Rate Housing. The Project shall include Market Rate For-Sale Condominiums and Market Rate For-Sale Townhomes to be located in buildings constructed in Quadrants 2, 3 and 4, as shown in the Quadrant Use Diagram attached as Exhibit F. No market-rate rental units will be included in the Project; provided that nothing herein shall be deemed to prevent an owner of a market rate for-sale unit from renting his or her unit. Subject to Section 2.05, the Market Rate For-Sale Condominiums will consist of primarily one and two bedroom units in buildings to be located in Quadrants 2 and 4, and two and three bedroom townhomes located in Quadrant 3.

Section 5.03. Affordable Commercial. Except for possible changes that would result in allowing some market rate commercial use as contemplated pursuant to Section 2.12, Master Developer shall develop all commercial space in the Project to be leased for rents set to be below prevailing market rents, the exact specifications for which shall be determined by the City and Master Developer in accordance with the requirements of this Section 5.03 (“Affordable Commercial”). Affordable Commercial space shall be developed on the ground floor of buildings anticipated to be located in one or more of Quadrants 1, 2 and 4 of the Project Property as a part of the Project in an effort to include small business and non-profit use and to promote the mixed-use nature of the development. The Affordable Commercial space within the Project is intended to be developed, owned and operated by Master Developer in partnership with investors. The layout and location of the Affordable Commercial space within the various Project elements shall be a part of the overall City site-plan Entitlements Process for the applicable Phases of development and shall be subject to the execution of any and all documents required by the City in connection with its affordability programs. The Affordable Commercial shall include the following elements:

(a) **Affordable Commercial.** Except for possible changes as contemplated pursuant to Section 2.12 or as otherwise may be modified in the Entitlements Process, the Owner agrees to design and propose approximately 21,000 sf of commercial space in the Project. The Project shall include deed restricted affordable commercial space located on the ground floor of buildings anticipated to be located in one or more of Quadrants 1, 2 and 4. Except for possible changes that would result in allowing some market rate commercial use as contemplated pursuant to Section 2.12, all commercial space in the Project shall be deed restricted as Affordable Commercial Space under permanent Deed Restrictions on the land containing the restrictions and requirements listed in Exhibit G: The Affordable Commercial owners and/or operators of the Affordable Commercial portions of the Project shall be required to participate in the Affordable Commercial Implementation Plan described in Section 5.03(d) below.

(b) ***Permanent Affordability Required; Accountability.*** Affordable Commercial shall be permanently deed restricted rental space with re-leasing requirements such that the Affordable Commercial shall be permanently affordable to commercial users in perpetuity. Initial rents will be set to be 75% of then market rates after netting out any tax reductions due to affordability restrictions and/or BHP involvement. Subsequent rent increases will be limited over time to no more than the change in the Consumer Price Index for All Urban Consumers (CPI-U); Denver-Boulder-Greeley Average; All items, not seasonally adjusted, 1982–1984=100 reference base (“***CPI***”). Initial market rents are to be determined based on CoStar, Xceligent or similar actual leasing data to identify potential comparable properties, which initial rental rates will be jointly agreed upon by Master Developer and the City. Master Developer may lease to some tenants above the 75% of market rate requirement and some that are below the 75% market rate requirement so long as the initial rents for the Affordable Commercial units, on average, do not exceed 75% of market rates for all of the Affordable Commercial space in the Project and no rent exceeds 100% of market rate.

(c) ***Separate Units; Subdividing Affordable Commercial Units.*** For each Affordable Commercial unit within a Condominium building, the Affordable Commercial unit shall be a separate unit within the building and the Subdeclaration shall include restrictions consistent with the Deed Restrictions referenced above. Subject to CCIOA requirements, provisions in the Subdeclaration shall not burden the Affordable Commercial unit with more assessment costs and expenses than the other uses located in the same building. The Subdeclarations will give the owner of each Affordable Commercial unit the right to further condominiumize the Affordable Commercial unit in order to subdivide it in the future, if the unit owner so chooses, for the purpose of selling commercial spaces at an affordable price if so desired, in which event the Affordable Commercial unit owner may record its own secondary Subdeclaration and map under applicable CCIOA requirements or exceptions thereto, which Affordable Commercial unit Subdeclaration shall remain subject to the Master Declaration and any Subdeclaration for the building. In either event, the Affordable Commercial unit shall be divided into rentable or co-occupancy spaces for rent (or sale if so subdivided) to individual business spaces. While Affordable Commercial space may be included in the LIHTC Affordable Housing Project, the Affordable Commercial unit therein shall be separate and distinct and shall not be included as a part of the LIHTC Partnership owning the LIHTC Affordable Housing Project.

(d) ***Leasing/Sale Requirements.*** Master Developer and the Development Partner developing the Affordable Commercial units agree to work with the City or a City-designated third party (such as a commercial real estate expert with expertise in nonprofit or small business leasing) to establish an Affordable Commercial Implementation Plan as summarized in Exhibit G (the “***Affordable Commercial Implementation Plan***”), that includes but is not limited to leasing goals, tenant mix, fair marketing and tenant selection procedures, lease terms, restrictions, subleasing and re-leasing/re-sale parameters and utilization of a peer group to determine tenant selection. The Affordable Commercial Implementation Plan is intended to provide programmatic details that may be reviewed and amended periodically as the affordable commercial program develops, subject to City Manager approval. The initial Affordable Commercial Implementation Plan must be in

place and approved by the City within 180 days following the Effective Date and, in any event, prior to the Transfer of any Project Quadrant. There shall be an Affordable Commercial deed restriction and/or, at the City's election, a separate covenant in form and substance approved by the City Manager (the "***Commercial Affordability Covenant***") recorded prior to Transfer of the applicable Project Quadrant containing Affordable Commercial uses. Master Developer and the applicable Development Partner responsible for the Affordable Commercial space agree to operate the Affordable Commercial units to a point of stabilization, under the Affordable Commercial Implementation Plan, the Commercial Affordability Covenant and any Subdeclarations applicable to the Affordable Commercial units. In order to ensure enforcement, the City may reserve in the Commercial Affordability Covenant or contained in any Transfer deed, certain enforcement rights including, in addition to other rights and remedies available to the City pursuant to the Affordable Commercial Implementation Plan or otherwise, a requirement that not less than 110% of the rents charged in excess of amount permitted under the Commercial Affordability Covenant shall be paid over to the City for use in implementation of affordable programs in the City.

Section 5.04. Parking Requirements. Parking management within the BJAD is guided by the Transit Village Area Plan (TVAP) and the City's Access Management and Parking Strategy (AMPS) SUMP principles (parking that is shared, unbundled, managed and paid) and Master Developer shall implement the SUMP principles in connection with the Project as described below. Car parking shall be primarily in the below-grade parking structures to enhance the pedestrian experience. Except as may be modified during the Entitlements Process, Master Developer agrees to include the number of the parking spaces shown on Exhibit C, including public parking located primarily in the two underground parking structures constructed beneath the LIHTC Affordable Housing Project anticipated to be constructed on Quadrant 1 and the primarily For-Sale Condominiums anticipated to be located on Quadrant 2. Parallel surface parking spaces (in a number approved by the City during the Entitlements Process) will be located along the E/W Dedicated Street and the N/S Dedicated Street, which shall also be made available for other curbside uses such as loading zones. Bike parking shall be located throughout the Project in locations to serve the needs of different users as described below. The Master Association shall be responsible for all operations and maintenance of parking within the Project subject to the SUMP principles, except to the extent provided in any Subdeclaration for the For-Sale Condominiums and except for the Townhomes.

(a) ***SUMP Principals to Be Applied.***

(i) *Shared.* All Project parking shall be shared amongst day and night uses, between users and among residential and commercial uses, with the exception of the Townhomes (that are anticipated to include parking within the unit itself), and the For-Sale Condominiums that include the right, but not the obligation, for acquiring an undivided ownership interest (anticipated to be a tenant in common interest) in the right to use a parking space within the limited common element block of parking space, as described below in Section 5.04(f).

(ii) *Unbundled.* With the exception of the Townhomes that include parking within the unit, all parking within the Project shall be unbundled, meaning

that parking shall be rented or sold separately from the occupied units or spaces within the Project. The cost of a parking space shall not be tied to nor included in the rent of commercial spaces or rent or ownership of residential units (other than such Townhomes) and the For-Sale Condominiums shall include the right, but not the obligation, for acquiring an ownership interest in a parking space as described below. Residents without vehicles shall not have to pay for parking. Residents shall pay for parking spaces at market rates. Day-time and night-time uses will share on-site parking. The Project shall include designated car-share spaces in areas to be approved by the City during the Entitlements Process. Appropriate regulations will be part of the Parking Management Agreement to ensure ongoing compliance and enforceability.

(iii) *Managed.* Master Developer shall, as part of the Master Declaration, incorporate the Parking Management Agreement for management by the Boulder Junction Parking District (the “**Parking District**”) to ensure that parking supply and demand are monitored and managed for the mutual benefit Master Developer and the Development Partners, the Parking District, and the residents, businesses, and employees of the Project in a manner that maximizes revenue and utilization. A Parking Management Agreement between the City and Master Developer shall be required (the “**Parking Management Agreement**”). The City may determine whether a single Parking Management Agreement is appropriate or whether a Parking Management Agreement is to be determined and executed for each Quadrant. There shall be no Transfer of any portion of the Project Property until (i) the Master Declaration provisions have been finalized to include a parking oversight function, including coordinating and overseeing implementation and enforcement of parking agreements and requirements within the Project (including those parking spaces subject to a Subassociation), and (ii) a Parking Management Agreement is in place with respect thereto. The form of the Master Declaration and the form of the Parking Management Agreement shall be finalized between Master Developer and the applicable City Departments within 180 days following the Effective Date and shall be included as a part of the Project Property Entitlement Process. The Master Declaration and the Parking Management Agreement shall address, among other things, (i) where residential and commercial parking will be located; (ii) how the unbundled parking program for residents will be managed and regulated, including, without limitation, how each Subassociation is to implement sharing arrangements for Residential Unit Owned Parking spaces and the rental thereof to the extent that the owner thereof elects to rent his or her unused Residential Unit Owned Parking spaces; (iii) the estimated cost of using, maintaining and overseeing each parking space per month; and (iv) how any additional on-site parking serving non-residential uses will be managed. The City and Master Developer shall agree on requirements for management and enforcement of the parking provisions in the Master Declaration and in the Parking Management Agreement including, without limitation, what portions thereof are to be enforced by the Master Association and which portions thereof are to be managed and enforced by the Parking District or any Subassociation.

(iv) *Paid.* The Project's parking rates will be consistently maintained with the market rates for parking and based on demand. The parking provisions of the Master Declaration and the Parking Management Agreement shall address the ongoing revenue stream generated by paid parking and how such revenue may offset the costs associated with the initial installation and on-going maintenance of the parking. Parking rates may vary by use and time of day, using pay-on-foot stations, access card and mobile parking technology depending on the use and area of the Project. Monthly parking rates shall be established in the Parking Management Agreement and collected and enforced through the Master Association. The City shall install (at its expense) pay-on-foot stations for the on-street parking within the E/W Dedicated Street and the N/S Dedicated Street and the rates for such parking shall be similar to the City's downtown area to incentivize shorter stays and turnover of spaces.

(b) ***BJAD -TDM and Parking District Payments; Alternate Transportation Modes Required/Encouraged.*** To encourage alternative modes of transportation for residents and commercial users of the Project Improvements, each regular commercial employee of business in the Project and all residents shall be provided with an Eco Pass and residents will be provided an on-site car-share membership through the BJAD - Travel Demand Management (the "***BJAD-TDM***"). The Project Property is included within both the BJAD -TDM and Parking District and annual payments associated therewith shall be covenants running with the land applicable to all Property within the Project and shall be collected as appropriate means therefor are determined, including collection with property taxes payable by the owners of such property. If any of such property within the Project is exempt from the payment of property taxes, the BJAD-TDM and Parking District payments shall be paid separately to the applicable collecting agency or district or the property shall be made subject to a PILOT (payment in lieu of taxes) agreement to contribute the equivalent amount to cover the programs and services provided by the BJAD -TDM and Parking District. The Master Association shall be primarily responsible for coordinating the BJAD-TDM for the Eco Pass and car-share and bike-share programs for the Project; provided, however, that the Parking Management Agreement shall include support services and enforcement provisions. Bicycles shall be encouraged as a primary mode of transportation in the Project. The Project shall include bike parking and storage spaces as required under the Form Based Code, the exact number of which will be confirmed during the Entitlements Process. All residents and employees shall receive Boulder B-Cycle or other branded shared bicycle station membership. Master Developer shall develop or otherwise provide for up to two such bicycle sharing stations on the Project Property in a number and in the location to be approved by the City during the site planning and entitlements process. Master Developer shall contribute 15 tandem community bikes to the Master Association to use in its Community Programming efforts.

(c) ***On Street Parking.*** All Access Streets within the Project shall be publicly managed and provide for on street parking and other uses in accordance with the Form-Based Code.

(d) ***Connectivity.*** The Project shall be designed to support existing TVAP program elements and to encourage residents, employees and visitors to utilize alternative

modes of transportation. The Project paseo layout and connecting walkways will be connected to the RTD station plaza with park enhancements, paseo connections and a “Complete Street” connection to Junction Place, to allow easy connections to the bus lines. Goose Creek bike and walking lanes shall be connected to the Project walkways to encourage pedestrian use.

(e) ***City Right of First Option to Acquire Parking.*** Subject to any prior rights of the Master Association or Subassociation, the Parking District and/or the City shall have the first right to purchase to acquire some or all of the parking associated with the Project that the owner thereof elects to sell, as such right of first purchase option shall be set forth in the Parking Management Agreement or by separate right of first purchase option agreement, as determined by the City and the Parking District during the Entitlements Process.

(f) ***Owned Parking with For Sale Units.*** The Townhomes are anticipated to include parking within the unit, and the For-Sale Condominiums are anticipated to include the right, but not the obligation, for acquiring an ownership interest in a parking space associated with the condominium ownership (collectively, “***Residential Unit Owned Parking***”). With respect to the For-Sale Condominiums, the condominium Subdeclaration and accompanying condominium map may identify a separate air space area within the parking structure for a block of Residential Unit Owned Parking spaces that may be identified as a limited common parking element. An undivided right of use of a space within the common element block of spaces comprising such Residential Unit Owned Parking may offered for sale (on an undivided ownership interest basis in such right of use) to the purchasers of the For-Sale Condominiums. Such Residential Unit Owned Parking shall be made available to the purchasers on an unbundled basis so that the owners will share (on an undivided ownership interest basis in the right of use) the right to occupy one of the parking spaces within the block of spaces, without specifying a designated space location or number. The Subassociation formed for such For-Sale Condominiums shall have the right (but not the obligation) to acquire unsold parking rights of use co-tenancy interests for future use by or sale to For-Sale Condominium purchasers or used to rent such rights to other For-Sale Condominium unit owners or for other uses within the Project by or through the Subassociation. The Subassociation for the For-Sale Condominiums shall manage the Residential Unit Owned Parking therein in a manner consistent with the parking provisions of the Master Declaration and in a manner that accommodates and balances the needs of the For-Sale Condominium Unit owners with the overall SUMP principles applicable to the Project. By way of example, the Subassociation may designate the right of use of the Residential Unit Owned Parking spaces for owners’ use for simplicity, but those parking spaces will remain a part of the undivided co-tenancy interest in the limited common element air space comprising the block of spaces within the For-Sale Condominium building; the right of use of such the Residential Unit Owned Parking spaces will be shared with others that have acquired a right of use of a the Residential Unit Owned Parking space within the block of spaces. No For-Sale Condominium unit owner will own any specific the Residential Unit Owned Parking space and the For-Sale Condominium Subdeclaration and map will not designate

that the right to use any particular the Residential Unit Owned Parking space will be tied to or associated with any particular For-Sale Condominium.²

(g) ***Depot Square or Other Adjacent Parking.*** Nothing in this Agreement shall prevent Master Developer from seeking a long term use or other license arrangement for Depot Square or other adjacent parking in a number sufficient to meet the parking requirements hereunder for any particular use within the Project in perpetuity. The City retains the right to review and approve any such arrangements in its sole and absolute discretion.

(h) ***Temporary Parking Rights.*** In connection with any Quadrant Transferred hereunder, the Parking District shall have a license to continue to use the surface rights thereof for temporary parking so long as and until Master Developer has received all building permits for the Project Improvements to be constructed thereon and the City is given written notice by Master Developer or the applicable Developer Partner that construction mobilization is proceeding on the applicable Quadrant of the Project Property.

