

**ACT NO. \_\_\_\_ - 2025**

**AN ACT** amending Act No. 146-2024 authorizing the County of Westchester to enter into an inter-municipal developer agreement with the City of White Plains, the White Plains Housing Authority and Trinity Financial, Inc., its successors or assigns, to fund certain infrastructure improvements as well as authorizing the County to grant and accept any property rights necessary in furtherance thereof, all for the purpose of constructing 174 affordable rental units at 161 South Lexington Avenue in the City of White Plains, that will affirmatively further fair housing and remain affordable for a period of not less than 50 years, in order to modify the number of affordable rental units from 174 units to 168 units.

**BE IT ENACTED** by the members of the Board of Legislators of the County of Westchester as follows:

**Section 1.** Act No. 146-2024 authorizing the County of Westchester to enter into an inter-municipal developer agreement with the City of White Plains, the White Plains Housing Authority and Trinity Financial, Inc., its successors or assigns, to fund certain infrastructure improvements as well as authorizing the County to grant and accept any property rights necessary in furtherance thereof, all for the purpose of constructing 174 affordable rental units at 161 South Lexington Avenue in the City of White Plains, that will affirmatively further fair housing and remain affordable for a period of not less than 50 years, is hereby amended in order to modify the number of affordable rental units from 174 units to 168 units.

§2. All of the remaining terms and conditions of Act No. 146-2024, except as amended and ratified herein, shall remain in full force and effect.

§3. The County Executive or his duly authorized designee is hereby authorized and empowered to execute all instruments and to take all action necessary and appropriate to

effectuate the purposes hereof.

§4. This Act shall take effect immediately.



## **INTER-MUNICIPAL/DEVELOPER AGREEMENT**

**THIS AGREEMENT** made this \_\_\_\_nd day of 2025, by and among:

**THE COUNTY OF WESTCHESTER**, a municipal corporation of the State of New York, having an office and place of business in the Michaelian Office Building, 148 Martine Avenue, White Plains, New York 10601 (“County”), and

**THE CITY OF WHITE PLAINS**, a municipal corporation of the State of New York, having an office and place of business at 255 Main Street, White Plains, New York 10601 (the “Municipality”), and

**WHITE PLAINS HOUSING AUTHORITY**, a public housing authority established under the laws of the State of New York, having an office and place of business at 223 Dr. Martin Luther King, Jr. Boulevard., White Plains, New York 10601 (the "Housing Authority" and "Fee Title Owner"); and

**WP THREE HOUSING DEVELOPMENT FUND CORPORATION**, a not-for-profit corporation organized pursuant to Article XI of the Private Housing Finance Law of the State of New York, having an office and place of business at 223 Dr. Martin Luther King, Jr. Boulevard, White Plains, New York 10601 (the "HDFC"); and

**TRINITY BROOKFIELD COMMONS PHASE THREE LIMITED PARTNERSHIP**, a limited partnership organized and existing under the laws of the State of New York, having an office and place of business at 1350 Broadway, Suite 2203, New York, New York 10018 (the "LP" and, together with the HDFC, the "Developer"), and

(individually "Party" or collectively the "Parties")

**WHEREAS**, in an effort to encourage the development of affordable housing that will affirmatively further fair housing (“AFFH”) in Westchester County, the County has established a Housing Implementation Fund (“HIF”) to provide funds to assist in the construction of water facilities, sewer facilities, road improvements and other infrastructure improvements necessary for the development of Affordable AFFH Units (defined below) in Westchester County; and

**WHEREAS**, pursuant to the provisions of Chapter 298 of the Westchester County Administrative Code, the County agrees to enter into agreements with municipalities and developers pursuant to which the municipalities will construct public improvements in support of the development of affordable housing; and

**WHEREAS**, in furtherance of the foregoing, the County desires to enter into an Intermunicipal-Developer Agreements with municipalities and developers in the County in support of affordable AFFH developments; and

**WHEREAS**, the Developer has agreed to construct certain Affordable AFFH Units on the property more particularly described on Schedule “A,” attached hereto and made a part hereof (the “Affordable Housing Property”); and

**WHEREAS**, the Fee Title Owner owns the fee interest in that portion of the Affordable Housing Property located at 161 South Lexington Avenue and designated on the City Tax Map as Section 125.83, Block 7, Lot 1 (the “Property”), and the Developer has agreed to construct thereon a 11-story building with 168 Affordable AFFH Units including one employee unit (the “Development”); and

**WHEREAS**, the Housing Authority will be (i) the fee owner of the Affordable Housing Property, and (ii) the fee owner of the Infrastructure Improvements Property; and

**WHEREAS**, the Municipality and the Developer desire that the County shall fund the

Infrastructure Improvements (defined below) which support the Development and, in consideration thereof, acknowledge that the Property shall be subject to that certain declaration of restrictive covenants (the “Declaration of Restrictive Covenants”) of even date hereof, a form of which is described in Schedule “B” annexed hereto and forming a part hereof (the “Declaration of Restrictive Covenants”), which shall be submitted for recording against the Affordable Housing Property in the Office of the Westchester County Clerk, and the affordability requirements as defined in Schedule “B” of the Declaration of Restrictive Covenants (the “Affordability Requirements”), which is incorporated herein by reference; and

**WHEREAS**, following construction of the Development, the rental and re-rental of the Affordable AFFH Units will adhere to the provisions of the Affordability Requirements for the Period of Affordability set forth therein; and

WHEREAS, the City is the owner of the City’s right of way upon which a portion of the Infrastructure Improvements shall be constructed, as more particularly described in Schedule “C-1” attached hereto and made part hereof (the “Municipal Infrastructure Property”) and the Infrastructure Improvements on the Municipal Infrastructure Property shall be referred to herein as the “Municipal Infrastructure Improvements”; and **WHEREAS**, as stated above, the Housing Authority will be the fee owner of the Property as more particularly described on Schedule A,” attached hereto and made a part hereof (including all rights to develop the Property), upon which a portion of the Infrastructure Improvements shall be constructed, as more particularly described in Schedule “C-2”, attached hereto and made a part hereof (the “Developer Infrastructure Property”) and the Infrastructure Improvements on the Developer Infrastructure Property shall be referred to herein as the “Developer Infrastructure Improvements”; and

**WHEREAS**, the Infrastructure Improvements shall be constructed on a portion of the Property (referred to herein as, the “Infrastructure Improvements Property”); and

**WHEREAS**, the Infrastructure Improvements will include, but are not limited to, on-site and off-site paving, curbing, sidewalks, retaining walls, storm water detention, drainage systems, sanitary sewer system, water lines, lighting, signage, landscaping, construction management, County administrative costs and other related work, all as more fully set forth in Schedule “D” annexed hereto and forming a part hereof; and

**WHEREAS**, the County proposes to fund the cost of the construction of the Infrastructure Improvements and will use the proceeds of tax exempt general obligation bonds issued by the County for such funding (as defined in Section 5 below); and

**WHEREAS**, the Municipality desires to implement the construction of the Infrastructure Improvements; and

**WHEREAS**, the County prohibits the Developer from charging tenants of the Affordable AFFH Units for use of the Resident Parking Spaces during the Period of Affordability, without the express approval of the Commissioner of the County Department of Planning or her duly authorized designee (the “Commissioner”); and

**WHEREAS**, the County will require the installation of electric car charging stations as follows: for parking facilities with 250 or less parking spaces, 10% of the spaces must be equipped with level one charging stations and another 10% with level two charging stations that must also have the electrical capacity for level three charging stations. For parking facilities with 250 vehicles, 50 spaces must have charging stations, half with level one and half with level two that also have the capacity for level three charging stations.

**NOW, THEREFORE**, in consideration of the terms and conditions herein contained, the parties agree as follows:

1. **RECITALS:**

The above recitals are hereby incorporated by reference into the body of this Inter-Municipal Developer Agreement (the “Agreement” and/or “IMDA”).

