

DRAFT (01/04/13)

**PARTNERSHIP AGREEMENT BETWEEN THE
CITY OF ALEXANDRIA, VIRGINIA, AND AHC, INC.**

THIS PARTNERSHIP AGREEMENT (“Agreement”) entered into the day of _____ 2013, by and between the CITY OF ALEXANDRIA, a municipal corporation of Virginia (“City”) and AHC, INC., a Virginia nonprofit corporation (“AHC”).

WITNESSETH:

WHEREAS, AHC is a nonprofit Virginia corporation; its purpose is to produce, preserve, manage, advocate for and finance affordable rental and owner occupied housing. AHC currently owns and manages affordable housing projects within the Washington-Baltimore region and has more than 35 years of development experience;

WHEREAS, AHC desires to develop a new rental apartment building for persons of low- or moderate-income in the City of Alexandria, Virginia (“the Project”);

WHEREAS, the Project would be developed on the following parcels of real property: 114, 116, 116 1/2, 118, 118 1/2, and 120 East Reed Avenue and 3600 Jefferson Davis Highway (a total of seven parcels);

WHEREAS, the City owns the parcel of real property located at 3600 Jefferson Davis Highway (“the City Property”);

WHEREAS, AHC currently holds options to purchase five of six other parcels and has already acquired one parcel;

WHEREAS, to complete AHC’s assemblage and facilitate its proposed affordable housing development, the City desires to enable the Project by appropriating City Property and providing a loan of no more than \$2,500,000 from Housing Funds (the “Loan”) to AHC and the owner of the Project real property;

WHEREAS, AHC plans to submit an application to the Virginia Housing Development Authority (“VHDA”) for Low Income Housing Tax Credits (“LIHTC”) to substantially fund the development of the Project in spring 2013;

WHEREAS, the approval of the Alexandria City Council (“City Council”) must be sought and obtained for multiple, sequential elements related to the Project prior to AHC’s submission of a 2013 LIHTC application;

WHEREAS, separate from but subject to City Council’s ultimate authority to consider and implement changes to the existing zoning and land uses required to enable the Project, the City and AHC desire to work together to develop the Project;

NOW, THEREFORE, the City and AHC hereby set forth and agree to the following.

1. Whereas, the City Manager presented to the City Council, on September 27, 2012, AHC's request for predevelopment support (docket memo dated September 19, 2012 attached hereto and incorporated herein by reference). The City Manager also presented the partnership concept, an outline of this Agreement, and other financial support and policy issues for consideration related to the Project. With City Council approval obtained, the City plans to proceed with the actions set forth below.
2. Pursuant to its Code, the City has begun a Section 9.06 process so that the Planning Commission and City Council may consider and approve, if appropriate, the proposed change in public use of its parcel located at 3600 Jefferson Davis Highway. Along with the aforementioned actions, in January 2013, the parties are seeking City Council approval of the appropriation of the City's Property and the Loan, subject to the terms of this Agreement.
3. Upon City Council's approval of the items set forth in Paragraph 2 above, the City will create a limited liability company ("East Reed LLC") to which it will transfer the City Property. In anticipation of possible future traffic improvements and prior to the transfer the City will reserve for itself an easement in the City Property of sufficient land, as documented in the civil engineer site plan prepared by AHC and approved by the City as part of the Site Plan approval (Exhibit A), to construct a right hand turn lane from southbound Jefferson Davis Highway onto westbound East Reed Avenue.
4. The East Reed LLC will create a limited partnership ("Limited Partnership") with AHC which will own the Project and the real property required for the Project under provisions and standards of the low-income tax credit program and subject to reasonable requirements of the Project's eventual tax credit investor. The terms of the Limited Partnership will include that:
 - a. The Limited Partnership will apply to assemble, rezone, finance, construct, own, hold, operate, maintain, and manage the Project.
 - b. The objectives of the Limited Partnership will be:
 - i. Delivery and operation of the Project, specifically a long-term, quality, affordable rental housing project;
 - ii. Maintaining the Limited Partnership's viability through payment of operating expenses and debt service out of the Project's cash flow;
 - iii. Operating the Project in compliance with applicable financing programs, which may include the Low Income Housing Tax Credit program; and
 - iv. Operating the Project consistent with federal, state and local laws and regulations.
 - c. AHC and the East Reed LLC will mutually agree on the name of the Limited Partnership.
 - d. The East Reed LLC will have a minority interest in and serve as a special limited partner in the Limited Partnership. The City will transfer the land to the Limited Partnership at a time and manner to minimize any potential tax consequences to its nonprofit managing partner and the future investor limited partner. The East Reed LLC's contribution to the Limited Partnership will be the City Property and any financial support, all as approved and/or appropriated by City Council during the Project's life. Based on projections and plans it is

not anticipated that the City would need to contribute any further financial support to the Project besides the \$2,500,000 contemplated under this Agreement.