Section 5.05. Open Space, Paseos and Pedestrian Accessibility. The Project shall include a coordinated system of walkways and open spaces to be utilized by all Project residents and occupants for connectivity and Project-wide Community Programming in a manner consistent with the Form-Based Code and the TVAP which will be reflected in the Master Declaration and overseen by the Master Association. The Entitlements Process shall incorporate Master Developer's commitment to create within the Project Property a public realm to create unique, dynamic community-gathering places that provide for a variety of diverse Community Programming activities and amenities. The Project's public spaces shall include a network of motion and movement creating engaging spaces to promote social interactions where residents and users connect. The Project's public realm will be a gradient or transect from more urban/dense along Pearl Parkway to more natural/open along the Goose Creek frontage. The planned Access Streets shall include a variety of interactive street furniture and fitness equipment, as well as a multipurpose trail to create an interactive, activated and contemporary streetscape that will terminate at the Goose Creek greenway. Such street furniture and fitness equipment for each Quadrant must be approved by the City as a part of the Form-Based Code review prior to any building permit submittal. The open spaces of the Project shall be designed and coordinated with

² By way of example, any unpurchased Residential Unit Owned Parking rights (defined as an undivided right of use in the air space comprising the block of parking spaces shown as limited common parking elements) can be purchased and owned by the Subassociation, which would then own a percentage interest based on the ratio of parking unit For-Sale Condominium owners acquired interests vs. total 'unsold' Residential Unit Owned Parking spaces. Those unsold Residential Unit Owned Parking interests can then be managed by the Subassociation and leased to third parties or to the For-Sale Condominium owners who may want to lease the right to use a parking space from the Subassociation. The Subdeclaration should limit the right of For-Sale Condominium owners to individually lease or sell their Residential Unit Owned Parking spaces to third parties (those who are not other For-Sale Condominium owners within the Subassociation), since that could drive up the market price for the other parking spaces being managed by the Subassociation or the Master Association under the Parking Management plan. The Residential Unit Owned Parking space interests acquired by a For-Sale Condominium owners will be able to be sold to any subsequent purchaser of the For-Sale Condominium or, if any subsequent owner desires not to acquire the allocated interest in the Residential Unit Owned Parking associated with the For-Sale Condominium, then the Subassociation may also retain a right of first purchase as to any unsold future spaces so that they can be put back into the pool for future sale or rental.

the Boulder Junction Park and the Goose Creek improvements to promote responsible use and protection for natural elements associated with Goose Creek. The Project open spaces shall include the use of paseos and pedestrian walkway elements to promote accessibility within and through the Project Property and connecting residents and employees to transit systems located adjacent to the Project Property. The use of paseos within the Project Property are to be located in substantially the areas set forth on the Outdoor Spaces Depiction attached hereto as Exhibit E and shall comply with Title 9, Appendix M-1-10 of the Form Based Code. Master Developer and Civitas shall present to the City as a part of the Entitlements Process, a Project-wide landscape plan to implement the open space/paseo plan and to incorporate the elements of the RFP Response with respect thereto.

Section 5.06. Utilities. Master Developer shall design and construct all utilities necessary to serve the Project. The utilities plan shall be included by Master Developer in the Entitlements Process and shall include requirements including, without limitation, (i) that Master Developer will bury the power lines along that portion of 30th Street running adjacent to the Project Property; (ii) that all power lines within the Project Property shall be buried within the Access Streets and the easements therein; and (iii) that Master Developer shall design and construct storm-water management infrastructure in accordance with adopted City regulations and standards.

Section 5.07. 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 (the “**Boulder Junction Park**”) as depicted on the Outdoor Spaces Depiction attached as Exhibit E. 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. Master Developer agrees to use Development Partner Civitas to work with Parks and Rec to coordinate the design of Boulder Junction Park in coordination with the design, planning and entitlement process for the paseos and outside walkway and “pocket park” areas of the Project. The Boulder Junction Park project could be designed and constructed by and in concert with Civitas’ landscape architect working on the Project; provided that a separate budget and timeframe therefor shall be presented for consideration of and approval by Parks and Rec. Until the date set forth in the timeframe approved by Parks and Rec, the Boulder Junction Park site may be used by Master Developer for construction staging pending approval by Parks and Rec; provided that all required improvements shall be installed when required under a construction timeline to be coordinated with the construction schedule for the site redevelopment as appropriate and as approved by Parks and Rec. In addition, Master Developer shall design and install a “pocket park” within the Project Property as shown on Exhibit E. A secured and covered bike parking shelter is desired within the Boulder Junction site and could be included as an amenity in Boulder Junction Park or the “pocket park” depending upon final design and feasibility of the site given all the desired amenities within the park. The installation of the bike parking shelter shall be at the City’s sole election and at its sole cost and expense; provided, however, if the City elects to pursue construction of a bike parking shelter, Master Developer shall use reasonable efforts to obtain a written commitment from Community Cycles, a non-profit corporation, to secure a grant for assistance with the planning and construction thereof. Upon completion of the Boulder Junction Park Project Improvements, the City shall assume full responsibility for the park and will either provide maintenance of Boulder Junction Park or explore an agreement with the Master Association to determine the most cost-effective and functional approach to maintenance of the site and the maintenance of Boulder

Junction Park. The internal “pocket park” shall be used, operated and maintained by the Master Association.

ARTICLE VI

THE WORK; CONSTRUCTION

Section 6.01. Project Oversight Management by Master Developer; Guarantee. Master Developer shall be the Project oversight manager for the Project. In such capacity, Master Developer shall execute and deliver to the City such Developer and/or site improvement agreements as are normally required by the City for developments similar to the Project. In connection therewith, Master Developer shall provide to the City such normal and customary guarantees or letters of credit in form and substance typically required for other developments in the City in the amount typically required pursuant to such development or site improvement agreements.

Section 6.02. Risk. The management, conduct, and operation of the Project’s endeavors shall be at the expense and risk of Master Developer. The City shall have no obligations hereunder to facilitate or otherwise promote the Completion of the Project other than the Transfer of the Project Property in accordance with the terms and conditions of this Agreement. All other risks including all development risks, are assumed by Master Developer and the Developer Parties.

ARTICLE VII

TERMINATION; DEFAULT; EXPEDITED ARBITRATION

Section 7.01. Termination. Except for those provisions expressly stated to survive termination hereof or in the Master Declaration, Subdeclaration, any Affordability Covenants, Commercial Affordability Covenant, Deed Restrictions, and subject to the rights of any Project Lender under a collateral assignment of this Agreement executed and acknowledged by each of applicable Parties, this Agreement shall terminate as to any Quadrant upon the any of the following events:

- (a) An uncured Event of Default by Master Developer or any Development Partner for which the City has exercised its right of termination hereunder;
- (b) as to any Quadrant Transferred, the date of Stabilization of the Project Improvements located thereon; or
- (c) the mutual agreement of the Parties.

Section 7.02. Event of Default Remedies; Specific Performance; Rights of Project Lenders. Master Developer acknowledges and agrees that if it or any Development Partner commits an Event of Default under this Agreement, then the City shall be entitled to pursue all rights and remedies at law and in equity including, without limitation, pursuing any guarantee or letter of credit securing the obligations for the benefit of the City. Further, the Parties agree that it would be impractical or extremely difficult to affix damages resulting from an Event of Default by Master Developer or any Development Partner, and that monetary damages are an inadequate

remedy for loss of the bargain under this Agreement. Accordingly, the Parties agree that, in the Event of Default by Master Developer or any Development Partner under the terms of this Agreement, the City shall be entitled to terminate this Agreement as to any Quadrant or Quadrants affected by such Event of Default or seek the equitable remedy of specific performance requiring Master Developer or any Development Partner to perform under this Agreement, in addition to all other remedies available to the City at law or in equity. The provisions herein regarding notice of Event of Default and exercise of remedies shall be subject to the provisions of the Deed Restrictions, any Affordability Covenant, Commercial Affordability Covenant, the Master Declaration, the Parking Management Agreement and/or any other document or instrument setting forth the rights of the City to pursue cure or other rights therein for the completion of the Project or otherwise.

Section 7.03. Expedited Arbitration. In the event of a dispute regarding interpretation of any provision of this Agreement, upon the written request of either Party, and the written agreement of the non-requesting Party, such dispute shall be governed by binding arbitration and the Parties each hereby waive their right to file a civil action or proceeding in connection with the same. The interpretation dispute shall be resolved by referring the same to a single arbitrator according to the terms, conditions, and procedures set forth in this Section 7.03 (“**Expedited Interpretation Arbitration**”). The Expedited Interpretation Arbitration shall take place in Boulder, Colorado or such other location as the Parties may mutually agree and be governed by the rules of the American Arbitration Association and amendments thereto, to the extent not inconsistent with the terms of the provisions stated above. Within two Business Days after the matter is submitted to Expedited Interpretation Arbitration, the party requesting application of the provisions of this Section shall provide the other with a list of three arbitrators from the American Arbitration Association having expertise in public/private partnerships, development partnerships and construction disputes. Within two Business Days after such party’s notice, the other shall select a single arbitrator from such list to preside over the dispute. If, within such two Business Day period, the non-requesting Party fails to respond in writing to the other Party with a single arbitrator from the list, the requesting Party shall have the right to designate the single arbitrator from the list. The arbitrator shall select the date for the arbitration which shall be as soon as reasonably possible following submission of the dispute to Expedited Interpretation Arbitration, it being the intent of the Parties that the disputes submitted to Expedited Interpretation Arbitration be resolved as quickly as possible (preferably within 10 Business Days of submission). The requesting Party shall state the nature of the claim or dispute with reasonable specificity and the Parties will grant the arbitrator access to such records of the Parties as are reasonably necessary for the arbitrator to make his or her decision. The award or decision rendered by the arbitrator shall be final, and judgment may be entered upon it in accordance with Applicable Law in any court having jurisdiction thereof and the arbitrator shall also have the power to determine allocation of costs between the Parties of the proceedings, including, without limitation, the costs of the arbitrator and any and all reasonable attorneys’ fees and costs.

Section 7.04. Attorneys’ Fees. In the event of any suit or action regarding this Agreement, the Parties’ performance hereunder or its interpretation or construction, the prevailing party in such suit or action shall be awarded its reasonable attorneys’ fees and costs and its reasonable attorneys’ fees and costs associated with any appeal. As used in this Section, “costs” include, but are not limited to, expert witness fees.

ARTICLE VIII

INSURANCE; INDEMNITY; MECHANICS' LIENS.

Section 8.01. Insurance; Waiver of Claims.

(a) Prior to the commencement of, and during the performance of, any actions taken hereunder by Master Developer and/or any Development Partners which allows or requires such Parties to either (i) access the Property Master Developer or (ii) contract directly or indirectly with the City or for the City's benefit with respect to the obligations contemplated pursuant to this Agreement, such Parties shall, at their sole cost and expense, obtain and maintain insurance in accordance with the requirements of the City as set forth in Exhibit H:

(b) Master Developer waives any and all rights against the City, and the agents and employees of the City, for damages caused by Master Developer's or any Development Partner's access onto the Project Property or any perils thereon and such Parties agree to look solely to its insurance coverage with respect to any loss to property or business interests.

Section 8.02. Indemnity. Master Developer shall, on demand, promptly indemnify and hold harmless the City from and against any losses, damages, liabilities, deficiencies and expenses (including reasonable attorneys' fees) incurred by Master Developer by reason or arising out of any failure of such Party to perform any obligation or duty required to be performed by it under any provision of this Agreement. Without limiting the foregoing, Master Developer shall, on demand, promptly indemnify and hold harmless the City from and against any losses, damages, liabilities, deficiencies and expenses (including reasonable attorneys' fees) incurred as a result of the filing of any Mechanics' lien against the Project Property by reason or arising out of any work done by the lien claimant at the request or for benefit of Master Developer.

Section 8.03. Non-Waiver. The Parties understand and agree that the City is relying on, and does not waiver or intend to waive by any provision of this Agreement, the monetary limitations or any other rights, immunities, and protections provided by the Colorado Governmental Immunity Act, 24-10-101 et seq., as from time to time amended, or otherwise available to the City or its elected officials, employees, agents and volunteers.

ARTICLE IX

AUTHORITIES FOR THE CITY'S ACTION; NOTICES

Section 9.01. Authorities for the City's Action; Remedy for Failure to Transfer. In any matter provided for under this Agreement, the City may act by and through the City's Departments, or through any other person who may from time to time be designated by the City in writing, except that the following shall require the signature of a duly empowered officer of the City: (a) providing legal notices as set forth under this Agreement; or (b) executing this Agreement or any amendments hereto. Notwithstanding anything contained herein to the contrary, the City shall remain primarily obligated for the Transfer of the Project Property to Master Developer or

the applicable Development Partner under the terms and conditions of this Agreement. If the City fails to complete a Transfer as and when required pursuant to the terms and conditions of this Agreement, then Master Developer shall have as its sole remedy the right to seek enforcement of the City's Transfer obligations hereunder in the District Court in the City and County of Boulder by specific performance and collection of actual damages suffered by Master Developer; punitive and/or consequential damages shall not be collectible against the City and are hereby waived. Nothing herein shall be deemed to waive the requirements of Section 7.03 or otherwise waive any immunities available to or otherwise applicable to the City.

Section 9.02. Notices. All notices or demands required or permitted to be given to Master Developer or the City hereunder (each, a "**Notice**") shall be in writing, and shall be: (a) personally delivered with a written receipt of delivery; (b) sent by a nationally recognized overnight delivery service requiring a written acknowledgement of receipt or providing a certification of delivery or attempted delivery; (c) sent by certified or registered mail, return receipt requested; or (d) sent by confirmed facsimile transmission, PDF or e-mail with an original copy thereof transmitted to the recipient by one of the means described in clauses (a) through (c) no later than three Business Days thereafter. All Notices shall be deemed effective when actually delivered as documented in a delivery receipt; provided, however, that if a Notice was sent by overnight courier or mail as aforesaid and is affirmatively refused or cannot be delivered during customary business hours by reason of the absence of a signatory to acknowledge receipt, or by reason of a change of address with respect to which the addressor did not have either knowledge or written notice delivered in accordance with this Section, then the first attempted delivery shall be deemed to constitute delivery; provided, further, however, that Notices given by facsimile, PDF or e-mail shall be deemed given when received by facsimile, PDF or email, as the case may be. Each party shall be entitled to change its address for Notices from time to time by delivering to the other party Notice thereof in the manner herein provided for the delivery of Notices. Telephone numbers are provided for convenience only, and oral communications shall not constitute valid notice hereunder, except where expressly indicated otherwise. Each Notice shall be addressed, in each instance, to the Party's notice address(es) set forth below:

If to the City, to:

The City of Boulder, Colorado
Deputy Director of Housing
1300 Canyon Blvd.
P.O. Box 791
Boulder, CO 80306
Attn: Kurt Firnhaber
Phone: (303) 441-4424
Email: FirnhaberK@bouldercolorado.gov

with a copy to:

The Boulder City Attorney
1777 Broadway
P.O. Box 791
Boulder CO 80306
Attn: Erin Poe
Phone: (303) 441-4175
Email: poee@bouldercolorado.gov

And with a copy to:

Kutak Rock LLP
1801 California Street, Suite 3000
Denver, CO 80202
Attn: M. Lou Raders, Esq.
Phone: (303) 297-2400; Fax: (303) 292-7799
Email: lou.raders@kutakrock.com

If to Master Developer:

Zocalo Community Development
455 Sherman Street, Suite 205
Denver, CO 80203
Telephone: (303) 884 7550
E-mail: david.zucker@zocalodevelopment.com; and
ted.featherstone@zocalodevelopment.com
Attn: David Zucker and Ted Featherstone

With a copy to:

And with a copy to:

Shutkin Sustainable Living
435 Canyon Blvd.
Boulder, CO 80302
Attn: William Shutkin
Phone: (303) 406-1743
Email: williamshutkin@gmail.com

ARTICLE X

NO BROKERS; INDEMNIFICATION

Master Developer and the City each represent and warrant to the other that it has not dealt with any broker or other person that is to be compensated in connection with this Agreement. Master Developer and the City agree to indemnify and hold the other Party harmless of and from any and all claims by reason of any claim of or liability to any broker or other person claiming

through the indemnifying Party and arising out of or in connection with the negotiation, execution and delivery of this Agreement.

ARTICLE XI

GENERAL PROVISIONS

Section 11.01. Governing Law; No Jury Trial; Venue; Jurisdiction. This Agreement shall be construed in accordance with the laws of the State of Colorado, without giving effect to conflict of laws principles. Each Party hereto (which includes any assignee, successor, heir or personal representative of a party) shall not seek a jury trial, hereby waives trial by jury in any action, proceeding or counterclaim brought by any of the Parties against the other on any matters whatsoever arising out of this Agreement, or any other claims, and hereby further waives any objection to venue in the District Court in Boulder County, Colorado, and agrees and consents to personal jurisdiction of the courts of the State of Colorado in any action or proceeding or counterclaim brought by any Party hereto against the other on any matter whatsoever arising out of or in any way connected with this Agreement.

Section 11.02. Relationship of Parties. Neither Party to this Agreement shall be deemed to be an agent of the other or be deemed as acting on the other's behalf for agency purposes, with the exception of the Entitlements Process to be performed by Master Developer hereunder under the terms and conditions as set forth in Section 4.02. Each Party agrees not to assume, create, or enter into any obligation, agreement, or commitment of any nature on behalf of the other, except as specifically authorized in this Agreement. The Parties further agree not to make any warranties to any third party concerning any matters that are not in accordance with this Agreement.

Section 11.03. Assignment; Successors and Assigns. Neither Master Developer nor any Development Partner who has rights and/or obligations hereunder who has taken a Transfer from the City of any portion of the Project Property may assign this Agreement or any portion thereof without the prior written consent of the City, and any attempt to assign this Agreement without such consent is void. City consent to an assignment by Master Developer to an Affiliate or another replacement Development Partner shall not be unreasonably withheld or delayed so long as such Development Partner has City approval under Recital F. This Agreement is binding upon and inures to the benefit of the City and Master Developer and any permitted successors and assigns.

