

## **DRAFT CO-DEVELOPMENT SERVICES AGREEMENT**

This Agreement is entered into this xx day of December , 2019, by and between XXXX and CORDES DEVELOPMENT 2, LLC. ("CD2") for the purpose of development, financing and construction of an affordable and market rate housing apartment complex including common use areas within Valdez, Alaska

Whereas, XXXX, an Arizona non-profit corporation, desires to have developed, financed and constructed an affordable and market rate housing complex ("Project") and to be the general partner of the limited partnership-ownership entity of such Project(substitute ownership structure), and,

Whereas, CD2 specializes in and has experience with the development of affordable housing using Low-Income Housing Tax Credits, HOME/CDBG funds, Federal Home Loan Bank funds, and other public and private funding sources,

Now, therefore, the parties do agree:

### **CD2 RESPONSIBILITIES**

1. As agent for XXand the to-be-formed limited partnership, begin and proceed with diligence the application process for the financing of the Project using a combination of equity from the sale of Low Income Housing Tax Credits (LIHTC) awarded by Alaska Housing Finance Corporaion (AHFC), HOME/NHT funds awarded by AHFC, and/or such other private or public financing as may be necessary, possibly to include a Federal Home Loan Bank - Affordable Housing Program direct subsidy. XXX, through its Council and governing authority, will be timely apprised as progress continues.

2. Present all applications for Board/XXX approval and signature prior to any submission to any financing source.

3. Once Project scope is determined, develop and present to XXX initial architectural, engineering and construction information for XXX approval.

4. Develop and present to XXX for its approval an initial Alaska limited partnership agreement to be used as a basis for the necessary investment vehicle to raise the funds required to develop and complete the Project. Both parties herein acknowledge that the financing sources/agencies may require substantive changes as a condition of the financing.

5. Track and advance, at its risk, funds necessary to successfully bring the Project from conception to construction and final completion. Both parties agree that CD2 will select, and will advance the pre-development funds to pay for, all professional/construction services on behalf of the partnership in furtherance of the development of the Project, including but not limited to any fees for architectural, legal, accounting, engineering, market study or other consultant services, at its sole discretion and risk. Both parties further acknowledge and agree

that such pre-development costs for which CD2 advances funds will be included in the various funding applications as part of the cost of development of the Project and will be reimbursed to CD2 from the funds awarded to the Project. CD2 warrants that, to the best of its abilities, it will keep these fees within the published allowed guidelines of the LIHTC, HOME and other funding programs. Any costs NOT covered by allowed fees within these programs will be solely costs of CD2.

6. Once all financing sources are in place through successful determinations by the financing sources, CD2 will negotiate a fixed price contract with a contractor that is acceptable to CD2 and agreed to by XXXX, and will oversee construction of the Project according to plans and specifications submitted by architect and approved by XXXX, contractor and the lenders. CD2 will provide construction completion guarantees to the partnership and construction lender, and shall control fiscal management of all pre-development and development funds throughout the development and construction of the Project, and through the cost certification audit.

7. Assist XXX with selection of a management agent that is acceptable to XXXX, the limited partner of the partnership, and the funding agencies, and work with the management agent in the initial set up and rent up of the Project.

8. Upon successful completion of construction of the Project, closing of the permanent loan(s), completion of 8609s and three-months breakeven operation after all units have been rented for an initial term, CD2's responsibilities shall be deemed completed. However, CD2 will remain available for consultation until XXX and Lenders are satisfied that such services are no longer indicated.

#### XXX RESPONSIBILITIES

1. Promptly review, approve, modify or reject with recommendations as to development and completion of the agreed affordable housing Project.

2. , XXX shall be responsible for securing/donating the land required for the construction of project. This includes any and all activities related to the land closing, which shall occur on or before loan closing.

3. Coordinate with architect and contractor to work with the Town of Valdez during the plan approval process and permitting process to obtain final building approval.

4. Assist CD2 with recommending preferred area service providers and agencies during the lease up period and with third party analysts during the application phase..

5. Through XXXX's tax credit legal counsel, negotiate an acceptable amended and restated partnership agreement with a limited partner-tax credit investor.

6. Once construction has commenced, participate with the project architect in the inspections of the construction during its progress and participate in any dialogues and decisions necessary to make any modifications to the project that may become necessary without increasing the overall cost of the Project.

#### DEVELOPER FEES

The total developer fee shall be maximized to the extent possible within the limitations imposed by the funding agencies. Ninety percent (90%) of the total fee shall be paid to CD2 as its share of the developer fee. Amount to be determined based on total funding otherwise available, cost overruns, changes implemented due to owner requests or government requirements, etc.) of the portion of developer fee paid may be required to be contributed back to the limited partnership.

#### TERM

The minimum term of this agreement shall be two years, shall include two application rounds (if necessary) for each of the funding programs and shall be automatically extended as long as the applications for various components of the financing remain active. Either party may, upon 60 days written notice, withdraw and find a substitute partner if the other refuses to proceed with the development.

- (a) If CD2 withdraws and does not proceed with the project, CD2 will not be entitled to any reimbursement of any expenses or services it engaged or utilized unless XXXproceeds with the project on its own and desires to use any or all such services, in which event such service costs will be repaid at the billed amount.
- (b) If XXXwithdraws and does not hire another developer and does not proceed on its own, XXXshall not be liable to CD2 for CD2's costs, expenses or time.
- (c) If XXXwithdraws and chooses to proceed either with another developer or on its own, it will reimburse CD2 as a Consultant for all costs incurred on behalf of the Partnership and/or XXXplus an hourly fee of \$150.00 per hour to a maximum of 2000 hours (the estimated total development hourly time), as reasonably agreed by the parties and based upon the timing of XXXX's withdrawal.

### ADVICE OF COUNSEL

This agreement must meet all requirements of the LIHTC program (as defined by AHFC), the HOME program (administered by AHFC), and any other private or public lender. Further, it must meet the requirements of the IRS in order to maintain the status of XXX and CD2 as a non-related independent developer. In consideration thereof, both parties agree that this agreement may be modified to maintain such status of each party.

### CERTAIN PROVISIONS

If the operation of any provision of this Agreement would contravene the provisions of the Uniform Limited Partnership Act, as in effect in the State, or would result in the imposition of general liability on the Limited Partner, that provision is void and without effect.

### BINDING AGREEMENT

Except as otherwise provided, each and every covenant, term, and provision of this Agreement is binding upon and inures to the benefit of the heirs, personal representatives, successors, and assigns of the parties.

### SEVERABILITY

Every term and provision of this Agreement is severable. If any term or provision of this Agreement is lawfully held to be illegal or invalid for any reason whatsoever, the illegality or invalidity will not affect the validity of the remainder of this Agreement.

Cordes Development 2, LLC

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David J. Cordes, Managing Member

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Name, Title