2. **PERFORMANCE OF WORK:**

The Municipality shall implement the construction of the Infrastructure Improvements on the Infrastructure Improvements Property in accordance with the provisions as set forth in this Agreement, including, but not limited to, Schedule “D,” attached hereto and made a part hereof. The Infrastructure Improvements shall include, but not be limited to, on-site and off-site paving, curbing, sidewalks, retaining walls, storm water detention, drainage systems, sanitary sewer system, water lines, lighting, signage, landscaping, construction management costs and County administrative costs (hereinafter collectively referred to as the “Infrastructure Improvements”). The Infrastructure Improvements shall be constructed in accordance with the Plans (as defined in Schedule “D”). Modification of the Plans or change orders, if any, shall require the prior written approval of the Commissioner of the County Department of Planning or her duly authorized designee (the “Commissioner”).

The Developer, its successors or assigns shall adhere to all provisions set forth in Schedule “B” of the Declaration of Restrictive Covenants, including but not limited to meeting the Affordability Requirements for the Development’s 168 Affordable AFFH Units until the end of the Period of Affordability. The Municipality and the Developer shall comply with Chapter 298 of the Westchester County Administrative Code as applicable to the Affordable AFFH Units (“Chapter 298”).

It is understood and agreed that the Municipality represents that the construction of the Infrastructure Improvements to be performed hereunder will be awarded within one hundred twenty (120) days of the date hereof, by means of public competitive bidding pursuant to section

103 of the General Municipal Law or by means of Section 213 of the White Plains City Charter. In no event shall the retention of a contractor to perform work on the Infrastructure Improvements relieve or otherwise discharge the Municipality or Developer, from their respective obligations hereunder or create a third party beneficiary relationship between the County and any such contractors and the parties hereto expressly disclaim any intention to create such a relationship.

Construction of the Infrastructure Improvements shall be done in strict accordance with the plans approved for such work, in compliance with all applicable laws, rules, regulations, ordinances and governmental approvals, and in accordance with the construction schedule

The County shall not advance any HIF Funds (as defined in Section “4” hereof) to the Municipality and work will not be required to commence on the Infrastructure Improvements until:

(i) the Housing Authority has a fee interest in the Property (described in Schedule “A”) and the Housing Authority has a fee interest in the land underlying the Affordable Housing Property) free of liens, encumbrances, easements and agreements, unless such liens, encumbrances easements and agreements, if any, shall be subordinate to the Declarations of Restrictive Covenants or the Required Easement, except for any Declaration of Trust or Declaration of Restrictive Covenants for the benefit of the U.S. Department of Housing and Urban Development that shall be superior to the Declarations of Restrictive Covenants or the Required Easement (a “HUD Declaration”); and

(ii) the Municipality has awarded the bids and contracted for construction of the Infrastructure Improvements, provided, however, that in the event the lowest acceptable bid exceeds the amount of the County HIF Funds, prior to the awarding of the bid, the Developer shall either (i) contribute said amount in excess of the County HIF Funds through a cash deposit with the Municipality, to be held by the Municipality in escrow until duly paid out to the successful low bidder upon completion of the work or (ii) provides



evidence satisfactory to the Municipality of the availability of other funds sufficient to cover the expected excess costs; and

(iii) the Municipality has received either: (a) a performance and payment bond, including without limitation materials and labor, covering one hundred percent (100%) of the work to be performed in connection with the Infrastructure Improvements, in form and content and issued by a surety reasonably satisfactory to the Municipality; or (b), an instrument of credit or guarantee which is acceptable to the City and the County. The City will allow the Housing Authority and the Developer and their successors and assigns and the County and its successors and assigns, to be added as obligees under a multiple obligee rider to the payment and performance bonds for the infrastructure work, it being acknowledged by the County and the Municipality that the Developer will be required to assign its rights with respect to this Agreement to New York State Housing Finance Agency (“HFA”) and (“INSERT LENDER NAME”). Further, the Municipality agrees that if the contractor awarded the bid for construction of the Infrastructure Improvements fails to complete work within the timeframe provided for in the subject contract, then at any time from and after thirty (30) days following delivery of a notice of default to the defaulting contractor by the Municipality, the Municipality shall promptly, at the direction of the Developer, HFA, or (INSERT LENDER NAME) enforce its rights under the bond and cause the surety that has issued such bond to undertake and complete the work to be completed pursuant to the contract in accordance with the requirements and procedures of the surety and the bond) ; and

(iv) the Declaration of Restrictive Covenants has been executed and recorded against the Affordable Housing Property all as more fully set forth below; and

(v) the Developer has obtained a firm, unconditional commitment for construction financing for the Development and has committed to complete any Infrastructure Improvements that may become known and are not funded by HIF, at its sole cost and

expense, and which will be required to be certified completed before the retainage held on the Infrastructure Improvements to be publicly bid by the Municipality pursuant to this Agreement may be released; and

(vi) an indenture from the Developer to the Municipality and to the County granting an easement to the Infrastructure Improvements Property for the construction of the Infrastructure Improvements to be constructed thereon has been executed in substantially the form attached hereto and forming a part hereof as more particularly described in Schedule “G” (the “Required Easement”) and such Required Easement will be submitted for recording, as more fully set forth below; and

(vii) the County has received title insurance acceptable to the County insuring its interest in the Required Easement naming the County as an insured in an amount equal to 25% of the County HIF Funds (defined in Section 4 below), which insured amount shall be Two Million Thirty-three Thousand Five Hundred (\$2,033,500) Dollars, and;

(viii) the Developer has obtained any approvals necessary in connection herewith, including but not limited to receipt of the site plan and State Environmental Quality Review Act (“SEQRA”) approvals by the Municipality’s City Council, Planning Board and Zoning Board of Appeals; and

(ix) any necessary approvals from the Municipality’s and the Developer’s governing bodies have been obtained.

The requirements contained in clauses (i), (iv), (v), (vi), (vii), (viii) and (ix) above have been or shall be satisfied prior to or concurrent with execution of this Agreement. Moreover, construction shall not commence and the County may terminate this Agreement if the conditions contained in clauses (ii) and (iii) have not been satisfied within 120 days following execution of this Agreement.

The Developer shall execute all required documents for the recording of the Declarations of Restrictive Covenants and the Required Easement, as may be applicable, which the Developer, at its sole cost and expense, prior to commencement of any construction of the Infrastructure Improvements, shall submit for recording to the Office of the Westchester County Clerk. Proof of recording shall be provided to the County by the Developer within thirty (30) days of said recording. No payments shall be made to the Municipality until proof of filing of said documents for recording by the Westchester County Clerk has been provided to the County. The Municipality agrees to provide the Developer with copies of all requests for payment for work performed. Requests for payment shall not be paid until Developer has confirmed that all work for which payment is being requested, has been properly performed.

All of the provisions of this Section “2” will survive the expiration or other termination of this Agreement until the expiration of the County Period of Affordability as defined in Schedule “B”.

### **3. LIENS:**

The Municipality and the Developer shall assure that their contractor(s) and subcontractor(s) will not enter into any mortgage or other financing documents that place a lien on the Infrastructure Improvements. In addition, the Developer shall not enter into any mortgage or other financing documents which place a lien on the Property which conflict with or diminish the terms of the Declaration of Restrictive Covenants recorded against the Affordable Housing Property other than a HUD Declaration. In the event any lien is placed on the Infrastructure Improvements or the Infrastructure Improvements Property by a contractor or subcontractor, the Municipality or the Developer that engaged such contractor or subcontractor shall take immediate action to discharge or bond such liens.

#### **4. PAYMENT:**

The County's sole obligation under this IMDA is to pay the Municipality an amount not to exceed EIGHT MILLION ONE HUNDRED THIRTY-FOUR THOUSAND DOLLARS (\$8,134,000.00) (the "County HIF Funds") to fund the construction of the Infrastructure Improvements as more fully set forth in Schedule "D".