Section 11.04. Severability. If any clause or provision of this Agreement is illegal, invalid or unenforceable under present or future Applicable Laws effective during the term of this Agreement, then and in that event, it is the intention of the Parties that the remainder of this Agreement shall not be affected thereby; and it is also the intention of the Parties that, in lieu of each clause or provision of this Agreement that is illegal, invalid or unenforceable, there shall be added as a part of this Agreement a legal, valid and enforceable clause or provision as similar in terms to such illegal, invalid or unenforceable clause or provision as may be possible.

Section 11.05. Headings. The headings and captions in this Agreement are inserted only as a matter of convenience and in no way define, limit, construe, or describe the scope or intent of this Agreement.

Section 11.06. Entire Agreement; Consents and Amendments; Waiver. Except where the RFP Response is expressly incorporated in this Agreement, this Agreement supersedes all prior or contemporaneous agreements, representations, warranties and understandings including, without limitation, the RFP and the RFP Responses, and contains the entire agreement between the Parties with regard to its subject matter. Except as otherwise specifically provided for in this Agreement, no amendment, modification, termination, or waiver of any provision of this Agreement nor consent or any departure therefrom, shall in any event be effective unless the same shall be in writing and signed by duly authorized representatives of the Parties, and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given. The City shall have the sole right to determine when any such consent, approval or amendment to this Agreement may be executed by the City Manager and which decisions would require approval by City Council. No failure or delay on the part of any Party in exercising any right, power or remedy hereunder shall operate as a waiver thereof; nor shall any single or partial exercise of any such right, power or remedy preclude any other or further exercise thereof or the exercise of any other right, power, or remedy hereunder.

Section 11.07. Time Is of the Essence. Time is of the essence hereof.

Section 11.08. Authority.

(a) **Master Developer.** Master Developer, and the individual executing this Agreement on behalf of Master Developer, represents to the City that it has full power and authority to enter into, execute and deliver this Agreement.

(b) **Development Partners.** The Development Partner, and the individuals executing this Agreement on behalf of the Development Partner, represent to the City that it has full power and authority to enter into, execute and deliver this Agreement.

(c) The City represents that it has the full power and authority to enter into and perform under this Agreement pursuant to City Council resolutions dated September 26, 2017 and _____, 2018.

Section 11.09. Force Majeure. Any obligation of either Party set forth in this Agreement, other than the obligation to pay money, which is delayed or not performed due to Force Majeure shall not constitute a default hereunder and shall be performed within a reasonable time after the end of such cause for delay or nonperformance; provided, however, an event of Force Majeure shall not relieve any Party of its obligation to make timely payments of any amounts due hereunder.

Section 11.10. Survival. The waivers of claims or rights, the releases and the obligations of Master Developer under this Agreement to indemnify, protect, defend and hold harmless the City shall survive the expiration or termination of this Agreement, and so shall all other obligations or agreements which by their terms survive expiration or termination of this Agreement.

Section 11.11. Additional Acts and Further Assurances. The Parties agree to cooperate as required to carry out the intent of this Agreement. Each Party agrees to execute and deliver whatever additional documents and to perform such additional acts as may be necessary or appropriate to effectuate and perform all of the terms, provisions, and conditions of this Agreement and the transactions contemplated by this Agreement.

Section 11.12. Counterparts. This Agreement may be executed in two or more duplicate originals. Each duplicate original shall be deemed to be an original hereof.

Section 11.13. No Waiver of the Police Power. This Agreement is not intended to be a binding obligation for the City to approve any matter or grant any entitlement for which notice and hearing or other legislative action is required or for which separate or further City Department approval is required or mandated hereby or by Applicable Law.

Section 11.14. Financial Obligations of the City. Any and all financial obligations of City are contingent upon appropriation, budgeting and availability of specific funds to discharge such obligations. Nothing in this Agreement shall be deemed to be a pledge of the City's credit, or a payment guarantee by the City to Master Developer.

Section 11.15. Merger; Survival. Unless otherwise expressly stated to survive the termination of this Agreement, this Agreement and the provisions hereof shall merge with the Transfer of the last Quadrant of the Project Property from the City to Master Developer and the provisions hereof shall merge into the Transfer deed, Master Declaration, any Deed Restrictions recorded against the applicable Quadrant of the Project Property as of the date of the last Quadrant Transfer hereof to Master Developer.

Section 11.16. Attorney Fees. In the event either Party seeks to enforce the provisions of this Agreement by legal means, the substantially successful party in such action shall be entitled to all expenses and costs (including attorneys' fees and costs) incurred by the successful party in advancing or defending such action.

[Remainder of page intentionally left blank – signature pages follow.]

Master Developer and the City have executed this Agreement effective as of the Effective Date.

Master Developer:

ZOCALO COMMUNITY DEVELOPMENT,
INC.

By _____
Name _____
Title _____

CITY OF BOULDER, COLORADO

By: _____
Jane S. Brautigam

Attest:

City Clerk

Approved as to Form:

By: _____
Office of the City Attorney

[Signature Page]

SCHEDULE OF DEFINITIONS

“**Access Streets**” has the meaning given such term in Section 2.07.

“**Affiliate**” means a person or entity that directly or indirectly has a controlling interest in, is controlled by, or is under common control with Master Developer.

“**Affordable Commercial**” has the meaning given such term in Section 5.03.

“**Affordable Commercial Implementation Plan**” has the meaning given such term in Section 5.03(d)

“**Affordable Co-housing**” has the meaning given such term in Section 2.05(d).

“**Affordable Co-operative Townhome**” has the meaning given such term in Section 2.05(c).

“**Affordable For-Sale Condominiums**” has the meaning given such term in Section 2.05(b).

“**Affordable For-Sale Townhomes**” has the meaning given such term in Section 2.05(c).

“**Affordable Housing Obligations**” has the meaning given such term in Section 5.01.

“**Affordable Housing Units**” has the meaning given such term in Section 2.05.

“**Affordable Rental Housing**” has the meaning given such term in Section 2.05(a).

“**Affordability Covenants**” has the meaning given such term in Section 5.01(d)(i).

“**Agreement**” means this Joint Development Agreement.

“**AMI**” means the area median income in the Boulder metropolitan area as shown in the City Manual.

“**Applicable Laws**” means, collectively, (a) all laws (including, without limitation, the Americans with Disabilities Act and Environmental Laws), ordinances, rules, regulations, other requirements, orders, rulings or decisions adopted or made by any governmental body, agency, department or judicial authority having jurisdiction over the Project Property or a Party’s activities in connection with the Project; and (b) all recorded easements, covenants, conditions, and restrictions now or hereafter affecting any portion of the Project Property, including, without limitation, the Master Declaration and the Deed Restrictions.

“**BHP**” has the meaning given such term in Recital F.

“**BHP Application**” has the meaning given such term in Section 5.01(a).

“**BJAD**” has the meaning given such term in Recital A.

“**BJAD-TDM**” has the meaning given such term in 5.04(b).

“**Boulder Junction Park**” has the meaning given such term in Section 5.07.

“**Business Day**” means any date that the administration offices of the City of Boulder, Colorado are open for business.

“**Caddis**” has the meaning given such term in Recital E(a).

“**CCIOA**” means the Colorado Common Interest Ownership Act, as set forth in Colorado Revised Statute § 38-33.3-101 et seq., as amended from time to time.

“**CERCLA**” has the meaning given such term in Section 3.01(b)(ii).

“**Certificate of Occupancy**” means governmental certificate issued to allow occupancy of the Project Improvements, including any temporary or partial certificate issued and any final certificate for occupancy of the Project Improvements issued by the applicable City Departments.

“**City**” has the meaning given such term in the preamble to this Agreement and shall include the City Departments for the purposes of this Agreement and for implementation of the City rights and obligation hereunder.

“**City Department**” or “**City Departments**” has the meanings given such terms in Recital C.

“**Civitas**” has the meaning given such term in Recital E(b).

“**Clean Determination**” has the meaning given such term in Section 3.01(b)(i).

“**Commercial Affordability Covenant**” has the meaning given such term in Section 5.03(d).

“**Community Programming**” has the meaning given such term in Section 2.06(a).

“**Community Vitality**” has the meaning given such term in Recital C.

“**Completion**” means final completion of construction of the Project Improvements in accordance with the requirements of this Agreement and evidenced by a Certificate of Occupancy or, as applicable, a certificate of completion acceptable to the City Department with authority over the construction of such Project Improvements.

“**Co-op Management Plan**” has the meaning given such term in Section 5.01(d)(viii).

“**CPI**” has the meaning given such term in Section 5.03(b)

“**Deed Restrictions**” has the meaning given such term in Section 2.06(c).

“**Developer Partners**” has the meaning given such term in Recital E.

“Effective Date” has the meaning given such term in the introductory paragraph of this Agreement.

“Energy Division” has the meaning given such term in Recital C.

“Entitlements Process” has the meaning given such term in Section 4.02.

“Environmental Consultant” has the meaning given such term in Section 3.01(b)(i).

“Environmental Report” has the meaning given such term in Section 3.01(b)(i).

“Environmental Study Standards” has the meaning given such term in Section 3.01(b)(i).

“Event of Default” means any of the following events by Master Developer or the applicable Development Partner:

(a) Noncompliance by Master Developer or the applicable Development Partner of any of the terms, obligations, covenants, representations or warranties under this Agreement, which breach or default is not cured to the City’s reasonable satisfaction within 30 days after written notice from the City (each an **“Event of Default”**); provided that this Agreement shall not terminate if the breach or default by its nature cannot be cured within 30 days, and Master Developer has facilitated cure, is acting diligently to complete such cure and is otherwise acting in good faith to cure the breach or default to the City’s reasonable satisfaction;

(b) the filing of a mechanics or other lien against the Project Property or any part thereof that is not released or bonded over to the City’s reasonable satisfaction within ten (10) Business Days’ notice thereof;

(c) the dissolution, liquidation, or event of bankruptcy of Master Developer or any Development Partner with primary responsibility for development or construction of the Project Improvements on any Quadrant;

(d) the filing of a mechanics or other lien against the Project Property, any Quadrant or any part thereof that is not released or bonded over to the City’s reasonable satisfaction within twenty (20) Business Days’ notice thereof from the City;

(e) the initiation of foreclosure or other enforcement proceedings by a Project Lender against any of the Project Property, subject in all respects to the rights of any Project Lender under agreements executed between the City and such Project Lender.

“Expedited Interpretation Arbitration” has the meaning given such term in Section 7.03.

“E/W Dedicated Street” has the meaning given such term in Section 2.07.

“Finance Department” has the meaning given such term in Recital C.

“Force Majeure” means wars, terrorism, explosion, fires, floods, labor disputes, hurricane, restraint of government, governmental acts, injunctions, labor strikes, extraordinary delays in transportation, epidemics, earthquakes, adverse severe weather conditions not normally experienced in the area and season, acts of god, and other events which render a Party’s timely performance impossible.

“Form-Based Code” has the meaning given such term in Section 2.08.

“For-Sale Condominiums” has the meaning given such term in Section 2.05(b).

“Hazardous Substance” has the meaning given such term in Section 3.01(b)(ii).

“Inspector” has the meaning given such term in Section 5.01(d)(vii).

“LIHTC Affordable Housing Project” has the meaning given such term in Section 5.01(a).

“LIHTC Financing” has the meaning given such term in Section 5.01(a).

“LIHTC Partnership” has the meaning given such term in Section 5.01(a).

“Manual” has the meaning given such term in Section 5.01(d)(iii).

“Market Rate For-Sale Condominiums” has the meaning given such term in Section 2.05(b)

“Market Rate For-Sale Townhomes” has the meaning given such term in Section 2.05(c).

“Master Association” has the meaning given such term in Section 2.06(a).

“Master Declaration” has the meaning given such term in Section 2.06(a).

“Master Developer” has the meaning given such term in the introductory paragraph of this Agreement.

“Mechanics’ lien” or words of similar import means any lien for the benefit of a Mechanic or Materials supplier or other party entitled to file a lien pursuant to C.R.S. §38-22-101 et. seq. and any claim against government funds as provided in C.R.S. §38-26-107.

“Notice” has the meaning given such term in Section 9.02.

“N/S Dedicated Street” has the meaning given such term in Section 2.07.

“Outside Completion Deadline” is the outside date for all components of the Project and all Project Improvements for the Project to reach Substantial Completion and, for purposes of this Agreement, means December 31, 2022.

“Parking District” has the meaning given such term in Section 5.04(a)(iii).

“**Parking Management Agreement**” has the meaning given such term in Section 5.04(a)(iii).

“**Parks and Rec**” has the meaning given such term in Recital C.

“**Party**” or “**Parties**” has the meanings given such terms in the introductory paragraph of this Agreement.

“**Paseo**” or “**paseo**” means a pathway designed for use by pedestrians, located mid-block, allowing pedestrian movement through the block from one street to another without traveling along the block's perimeter as describe in Title 9, Appendix M-1-8(k).

“**Permanently Affordable Units**” means the for-sale and rental Affordable Housing Units identified as such on Exhibit C, as such may be modified in the Entitlements Process and except for possible changes in the number of units as contemplated pursuant to Section 2.12.

“**Permitted Exceptions**” has the meaning given such term in Section 3.01(a).

“**Phase**” has the meaning given such term in Section 2.09.

“**Phasing Plan**” has the meaning given such term in Section 2.09.

“**Planning and Housing Department**” has the meaning given such term in Recital C.

“**Pollard**” has the meaning given such term in Recital A.

“**Pollard Lease**” has the meaning given such term in Recital A.

“**Private Drive**” has the meaning given such term in Section 2.07.

“**Project**” has the meaning given such term in Recital D.

“**Project Costs**” has the meaning given such term in Section 4.04.

“**Project Improvements**” means, collectively, the Improvements to be constructed on the Project Property or any Quadrant thereof to implement the terms and conditions of this Agreement, together with all other onsite and offsite improvements required by the City or any of the City Departments in connection therewith.

“**Project Lender**” has the meaning given such term in Section 4.04.

“**Project Property**” has the meaning given such term in Recital A.

“**Public Works**” has the meaning given such term in Recital C.

“**Quadrant**” has the meaning given such term in Section 2.05.

“**Residential Unit Owned Parking**” has the meaning given such term in Section 5.04(f).

“**RFP**” has the meaning given such term in Recital C.

“**RFP Committee**” has the meaning given such term in Recital C.

“**RFP Response**” has the meaning given such term in Recital D.

“**SB Clark**” has the meaning given such term in Section 5.01(a).

“**Schedule of Definitions**” has the meaning given such term in Section 1.03.

“**Site Plan**” has the meaning given such term in Section 2.05.

“**Stabilization**” means the date that the Project Improvements constructed within a Quadrant have been in operation for a period of two (2) years following Completion thereof.

“**Subassociation**” has the meaning given such term in Section 2.06(b).

“**Subdeclaration**” has the meaning given such term in Section 2.06(b).

“**Survey**” means an A.L.T.A. survey of the Project Property, certified in favor of Master Developer, the applicable Development Partner, the Title Company and the City.

“**Title Company**” means First American Title Insurance Company, a title insurance company authorized to transact business in the State of Colorado.

“**Title Commitment**” has the meaning given such term in Section 3.01(a).

“**Title Condition**” has the meaning given such term in Section 3.01(a).

“**Title Policy**” has the meaning given such term in Section 3.02(c).

“**Townhomes**” has the meaning given such term in Section 2.05(c).

“**Transfer**” has the meaning given such term in Section 3.02

“**TVAP**” has the meaning given such term in Recital A.

“**Unforeseen Conditions**” has the meaning given such term in Section 3.01(d).

EXHIBIT A

LEGAL DESCRIPTION OF THE PROJECT PROPERTY

[To be inserted from Title Commitment]

EXHIBIT B
SITE PLAN/QUADRANTS



EXHIBIT C
HOUSING UNITS / PARKING DESCRIPTION

Housing Unit Configuration

NOTE THAT THE FOLLOWING CONFIGURATION SUMMARIES ARE SUBJECT IN ALL RESPECTS TO CHANGES THAT MAY BE REQUIRED IN CONNECTION WITH THE ENTITLEMENTS PROCESS. In addition, Master Developer agrees to include two additional For-Sale Condominiums or Townhomes (one one-bedroom and one two-bedroom) affordable to 100% AMI middle income households in the Project on the following conditions:: (i) if the Master Developer or the applicable Development Partner is successful in securing a State Tax Credit allocation for the Affordable Housing Units, (ii) if, during the Entitlements Process, the Master Developer is able to design and entitle four additional For-Sale Condominiums or Townhomes, or; (iii) if Master Developer's investors approve the reconfiguration to include two to four additional middle income units.