- e. Neither the East Reed LLC nor the City shall be responsible for the condition of the City Property, including, but not limited to, testing and mitigation of environmental issues at, on, or around the Property, whether known or unknown, at the time of transfer to the East Reed LLC. AHC shall protect, indemnify, and hold harmless the City and the East Reed LLC arising from any third party claims arising from the conditions at, on, or around the Property, except with respect to claims against the City related to its property which arose prior to AHC's acquisition of the City's Property.
- f. Neither the East Reed LLC nor the City shall be responsible for any taxes owed on the City Property. Neither the East Reed LLC nor the City shall be responsible for any required accountings, audits, reports, feasibility studies, monitoring or compliance that may be required at any time by a senior lender, VHDA, the Project's eventual tax credit investor or by any other third party entity associated with the Project. AHC or the Limited Partnership shall be responsible for these aforementioned reports and actions. However, the East Reed LLC and/or the City will reasonably cooperate with AHC in furnishing any information it may already have or produce at the request of such third parties to facilitate such processes.
- g. If the Limited Partnership will not be the owner of the real property of the Project during the low-income housing tax credit period, then the City Property may only be transferred out of the Limited Partnership (or from the East Reed LLC) to AHC or to the tax credit ownership entity pursuant to AHC's closing on the low-income housing tax credits and subject to the City's review and written approval of such requests.
- h. The Limited Partnership will dissolve if AHC is not awarded low-income housing tax credits upon its application to VHDA in spring 2013 and the City Property will revert to the East Reed LLC.
- i. After the initial fifteen year tax credit period, the City's interest must be bought out of the partnership at the below listed value of the City Property. The value of the City's partnership share is \$720,000 which reflects the current fair market value of the appropriated parcel if developed as part of an assemblage for multifamily housing. Pursuant to its partnership with AHC the City is allowing the Limited Partnership to earn all future appreciation which accrues to its parcel and/or through the proposed redevelopment in order to facilitate an affordable housing project.
- j. The value of the City's partnership share may also be reduced up to \$720,000 to reimburse AHC for one half of the costs it incurs to investigate, test, remediate, and/or monitor environmental conditions on the City Property. Prior to undertaking any soil disturbing activities on the City Property, AHC shall provide to the City for review and approval, all documents related to any proposed investigation, testing, remediation, and/or monitoring of environmental conditions. AHC shall also provide to the City for its review and approval, prior to the start of construction, its plans and methods for staging and conducting site work, including the building foundation and underground garage, as well as related disposal and/or treatment of disturbed soils, if any costs associated with this phase of the Project are proposed to be deducted from the value of the City's partnership share. Thereafter, AHC shall document and present evidence to the City of such costs at the time they are incurred.
- k. As the Project guarantor for purposes of construction completion, development, and operating deficits and the like, an affiliate of AHC will be the managing member of the

Partnership.

5. With City Council's approval of a commitment of predevelopment funding of \$250,000, AHC has continued to develop the Project, seek land use approvals and to secure tax credit funding and other financing. The City's investment of housing monies for predevelopment is memorialized as a loan to AHC, dated _____, 2013. In the event that the required land use approvals are not obtained and AHC is not able to proceed with a 2013 tax credit application or AHC does not obtain low income housing tax credits in 2013, the City will reimburse AHC for up to \$250,000 in predevelopment costs, and this support will be considered a grant, with no obligation for AHDC to repay the funds.
6. Pursuant to its partnership with AHC, the City will cooperate in supporting AHC's efforts to secure up to eight (8) project-based vouchers ("Vouchers") from the Alexandria Redevelopment and Housing Authority (ARHA) to make the development's planned HUD Section 504/accessible units more affordable to residents with disabilities. It is understood by the parties that the decision to provide such Vouchers is exclusively within ARHA's control, and subject to funding that ARHA has available.
7. On or about June 6, 2013, subject to the Project's award of tax credits by VHDA and AHC's reservation of its allocation of credits and the City's review of all related documentation regarding the award and reservation, the City will provide a loan to AHC and the Project real property owner totaling up to \$2,500,000 for the development of the Project, specifically to allow AHC to close on all of the parcels related to the real property assemblage necessary to develop the Project. The City's total, consolidated loan amount of \$2,500,000, including predevelopment support of up to \$250,000, will be secured against real property of the Project, subordinate only to the interests of the senior lender and the tax credit investor for the Project. The City's loan will be a residual receipts loan. The City understands and agrees to subordinate its Loan as the Borrower obtains construction and permanent financing.
8. It is anticipated that the Project will be financed through a combination of the following sources: first mortgage financing, sale of Limited Partnership interest qualifying for low-income tax credits, the City of Alexandria loan, and AHC's deferred development fee.
9. AHC plans to take the following actions with regard to the Project:
 - a. Assemble the real property necessary (114, 116, 116 1/2, 118, 118 1/2, and 120 East Reed Avenue and 3600 Jefferson Davis Highway) to build the Project, totaling approximately 30,000 square feet;
 - b. Develop the Project;
 - c. Hire an architect to design and a contractor to build the Project;
 - d. Provide any construction completion, development, operating deficit, or tax credit recapture and/or other guaranties, required by the tax credit investor limited partner and senior lender;
 - e. Obtain other financing necessary to acquire and build the Project, including applying for to VHDA for 9% low-income housing tax credits in spring 2013;
 - f. Operate the project in a professional manner;