In no event will the Developer have any recourse against the County for payment hereunder. The Developer expressly acknowledge and agree that their only recourse will be against the Municipality for amounts distributed to the Municipality by the County. The County HIF Funds will be paid with the proceeds of the Bonds in accordance with the payment provisions of Schedule "D". The County will make such payment to the Municipality only after submission by the Municipality of all requested documentation concerning construction of the Infrastructure Improvements and after review and approval by the County for expenses properly incurred in the performance of this Agreement. Neither the Municipality nor the County will be liable for any costs or expenses in excess of the County HIF Funds incurred in connection herewith. The Municipality will promptly pay for work performed. In the event the cost of constructing the Infrastructure Improvements exceeds the amount of the County HIF Funds, the Municipality will pay said excess using the Developer funds being held in escrow, as may be applicable, in accordance with Paragraph 2 above, and any remaining excess above the amount of the HIF Funds and the Escrow Funds shall be paid by the Developer or an affiliate thereof.

County HIF Funds shall be expended solely and exclusively for the purchase of materials and performance of labor, or engineering services used in the design and/or construction of the Infrastructure Improvements, including the retention of a Project Manager, as described in Schedule D.

Prior to the making of any payments hereunder, the County, may, at its option audit such books and records of the Municipality and the Developer as are reasonably pertinent to this

Agreement to substantiate the basis for payment. The Municipality and Developer will require any contractor(s) or sub-contractor(s) to make their books and records available to the County for audit and inspection. The County shall not be restricted from withholding payment for cause found in the course of such audit or because of failure of the Municipality or the Developer to cooperate with such audit.

The Municipality will furnish the County, whenever requested to do so, satisfactory evidence showing that all monies already paid hereunder have been applied by the Municipality toward the costs of the Infrastructure Improvements. Until such evidence, which shall consist of an affidavit certified by the respective contractor(s) acknowledging receipt of payment from the Municipality, is produced, at the option of the County, no further payments need be made by the County hereunder.

Payments hereunder to the Municipality by the County will operate to release the County from any and all obligations or liabilities to the Municipality, the Developer, and their respective agent(s), contractor(s) or sub-contractor(s) in connection herewith. The County expressly disclaims the existence of any third-party beneficiary relationship between the County and any such parties.

In the event that the Infrastructure Improvements and the Development's 168 Affordable AFFH Units fail to be fully constructed, as evidenced with a Certificate of Occupancy or Temporary Certificate of Occupancy issued by the Municipality for the Development, within four (4) years from execution of this Agreement, subject to Sections 5(C) and 5(E), below, the County shall have the right, at its option, to require repayment from: (1) the Municipality of all County HIF funds paid to the Municipality pursuant to this Agreement but not yet disbursed in furtherance hereof; and/or (2) the Developer of all County HIF Funds received in accordance herewith.

All of the terms of this Section "4" shall survive the expiration or other termination of this Agreement.

## 5. TAX RESTRICTIONS:

A. The Bonds. The Municipality and the Developer acknowledge and understand that the funds available for the Infrastructure Improvements hereunder are expected to be made available from tax exempt general obligation bonds issued by the County (the “Bonds”), which have been, or shall be, issued to fund construction of the Infrastructure Improvements in accordance with the provisions of this Agreement. The Municipality and Developer further acknowledge and understand that in connection with the issuance of the Bonds, the Commissioner of Finance of the County of Westchester has executed or will execute an “Arbitrage and Use of Proceeds Certificate,” in compliance with the Internal Revenue Code of 1986, as amended, and the regulations promulgated thereunder (the “Code”). The Municipality and the Developer agree that each will do all commercially reasonable acts and things, or refrain from taking action, as necessary, in order to assure that interest paid on the Bonds shall not be included in gross income of the owners of the Bonds for the purpose of Federal income taxation.

B. Commencement of Construction. The Municipality and Developer expect that the construction of the Infrastructure Improvements will commence as set forth in Schedule “D” and that the County HIF Funds made available hereunder will be expended for costs of constructing the Infrastructure Improvements in accordance with the budget contained in Schedule “D” and the construction of the Infrastructure Improvements will proceed substantially in accordance with said Schedule. The Municipality and Developer agree to notify the County in the event of changes in the expected schedule for completion of the Infrastructure Improvements.

C. Failure to Complete. The Municipality and Developer agree that should the Infrastructure Improvements fail to be completed in accordance with Schedule “D,” except as a result of any delay occasioned by reason of any unavoidable delays (including but not limited to *force majeure*) or other causes beyond the control of the Municipality or the Developer, the County, without limiting any other right or remedy to which it may be entitled, shall have the right

to terminate this Agreement upon thirty (30) days prior written notice to the Municipality and Developer and/or to deduct from any remaining payments due hereunder an amount equal to the penalties required by the Code for failure to expend the bond proceeds allocable to the Infrastructure Improvements in a timely manner.

D. Termination. Should the County terminate this Agreement pursuant to the terms hereof or should the remaining payments due the Municipality be insufficient to cover the amount of the aforementioned penalty, the Municipality and the Developer, to the extent any funds have been disbursed to the Developer, shall be obligated to immediately pay the County the full amount of any such penalty and the Developer, agrees to indemnify the Municipality for any such penalties that are not due to the fault of the Municipality.

E. Extensions. The Municipality and Developer shall use commercially reasonable efforts and good faith to meet any and all time periods provided for in this Agreement and in any schedule annexed hereto in connection with any obligation hereunder. If, despite the use of commercially reasonable efforts and good faith, the Municipality and the Developer are unable to meet any stated time period, then the Municipality or Developer can request an extension of such time period and all subsequent time periods affected thereby, subject to the consent of the County. Any such extension, if granted, shall not constitute waiver by the County of any terms or requirements herein.

F. No Loan. The parties hereto acknowledge and agree that the County HIF Funds do not constitute a loan. The County HIF Funds are to be paid to the Municipality in consideration for causing construction of the Infrastructure Improvements in support of the Development.

All of the provisions of this Section “5” shall survive the expiration or other termination of this Agreement until and for so long as the Bonds are outstanding.

## **6. OWNERSHIP OF INFRASTRUCTURE IMPROVEMENTS:**

The Municipality and the Developer acknowledge and agree that the Infrastructure Improvements shall be owned by the County for so long as the Bonds are outstanding. The Municipality and the Developer agree to execute or cause to be executed any and all such documents as are necessary and appropriate to effectuate the County ownership and right of access including but not limited to the Required Easement. Upon maturity or redemption of the Bonds, the County's ownership of the Infrastructure Improvements shall automatically terminate and title to the Infrastructure Improvements will immediately and without necessity of further action vest in the Developer. The County shall provide notice to the Developer of the maturity or earlier redemption of the bonds.

The parties hereto acknowledge and agree that the Developer and their respective successors and assigns, as applicable, at all times shall be entitled to use, operate and maintain (in accordance with Section "7" below) the Infrastructure Improvements.

Upon acceptance of the completed Infrastructure Improvements, the Municipality's interest in the Required Easement will automatically terminate.

All of the provisions of this Section "6" shall survive the expiration or other termination of this Agreement until and for so long as the Bonds are outstanding.

## **7. MAINTENANCE AND REPAIRS:**

The Infrastructure Improvements located in and on the Property shall be kept in good order and repair by the Developer, and its successors or assigns at the Developer's (including successors or assigns) sole cost and expense, the Developer, or its successors or assigns shall make all repairs and replacements, ordinary as well as extraordinary, foreseen and unforeseen, structural or otherwise, that may be necessary or required so that at all times the Infrastructure Improvements



shall be in thorough good order, condition and repair.

All of the provisions of this Section “7” will survive the expiration or other termination of this Agreement.

#### **8. REPORTS:**

To the extent that the parties have performed work hereunder, the Municipality and/or Developer shall furnish the County with progress reports as may be requested detailing the progress of the construction of the Infrastructure Improvements (with copies of any Municipality reports being furnished to the County to be furnished also to the Developer and vice versa). The Municipality and/or Developer shall prepare a final report describing the work performed by the Municipality and Developer in implementing the construction of the Infrastructure Improvements together with such supporting information and documentation in such form and at such times as the County may reasonably require.