	Affordability	# Efficiency units	# of 1 bedroom units .	# of 2 bedroom units	# of 3 bedroom units .	# of townhome units	Total	% of Total
PERMANENTLY AFFORDABLE RENTAL	30% AMI	2	1	1	1	0	5	2%
	40% AMI	3	1	1	1	0	6	2%
	50% AMI	9	5	2	2	0	18	5%
	60% AMI	45	48	37	7	0	137*	41%
	60% AMI	0	0	0	0	1	1**	0.3
	Total		59	55	41	11	1	167
PERMANENTLY AFFORDABLE OWNERSHIP	70% AMI	0	0	0	0	0	0	0%
	80% AMI	0	0	4	0	0	4	1%
	100% AMI	0	0	3	0	0	3	1%
	120% AMI	0	0	4	0	1	5	2%
	Total		0	0	11	0	1	12
NOTE THAT ALL AFFORDABLE UNITS ARE DEED RESTRICTED							*Includes 48 co-housing units.	** Subject to the last sentence of 2.05(c), this one Townhome unit is a 12 bedroom co-op unit.
MARKET RATE	Market Rental	0	0	0	0	0	0	0%
	Market Ownership	0	81	58	0	14	153	46%
	Total Market		0	81	58	0	14	153
	Total of all units:	59	136	110	11	16	332	100%

Average Unit Sizes (in Square Feet)

Average Unit Sizes (SF)	Efficiency units	1 bedroom units	2 bedroom units	3 bedroom units
Rental Units	362	640	844	1,161
Condominiums		774	968	
Townhomes				1,350
Co-Op townhome				2,700

Parking Minimums

Phase/Quadrant – Type of Parking	Number of Spaces
Below Grade at Quadrants 1 and 2	230
Below Grade at Quadrants 3 and 4	160
Public, on-street parking	25
Total	415

EXHIBIT D

BHP APPLICATION AND RESOLUTION

Raders, M. Lou

From: Marienthal, Frederic H.
Sent: Friday, December 1, 2017 3:46 PM
To: Raders, M. Lou
Subject: FW: Application for Private Activity Bond Issuance - Pollard Affordable Housing Project at 30th and Pearl
Attachments: BHP PAB Bond Issuance Application Cover Letter 12-1-17.pdf; ATT00001.htm; 2017-12-1 - BHP Private Activity Bond Issuance Application v3.pdf; ATT00002.htm

FYI

Frederic H. Marienthal | Partner | **Kutak Rock LLP**
1801 California Street, Suite 3000, Denver, CO 80202
D 303-292-7817 | O 303-297-2400 | C 720-530-9852
Frederic.Marienthal@kutakrock.com | www.kutakrock.com

From: Stephen B. Clark [mailto:steve@sbclarkinc.com]
Sent: Friday, December 1, 2017 3:43 PM
To: Jeremy Durham <DurhamJ@boulderhousing.org>; Laura Sheinbaum <sheinbauml@boulderhousing.org>
Cc: Marienthal, Frederic H. <Frederic.Marienthal@KutakRock.com>; David L. Zucker <david@zocalodevelopment.com>; Justin Kolb <justin.kolb@zocalodevelopment.com>; Laura E. Clark <laura@sbclarkinc.com>; Jeremy C. Keaveny <jeremy@sbclarkinc.com>
Subject: Application for Private Activity Bond Issuance - Pollard Affordable Housing Project at 30th and Pearl

Jeremy and Laura:

Please find attached the application for BHP to act of conduit private activity bond issuer for the above reference project. Please contact our firm for any questions.

Steve



999 18th Street, Suite 1440-S
Denver, Colorado 80202
303.794.0257 voice
303.797.0924 fax
info@sbclarkinc.com
www.sbclarkinc.com

Jeremy Durham
Executive Director
Boulder Housing Partners
4800 Broadway
Boulder, CO 80304

Re: Application for Private Activity Bond Issuance

Dear Jeremy:

Please find attached the application for private activity bond issuance by The Housing Authority of the City of Boulder, CO d/b/a Boulder Housing Partners (BHP) for the Pollard Affordable Housing Project located at 30th and Pearl proposed to be developed by Zocalo Community Development in partnership with BHP.

This application is based on the current development pro forma prepared by Zocalo Community Development assisted by our firm as financial advisors. Such pro forma is subject to change as the project planning process proceeds and market conditions change. However, we believe the assumptions upon which this application is based are reflective of current development costs, funding sources and market conditions.

Please contact me if you have any questions.

S.B. Clark Companies

Stephen B. Clark
Principal

cc: Laura Sheinbaum, Director of Real Estate Development – BHP
Fred Marienthal, Esq. – Kutak Rock LLP
David Zucker, CEO – Zocalo Community Development
Justin Kolb, VP Finance and Administration – Zocalo Community Development



**Colorado Private Activity Bond
Request for Issuance**

The Colorado Private Activity Bonds (PAB) Program provides a financing tool that can be used to fund affordable housing activities. Each year the City of Boulder receives an annual allocation of PAB from the State of Colorado. Additionally, the State retains PAB allocation and makes such available for applicants with deserving projects. Boulder Housing Partners (BHP) has currently PAB allocation and expects to apply both to the City of Boulder and the State for PAB in 2018.

The following application is made to BHP to act as issuer of PAB for the project described in the application. BHP is empowered under state law to act as issuer of PAB for affordable housing purposes and has in past years acted as PAB issuer for Low-Income Housing Tax Credit Partnerships for which it is the general partner, and for other non-profit housing provider borrowers. It is expected that the Project described below will seek for issuance by BHP during the Fall, 2018.

PROJECT SUMMARY

APPLICANT INFORMATION:

Applicant Name: ***Zocalo Community Development in partnership with Boulder Housing Partners***

Organization's Full Legal Name: ***Zocalo Community Development.***

Type of Organization: Nonprofit ***XX*** For-Profit Developer PHA

Contact Name: ***David Zucker, CEO***
Zocalo Community Development

Street Address: ***455 Sherman Street, Suite 205***

City: ***Denver*** State: ***CO*** Zip: ***80203***

Phone: ***303-228-7351***

Email: ***david@zocalodevelopment.com***

PROJECT INFORMATION:

Project Name: *Pollard Affordable Housing Project*

Address: *30th and Pearl
Boulder, CO*

Construction Start Date: *Third Quarter, 2019*

Unit Delivery Date: *Second Quarter 2021*

FINANCIAL SUMMARY: (Include all intended sources of financing.)

Source	Use	Amount	Status (Applied/Awarded/if other specify)
<i>Private Activity Bond – 1st Mortgage</i>	<i>Construction and Permanent</i>	<i>Up to \$34,000,000 for Construction (\$21,000,000 Permanent)</i>	<i>Allocation Expected from City and State in 2018</i>
<i>LIHTC Equity</i>	<i>Construction and Permanent</i>	<i>\$17,850,000</i>	<i>Competitively bid in 2018</i>
<i>GP Loan (subordinate)</i>	<i>Permanent</i>	<i>Up to \$1,500,000</i>	<i>Developer – As Needed</i>
<i>City of Boulder Land Contribution</i>	<i>Permanent</i>	<i>\$5,635,000</i>	<i>Awarded</i>
<i>Soft Sources</i>	<i>Permanent</i>	<i>Up to \$4,000,000</i>	<i>Private Equity Offering Underway</i>
<i>Deferred Developer Fee</i>	<i>Permanent</i>	<i>Up to \$2,200,000</i>	<i>Developer – As Needed</i>

TYPE OF PROJECT: (check all that apply)

- XX** Rental Homeownership **XX** New Construction Acquisition
 Rehabilitation
 Predevelopment Costs Transitional Housing Special Needs
 Other

PROVIDE BRIEF PROJECT NARRATIVE:

The Pollard Affordable Housing Project is the affordable multi-family rental housing portion of a 4.7-acre mixed use, mixed income, sustainable community of approximately 300 units and related commercial development. The Site is among the largest undeveloped parcels in the City of Boulder. It lies approximately one mile from the University of Colorado Boulder campus and is a 5-minute bike ride from downtown

along the popular Goose Creek Bike Path, which describes the Site's northern edge. The Site sits at the eastern edge of the of the Boulder Transit Village, one of the quickest-developing portions of Boulder, Colorado.

The Pollard Affordable Housing Project is a mixed income, multi-family rental housing project of 161-units restricted to 30%, 40%, 50% and 60% area median income rents using 4% Low-Income Housing Tax Credits and Private Activity Bond Financing coupled with developer equity contribution from the profits of the for-sale condominium housing units of the overall project.

Zocalo Community Development is a for-profit housing developer that has been recognized with among the following awards:

- *Zocalo received the prestigious Project of the Year award from the Downtown Denver Partnership for Cadence in 2014.*
- *Zocalo's Cadence Union Station project sold in February 2014 for the highest price per-unit and per-foot recorded in Colorado.*
- *Cadence Union Station received the 2013 Limelight award by the LoDo District.*
- *Zocalo's Solera project, completed in 2010, held the record for the highest price per-foot and per-unit paid for an apartment project in Colorado until eclipsed by Zocalo's Cadence project.*
- *Zocalo received the prestigious Developer of the Year Award by the Denver Business Journal in 2012.*
- *Zocalo is a two-time recipient of the University of Denver's Project of the Year Award presented annually by the Burns School of Real Estate.*
 - *RiverClay: Recognized as not just the first-ever LEED®-Certified multi-family project in the Rocky Mountain region, but for the project's market success. All 62 condominiums sold out despite the 2008/09 market crisis.*
 - *Solera: Recognized as the Rocky Mountain region's first LEED®-certified multi-family high-rise.*
- *Zocalo's RiverClay condo project, completed in late 2008, won the Innovative Green Business Idea Award in 2009 from the Environmental Defense Fund.*

Zocalo is currently developing several affordable housing projects in Denver including redevelopment of an historic hotel at 1st and Broadway near downtown and construction of an affordable multi-family rental project near Sloans Lake in near west Denver.

The project will be a partnership between Boulder Housing Partners and Zocalo Community Development. BHP will be the property owner upon the completion of the project, the delivery of a Certificate of Occupancy and an IRS Form 8609. BHP will earn a fee of \$200,000 for its role in the development process.

PROPOSED UNIT MIX:

New construction and acquisition with or without rehabilitation projects may include both affordable and market rate units. Use the chart below to provide information about the units in your project. Please only include information about dwelling units.

All of the proposed units for the Pollard Affordable Housing Project will be LIHTC rent restricted and are made up of the following unit mix:

	Target AMI Restriction	Calculated AMI	# of units	Avg Sq Ft	Total Sq Ft	LIHTC Max Net Mo. Rent	Proposed Net Rent	Total Ann Rent
Studio - 30% AMI	30%	30.0%	2	400	800	516	516	12,384
1Br 1Ba - 30% AMI	30%	30.0%	2	670	1,340	552	552	13,248
2Br 2Ba - 30% AMI	30%	30.0%	2	850	1,700	663	663	15,912
3Br 2Ba - 30% AMI	30%	30.0%	5	1,150	5,750	766	766	45,960
Studio - 40% AMI	40%	40.0%	2	400	800	688	688	16,512
1Br 1Ba - 40% AMI	40%	40.0%	2	670	1,340	737	737	17,688
2Br 2Ba - 40% AMI	40%	40.0%	2	850	1,700	884	884	21,216
3Br 2Ba - 40% AMI	40%	40.0%	4	1,150	4,600	1,021	1,021	49,008
Studio - 50% AMI	50%	50.0%	4	400	1,600	860	860	41,280
1Br 1Ba - 50% AMI	50%	50.0%	4	670	2,680	921	921	44,208
2Br 2Ba - 50% AMI	50%	50.0%	4	850	3,400	1,105	1,105	53,040
3Br 2Ba - 50% AMI	50%	50.0%	4	1,150	4,600	1,276	1,276	61,248
Studio - 60% AMI	60%	60.0%	23	400	9,200	1,032	1,032	284,832
1Br 1Ba - 60% AMI	60%	60.0%	33	670	22,110	1,105	1,105	437,580
2Br 2Ba - 60% AMI	60%	60.0%	31	850	26,350	1,326	1,326	493,272
3Br 2Ba - 60% AMI	60%	60.0%	2	1,150	2,300	1,532	1,532	36,768
Co-Housing Units	60%	60.0%	35	518	18,130	1,105	1,105	464,100
Pollard Affordable Housing Project - Residential Subtotal			161		108,400			2,108,256

Affordability Mix:		
30% AMI	11	6.8%
40% AMI	10	6.2%
50% AMI	16	9.9%
60% AMI	124	77.0%
Total	161	100.0%
Bedroom Mix:		
0 bedrooms	31	19.3%
1 bedroom	76	47.2%
2 bedrooms	39	24.2%
3 bedrooms	15	9.3%
Total	161	100.0%

PROPOSED PAB BOND ISSUANCE AMOUNT UP TO:

\$34,000,000

**RESOLUTION NUMBER #24
SERIES 2017**

A RESOLUTION DECLARING THE INTENT OF THE BOARD OF COMMISSIONERS OF THE HOUSING AUTHORITY OF THE CITY OF BOULDER, COLORADO D/B/A BOULDER HOUSING PARTNERS TO ISSUE ITS MULTIFAMILY HOUSING REVENUE BONDS FOR THE POLLARD AFFORDABLE HOUSING PROJECT

WHEREAS, The Housing Authority of the City of Boulder, Colorado d/b/a Boulder Housing Partners (the “Authority”) was legally established with the Colorado Secretary of State on September 22, 1966; and

WHEREAS, the Authority is authorized and empowered by Part 2, Article 4, Title 29 of the Colorado Revised Statutes, as amended (the “Act”) and the Supplemental Public Securities Act, Part 2, Article 57, Title 11 of the Colorado Revised Statutes, as amended (the “Supplemental Act”) to issue its revenue bonds for the purpose of providing multifamily residential housing that substantially benefits persons of low income; and

WHEREAS, the Authority has received an application from Zocalo Community Development (in partnership with the Authority) (the “Borrower”) and based upon its review of such application intends to issue and sell an aggregate principal amount not to exceed \$34,000,000 of its Multifamily Housing Revenue Bonds (Pollard Affordable Housing Project) Series 2018 (the “Bonds”) pursuant to the Act and the Supplemental Act to finance a portion of (i) the acquisition, construction, improvement, expansion, equipping and placing in service of an approximately 161-unit multifamily housing project located at 30th and Pearl Streets, Boulder, Colorado 80304 (the “Development”); (ii) the funding of any reserves or capitalized interest; and (iii) the payment of the costs of issuance of the Bonds (the “Project”); and

WHEREAS, the Authority will enter into a loan agreement or other type of financing agreement (the “Financing Agreement”) pursuant to which the Authority will loan the proceeds of the Bonds to the Borrower, or an affiliated entity thereof; and

WHEREAS, the Development is located within the boundaries of the City of Boulder, Colorado; and

WHEREAS, the Project will qualify as a “project” within the meaning of the Act; and

WHEREAS, the Board of Commissioners of the Authority (the “Board”) has concluded that the Project is consistent with the goals and objectives of the Authority; and

WHEREAS, the Authority intends to enter into a partnership arrangement with the Borrower in order to facilitate the financing of the Project; and

WHEREAS, the Borrower will own the Development and intends to enter into a management agreement with the Authority for the operation of the Development; and

NOW THEREFORE, be it resolved by the Board of Commissioners of the Housing Authority of the City of Boulder, Colorado d/b/a Boulder Housing Partners, as follows:

Section 1. In order to finance the Project, the Authority shall, subject to the provisions hereof, take all necessary and advisable steps to effect the issuance of the Bonds pursuant to the Act and Supplemental Act in an aggregate principal amount not to exceed \$34,000,000, which amount shall be determined by the Authority in a bond resolution to be considered for adoption at another meeting. The Bonds shall not constitute the debt or indebtedness of the Authority or a multiple-fiscal year direct or indirect debt or other financial obligation of the Authority whatsoever, within the meaning of any provision or limitation of the Constitution or statutes of the State of Colorado (the "State"), and shall not constitute nor give rise to a pecuniary liability or financial obligation of the Authority. The Bonds shall never be deemed to be an obligation of any officer, agent or employee of the Authority in such person's individual capacity, and no such person shall be subject to personal liability by reason of the issuance of the Bonds. The Bonds shall be special, limited obligations of the Authority and payable solely from and secured by a pledge of revenues derived from and payable by the Borrower pursuant to the Financing Agreement with the Authority. No Board member, officer, official, employee or agent of the Authority shall be subject to any personal liability in connection with the Bonds, the Project or the provisions of this Resolution.

Section 2. The Board hereby finds, determines, recites and declares the Authority's intent that this Resolution constitute an official indication of the acceptance of the Borrower's application and the present intention of the Authority to issue the Bonds as herein provided, subject to: (a) the delivery of an approving opinion of Bond Counsel to the Authority; (b) the Borrower obtaining sufficient debt and equity financing acceptable to the Authority; (c) the execution and delivery by the Borrower of indemnity agreements and agreements providing that the Borrower pay or reimburse the costs and expenses of the Authority, all to the satisfaction of the Authority; and (d) the adoption of a final bond resolution by the Board. The Authority's discretion to accept or not to accept items relating to the Project or additional financing therefor or relating to credit, security, sale or marketing aspects of the Bonds is intended for the protection of the Authority's interest, and any such acceptance shall not be construed to impose upon the Authority any duties to, nor to confer any rights against the Authority upon, any bondholders, investors or other third parties.