- g. Coordinate with resident service partners and providers to provide structured, educational programming to the Project;
 - h. Provide construction management services to ensure on-time, on-budget construction completion;
 - i. Attend community meetings to provide information to neighborhood and civic groups interested in the Project;
 - j. Maintain insurance for all aspects of the Project, listing the City as an additional insured
 - k. Protect, indemnify, and hold harmless the City and the East Reed LLC; and
 - l. Take other actions necessary to develop and operate the Project.
10. The following usual and customary fees will be associated with the Project:
- a. Development Fee – AHC will earn a fee for putting the Project together and guaranteeing various obligations, including construction completion, tax credit delivery, and operating deficits. This fee will be subject to the City’s review and approval.
 - b. Property Management Fee – AHC’s affiliate, AHC Management LLC, or a third party entity, will provide property management services for a reasonable fee, according to a separate Property Management agreement between the Limited Partnership and AHC Management LLC, or a third party entity, subject to the City’s review and approval.
 - c. Resident Services Fee – As compensation for the coordination and implementation of a resident services program, AHC will receive a reasonable fee, subject to the City’s review and approval, when such services program agreement is developed and presented.
 - d. Asset Management Fee – AHC shall receive an asset management fee of up to \$10,000 per year escalated annually by the CPI, according to a separate Asset Management agreement between the Limited Partnership and AHC, subject to the City’s review and approval.
 - e. Partnership/syndicator Management Fee – A management fee of up to \$10,000 per year may be paid to the limited partner, according to the limited partnership agreement, subject to the City’s review and approval.
11. AHC will provide the proposed operating budget, including proposed rental rates, to the City by November 1 of each year for the City’s review and approval. The City can make comments to the budget and rental rates within 30 days. If AHC and the City do not agree on the budget, the Parties will work together to resolve the issue in a timely fashion; pending such resolution, the management company will be authorized to operate the property pursuant to rents and expenses detailed in the previous year’s approved budget, plus an escalation rate not to exceed the City’s annual voluntary rent guidelines.
12. After completion of the Project, AHC will provide the City with updates regarding its progress in stabilizing occupancy and operations, and will notify the City when the Project is 100% leased. After the building is fully leased, AHC will provide monthly reports to the City on resident car ownership and progress in leasing parking spaces to residents. If residents with cars are not fully utilizing the garage parking, the City and AHC shall develop an amended parking utilization plan. AHC and the City agree to work together, with the Lynhaven Civic Association and Project residents, to implement a program of incentives to encourage use of the Project’s garage. This program will be monitored and adjusted until full parking utilization is achieved. Once full parking utilization is maintained for a six month period, as documented by AHC’s monthly reports to the

City, AHC's reporting obligation shall be reduced to an annual basis.

13. The official address for the Limited Partnership (or Project real property owner) will be AHC's office at 2230 N. Fairfax Drive, Arlington, Virginia 22201. The City shall have the right to review the books and records of AHC, the Limited Partnership (or Project real property owner entity) and entities affiliated with the Project at the principal place of business of the Limited Partnership (or Project real property owner) during business hours, upon reasonable prior written notice to the other party. In addition, the City shall have the right to obtain, at its expense, a private audit of the books and records of the Limited Partnership (or Project real property owner), provided such audit is made at reasonable times after reasonable notice.
14. At the end of the tax credit period, if AHC does not or cannot exercise its option to purchase or its right of first refusal, the City or its designee will be provided a right of first refusal to acquire the Project and/or Project real property, even if the Limited Partnership (or Project real property owner entity) has dissolved. Further, any right that AHC has to assign its right of first refusal will be limited to entities that will maintain the Project and/or Project real property as low- and moderate-income and workforce housing. This right will be provided in documents executed by the pertinent parties.
15. At all times that AHC or a related entity own the Project and/or Project real property, the City will retain a right of first refusal to acquire the Project and/or Project real property. In the event that AHC wishes to sell the Project and/or Project real property, the City must approve of any transfer or sale of the Project and/or Project real property to any entity. Such approval shall not be unreasonably withheld, delayed, or conditioned subject to its continued operation as low- and moderate-income and workforce housing.
16. The owner of the real property of the Project will execute and record a Declaration of Restrictive Covenants and Deed of Easement.
17. This Agreement may only be amended in writing, signed by both parties.

[SIGNATURES ON FOLLOWING PAGE.]

The parties hereto have executed this Partnership Agreement to evidence their agreement with its terms and their agreement to proceed in good faith (but without any legal obligation) towards execution and delivery of formal documents.

ACKNOWLEDGED AND AGREED as of this ____ day of _____, 2013.

City of Alexandria,
a municipal corporation of Virginia

By: _____

Name: _____

Title: _____

AHC, Inc.

By: _____

Name: _____

Title: _____

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