#### **9. MAINTENANCE OF RECORDS:**

The parties will, each at their sole cost and expense, keep, maintain, and preserve at their respective principal offices throughout the term of this Agreement and for such later time as may be required by applicable law, full and detailed books, accounts, and records pertaining to its performance pursuant to this Agreement. Such books, accounts and records will include, without limitation, all bills, invoices, payrolls and other data evidencing, or in any material way relating to, the direct and indirect costs and expenses incurred in connection herewith. The County will have the right to inspect and audit, at reasonable times and upon reasonable notice, any and all such books, accounts and records at the office or offices where they are then being kept, maintained and preserved.

All of the provisions of this Section “9” will survive the expiration or other termination of this Agreement until the expiration of the County Period of Affordability.

**10. COUNTY’S RIGHT TO WITHHOLD PAYMENTS:**

If at any time the Municipality or the Developer shall neglect or fail to perform any of its obligations under this Agreement in any material respect, and such neglect or failure shall continue and remain uncured for a period of thirty (30) days after written notice thereof is sent to the Municipality, the Developer, then the County shall have the right to withhold, in whole or in part, any payments otherwise due or to become due to the Municipality hereunder until such neglect or failure shall have been remedied to the satisfaction of the County.

**11. REPRESENTATIONS, WARRANTIES AND GUARANTEES:**

A. The Municipality expressly represents, warrants and guarantees to the County that:

(a) it is a municipal corporation duly organized, validly existing and in good standing under the laws of the State of New York; the execution and performance of this Agreement by the Municipality has been duly authorized by its governing body; this Agreement, and any other documents required in connection herewith, when so delivered, will constitute legal, valid and binding obligations of the Municipality enforceable against the Municipality in accordance with their respective terms; and the Municipality will deliver to the County at the time of execution of this Agreement a resolution adopted by its governing body authorizing the execution of this Agreement, and any other documents required to be delivered by the Municipality;

(b) the person signing this Agreement on behalf of the Municipality has full authority to bind the Municipality to all of the terms and conditions of this Agreement;

(c) it is financially and technically qualified to perform its obligations hereunder, including construction of the Infrastructure Improvements;

(d) it has received no information or documentation indicating that the Developer is not otherwise financially capable of completing the Development;

(e) it is familiar and will comply with all general and special Federal, State, municipal and local laws, ordinances and regulations, if any, that may in any way affect the performance of this Agreement;

(f) the design, supervision and workmanship furnished with respect to the construction of the Infrastructure Improvements will be in accordance with sound and currently accepted scientific standards and best engineering practices;

(g) it will use its best efforts to assure and shall require in any contract documents with its contractor(s) that all materials, equipment and workmanship furnished by contractor(s) of the Municipality in performance of the work or any portion thereof shall be free of defects in design, material and workmanship, and all such materials and equipment shall be of first-class quality, shall conform with all applicable codes, specifications, standards and ordinances and shall have service lives and maintenance characteristics suitable for their intended purposes in accordance with sound and currently accepted scientific standards and best engineering practices;

(h) to the best of the Municipality's current knowledge and information the budget proposal attached in Schedule "D" lists the anticipated true and correct costs for the Infrastructure Improvements;

(i) the consummation of the transactions contemplated by this Agreement and the performance of the Municipality's obligations hereunder will not result in any breach of or

constitute a default under other instruments or documents to which the Municipality is a party or by which it may be bound or affected; and

(j) construction of the Infrastructure Improvements is necessary to support the Development.

The Municipality expressly acknowledges that the County is materially relying on the above representations.

B. The Developer expressly represents, warrants and guarantees to the County and the Municipality that:

(a) it is a limited partnership duly organized, validly existing and in good standing under the laws of the State of New York. The Developer is duly qualified to do business and is in good standing in each jurisdiction where the conduct of its business requires it to be so qualified. The Developer has the corporate power, authority and legal right to execute and perform this transaction and to execute this Agreement; the execution and performance of this Agreement by the Developer have been duly authorized by its partners; this Agreement constitutes, and any other documents required to be delivered by the Developer, when so delivered will constitute, the legal, valid and binding obligations of the Developer enforceable against the Developer in accordance with their respective terms; the Developer has all requisite power and authority to enter into this Agreement; and the Developer will deliver to the County at the time of execution of this Agreement a resolution adopted by its partners authorizing the execution of this Agreement, and any other documents required to be delivered by the Developer;

(b) the person signing this Agreement on behalf of the Developer has full authority to bind the Developer to all of the terms and conditions of this Agreement, as noted above;

(c) the Developer is not on the low-income housing debarred list with either HUD or the State of New York, and it is not in default under any contract with the County;

(d) the Developer has not employed or retained any person, other than a bona fide full time salaried employee working fully for the Developer or an independent professional consultant to solicit or secure this Agreement, and that it has not paid or agreed to pay any person (other than counsel) any fee, commission, percentage, gift or other consideration, contingent upon or resulting from the award or making of this Agreement;

(e) it is financially and technically qualified to perform its obligations hereunder including construction of the Development;

(f) it is familiar with and will comply with all general and special Federal, State, municipal and local laws, ordinances and regulations, if any, that may in any way affect the performance of this Agreement;

(g) to the best of the Developer's current knowledge and information, the budget proposal attached in Schedule "D" lists the anticipated true and correct costs for the Infrastructure Improvements;

(h) the consummation of the transactions contemplated by this Agreement and the performance of the Developer's obligations hereunder will not result in any breach of or constitute a default under other instruments or documents to which the Developer is a party or by which it may be bound or affected; and

(i) construction of the Infrastructure Improvements is necessary to support the Development.

The Developer expressly acknowledges that the County is materially relying on the above

representations.

C. The Developer expressly represents, warrants and guarantees to the County that:

(a) It is duly organized, validly existing and in good standing under the laws of the State of New York. The Developer is duly qualified to do business and is in good standing in each jurisdiction where the conduct of its business requires it to be so qualified. The Developer has the corporate power, authority and legal right to execute and perform this transaction and to execute this Agreement; the execution and performance of this Agreement by the Developer have been duly authorized by its Board of Directors and/or Members; this Agreement constitutes, and any other documents required to be delivered by the Developer, when so delivered will constitute, the legal, valid and binding obligations of the Developer enforceable against the Developer in accordance with their respective terms (subject to limitations imposed by bankruptcy, reorganization, insolvency, moratorium, and similar laws and related court decisions of general applicability relating to or affecting creditors' rights generally, general principles of equity and to the availability of equitable remedies) ; the Developer has all requisite power and authority to enter into this Agreement; and the Developer will deliver to the County at the time of execution of this Agreement a resolution adopted by its members authorizing the execution of this Agreement, and any other documents required to be delivered by the Developer;

(b) the person signing this Agreement on behalf of the Developer has full authority to bind the Developer to all of the terms and conditions of this Agreement;

(c) [N/A]

(d) it has received no information or documentation indicating that the Developer

is not otherwise financially capable of completing the Development;

(e) it is familiar and will comply with all general and special Federal, State, municipal and local laws, ordinances and regulations, if any, that may in any way affect the performance of this Agreement;

(f) to the best of the Developer's current knowledge and information the budget proposal attached in Schedule "D" lists the anticipated true and correct costs for the Infrastructure Improvements;

(g) the consummation of the transactions contemplated by this Agreement and the performance of the Developer's obligations hereunder will not result in any breach of or constitute a default under other instruments or documents to which the Developer is a party or by which it may be bound or affected; and

(h) construction of the Infrastructure Improvements is necessary to support the Development.

The Developer expressly acknowledges that the County is materially relying on the above representations.

All of the provisions of this Section "11" shall survive the expiration or other termination of this Agreement.