Section 3. No costs or expenses whether incurred by the Authority or any other party in connection with the issuance of the Bonds or the preparation or review of any documents by any legal or financial consultants retained in connection herewith shall be borne by the Authority. The Authority shall have the right to select and retain legal, financial and other consultants in connection with the proposed financing, and all fees, costs and expenses of such consultants, along with all other such costs and expenses shall be paid from the proceeds of the Bonds or otherwise borne by the Borrower regardless of whether the Bonds are issued. The Authority may require such deposits or advances as it deems desirable for such fees, costs and expenses, and may require reimbursement of any such fees, costs and expenses paid by the Authority.

Section 4. Prior to the execution of the Financing Agreement, any mortgage, indenture of trust, bond purchase agreement or any other necessary documents and agreements in

connection with such Bonds, such documents and or agreements shall be submitted for approval to the Authority, and, if satisfactory to the Authority, their execution shall be authorized by resolution of the Board pursuant to law.

Section 5. The Authority hereby desires to declare its official intent, pursuant to 26 C.F.R. § 1.150-2, to issue the Bonds and thereby permit the Authority and the Borrower to reimburse itself from proceeds of the Bonds for certain expenditures incurred in connection with the Project prior to issuance of the Bonds.

Section 6. The Authority hereby agrees to collaborate with the Borrower to obtain a sufficient amount of private activity bond volume cap allocation to permit the issuance of the Bonds on a tax-exempt basis..

Section 7. The Board hereby appoints Kutak Rock LLP as bond counsel for the Bonds.

Section 8. All commitments of the Authority contained herein are subject to the condition that within 730 days of the date hereof, or such shorter period of time available under applicable law, unless otherwise extended by the Authority, the Bonds to be issued pursuant hereto shall be issued and sold. In the event that the Bonds to be issued pursuant hereto are not issued within 730 days, or such shorter period of time available under applicable law, the Authority shall be under no obligation to perform any of the terms and conditions contained herein.

Section 9. All actions not inconsistent with the provisions of this Resolution heretofore taken by the Board or any officer or employee of the Authority in furtherance of the issuance of the Bonds are hereby ratified, approved and confirmed.

Section 10. All resolutions or parts thereof concerning the subject matter hereof in conflict with this Resolution are hereby repealed to the extent of such conflict. This repeal shall not be construed to revive any resolution or part thereof, heretofore repealed.

Section 11. The agreements of the Authority set forth above are expressly conditioned upon the ability and willingness of the Authority to issue the Bonds as tax-exempt obligations under the Internal Revenue Code of 1986, as amended. Nothing contained in this Resolution shall be construed as requiring the Authority to issue the Bonds and the decision to issue the Bonds shall be in the complete discretion of the Authority.

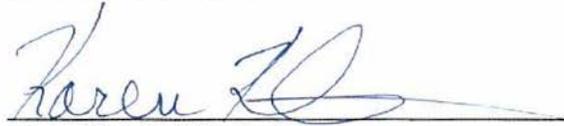
Section 12. If any section, paragraph, clause or provision of this Resolution, with the exception of any section, paragraph, clause or provision limiting the Authority's financial obligation, shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such section, paragraph, clause or provision shall not affect any of the remaining provisions of this Resolution.

Section 13. This Resolution shall take effect immediately upon its introduction and passage.

PASSED, ADOPTED AND APPROVED this 11 day of December, 2017.

HOUSING AUTHORITY OF THE CITY OF
BOULDER, COLORADO d/b/a BOULDER
HOUSING PARTNERS

[SEAL]



Chair, Board of Commissioners
Housing Authority of the City of Boulder

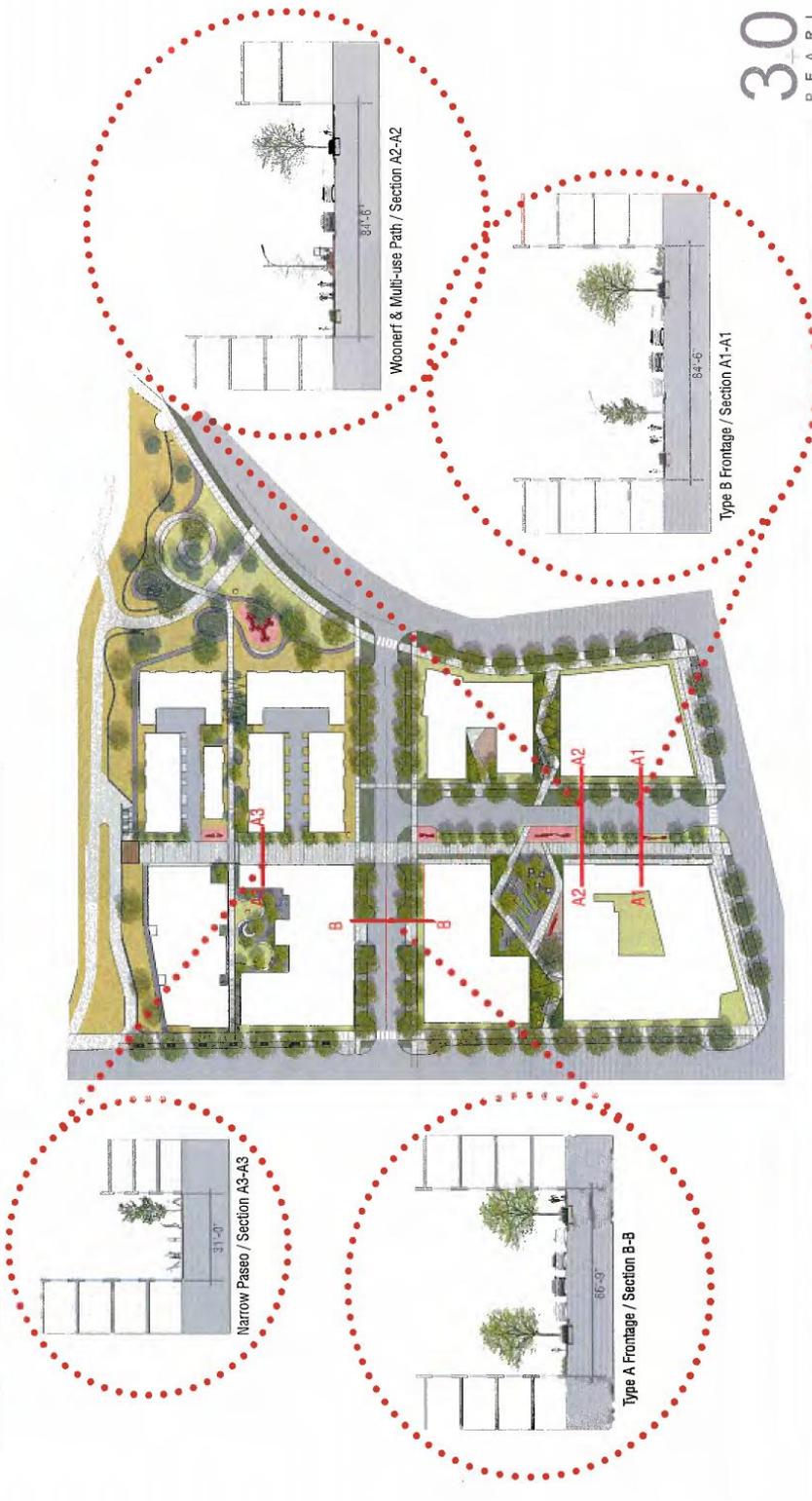
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Executive Director

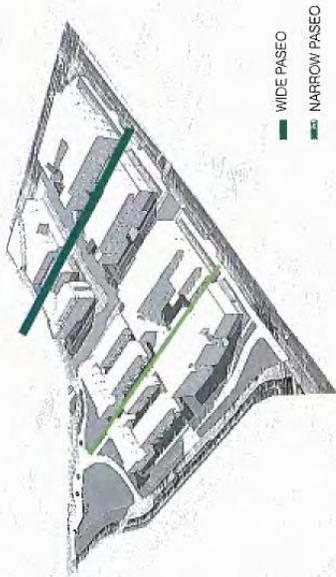
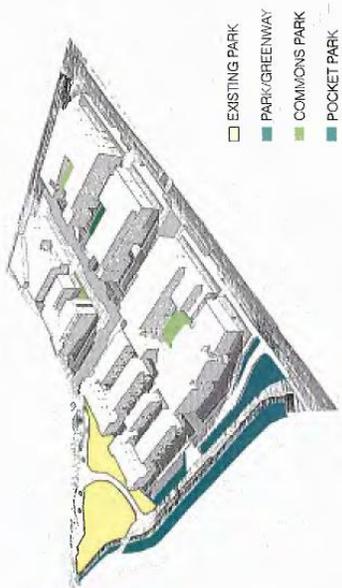
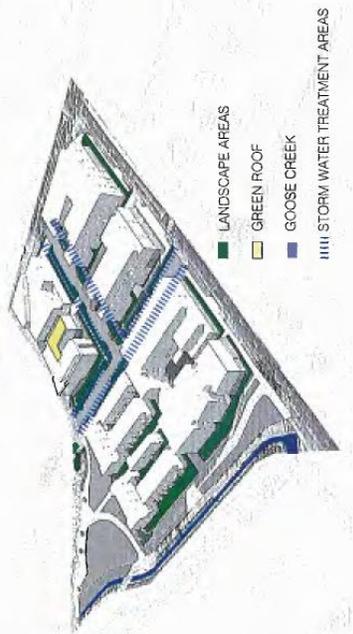
EXHIBIT E

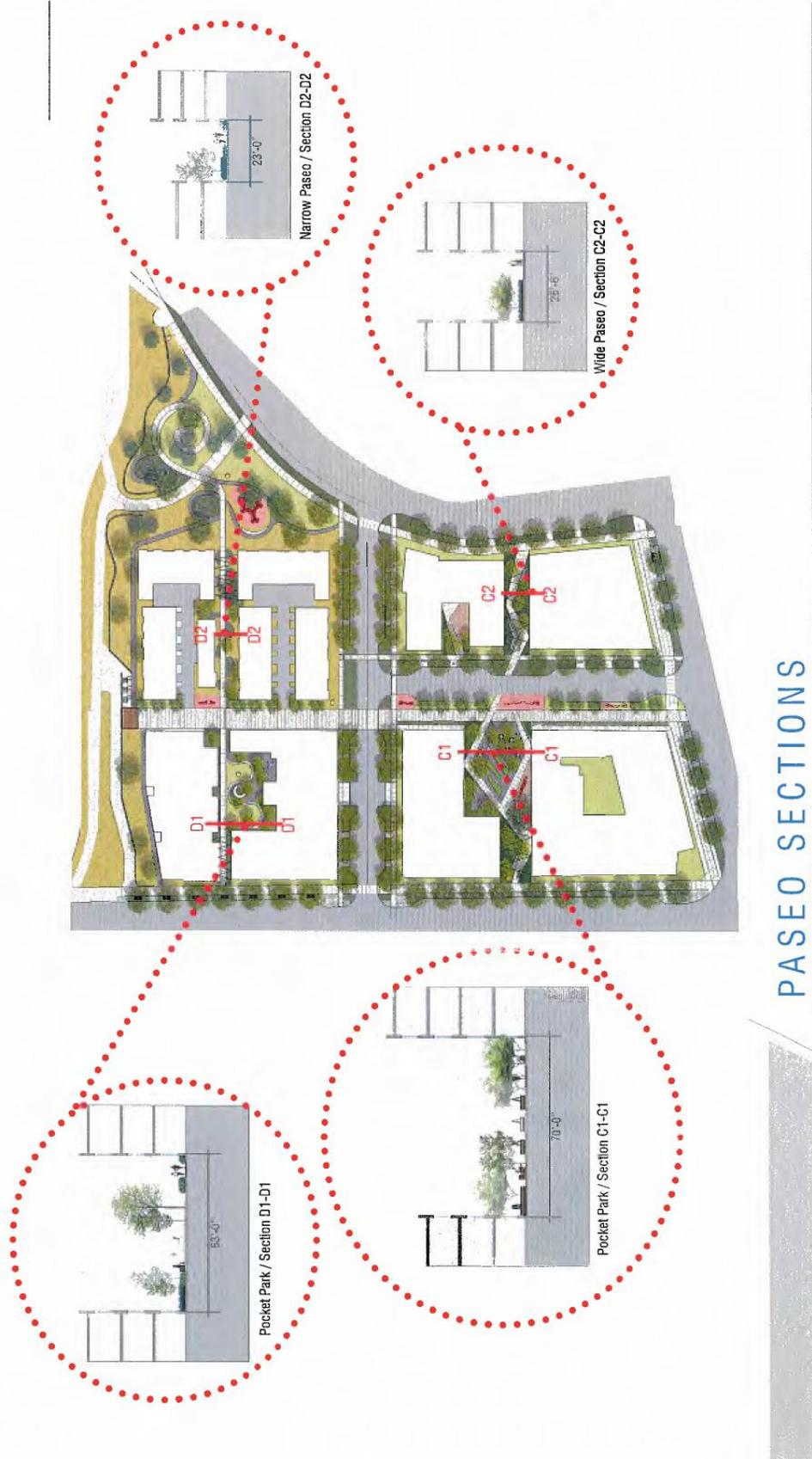
OUTDOOR SPACES DEPICTION

STREET SECTIONS



OUTDOOR SPACE





PASEO SECTIONS

EXHIBIT F
QUADRANT USE DIAGRAM



EXHIBIT G

AFFORDABLE COMMERCIAL RESTRICTIONS/REQUIREMENTS

Affordable Commercial Covenant Outline

Primary requirements and restrictions that will be included in the permanent Affordable Commercial Deed Restrictions (“Covenant”)

1. Whereas Clauses
 - The parties wish to implement related BVCP policies
 - *Support for Local Business & Business Retention*
 - *Affordable Business Space & Diverse Employment Base*
 - The parties wish to support the community’s economic vitality and social sustainability
 - The parties wish to support local independent small businesses and non-profit organizations serving the community
 - The parties wish to support vibrancy and activity in Boulder Junction
 - The parties desire a vibrant and economically successful mix of retail, restaurant, office and non-profit users.
 - The parties wish to use the Affordable Commercial Program as pilot opportunity for the city to explore approaches that may be implemented elsewhere and as such they intent to learn from its operation and cooperate on future program improvements.
2. Property
 - The Covenant shall be recorded on the land prior to transferring each Quadrant.
 - The Covenant will restrict only the commercial condominium unit(s) in each Quadrant.
 - The Covenant shall specify the minimum amount of square footage for the commercial condominium(s).
 - If the commercial condominium is subdivided, the Covenant restrictions shall apply to each subdivided condominium.
3. Rental Affordability
 - Initial market rent will be determined at the time each commercial space is first leased by:
 - Evaluating CoStar or similar data on current properties for lease to identify potential comparable properties
 - From comparable properties the parties will jointly pick which to use
 - Either or both parties will confirm actual leasing terms with the properties’ owners
 - From the confirmed information on comparable properties the parties will agree on the market rate rental amount for each type of commercial space offered in the Project.
 - Initial rents shall be set at no more than 75% of the market-rate rent after netting out any tax reductions due to affordability restrictions and/or BHP involvement.

- If the Owner chooses, it may set rents either above or below 75% of market rate so long as the average of all rents does not exceed 75% of market rate and no rent exceeds 100% of market rate.
 - Following the initial leasing of each space, rents may be increased no faster than the change in the CPI, however, pass-through expenses for taxes, insurance, and maintenance/HOA shall be as actually incurred and not subject to the CPI limit.
 - Leases shall contain no other charges or terms beyond those that are usual and customary for commercial leases in Boulder.
4. For-sale Affordability
- The Owner may choose to sell the commercial condominium, or subdivide it and sell one or more of the subdivided commercial condominiums
 - The Covenant shall contain a price limitation formula approved by the city manager that establishes a below-market price and caps appreciation at the change in CPI.
 - Prior to marketing or selling any of the affordable commercial space, the Owner shall submit a fair marketing plan for approval by the city manager.
5. Fair Marketing and Tenant Selection Requirements
- The Owner shall market the affordable commercial space and select tenants according to a fair marketing and selection plan approved by the city manager that includes the following elements:
 - Type of notices to the general public of the availability of any affordable commercial space, tenant requirements and preferences.
 - Length of time space must be marketed prior to selecting a tenant.
 - Selection criteria used to select between multiple eligible tenants as defined in the Implementation Agreement as it may be amended.
 - Upon request by the Owner the City shall participate in the fair marketing and selection plan's development and/or tenant selection.
 - Tenants selected by the Owner shall be presented to the City for approval according to the terms of the Covenant and its required agreed upon fair marketing and selection plan and leasing program, such approval shall not be unreasonably withheld.
 - The City, in its sole discretion, may grant exceptions to the tenant eligibility requirements, fair marketing and selection plan, and leasing program.
6. Affordable Commercial Implementation Agreement
- Owner and City shall collaborate to create a mutually agreed Implementation Agreement and shall review it regularly to incorporate program experience and changing market conditions.
 - Owner shall operate the Property in accordance with the Implementation Agreement.
 - The Implementation Agreement shall include, but is not limited to:
 - Desired tenant mix, e.g., retail, restaurant, office, non-profit.
 - Eligible beneficiaries
 - Small, local, independent businesses
 - Non-profit organizations headquartered in Boulder County
 - Eligibility requirements defined
 - Tenant application requirements

- Tenant selection process, with the option for a peer review group
 - Selection criteria used to select from eligible tenants, e.g., economic viability, potential contributions to the community, preferences for greater local presence, etc.
 - Leasing program, e.g., lease lengths, terms, renewal policies and subleasing, etc.
 - Reporting requirements.
 - Procedure for reviewing and amending the Implementation Agreement
 - The city manager shall approve the Implementation Agreement and any amendments, which approval shall not be unreasonably withheld.
7. The Owner is obligated to maintain the property to a mutually agreed condition.
8. City Right of first option to Purchase
- The City shall have a right to purchase the commercial condominium, as encumbered by any leases, at the maximum price allowed under the Covenant by exercising the right within 30 days following notice by the owner of the intent to sell.
 - The Covenant shall define the notice requirements, due diligence period, closing timeline (which shall be approximately 45 days following the City's exercise of its election to proceed with the acquisition unless the parties otherwise agree) and including other elements of the right to purchase.
 - The purchase right shall expire if the City fails to timely exercise its election to purchase and/or fails to timely complete such purchase.
 - The purchase right shall be transferable to a City designee at the same terms.
9. The City may designate a third party to exercise some or all of its rights and/or its responsibilities under the Covenant; however the City shall remain responsible for ensuring its designee fulfills the City's responsibilities.
10. The Covenant shall define defaults, cure procedures and remedies.
- In the event the Owner charges more than the maximum allowed rent, the City shall be entitled to no less than 110% of the amount of excess rent.