## **12. INSURANCE; INDEMNIFICATION:**

A. In addition to, and not in limitation of, the insurance requirements contained in Schedule "E(i)" entitled "Standard Insurance Provisions, Municipality," attached hereto and made a part hereof, the Municipality agrees:

- (a) that except for the amount, if any, of damage contributed to, caused by or resulting from the sole negligence of the County, the Municipality shall indemnify and hold harmless the County, its elected officials, officers, employees and agents from and against any and all actual liability, damage, claims, demands, costs, judgments, fees, reasonable attorneys' fees or loss arising directly or indirectly under this Agreement as a result of the acts or omissions hereunder by the Municipality, the Developer, contractors or third parties under the direction or control of the Municipality or the Developer; and
- (b) to provide defense for and defend, at its sole expense, any and all claims, demands or causes of action against the County directly or indirectly arising out of this Agreement and to bear all other costs and expenses related thereto; and
- (c) In the event the Developer does not provide the above defense and indemnification to the County, and such refusal or denial to provide the above defense and indemnification is found to be in breach of this provision, then the Developer shall reimburse the County's reasonable attorney's fees incurred in connection with the defense of any action, and in connection with enforcing this provision of the Agreement.

B. In addition, Developer shall provide defense for and defend, indemnify and hold harmless the Municipality, its officers, employees and agents from and against any and all actual liability, damage, claims, demands, costs, judgments, fees, reasonable attorneys' fees or loss arising directly or indirectly under this Agreement as a result of any cause whatsoever other than the acts or omissions hereunder by the Municipality or contractors or third parties under the direction or control of the Municipality. Notwithstanding anything to the contrary, nothing herein shall relieve the Municipality of its obligation to indemnify and hold harmless the County pursuant



to Section 12A, above; and

C. In addition to, and not in limitation of the County's insurance requirements contained in Schedule "E(ii)" entitled "Standard Insurance Provisions, Developer," attached hereto and made a part hereof, the Developer agree:

- (a) that except for the amount, if any, of damage contributed to, caused by or resulting from the negligence of the County, the Developer and the Developer shall indemnify and hold harmless the County, its officers, employees and agents from and against any and all liability, damage, claims, demands, costs, judgments, fees, reasonable attorney's fees or loss arising directly or indirectly out of the acts or omissions hereunder by the Developer, respectively, contractors or third parties under the direction or control of the Developer respectively; and
- (b) to the extent arising directly or indirectly out of the acts or omissions hereunder by the Developer, contractors or third parties under the direction or control of the Developer to provide defense for and defend, at its sole expense, any and all claims, demands or causes of action directly or indirectly arising out of this Agreement and to bear all other costs and expenses related thereto.

### **13. ENVIRONMENTAL INDEMNIFICATION:**

A. The Municipality represents and warrants and guarantees to the County as follows:

(1) The Municipality has no knowledge of, and has not received any notice of any condition at, on, under or related Infrastructure Improvements Property (or ground or surface waters associated therewith) or migrating or threatening to migrate to or from the Infrastructure Improvements Property which may have a material effect on the value of the Infrastructure

Improvements Property or subject the owner thereof to potential liabilities in accordance with the Environmental Requirements (as defined below); and

(2) The Municipality has no knowledge of, has and has not received any notice of any condition at, on, under, or related to the Infrastructure Improvements or the Public ROW Property (or ground or surface waters associated therewith) or migrating or threatening to migrate to or from the Infrastructure Improvements presently or potentially posing a significant hazard to human health or the environment; such conditions being defined as “Hazardous Materials” below; and

Definitions. For the purposes of this Agreement and this Section “13”, the following definitions will apply:

- (a.) “Hazardous Materials” or “Hazardous Waste” will mean any substance:
  - (i) the presence of which requires investigation or remediation under any federal, state, or local statute, regulation, ordinance, order, action, policy or common law; or
  - (ii) which is or becomes defined as a hazardous waste, hazardous substance, pollutant or contaminant under any federal, state or local statute, regulation, rule, or ordinance or amendments thereto including, without limitation, the United States Comprehensive Environmental Response, Compensation and Liability Act, as amended, 42 USC §9601 (14) 42 USC §9602, and any “hazardous waste” as defined in or listed under the United States Solid Waste Disposal Act, as amended, 42 USC §6901(5), 42 USC §6921; or
  - (iii) which is toxic, explosive, corrosive, flammable, infectious,

radioactive, carcinogenic, mutagenic, or otherwise hazardous, and is or becomes regulated by any governmental authority, agency, department, commission, board or instrumentality of the United States, the State of New York or any political subdivision thereof; or

(iv) the presence of which, on the Infrastructure Improvements Property, causes or threatens to cause a nuisance on the Infrastructure Improvements Property or to nearby properties, or poses or threatens to pose a hazard to the health and safety of persons on, about or nearby the Infrastructure Improvements Property; or

(v) the presence of which on nearby properties would constitute a trespass by the owner of the Infrastructure Improvements Property; or

(vi) which contains, without limitation, gasoline, diesel fuel, or other petroleum hydrocarbons; or

(vii) which contains, without limitation, polychlorinated biphenols (PCBs), asbestos, or urea formaldehyde foam insulation.

(b.) “Environmental Requirements” will mean all applicable present and future statutes, regulations, rules, ordinances, codes, licenses, permits, orders, approvals, plans, authorizations, concessions, franchises, and similar items, of all government agencies, departments, commissions, boards, bureaus, or instrumentalities of the United States, the State of New York and the political subdivisions thereof; and all applicable judicial, administrative, and regulatory decrees, judgments, and orders relating to the protection of human health or the environment.

(c) The Municipality hereby acknowledges and agrees that it will defend and indemnify the County for any Environmental Damages (as defined below), whether or not disclosed in the Environmental Reports (as defined below), arising out of or in any way connected with the Infrastructure Improvements. Environmental Damages will mean all claims, damages, losses, penalties, fines, liabilities (including strict liability), encumbrances, liens, costs and expenses of investigation and defense of any, whether or not such claim is ultimately defeated, and any good faith settlement or judgment, of whatever kind or nature, contingent or otherwise, matured or unmatured, foreseeable or unforeseeable, including without limitation reasonable attorneys' fees and disbursements and consultants' fees, any of which are incurred as the result of the existence of "Hazardous Materials" or "Hazardous Waste" at, on, under or related to the Infrastructure Improvements (or ground or surface water associated therewith) or migrating or threatening to migrate to or from the Public ROW Property, or the existence of a violation of Environmental Requirements pertaining to the Infrastructure Improvements, regardless of when the existence of such Hazardous Materials or "Hazardous Waste" or the violation of Environmental Requirements arose, including without limitation:

- (i) damages for personal injury, death or injury to property or natural resources occurring on or off the Infrastructure Improvements, foreseeable or unforeseeable, including without limitation, lost profits, consequential damages, the cost of demolition or rebuilding of any improvements of real property, interest and penalties;
- (ii) fees incurred for the service of attorneys, consultants, contractors, experts, laboratories and all other costs incurred in connection with the investigation or remediation of such "Hazardous Materials" or

“Hazardous Waste” or violation of Environmental Requirements including, but not limited to, the preparation of any feasibility studies or reports or the performance of any cleanup, remediation, removal, response, abatement, containment, closure, restoration or monitoring work required by any federal, state or local governmental agency or political subdivision, or reasonably necessary to make the full use of the Infrastructure Improvements or any other property or otherwise expended in connection with such conditions;

- (iii) liability to any third person or governmental agency to indemnify such person or agency for the costs expended in connection with the items referenced in subsection (ii) herein; and
- (iv) diminution in the value of the Infrastructure Improvements and damages for loss of business from restriction on the use of the Infrastructure Improvements or any part thereof.