EXHIBIT H

CITY'S STANDARD INSURANCE REQUIREMENTS

I. Insurance Coverages³:

1. Commercial General Liability – ISO CG 00001 or equivalent. Coverage to include:

- Premises and Operations
- Explosions, Collapse and Underground Hazards
- Personal / Advertising Injury
- Products / Completed Operations
- Liability assumed under an Insured Contract (including defense costs assumed under contract)
- Independent Contractors
- Designated Construction Projects(s) General Aggregate Limit, ISO CG 2503 or equivalent
- Additional Insured—Owners, Lessees or Contractors Endorsement, ISO Form 2038 or equivalent
- Additional Insured—Completed Operations, Owners, Lessees or Contractors Endorsement, ISO CG 2037 or equivalent

Completed Operations coverage must be kept in effect for up to the statute of repose after project completion

2. Automobile Liability including all:

- Owned Vehicles
- Non-Owned Vehicles
- Hired Vehicles

3. Excess/Umbrella Liability (applies to large construction projects):

- Excess of Commercial General Liability, Automobile Liability, and Employers' Liability.
- Coverages should be as broad as primary.
- The city reserves the right to require higher limits.

4. Workers Compensation

- Statutory Benefits (Coverage A)
- Employers Liability (Coverage B)

5. Installation Floater/Builder's Risk

- Special cause of loss
- Theft
- Faulty workmanship
- Vandalism
- Labor costs to repair damaged work

6. Contractors Pollution Liability/Environmental Impairment Liability

This section applies to the following types of proposals, including but not limited to:

- ASBESTOS/LEAD ABATEMENT Contracting Services
- CORE DRILLINGS Contracting Services
- ROOFING Contracting Services

³ k:\cafo\contract forms\terms and conditions (construction contract for large capital improvement projects)-.doc

- GENERAL CONSTRUCTION CONTRACTORS
- BOILER REPAIRS & CLEANING
- GAS & ELECTRICAL TURBINES

The city requires this coverage whenever work at issue under this contract involves potential pollution risk to the environment or losses caused by pollution conditions (including asbestos) that may arise from the operations of the Contractor described in the Contractor's bid and specifications. Policy shall cover the Contractors completed operations. Such coverage shall include:

- Bodily Injury, sickness, disease, mental anguish or shock sustained by any person, including death.
- Property Damage including natural resource damages, physical injury to or destruction of tangible property including resulting loss of use, clean up costs, and the loss of use of tangible property that has not been physically injured or destroyed.
- Defense, including costs, charges and expenses incurred in the investigation, adjustment or defense of claims for such compensatory damages.
- Cleanup costs, removal, storage, disposal, and or use of the pollutant; and defense, including costs and expenses incurred in the investigation, defense, or settlement of claims.
- Coverage shall apply to sudden and gradual pollution conditions resulting from the escape of release of smoke, vapors, fumes, acids, alkalis, toxic chemicals, liquids, or gases, natural gas, waste materials, or other irritants, contaminants, or pollutants (including asbestos). If the coverage is written on a claims-made basis, the Contractor warrants that any retroactive date applicable to coverage under the policy precedes the effective date of this contract; and that continuous coverage will be maintained or an extended discovery period will be exercised for a period of three (or specify desired number) years beginning from the time that work under this contract is completed.
- On the Automobile Liability Coverage endorsements CA9948 and MCS-90 are required if the Contractor is transporting any type of hazardous materials.
- Contractor shall name the City of Boulder, its elected officials, employees, agents and volunteers as "Additional Insureds" for work that is being performed by the Contractor and as respects the Contractors Pollution Liability.

B. Limits Required. The Contractor shall carry the following limits of liability as required below:

Commercial General Liability:

General Aggregate \$2,000,000
Products/Completed Operations Aggregate \$2,000,000
Each Occurrence Limit \$1,000,000
Personal/Advertising Injury \$1,000,000
Fire Damage (Any One Fire) \$ 50,000
Medical Payments (Any One Person) \$ 5,000
Excess/Umbrella Liability (as needed)
General Aggregate Limit \$1,000,000
Products/Completed Operations Aggregate \$1,000,000

Automobile Liability: Bodily Injury/Property Damage (Each Accident) \$1,000,000

Workers' Compensation:

Coverage A (Workers' Compensation) Statutory

Coverage B (Employers Liability) \$ 100,000 Each Accident

\$ 100,000 Disease Ea.

\$ 500,000 Disease-Policy Limit

Contractors Pollution Liability/Environmental Impairment Liability (as needed)

Per Loss \$1,000,000

Aggregate \$1,000,000

Installation Floater/Builder's Risk For materials and equipment to be installed:

- Shall be written for 100% of the completed value (replacement cost basis)
- Deductible maximum is \$10,000.00
- Waiver of Subrogation applies on Installation Floater/Builder's Risk

II. ADDITIONAL INSURANCE REQUIREMENTS

Failure of the Contractor to fully comply with these requirements during the term of the Contract may be considered a material breach of contract and may be cause for immediate termination of the Contract at the option of the city. The city reserves the right to negotiate additional specific insurance requirements at the time of the contract award.

A. All insurers must be licensed or approved to do business within the State of Colorado, and unless otherwise specified, all policies must be written on a per occurrence basis.

B. The Contractor shall provide the city 4 (four) copies of the Certificate of Insurance Form, including all required endorsements, evidencing all required coverages, prior to signature of the contract by the city. The city will not execute the contract until the city has verified that all required insurance is in effect.

C. The Contractor shall name "The City of Boulder, its elected officials, employees, agents and volunteers" as an Additional Insured as respects General Liability.

D. Upon request by the city, Contractor must provide a copy of the actual insurance policy effecting coverage(s) required by the contract.

E. The city requires that all policies of insurance be written on a primary basis, noncontributory with any other insurance coverages and/or self-insurance carried by the city.

F. A Separation of Insureds Clause must be included in general liability policies.

G. The Contractor shall advise the city in the event any general aggregate or other aggregate limits are reduced below the required per occurrence limit. At their own expense, the Contractor will reinstate the aggregate limits to comply with the minimum requirements and shall furnish to the city a new certificate of insurance showing such coverage is in force.

H. Contractor's insurance carrier should possess a minimum A.M. Best's Insurance Guide rating of A- VI.

I. Commercial General Liability Completed Operations policies must be kept in effect for up to two (2) years after completion of the project.

J. Contractors Pollution Liability policies must be kept in effect for up to two (2) years after completion of the project.

K. Contractor, or Contractor's insurance broker, shall notify the City of any cancellation or reduction in coverage or limits of any insurance within seven (7) days of receipt of insurer's notification to that effect. The Contractor shall forthwith obtain and submit proof of substitute insurance in the event of expiration or cancellation of coverage.

L. Certificate Holder: City of Boulder, Purchasing, P.O. Box 791, Boulder, CO 80306.

M. Contractor is responsible for any damage or loss to its own vehicles or equipment.

N. The city and Contractor shall cooperate with each other in the collection of any insurance proceeds which may be payable in the event of any loss, including the execution and delivery of any proof of loss or other actions required to effect recovery.

EXHIBIT I

ENERGY/RESILIENCE AND SUSTAINABILITY REQUIREMENTS

Section 1.01 Construction Systems. The Project Improvements shall be designed and constructed to achieve a minimum ‘Silver’ level certification through USGBC’s LEED standard for construction. All housing Project Improvements shall also be designed with principles of the WELL Building Standard and “Passive Haus” standards as guides. In addition, the Project should be designed and constructed using the following energy efficiency systems:

(a) **Lighting.** Lighting projects must meet all City of Boulder building, land use and energy code requirements, including, BPO (Title 10-7.7-4) and Dark Skies Ordinance (Title 9-9-16), based on the requirements therein as of the date of RFP Response. If such code provision requirements are modified between the date of the RFP Response and the applicable City review dates for the Project Improvement planning and permitting approvals such that the impact of such modifications materially and negatively increases the cost and/or development timing for such Project Improvements, then the City agrees to work with Master Developer to adjust or otherwise address the lighting requirements of this Agreement in order to realize, as close as possible, the reasonable expectations of both Master Developer and the City under the terms of this Agreement. The resolution of the negative impact resulting from the modifications in lighting code requirements may include (by way of example and not limitation), City waivers, variances or other accommodations and/or providing City or other funding available to offset the negative impact of such changes.

(b) **Fuel Source and On-site Electricity Generation.** To support the City’s transition from fossil fuels to clean energy sources, all Project Improvements shall be designed with the express development goal of using an all-electric energy supply while maximizing onsite, renewable energy generation options. 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. The size of the system is typically driven by the load on the site, the budget and/or the available space for installation. Where rooftop solar capacity remains, the Project should factor in the latest energy code requirements for “Solar Ready” buildings such as pre-wiring for solar, location of penetrations in the roof. The following specific requirements shall apply to Project Improvements:

(i) For commercial buildings, these requirements are in the 2017 City of Boulder Energy Conservation Code,

(ii) For residential buildings, these requirements are in the Boulder Revised Code (B.R.C. 10-5.5-2) as amendments to the International Residential Code (IRC),

(iii) New landscape projects should consider the placement and types of trees to maximize onsite renewable energy access,

(iv) New solar projects should consider and implement ways to maximize onsite renewable energy access,

(v) Residential Project Improvements (including all rental and owned residential uses) shall be electric only,

(vi) Commercial Project Improvements shall be primarily electric with limited use of natural gas.

(c) **Energy Efficiency Technologies.** The Project shall be connected to the local electric distribution system to provide grid power to the site when on-site renewable energy generation does not meet site load demands. Developer shall provide in each residential and commercial unit, customer-sited technologies and strategies aimed at reduced plug loads. Each of the developers of each of the phases shall design and construct in the Project Improvements end-use metering and energy monitoring systems that support occupants to monitor and control their energy use. Acceptable technologies include: innovative thermostat options that learn users' needs and automation wherever possible, home automation assistants (such as IOTAS Smart Home, Cisco Smart+Connected Home and other internet systems offering enterprise level networks to support environmentally-conscious behaviors).

(d) **Resilience.** The City and Master Developer agree to the integration of long-term resilience and sustainability options including public/private partnership strategies and future funding opportunities to facilitate further energy, resilience and overall sustainability objectives. The sustainability-related requirements may, but are not required, to include, among the following:

(i) Exploring energy storage technologies.

(ii) If there is engineering and financial support from local utility companies, Master Developer will explore designing the Project site with the ability to be isolated (micro gridded) from the larger electric distribution system through the inclusion of existing and emerging technologies.

(e) **Electric Vehicle Integration.** The Project shall include car-charging options (conduit in place for charging stations) at 25% of available parking spaces (on-street and parking structures). Of those, 10% will be DC fast-charge technology. In addition, if there is engineering and financial support from local utility companies or the City, Master Developer shall design towards future bi-directional feeding of electricity ("**Vehicle-to grid**"). Specific site requirements include: the installation of either free or paid (via ChargeAhead or a vendor like ChargePoint) EVSEs including: high-amperage Level 2 and DC Fast Charge (CHAdMO, SAE Combo, or Superchargers), at a rate of 4 percent Level 2 and 2 percent DC Fast Charge, resulting in Level 2 stations to serve 12 stalls and DC Fast Charge stations to serve six stalls, the location of which shall be determined based on the Form-Based Code review for the applicable Project Improvements. Master Developer agrees to take the following actions:

(i) Evaluate electric utility rate design for applicable site locations:

(A) Determine impact of added vehicle charging to applicable electric utility customer class, considering:

(1) Whether additional load moves site into new customer class with additional bill components (e.g., commercial class customer with no demand charge moves to secondary general class with demand charge).

(2) For DC Fast Charge, determine impact of demand charge on site electric bill and utility capacity.

(ii) Develop charging station usage policies and including ensuring proper signage for EV charging station parking spaces.

(f) **Materials and Waste Diversion.** The City is working to become a ‘Zero Waste Community’ and encourages zero waste practices through both construction waste management, and design considerations to provide access to zero waste services for future building occupants, as well as compliance with the Universal Zero Waste Ordinance (City Code Title 6-3, 6-12).

(g) **Water Use.** All indoor water fixtures in the Project Improvements shall meet existing City ordinances and design and construction standards.

Section 1.02 On-Site Food Production. Master Developer will endeavor to include on-site food production in the Project as described in the RFP Response, especially regarding the cohousing/co-op components of the Project. Master Developer shall provide assigned portions of the Project Property site for community gardens for onsite food production, including gardens or planters with vegetables and/or edible nut- and fruit-bearing plants appropriate to the location. Master Developer shall keep the City reasonably informed as to Master Developer’s implementation analysis, including whether the Project Property is capable of providing for on-site food production and whether such programs are financially viable. If so delivered, the Master Declaration shall include programmatic oversight and maintenance of on-site community gardens.

EXHIBIT J

LIVABILITY STANDARDS FOR PERMANENTLY AFFORDABLE HOUSING

Initially adopted June 13, 2003
Revised June 28, 2006
Revised December 16, 2013
Revised October 16, 2014
Revised September 6, 2016

Livability Standards For Permanently Affordable Housing

A. Background

The City of Boulder's Comprehensive Plan deems affordable housing a "significant community benefit" and seeks to increase the proportion of permanently affordable housing units to 10% of the total housing stock. The City has a number of programs designed to increase the amount of permanently affordable housing. One of the City's strategies is the Inclusionary Housing ordinance (Boulder Revised Code 9-13) which requires that new residential development contribute toward permanently affordable housing in the City. City Council passed this ordinance in 2000 to respond to community concerns about the lack of affordable housing. Additionally, the City provides subsidy funds from a variety of sources to assist in the development of permanently affordable housing and requires permanently affordable housing as a community benefit from annexations.

Permanently affordable housing represents a substantial and long-term public investment. As such, it is imperative the affordable housing produced be livable and of good quality.

The majority of the affordable housing being produced has been of acceptable quality. However, there have been instances when affordable homebuyers and renters have had legitimate concerns about the quality of units, i.e. lack of upper kitchen cabinets, closet doors opening inward, and odd shaped bedrooms that cannot easily accommodate a bed. These standards were developed as a result of those concerns. They are intended to clarify standards for developers as they plan and design permanently affordable housing.

B. Process

Affordable units and/or projects may be subject to Land Use review including but not limited to; Concept Plan, Site Review, Use Review, Annexation, and Technical Document Review. Affordable units provided through inclusionary housing as off-site units are also subject to Location Approval and either Site Review or the Off-site Affordable Housing Design Review. Details may be found at www.boulderaffordablehomes.com.

When possible, affordable unit floor plans and finish specifications will be reviewed by the city for conformance with the standards herein concurrent with a Land Use review. In cases where this is not possible, proposed affordable units will be reviewed prior to building permit issuance. Any such reviews must be completed prior to issuance of a residential building permit and execution of the Permanently Affordable Housing Covenant. Developers will be required to sign two livability checklists certifying that the information they provide regarding conformance with these standards is accurate and true, and that the City will be notified of any changes. The livability checklists are provided as attachments A & B to this document. Please check with a housing planner for specific timing requirements for your development.

C. Remedies

Once the affordable units and/or projects are constructed, any deviations from these standards ("deficiencies") not approved ahead of time by the City could result in the City Manager not accepting

the unit as affordable. Ideally, deficiencies would be rectified by bringing the unit into compliance. If this is not possible, other remedies for deficiencies may include a reduction of the maximum allowable affordable sales price or rent or a monetary assessment per square foot to be paid prior to receiving a certificate of occupancy for the unit or building.

One of the most frequently identified deficiencies has been finished room sizes that do not meet the minimum size standards. It is highly recommended that unit, closet and room dimensions include an additional 1-2" as a margin of error to accommodate discrepancies in the framing and finish.

D. Acceptance of proposed Affordable Units

Affordable units created through Inclusionary Housing will be held to the quality standard of the market units that generated the affordable requirement. B.R.C.9-16 Definition, "Permanently Affordable" specifies that *"no unit shall be considered a permanently affordable unit until the location, construction methods, floor plan, fixtures, finish, and cabinetry of the dwelling units have been approved by the city manager."* Affordable units acquired through other programs such as funding or annexation will be held to the quality standard outlined in the Agreement or Covenant that secured the unit and/or project and reflected in any land use review approval.