B. The Developer, with respect to the Property, and the Developer, solely as to itself, each represent and warrant and guarantee to the County and the Municipality as follows:

- (1) Except as described in the environmental reports listed on Schedule “F” hereto (the “Environmental Reports”), the Developer has no knowledge of, and have not received any notice of any condition at, on under or related to the Property (or ground or surface waters associated therewith) or migrating or threatening to migrate to or from the Property which may have a material effect on the value of the Infrastructure Improvements Property or subject the owner thereof to potential liabilities in accordance with the Environmental Requirements as defined herein; and

- (2) Except as described in the Environmental Reports, the Developer have no knowledge, and have not received any notice of any Hazardous Materials on under or related to the Property (or ground or surface waters associated therewith) or migrating or threatening to migrate to or from the Property which may have a material effect on the value of the Property or subject the owner thereof to potential liabilities; and
- (3) The Developer hereby acknowledges and agrees that it will defend and indemnify the County and the Municipality for any Environmental Damages, whether or not disclosed in the Environmental Reports, arising out of or in any way connected with the Property. Environmental Damages shall mean all actual claims, damages, losses, penalties, fines, liabilities (including strict liability), encumbrances, liens, costs and expenses of investigation and defense of any, whether or not such claim is ultimately defeated, and of any good faith settlement or judgment, of whatever kind or nature, contingent or otherwise, matured or unmatured, foreseeable or unforeseeable, including without limitation reasonable attorneys' fees and disbursements and consultants' fees, any of which are incurred as the result of the existence of "Hazardous Materials" or "Hazardous Waste" at, on, under or related to the Property (or ground or surface water associated therewith) or migrating or threatening to migrate to or from the Property, or the existence of a violation of Environmental Requirements pertaining to the Property regardless of when the existence of such Hazardous Materials or "Hazardous Waste" or the violation of Environmental Requirements arose, including without limitation:
- (i) damages for personal injury, death or injury to property or natural resources occurring on or off the Property, foreseeable or unforeseeable, including without limitation, lost profits, consequential damages, the cost of demolition or rebuilding of any improvements of real property, interest and penalties;
  - (ii) fees incurred for the service of attorneys, consultants, contractors,

experts, laboratories and all other costs incurred in connection with the investigation or remediation of such “Hazardous Materials” or “Hazardous Waste” or violation of Environmental Requirements including, but not limited to, the preparation of any feasibility studies or reports or the performance of any cleanup, remediation, removal, response, abatement, containment, closure, restoration or monitoring work required by any federal, state or local governmental agency or political subdivision, or reasonably necessary to make the full use of the Property or any other property or otherwise expended in connection with such conditions;

- (iii) liability to any third person or governmental agency to indemnify such person or agency for the costs expended in connection with the items referenced in subsection (ii) herein; and
- (iv) diminution in the value of the Property and damages for loss of business from restriction on the use of the Property or any part thereof.

All of the provisions of this Section “13” will survive the expiration or other termination of this Agreement until the expiration of the County Period of Affordability.

#### **14. ASSIGNMENT OF RIGHTS:**

Any purported delegation of duties or assignment of rights under this Agreement without the prior express written consent of the County is void. The Municipality shall not subcontract any part of the work to be performed hereunder without the written consent of the County, provided, however, that the foregoing shall not be deemed to apply to contracts entered into by the Municipality to implement construction of the Infrastructure Improvements. All subcontracts shall provide that subcontractors are subject to all terms and conditions set forth in this Agreement. All work performed by a subcontractor shall be deemed work performed by the Municipality.

The County's consent to the assignment of the responsibility for or delegation of the duty hereunder shall not release the Municipality or Developer from their respective obligations under this Agreement. The Municipality and Developer shall remain liable to the County for the performance of all respective obligations under this Agreement.

**15. ENTIRE AGREEMENT; AMENDMENT:**

This Agreement including without limitation all Schedules and attachments constitute the entire Agreement between the parties with respect to the funding of the Infrastructure Improvements and shall supersede all previous negotiations, commitments and writings. This Agreement shall not be released, discharged, changed or modified except by an instrument in writing signed by a duly authorized representative of each of the parties.

**16. INDEPENDENT CONTRACTOR:**

The status of each of the Municipality and the Developer under this Agreement shall be that of an independent contractor and not that of an agent, and in accordance with such status, the Municipality, the subcontractors, and their respective officers, agents, employees, representatives and servants shall at all times during the term of this Agreement conduct themselves in a manner consistent with such status and by reason of this Agreement shall neither hold themselves out as, nor claim to be acting in the capacity of, officers, employees, agents, representatives or servants of the County nor make any claim, demand or application for any right or privilege applicable to the County, including without limitation, rights or privileges derived from workers' compensation coverage, unemployment insurance benefits, social security coverage and retirement membership or credit.

**17. COMPLIANCE WITH LAW:**



Each of the Municipality and the Developer shall perform the work hereunder in good workmanlike manner and shall obtain each, at its sole cost and expense, all permits, approvals and consents necessary for the proper conduct of its activities in connection with this Agreement. In addition to, and not in limitation of the foregoing, the Municipality, the Developer shall comply at their sole cost and expense with all applicable federal, state and local laws, rules and regulations, ordinances and requirements affecting the conduct of activities in connection with this Agreement.

All of the provisions of this Section “17” shall survive the expiration or other termination of this Agreement until the expiration of the County Period of Affordability provided the County has paid the County HIF Funds to the Municipality.

**18. NOTICES:**

All notices of any nature, requests, approvals and other communications which may be given by either party to the other under this Agreement shall be in writing and sent by registered or certified mail postage pre-paid, or sent by hand or overnight courier to the respective addresses set forth below or to such other addresses as the respective parties hereto may designate in writing. Notice shall be effective on the date of receipt:

To the County

Commissioner of Planning  
Michaelian Office Building, Room 432  
148 Martine Avenue  
White Plains, New York 10601

with a copy to:

County Attorney  
Michaelian Office Building, Room 600  
148 Martine Avenue  
White Plains, New York 10601

To the Municipality:

Mayor  
City of White Plains  
City Hall  
255 Main Street  
White Plains, New York 10601

with a copy to:

Corporation Counsel  
City of White Plains  
City Hall  
255 Main Street  
White Plains, New York 10601

To the Housing Authority:

White Plains Housing Authority  
223 Dr. Martin Luther King, Jr. Boulevard  
White Plains, New York 10601

With a copy to:

Ballard Spahr LLP  
1909 K Street, NW, 12<sup>th</sup> Floor  
Washington, DC 20006  
Attention: Molly Bryson, Esq.

To the HDFC:

WP Three Housing Development Fund Corporation  
223 Dr. Martin Luther King, Jr. Boulevard  
White Plains, New York 10601

With a copy to:

Ballard Spahr LLP  
1909 K Street, NW, 12<sup>th</sup> Floor  
Washington, DC 20006  
Attention: Molly Bryson, Esq.

To the LP:

Trinity Brookfield Commons Phase Three Limited Partnership  
1350 Broadway, Suite 2203  
New York, New York 10018

with a copy to:

Nixon Peabody LLP  
55 West 46<sup>th</sup> Street  
New York, New York 10036

and to:

New York State Housing Finance Agency  
641 Lexington Avenue  
New York, New York 10022  
Attention: Senior Vice President and Counsel, and  
Attention: Senior Vice President, Asset Management

**19. TERM OF AGREEMENT:**

The term of this Agreement shall commence upon execution and shall continue for fifteen (15) years, or until the County has retired the Bonds, whichever comes first, unless the Agreement is terminated sooner in accordance with the terms of this Agreement.

In the event of a dispute as to the value of the Work rendered by the parties prior to the date of termination, it is understood and agreed that the Commissioner shall, reasonably and in good faith, upon consultation with the Developer and/or the Municipality, as applicable, determine the value of such Work rendered by the Parties consistent with, and based upon the Schedule of work in the Municipality's contract for performance of Infrastructure Improvements. The Parties shall accept such reasonable and good faith determination as final.

**20. NON-DISCRIMINATION:**

Each of the Municipality and the Developer expressly agrees, solely for itself, that neither it nor any contractor, subcontractor, employee, or any other person acting on its behalf shall discriminate against or intimidate any employee or other individual on the basis of race, creed, religion, color, gender, age, national origin, ethnicity, alienage or citizenship status, disability, marital status, sexual orientation, familial status, genetic predisposition or carrier status during the term of or in connection with this Agreement, as those terms may be defined in Chapter 700 of the Laws of Westchester County. The Municipality and the Developer acknowledge and understand that the County maintains a zero-tolerance policy prohibiting all forms of harassment or discrimination against its employees by co-workers, supervisors, vendors, contractors, or others.

Pursuant to Section 308.01 of the Laws of Westchester County, it is the goal of the County to use its best efforts to encourage, promote and increase the participation of business enterprises owned and controlled by persons of color or women in contracts and projects funded by all departments of the County. Under this IMDA it is recognized and understood that the County encourages the Municipality and the Developer to do similarly.

**21. VALIDITY:**

If any term or provision of this Agreement is held by a court of competent jurisdiction to be invalid or void or unenforceable, the remainder of the terms and provisions of this Agreement will in no way be affected, impaired, or invalidated, and to the extent permitted by applicable law, any such term, or provision will be restricted in applicability or reformed to the minimum extent required for such to be enforceable. This provision will be interpreted and enforced to give effect to the original written intent of the parties prior to determination of such invalidity or unenforceability.

**22. LEGAL AND EQUITABLE RELIEF:**

The injury to the County arising from noncompliance with any of the material terms of this Agreement and the Schedules hereto, including without limitation failure to complete the Development or the Infrastructure Improvements in accordance herewith or noncompliance with the Affordability Requirements until expiration of the County Period of Affordability, would be great and the amount of consequential damage would be difficult to ascertain and may not be compensable by money alone. Therefore, in the event of any such noncompliance, which remains uncured for thirty (30) days after service on the Municipality and Developer of written notice thereof (the “Cure Period”), the County, at its option, may apply to any state or federal court for: (A) specific performance of this Agreement and the Schedules hereto; (B) an injunctive relief against any noncompliance; and/or (C) seek any and all appropriate legal and/or equitable remedies, including, but not limited to, damages, reasonable attorney’s fees, disbursements and court costs in such amounts as shall be allowed by the court.

The Commissioner shall agree to stay any such enforcement beyond the Cure Period, provided that the County determines that the Municipality and/or the Developer are diligently and continuously acting to cure said noncompliance. Without limiting the foregoing, upon written notice to the Municipality and Developer, repeated non-compliance by the Municipality and/or the

Developer of any material duty or obligation under this IMDA shall be deemed a material breach of this IMDA justifying termination for cause hereunder without requirement for further opportunity to cure. Notice shall be effective as set forth in Section 18 of this IMDA.

The investor limited partner of the Developer (the “Investor”) and any first mortgagee of any interest in Development (the “First Mortgagee”) shall have the right, but not the obligation, to cure any and all defaults under this Agreement.

All of the provisions of this Section “22” will survive the Closing or other cancellation or termination of this Agreement until the expiration of the County Period of Affordability.

**23. COUNTY APPROVALS:**

The parties hereby acknowledge and agree that any request by the Municipality and/or the Developer for an extension or other modification of the terms hereof which requires consent of the County will be subject to the receipt of any and all necessary County approvals.

**24. EXECUTION:**

This Agreement may be executed simultaneously in several identical copies, each of which shall be an original and all of which shall constitute but one and the same Agreement.

**25. GOVERNING LAW:**

This Agreement shall be construed and enforced in accordance with the laws of the State of New York. In addition, the parties hereby agree that any cause of action arising out of this Agreement will be brought in the County of Westchester.

**26. NO WAIVER:**

Failure of the County to insist, in any one or more instances, upon strict performance of any term or condition herein contained shall not be deemed a waiver or relinquishment for the future of such term or condition, but the same shall remain in full force and effect.

**27. THIRD PARTIES:**

Except for HFA, (INSERT LENDER NAME), the First Mortgagee and the Investor, nothing herein is intended or shall be construed to confer upon or give to any third party or its successors and assigns any rights, remedies or basis for reliance upon, under or by reason of this Agreement.

**28. REQUIRED SCHEDULES:**

Attached hereto and forming a part hereof as Schedule “H” is a questionnaire entitled “Required Disclosure of Relationships to County.” The Developer agree to complete said questionnaire as part of this Agreement. In the event that any information provided in the completed questionnaire changes during the term of this Agreement, the Developer, as applicable, agree to notify County in writing within ten (10) business days of such event.

Pursuant to Section 308.01 of the Laws of Westchester County, it is the goal of the County to use its best efforts to encourage, promote and increase the participation of business enterprises owned and controlled by persons of color or women in contracts and projects funded by all departments of the County. Attached hereto and forming a part hereof as Schedule “J” is a questionnaire entitled “Business Enterprises Owned and Controlled by Persons of Color or Women” which the Developer agrees to complete.

**29. FORCE MAJEURE:**

Any prevention, delay or stoppage due to strikes, lockouts, labor disputes, acts of God, acts of war or terrorism, inability to obtain services, labor, or materials or reasonable substitutes therefor, governmental actions, civil commotions, pandemic, fire or other casualty, in each case if due to a cause beyond the reasonable control of the party obligated to perform, and other causes beyond the reasonable control of the party obligated to perform (collectively, “Force Majeure”) shall, notwithstanding anything to the contrary contained herein, excuse the performance of such party for a period equal to any such prevention, delay or stoppage and, therefore, if this Agreement specifies a time period for performance of an obligation of either party, that time period shall be extended by the period of any delay in such party’s performance caused by a Force Majeure. For purposes of this Section 29, a cause shall not be deemed beyond a party’s control if it is within the control of such party’s agents, employees or contractors.

**30. LIABILITY:**

The parties hereby acknowledge and agree that, unless otherwise set forth in this Agreement, the Municipality, the Developer shall each be jointly and severally liable for all obligations hereunder and for any breach of the terms of this Agreement.

The provisions of this Section “30” will survive the Closing or other cancellation or termination of this Agreement.

**31. CONFLICT OF INTEREST:**

The Municipality and the Developer shall use all reasonable means to avoid any conflict of interest with the County and shall immediately notify the County in the event of a conflict of interest. The aforementioned parties shall also use all commercially reasonable means to avoid any appearance of impropriety.



### **32: ELECTRONIC FUNDS TRANSFER:**

All payments made by the County to the Municipality will be made by electronic funds transfer (“EFT”) pursuant to the County’s Vendor Direct program. Contractors doing business with Westchester County, who are not already enrolled in the Vendor Direct Program, will be required to fill out and submit an EFT Authorization Form in order to receive payment. The EFT Authorization Form and related information are annexed hereto as Schedule “I”. The completed Authorization Form must be returned by the Municipality to the Commissioner prior to execution of the contract. In rare cases, a hardship waiver may be granted. For a Hardship Waiver Request Form, please contact the Westchester County Finance Department.

### **33. ENFORCEMENT:**

This Agreement shall not be enforceable until signed by all parties and approved by the Office of the County Attorney.

**IN WITNESS WHEREOF**, each of the undersigned parties has caused this Agreement to be executed.

**THE COUNTY OF WESTCHESTER**

By: \_\_\_\_\_  
Name: Blanca P. Lopez  
Title: Commissioner of Planning

**CITY OF WHITE PLAINS**

By: \_\_\_\_\_  
Name: Thomas M. Roach  
Title: Mayor, City of White Plains

**WHITE PLAINS HOUSING AUTHORITY**

By: \_\_\_\_\_  
Name: Denise Brooks-Jones  
Title: Executive Director and Chief Executive Officer

**WP THREE HOUSING DEVELOPMENT FUND CORPORATION**

By: \_\_\_\_\_  
Name: Denise Brooks-Jones  
Title: Chief Executive Officer

**TRINITY BROOKFIELD COMMONS PHASE THREE LIMITED PARTNERSHIP**

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

Approved by the Board of Legislators by Act No. 2024–146 adopted on August 5, 2024;

Approved by the Westchester County Board of Acquisition & Contract at a meeting duly held on the 5th day of December, 2024; and

Approved by City of White Plains Common Council on the \_\_ day of \_\_\_\_ 2025.