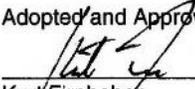
Permanently affordable units are expected to be designed with logical and functional room layout. This includes adequate space for normal living based on 1.5 persons per bedroom and adequate circulation pathways through the unit based on a reasonable furniture configuration. The standards contained in this document provide minimum requirements for specific items and are not intended to be "build to" specifications.

Affordable units created through Inclusionary Housing may be "functionally equivalent" to the market rate units generating the requirement meaning that when fixtures and finishes are included in market rate units, such as kitchen cabinets, countertops, dishwasher, garbage disposal etc., equivalent features are included in the permanently affordable units. This does not mean that the types of features need to be identical. For example, market rate units could include granite countertops, while laminate countertops of reasonable quality would be acceptable for the permanently affordable units. The city will consider proposals by the applicant or may request variations to proposed functionally equivalent features that result in an equivalent livability outcome. The desire is to achieve a balance between flexibility in design, and livability that is equivalent to the market units generating the affordable housing requirement.

When inclusionary housing affordable units are provided off-site or on-site in a separate 100 percent affordable building they must meet all of the livability standards regardless of what is provided in the market units unless otherwise agreed in writing by the Deputy Director of Housing. Affordable units created through funding or annexation agreements must meet all of the livability standards unless otherwise agreed in writing by the Deputy Director of Housing.

These standards may be revised or adjusted in the future based on experience with implementation.

Adopted and Approved by:



Kury Firnhaber,
Deputy Director of Housing
City of Boulder

SEPTEMBER 6, 2016
Date

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Attachment A – Livability Standards for Permanently Affordable Housing Checklist Part 1
Attachment B – Livability Standards for Permanently Affordable Housing Checklist Part 2

1. Affordable Unit Size

Each affordable unit must meet the minimum floor area required by Inclusionary Housing or any applicable funding or annexation covenant or other agreement. Floor area requirements may be found in the Determination of Inclusionary Housing Compliance form, Covenant or Agreement executed for the specific development. Floor area for affordable units should be measured based on the requirements of B.R.C.9-16; Floor area for attached dwelling units or Floor area for detached dwelling units.

2. Kitchen

Cabinets

All units shall have kitchen cabinet or other storage area (such as a pantry) proportionate to unit size that at minimum meet the required space listing in the table below. Note that additional kitchen storage beyond the minimum is desirable. In some cases, additional cabinetry is provided as either base or upper cabinets and credit is requested to reduce cabinetry elsewhere. In this case any additional cabinetry may be substituted for no more than 10% of the cabinetry elsewhere.

For example; if five lineal feet of base and uppers each are required and ten lineal feet of base cabinets are provided; a one foot credit may be applied to the uppers leaving four lineal feet of uppers required.

Sink bases, Stove/oven and cabinet spaces less than one foot in width may not be used to meet cabinet requirements.

Unit Size	Lineal Ft of Base Cabinets*	Lineal Ft of Upper Cabinets*
Micro unit <300 sq. ft.	3	3
Efficiency/studio/one bedroom 301 – 475 sq. ft.	4	4
One bedroom > 476 sq. ft.	5	5
Two bedrooms	6	6
Three bedrooms or more	7	7

* Assumes standard 24" depth and 26" height for base cabinets and 12" depth and 30" height for upper cabinets.

Countertops

The surface of countertops shall be made of new, durable, easily cleaned materials. One, two and three bedroom units must provide a minimum 3' of continuous countertop work space not including interior corner space.

Appliances

The table below specifies minimum appliance requirements. When affordable units created through Inclusionary Housing are provided on-site, the affordable units must include the same or functionally equivalent appliances as in the market units. For example, if the market units include a refrigerator and dishwasher, similarly sized appliances must be provided in the affordable units.

Unit Size	Sink width*	Range/oven width*	Refrigerator cubic feet*	Dishwasher*
Micro unit <300 sf without additional kitchen facilities	24"	24"	5	none
Efficiency/studio/one bedroom 301 – 475 sq. ft.	24"	24"	18	18"
One bedroom > 476 Sq. Ft.	30"	30"	25	24"
Two bedrooms	32"	30"	30	24"
Three bedrooms or more	32"	30"	30	24"

* Minimum size.

All appliances shall be new, UL (Underwriters Laboratories Standards for Safety) listed, and approved appliances. Energy Star rated appliances are encouraged. Documentation of the estimated reliability of proposed appliances, such as Consumer Report ratings, should be provided. Appliances must be of sound quality with the following minimum warranties.

Range or Stove and Oven: One-year minimum warranty. All major appliances used for surface cooking should have a ventilation system that meets code (typically, a fan rated at a minimum of 150 CFM).

Refrigerator: One-year minimum warranty on the entire appliance.

Dishwasher: One-year minimum warranty on the entire appliance.

Garbage Disposal: If provided in the market rate units, all permanently affordable for-sale units shall include a garbage disposal each with a one-year minimum warranty on the entire appliance.

Microwaves and other small appliances are optional.

3. Closets and Storage Areas

Adequate storage is essential to providing livable housing. For safety reasons, mechanical rooms should be separate from any storage space and to ensure usable storage space should not open onto storage space. All closets and storage areas should have a minimum 8' height except those under stairs which can include sloping ceilings down to 6' in height or in micro units and efficiency/studios which should have a minimum 6' height.

All dimensions shall be calculated from the finish trim dimension. It is highly recommended that closet dimensions include an additional 1-2" as a margin of error to accommodate discrepancies in the framing and finish.

Closet and Storage Area Minimum Requirements

Unit Size	Bedroom closet width	Linen closet width	Entryway closet width	Additional Storage square feet	Built-in Floor to Ceiling Shelving
Micro unit <300 sf without additional kitchen facilities	4'	0	0	16	4" wide X 16" deep
Efficiency/studio/one bedroom 301 – 475 sq. ft.	6'	0	18"	25	0

One bedroom > 476 Sq. Ft.	6'	30"	24"	30	0
Two bedrooms	6'	30"	30"	40	0
Three bedrooms or more	6'	36"	36"	50	0

Closet depth – All required closets must have a minimum depth of 22".

Bedroom - Each bedroom must contain a closet that includes one shelf over a rod.

Linen – Each linen closet must include no less than four fixed or adjustable shelves.

Entryway – The entryway closet shall be provided near at least one of the outside entry ways into the unit for coat and shoe storage. One shelf over a rod shall be provided.

Additional Storage – In addition to bedroom, linen and entryway closets, additional storage must be provided. Locations may include the basement, garage, exterior to the unit or interior to the unit. If provided interior to the unit, this space may not be counted towards the minimum dwelling unit floor area required. The intent of this storage is to provide space for large or outdoor items such as bicycles, strollers, skis and luggage. No appliances may be included in this space. City requirements for long term bicycle storage may be counted towards this requirement.

Door Openings - Closet and storage doors must be sliding doors, folding doors, or doors that open outwards to allow for access to space. Closets and storage space may not have any other doors opening into the space.

4. Floor Coverings

New carpet, wood, tile, vinyl or linoleum floor covering shall be provided, with a minimum 10-year warranty. New water resistant floor covering other than carpet is required for kitchens and bathrooms.

5. Room Sizes & Shapes

The following standards apply to all units except Micro-units and Efficiency/Studios.

All units must include appropriate and adequate room sizes and room shapes (generally rectilinear) that allow for functional furniture placement. Minimum sizes should be measured at the narrowest point in the room. Where any room such as the dining room is adjacent to the kitchen area, a 3' wide buffer between all kitchen cabinets, appliances and work spaces may not be included in the minimum room calculation. All dimensions shall be calculated from the finish trim dimension.

It is highly recommended that room dimensions include an additional 1-2" as a margin of error to accommodate discrepancies in the framing and finish.

Bedrooms – The first bedroom shall be a minimum of 120 square feet. Additional bedrooms shall be a minimum of 90 square feet. No bedroom shall have a finish dimension less than nine feet (9'0").

Living/dining Rooms - shall provide the following minimum dimensions with no dimension less than ten feet (10'0").

1. Micro unit <300 sq. ft. – N/A
2. Efficiency/studio/one bedroom 301 – 475 sq. ft.- 100 square feet
3. One Bedroom – 120 square feet
4. Two bedroom – 180 square feet

5. Three bedrooms or more – 200 square feet

Connections and openings, circulation to and through, and exterior doors and windows should not compromise the ability to furnish the living/dining area. Furniture layouts should be used to set critical room dimensions. There should be a minimum of one layout that is possible which will seat every household member assuming 1.5 persons per bedroom and at least one seven-foot sofa, space for side tables, entertainment center, and ample leg room. There should be enough wall space to accommodate a television or entertainment unit in a location which is easily visible from most seating. Mechanical features, such as fuse boxes, should not be a visible or central feature in the living area.

the eating dining area may be in a separate room, part of a combined living/dining area, or in the kitchen provided a 3' wide buffer between all kitchen cabinets, appliances and work spaces is not included in the minimum room calculation and a table and chairs (2 chairs for an efficiency/studio/one bedroom 301 – 475 sq. ft. and a one bedroom and 4 chairs for 2 bedrooms or larger) may be shown to fit into the space without blocking circulation or doorways. A countertop eating area a minimum of 12" deep and 36" in length may be an acceptable alternative for micro and efficiency/studio/one bedroom 301 – 475 sq. ft. units only.

Micro –units and Efficiency/Studios/One Bedroom 301-475 sq. ft. - All units must include appropriate room shapes (generally, rectilinear) that allow for functional furniture placement including a sleeping area that will accommodate a twin bed, a living area that can accommodate a 6' sofa, and a cooking eating area (table or island) that will accommodate two persons/chairs or stools. Furniture layouts should be used to set critical room dimensions that include room for circulation.

6. Windows / Noise Mitigation

All windows in conditions where pedestrians or passersby can see directly into the window must provide window shades or coverings that open from the top down to allow partial closing that provides privacy but also allows for the maximum amount of natural light to enter the unit.

For developments that propose affordable units facing on and within 100 yards of either road-ways with allowable speeds in excess of 35 miles per hour or train tracks must have windows facing these conditions that meet a 32 Sound Transmission Class (STC) rating standard for noise mitigation or greater. The city manager may also require that the affordable units have central air or unit air conditioners such that the windows can be kept closed at all times to mitigate noise.

7. Laundry

Affordable units provided through inclusionary housing shall have provisions for laundry within the unit that are equivalent to what is provided in the market units (shared common laundry, washer/dryer hook-ups or new washer/dryers). Affordable units provided through funding and annexations shall provide washer/dryers within the unit unless otherwise noted in the annexation or funding agreement. Micro –units and efficiency/studios only may provide a shared common laundry on-site. If washer is on an upper level, precautions should be included to prevent damages from potential water leaks.

Washing Machines must have a 1-year minimum warranty for the entire appliance. Dryers must have a 1-year minimum warranty for the entire appliance

8. Air Conditioning/Air Cooling

Air conditioning or other cooling method such as ceiling or door fans, attic fans, or evaporative cooler must be provided as new appliances in rooms without cross ventilation (windows on opposite walls). For affordable units provided through inclusionary housing, if air conditioning is provided in market rate units, then it must be provided in permanently affordable units

Air conditioners must have a minimum 5-year minimum warranty on the compressor condenser and evaporator coils.

Cooling mechanical units may not be located on any patio or deck used to meet open space requirements or interior to the unit in a way that reduces usable floor area.

See section #6 above for air conditioning requirements for noise mitigation.

9. Heating and Hot Water

Furnaces or boilers provided must have a 5-year minimum warranty.

Hot water heaters must be appropriately sized to adequately serve the number of anticipated occupants based on 1.5 persons per bedroom and must have a 5-year minimum warranty.

Heating mechanical units may not be located on any patio or deck used to meet open space requirements or interior to the unit in a way that reduces usable floor area.

10. Finish and Fixture Specifications

All finish and fixture specifications must be approved by the city. See Attachment B, Livability Standards for Permanently Affordable Housing Checklist Part 2, for the list of specifications required.

ATTACHMENT A

**City of Boulder
LIVABILITY STANDARDS FOR
PERMANANTLY AFFORDABLE HOUSING
CHECKLIST PART 1**

The Livability Standard checklist is composed of two parts with part 1 generally submitted during Site Review or when the floor plans are reviewed. *Please refer to the Livability Standards for additional information on rationale and requirements.*

Development Address: _____

Unit Type or Unit Number: _____

Name of Owner or Contact: _____

Owner or Contact Phone: _____

Date Submitted: _____

UNIT FLOOR AREA – CABINETS – STORAGE – CLOSETS – ROOM SIZES		
INITIAL to verify the floor area of each unit meets the minimum required _____		
	INDICATE DIMENSION BEING PROVIDED	
	1 or more Bedrooms	Efficiency/Studio and Micro-units
Number of Bedrooms		
Linear sq. ft. of built-in floor - ceiling shelving	N/A	
Linear sq. ft. of Kitchen Cabinets	Uppers – Lowers -	N/A
Linen Closet		N/A
Entryway Closet		
Additional Storage Closet		
0 Bedroom Closet		
1 Bedroom Closet		N/A
2 Bedroom Closet		N/A
3 Bedroom Closet		N/A
4 Bedroom Closet		N/A
Living room		N/A
Eating /dining area		N/A

All affordable units will be held to the quality standard of the market units that generated the affordable requirement or any standards included in any annexation or funding agreement. Affordable units provided off-site to meet an inclusionary requirement must meet the requirements of B.R.C. 9-13-

8 (b)(1) Quality of Off-Site Affordable Units: *The restricted off-site affordable units and developments must be of equivalent or better quality, as determined by the city manager, to the affordable units that would have been constructed on-site if this alternative had not been utilized. Such units and developments are subject to city review of site, architectural, floor and similar plans as determined by the manager to ensure equivalent quality. All such units or developments must be accepted by the City Manager.*

Applicant Attests:

I understand that any deficiencies from the above standards could result in the City Manager not accepting the unit as affordable. Other remedies for deficiencies may include a reduction of the maximum allowable sales price or rent allowed for an affordable unit or a monetary assessment per square foot to be paid prior to receiving a certificate of occupancy for this building.

I certify that all the information contained in this application is true and complete. I agree to report any changes to this information, and understand that changes must be approved by the City of Boulder.

Owner or Owners Representative Signature

Date

ATTACHMENT B

City of Boulder
**LIVABILITY STANDARDS FOR
 PERMANENTLY AFFORDABLE HOUSING
 CHECKLIST PART 2**

The Livability Standard checklist is composed of two parts with Part 2 generally submitted prior to residential building permit submittal.. *Please refer to the Livability Standards for additional information on rationale and requirements.*

Development Address: _____

Unit number: _____

Name of Owner or Contact: _____

Owner or Contact Phone: _____

Date Submitted: _____

Please fill in all empty blocks or indicate N/A as appropriate:

FINISHES – APPLIANCES – HEATING - AIR				
ATTACH MANUFACTURERS SPECIFICATIONS	Manufacturer/brand Or Make/Model	Warranty Period Required 1 BR & >	Warranty Period Required Efficiency/Studio & Micro-units	INITIAL to indicate warranty period and /or requirement met
Countertops		N/A	N/A	
Range or Stove		1 year	N/A	
Oven		1 year	N/A	
Refrigerator		1 year	1 year	
Dishwasher		1 year	N/A	
Garbage Disposal		1 year	N/A	
Flooring – Carpet		10 year	10 year	
Flooring – Other		10 year	10 year	
Air conditioning		5 year	5 year	
Furnace/boiler		5 year	5 year	
Overhead Fan		N/A	N/A	
Plumbing Fixtures		N/A	N/A	
Bathroom Fan		N/A	N/A	
Washing Machine		N/A	N/A	
Dryer		N/A	N/A	
Units directly adjacent to high volume roadways, train tracks or other potential high noise conditions:				
Windows		STC rating 32 or >		
Shades		Open from top down		
Central Air or Air Conditioning		Required		

All affordable units will be held to the quality standard of the market units that generated the affordable requirement or any standards included in any annexation or funding agreement. Affordable units provided off-site to meet an inclusionary requirement must be of equivalent or better quality, as determined by the city manager, to the affordable units that would have been constructed on-site if this alternative had not been utilized. Such units and developments are subject to city review of site, architectural, floor and similar plans as determined by the manager to ensure equivalent quality. All such units or developments must be accepted by the City Manager.

Applicant Attests:

I understand that any deficiencies from the above standards could result in the City Manager not accepting the unit as affordable. Other remedies for deficiencies may include a reduction of the maximum allowable sales price or rent allowed for an affordable unit or a monetary assessment per square foot to be paid prior to receiving a certificate of occupancy for this building.

I certify that all the information contained in this application is true and complete. I agree to report any changes to this information, and understand that changes must be approved by the City of Boulder.

Owner or Owners Representative Signature

Date

EXHIBIT K

SAMPLE ACCESS LICENSE FORM

CITY OF BOULDER

REVOCABLE LICENSE

THIS License is granted into this ____ day of _____, 20____, by and between the CITY OF BOULDER, a municipal corporation of the State of Colorado, a municipal corporation of the State of Colorado and a home rule city (“City”), located at 1777 Broadway Street, Boulder, Colorado 80306, and _____ (“Licensee”) located at _____.

RECITALS

A. The City is the owner of public property (“Property”) located at [2360 30th street, Boulder, Colorado, or otherwise known as the future 30th and Pearl Development (pending)] in Boulder, Colorado, as more particularly, described on Exhibit A attached hereto and incorporated herein (“Licensed Premises”).

B. Licensee is in the process of initiating construction for the proposed 30th and Pearl development, which includes market-rate and permanently affordable housing units, a parking structure, affordable commercial retail space with associated public infrastructure improvements (roads, utilities) and plaza space, (the “Project”).

C. Licensee desires to perform [*INSERT PURPOSE; EXAMPLE IS: geotechnical work such as drilling wells to determine the condition of the subsurface in preparation for the Project*]. This is the primary use of the Licensed Premises.

F. The City finds that there is a public benefit in allowing Licensee this License.

G. The City finds that there is a public benefit to waive any charge for the use of the Licensed premises because the [*geotechnical work*] will benefit the Licensed Premises and support the future community benefit of the Project.

NOW THEREFORE, for and in consideration of the foregoing recitals and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged. City and Licensee agree as follows:

1. License.

(a) City hereby grants a License to the Licensee and the Permitted Users (as defined in Subsection 1 (b) below), to allow use of the Licensed Premises.

(b) The Licensed Premises shall be used solely for the purposes of geotechnical investigative work by Licensee, its members, managers, directors, officers, employees, agents, contractors, subcontractors, guests or invitees (each, a “Permitted User” and, collectively, the

“Permitted Users”). Licensee is expressly prohibited from using the Licensed Premises for storage of any material that could be a soil contaminant such as fuel, lubricants, or stockpiling of excavated soil.

(c) Licensee shall provide for city-approval a detailed description of the work to be performed on the Licensed Premises and shall provide updates as the necessary to keep the City informed about the on-going nature of the *[geotechnical work]*.

(d) Licensee shall not assign this License or any of Licensee’s rights or obligations hereunder without the City’s prior written consent.

(e) This License is non-exclusive and the City may grant permission, lease, permit, or license other individuals or entities to use area within, above, or below the area licensed to Licensee.

2. Fee. *[The City is/is not waiving a fee at this time for use of the Licensed Premises]*. In exchange for use of the Licensed Premises, Grantee, upon request, will provide to the City the results of all testing and observations made concerning the Licensed Premises to the City.

3. Term. The term of this License shall commence on the Date of Issuance and shall continue until _____, 20__ or following 3 days’ notice from the City, whichever occurs earlier.

4. Revocation. This License may be revoked by the City at any time in its entirety or any portion thereof without any cost or liability to the City.

The decision to revoke may be made whenever the City, in its sole discretion, determines that the use, encroachment, obstruction, or other structure constitutes a nuisance, destroys or impairs the use of the Leased Premises by the public, constitutes a traffic hazard, or the property is required for use by the public, or for any reason deemed sufficient by the City. All indemnities and releases shall survive revocation.

Licensee shall remove at its expense, all materials, encroachments, obstructions, or structures within ten (10) days of revocation, and comply with the additional requirements of Section 9 of this License. In the event that Licensee does not remove the encroachment, obstruction, or structure within ten (10) days, the City is hereby authorized to remove same and Licensee agrees to reimburse the City for the costs of removal.

5. Insurance.

(a) Licensee shall be liable for and agrees to, at Licensee’s sole expense, to maintain, or cause to be maintained with insurers approved by City:

(1) Contractor’s Pollution Liability policy with limits of \$1,000,000 per occurrence and \$2,000,000 aggregate,

(2) General Liability insurance policy with minimum limits of \$1,000,000 per occurrence and \$2,000,000 aggregate, and

(3) Automobile Liability with Bodily Injury & Property Damage Combined Single Limit of \$1,000,000; provided that if a drilling rig attached to a truck or trailer is used, then the limit will be \$2,000,000.

(b) These policies shall name the City of Boulder as Certificate Holder and Additional Insured with a CG2010 and CG2037 endorsement (or equivalency), and include the limits of each policy, the policy number, the name of the insured, the effective date and expiration date of each policy, and a copy of an endorsement on each policy requiring ten (10) days' notice, by mail, to the City of Boulder before the insurer may cancel the policy for any reason. These policies should include a waiver of subrogation and be issued from a company licensed to do business in Colorado having an AM Best rating of at least A-VI. The above stated policy limits shall be raised by City to meet any additional coverage required by amendments to the Colorado Governmental Immunity Act. City shall be named insured on each policy. Licensee shall Provide City with a Certificate of Insurance as evidence of compliance with the provisions of this paragraph. Licensee further shall provide City with a Certificate of Insurance if the policy is renewed or changed during the term of the License.

These policies shall stand as the primary liability policy with respect to any interest the City may have in this property. These policies shall remain in effect for the duration of the License. Licensee shall notify the City thirty (30) days prior to the cancellation of insurance coverage.

All insurance policies and certificates shall be submitted prior to the execution of the License and shall be subject to approval by the City.

6. Waiver of Subrogation. Licensee waives (to the extent of insurance proceeds collected) any and all rights of recovery, claim, action or cause of action against the other, its agents, officers, or employees for any damage that may occur to the Licensed Premises, including but not limited to the Licensed Premises, and/or any personal property of such party therein by reason of any cause which is insured against under the terms of any insurance policies referred to herein or self-insured, regardless of cause or origin, including negligence. Licensee agrees that no insurer shall hold any rights of subrogation against City, and that Licensee's insurance policies shall be endorsed or otherwise written to provide that no insurer shall hold any rights of subrogation against such other party. This Section 6 shall survive the expiration or earlier revocation of this License.

7. General Maintenance and Repair. Licensee agrees to access and maintain the Licensed Premises with due caution and regard for the City's use and access. The City shall not be responsible for any maintenance in the Licensed Premises. The City reserves the right to access the Licensed Premises. In an emergency, the City may remove any encroachment, obstruction, or structure immediately without notice to Licensee. It is expressly understood that damage to Licensee's property due to force majeure or sabotage are beyond the control of the City and do not constitute breach of this License. Loss or damage to property of any kind in the Licensed Premises or loss suffered by the business or occupation by Licensee as a result of the foregoing events shall be at Licensee's risk. Licensee agrees, at its sole cost, to repair and maintain the Licensed Premises in safe working order and good condition.

8. Indemnification.

(a) Licensee hereby agrees to defend, indemnify, reimburse and hold harmless City, its appointed and elected officials, agents and employees for, from and against all liabilities, claims, judgments, suits or demands for damages to persons or property arising out of, resulting from, or relating to the License (“Claims”), unless such Claims have been specifically determined by the trier of fact to be the sole negligence or willful misconduct of the City. This indemnity shall be interpreted in the broadest possible manner to indemnify City for any acts or omissions of Licensee either passive or active, irrespective of fault, including City’s concurrent negligence whether active or passive, except for the sole negligence or willful misconduct of City.

(b) Licensee’s duty to defend and indemnify City shall arise at the time written notice of the Claim is first provided to City regardless of whether Claimant has filed suit on the Claim. Licensee’s duty to defend and indemnify City shall arise even if City is the only party sued by claimant and/or claimant alleges that City’s negligence or willful misconduct was the sole cause of claimant’s damages.

(c) Licensee will defend any and all Claims which may be brought or threatened against City and will pay on behalf of City any expenses incurred by reason of such Claims including, but not limited to, court costs and attorney fees incurred in defending and investigating such Claims or seeking to enforce this indemnity obligation. Such payments on behalf of City shall be in addition to any other legal remedies available to City and shall not be considered City’s exclusive remedy.

(d) Insurance coverage requirements specified in this Revocable License shall in no way lessen or limit the liability of the Licensee under the terms of this indemnification obligation. The Licensee shall obtain, at its own expense, any additional insurance that it deems necessary for the City’s protection.

(e) This defense and indemnification obligation shall survive the expiration or revocation of this License.

9. Removal and Restoration. Licensee agrees to restore the Licensed Premises to its original condition, unless otherwise agreed by the City. If the City determines that all or portions of the Licensed Premises have been damaged beyond reasonable repair, Licensee agrees to repair the damage in accordance with standards for construction in the public right of way prescribed by the Public Works Department’s most current “Design and Construction Standards,” and to the satisfaction of City. Licensee agrees to notify the City within five working days of removal of any private improvements or encroachments so the City may inspect the area. This Section shall survive the expiration or earlier revocation of this License.

10. Default by Licensee. If Licensee shall fail to Perform any of the agreements, terms, covenants or conditions hereof on Licensee’s part to be performed, and such non-performance shall continue for a period of seven (7) days after written notice thereof by City to Licensee, such event shall be deemed an “event of default.” This section is in addition to the City’s right to revoke the License under Section 4.

11. Remedies of City. If any one or more events of default shall happen, then City shall have the right, at City's election, to revoke this License by written notice to Licensee, and to pursue any other remedy provided in law or in equity for damages incurred by City.

12. Waiver of Consequential Damages. Each party waives the right to special, indirect, consequential and punitive damages, including lost profits. This Section 12 shall survive the expiration or earlier revocation of this License.

13. Notices. Any notices required by any provision of this License shall be made in writing and delivered by (a) United States registered or certified mail, postage prepaid; (b) reputable overnight courier, or (c) facsimile transmission. Such notice shall be effective three (3) days after the mailing thereof by registered or certified mail, one (1) business day after the mailing thereof by overnight courier, and on the day of confirmed delivery by facsimile transmission. Each party shall give notice to the other party in the event of any change of address. Rejection or refusal to accept delivery or the inability to deliver because of a change of address of which no notice was given shall be deemed to be receipt of notices as of the date such notice was deposited in the mail or delivered to the courier or transmitted via confirmed facsimile. Notices shall be addressed to the addresses set forth on the respective signature page hereto.

14. No Third Party Beneficiaries. Enforcement of the terms of this License, and all rights of action relating to enforcement are strictly reserved to the parties. Nothing contained in this License gives or allows any claim or right of action to any third person or entity. Any person or entity other than the City or the Licensee receiving services or benefits pursuant to this License is an incidental beneficiary only.

15. Attorneys' Fees. In the event of any dispute between the parties concerning this License, each parties will be responsible for its own costs and fees.

16. Headings. The headings and captions in this License are inserted only as a matter of convenience and in no way define, limit, construe, or describe the scope or intent of this License.

17. Counterparts. This License may be executed in multiple counterparts each of which shall be deemed an original and together will constitute one and the same instrument.

18. Facsimile Signatures. This License may be executed by facsimile signatures which shall be binding as originals on the parties hereto.

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

20. Police Power. Nothing contained in this license shall be construed as a waiver of any City regulations or the City's police power.

21. Modifications. Licensee must secure written approval from the City prior to making any changes to the size, type, or location of any encroachment, obstruction, or structure. Changes to the size, type, or location of any encroachment, obstruction, or structure may be approved by the City (with respect to required permits) with the permission of any required City department or board by written amendment to this License Agreement. This includes the addition

CITY OF BOULDER

City Manager

ATTEST:

City Clerk on behalf of the
Director of Finance and Record

APPROVED AS TO FORM:

City Attorney's Office

Date: _____

CITY'S NOTICE OF ADDRESSES:

Notice to the City:

City of Boulder
Attn: City Manager and Housing Department
1777 Broadway
P.O. Box 791
Boulder Colorado 80306

EXHIBIT A

THE PROPERTY DESCRIPTION

EXHIBIT L

HOUSING INSPECTION REQUIREMENTS

(1) Master Developer shall provide City building inspectors, or any inspector representing the City, reasonable access to inspect the site and both the interior and exterior of the units during construction prior to the issuance of a final Certificate of Occupancy.

(2) Master Developer shall permit the Inspector access to the technical building plans and all construction documents (other than the construction contract) for ensuring compliance with this Agreement during normal business hours, with reasonable notice.

(3) Observations, inspections and tests by the Inspector are for the express purpose of verifying compliance with this Agreement for the sole benefit of the City. Such activities shall not relieve Master Developer from its obligations to perform the work strictly in accordance with all plans approved by the City. Written inspection reports shall be delivered by the Inspector to the City and Master Developer within three (3) Business Days following the inspection.

(4) All actual costs for the time of the Inspector and any actual costs related to the City's inspections incurred shall be borne by Master Developer, or its Development Partner. Master Developer or the applicable Development Partner will pay the amounts estimated below at the time of building permit issuance for the Development. All bills will be available to Master Developer with five (5) Business Days' notice to the City, and will be provided along with an accounting record within 30 days of the issuance of the final Certificate of Occupancy. Four site visits will occur during development of the Affordable Units. These site visits will align standard construction milestones including following framing, prior to drywall installation, following installation of interior finishes (interior wall, ceiling, floor finishes; installation of appliances, carpentry, plumbing, and related items), and at final inspection. Additional inspections may be required if the City has a good faith belief that there is a violation of this Agreement.

(A) \$20 per unit for 4 site visits during development (\$20/unit x 208 units x 4 site visits = \$16,640) plus a document review fee of \$400 for a total estimate of \$17,040.

(B) Final costs will be determined and promptly provided to Master Developer or the applicable Developer Partner once the Inspector is hired and are dependent on the Inspector's rates, expenses and number of inspections. Final costs will be determined and promptly provided to the Master Developer once the Inspector is hired and are dependent on the Inspector's rates and expenses, number of inspections.

(C) The City shall issue a final accounting of the Inspector's costs within 30 days of receipt of a final report and bill from the housing inspector after issuance of the final Certificate of Occupancy for the applicable Project Improvements. If an amount more than the amount of inspection services consumed was paid, the City shall refund the excess amount within 30 days from the issuance of the final accounting. If an amount less than the amount of inspection services consumed was paid, Master Developer shall pay the additional amount due within 30 days from the issuance of the final accounting.

(5) The Inspector shall not be an employee of the City unless mutually agreed to by the Parties.

(6) Any deficiencies identified by the Inspector shall be supported by a specific reference to the code, agreement, guideline or standard in question and will be provided to Master Developer and the City in writing. If Master Developer fails to resolve the deficiency timely or if there is disagreement between the Parties regarding the existence or manner of addressing such deficiencies that cannot be resolved between all Parties within thirty (30) days of the notice from the Inspector, the parties shall participate in good faith in at least one session of mediation with an impartial, professional third-party mediator mutually acceptable to the parties. If the parties are unable to agree upon a mediator, the City and Master Developer collectively shall designate one mediator, and those mediators shall then select a mediator to mediate the dispute. The fees of the mediator shall be split evenly by the Parties to the mediation.

HOUSING UNITS / PARKING DESCRIPTION

Housing Unit Configuration

NOTE THAT THE FOLLOWING CONFIGURATION SUMMARIES ARE SUBJECT IN ALL RESPECTS TO CHANGES THAT MAY BE REQUIRED IN CONNECTION WITH THE ENTITLEMENTS PROCESS. In addition, Master Developer agrees to include two additional deed restricted permanently for-sale affordable units (one each 1 BR & 2 BR) affordable to 100% AMI middle income households in the Project on the following conditions: (i) if the Master Developer or the applicable Development Partner is successful in securing a State Tax Credit allocation for the Affordable Housing Units, (ii) if, during the Entitlements Process, the Master Developer is able to design and entitle four additional Condominiums or Townhomes, or; (iii) if Master Developer's investors approve the reconfiguration to include two additional middle income units.

	Affordability	# Efficiency units	# of 1 bedroom units .	# of 2 bedroom units	# of 3 bedroom units .	# of townhome units	Total	% of Total
PERMANENTLY AFFORDABLE RENTAL	30% AMI	2	1	1	1	0	5	2%
	40% AMI	3	1	1	1	0	6	2%
	50% AMI	9	5	2	2	0	18	5%
	60% AMI	45	48	37	7	0	137*	41%
	60% AMI	0	0	0	0	1	1**	0.3
	Total		59	55	41	11	1	167
PERMANENTLY AFFORDABLE OWNERSHIP	70% AMI	0	0	0	0	0	0	0%
	80% AMI	0	0	4	0	0	4	1%
	100% AMI	0	0	3	0	0	3	1%
	120% AMI	0	0	4	0	1	5	2%
	Total		0	0	11	0	1	12
NOTE THAT ALL AFFORDABLE UNITS ARE DEED RESTRICTED							*Includes 48 co-housing units.	** This one Townhome unit is a 12 bedroom co-op unit.
MARKET RATE	Market Rental	0	0	0	0	0	0	0%
	Market Ownership	0	81	58	0	14	153	46%
	Total Market		0	81	58	0	14	153
	Total of all units:	59	136	110	11	16	332	100%

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- **Average Unit Sizes (in Square Feet)**

Average Unit Sizes (SF)	Efficiency units	1 bedroom units	2 bedroom units	3 bedroom units
Rental Units	362	640	844	1,161
Condominiums		774	968	
Townhomes				1,350
Co-Op townhome				2,700

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- **Parking Minimums**

Phase/Quadrant – Type of Parking	Number of Spaces
Below Grade at Quadrants 1 and 2	230
Below Grade at Quadrants 3 and 5	160
Public, on-street parking	25
Total	415