Approved as to form and manner of execution:

---

Associate County Attorney  
County of Westchester

**COUNTY ACKNOWLEDGMENT**

STATE OF NEW YORK                    )  
  )ss.:  
COUNTY OF WESTCHESTER        )

On the \_\_\_\_\_ day of \_\_\_\_\_ in the year 20\_\_ before me, the undersigned, a Notary Public in and for said State, personally appeared Blanca P. Lopez, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument; and, acknowledged if operating under any trade name, that the certificate required by the New York State General Business Law Section 130 has been filed as required therein.

\_\_\_\_\_  
Signature and Office of individual  
taking acknowledgment

**MUNICIPALITY ACKNOWLEDGMENT**

STATE OF NEW YORK                    )  
  )ss.:  
COUNTY OF WESTCHESTER        )

On the \_\_\_\_\_ day of \_\_\_\_\_ in the year 20\_\_ before me, the undersigned, a Notary Public in and for said State, personally appeared \_\_\_\_\_, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument; and, acknowledged if operating under any trade name, that the certificate required by the New York State General Business Law Section 130 has been filed as required therein.

\_\_\_\_\_  
Signature and Office of individual  
taking acknowledgment

## MUNICIPAL CERTIFICATE OF AUTHORITY

I, \_\_\_\_\_,  
*Officer other than officer signing contract)*

certify that I am the \_\_\_\_\_ of  
(Title)  
the \_\_\_\_\_  
(the “Municipality”)

a municipal corporation duly organized and in good standing under the \_\_\_\_\_  
(Law under which organized, e.g., the  
New York Business Corporate Law)

named in the foregoing agreement;  
that \_\_\_\_\_  
(Person executing agreement)

who signed said agreement on behalf of the Municipality was, at the time of execution

*(Title of such person)*

of the Municipality and that said agreement was duly signed for and on behalf of said Municipality by authority of the Common Council of the City of White Plains, thereunto duly authorized and that such authority is in full force and effect at the date hereof.

(Signature)

STATE OF NEW YORK )  
 )ss.:  
COUNTY OF WESTCHESTER )

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_, before me personally came \_\_\_\_\_, whose signature appears above, to me

known, and known to me to be the \_\_\_\_\_ of  
(Title)

\_\_\_\_\_, the Municipality described in and which executed the above certificate, who being by me duly sworn did depose and say that he/she, the said \_\_\_\_\_ of said Municipality resides at \_\_\_\_\_, and that he/she signed his/her name hereto by order of the Board of \_\_\_\_\_ of said Municipality.

Notary Public                      County

**HOUSING AUTHORITY ACKNOWLEDGMENT**

STATE OF NEW YORK                     )  
  )ss.:  
COUNTY OF WESTCHESTER        )

On the \_\_\_\_\_ day of \_\_\_\_\_ in the year 20\_\_ before me, the undersigned, a Notary Public in and for said State, personally appeared Denise Brooks-Jones, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument; and, acknowledged if operating under any trade name, that the certificate required by the New York State General Business Law Section 130 has been filed as required therein.

\_\_\_\_\_  
Signature and Office of individual  
taking acknowledgment

**HOUSING AUTHORITY CERTIFICATE OF AUTHORITY**

I, \_\_\_\_\_,  
*Officer other than officer signing contract)*

certify that I am the \_\_\_\_\_ of  
*(Title)*

the White Plains Housing Authority, a public housing authority established under

the laws of the State of New York, named in the foregoing agreement;

that Denise Brooks-Jones who signed said agreement on behalf of the Authority was, at the time of execution Executive Director and Chief Executive Officer of the Authority and that said agreement was duly signed for and on behalf of said Authority by authority of the White Plains Housing Authority, thereunto duly authorized and that such authority is in full force and effect at the date hereof.

*(Signature)*

STATE OF NEW YORK                    )  
  )ss.:  
COUNTY OF WESTCHESTER        )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2025, before me personally came \_\_\_\_\_, whose signature appears above, to me known, and known to me to be the \_\_\_\_\_ of  
*(Title)*

White Plains Housing Authority, the Housing Authority described in and which executed the above certificate, who being by me duly sworn did depose and say that he/she has an office at 223 Dr. Martin Luther King, Jr. Boulevard, White Plains, New York 10601, that he/she is duly authorized to execute said certificate on behalf of said Authority, and that he/she signed his/her name thereto pursuant to such authority.

Notary Public \_\_\_\_\_

Date: \_\_\_\_\_



**HDFC ACKNOWLEDGMENT**

STATE OF NEW YORK                    )  
  ) ss.:  
COUNTY OF WESTCHESTER        )

On the \_\_\_\_\_ day of \_\_\_\_\_ in the year 2025 before me, the undersigned, a Notary Public in and for said State, personally appeared Denise Brooks-Jones, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument; and, acknowledged if operating under any trade name, that the certificate required by the New York State General Business Law Section 130 has been filed as required therein.

\_\_\_\_\_  
Signature and Office of individual  
taking acknowledgment

**HDFC CERTIFICATE OF AUTHORITY**

I, \_\_\_\_\_  
*Manager or officer other than officer signing contract)*

certify that I am a \_\_\_\_\_ of WP Three Housing Development Fund Corporation, a not-for-profit corporation (the "HDFC") duly organized under the laws of the State of New York; that Denise Brooks-Jones who signed said Agreement on behalf of the HDFC was, at the time of execution, the Chief Executive Officer of the HDFC; that said Agreement was duly signed for and on behalf of said HDFC and as the act of said HDFC for the purposes therein mentioned.

\_\_\_\_\_  
*(Signature)*

STATE OF NEW YORK                     )  
  ) ss.:  
COUNTY OF WESTCHESTER        )

On the \_\_\_\_\_ day of \_\_\_\_\_ in the year 2025 before me, the undersigned, a Notary Public in and for said State, \_\_\_\_\_ personally appeared, personally known to me or proved to me on the basis of satisfactory evidence to be person described in and who executed the above certificate, who being by me duly sworn did depose and say that he/she has an office at 223 Dr. Martin Luther King, Jr. Boulevard, White Plains, New York 10601, and he/she is a \_\_\_\_\_ of said HDFC; that he/she is duly authorized to execute said certificate on behalf of said HDFC, and that he/she signed his/her name thereto pursuant to such authority.

Notary Public \_\_\_\_\_

Date: \_\_\_\_\_

DRAFT

**DEVELOPER ACKNOWLEDGMENT**

STATE OF NEW YORK                    )  
  )ss.:  
COUNTY OF \_\_\_\_\_ )

On the \_\_\_\_\_ day of \_\_\_\_\_ in the year 2024 before me, the undersigned, a Notary Public in and for said State, personally appeared \_\_\_\_\_, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument; and, acknowledged if operating under any trade name, that the certificate required by the New York State General Business Law Section 130 has been filed as required therein.

\_\_\_\_\_  
Signature and Office of individual  
taking acknowledgment

**DEVELOPER CERTIFICATE OF AUTHORITY**

I, \_\_\_\_\_  
*Manager or officer other than officer signing contract)*

certify that I am a \_\_\_\_\_ of \_\_\_\_\_, the Managing Member of  
\_\_\_\_\_ LP

(the "LP") duly organized under the Laws of the State of New York; that

\_\_\_\_\_ who signed said Agreement on behalf of the LP  
was, at the time of execution, an Authorized Agent of the General Partner of the LP; that said  
Agreement was duly signed for and on behalf of said LP and as the act of said LP for the purposes  
therein mentioned.

\_\_\_\_\_  
*(Signature)*

STATE OF NEW YORK)

ss.:

COUNTY OF \_\_\_\_\_)

On the \_\_\_\_\_ day of \_\_\_\_\_ in the year 2024 before me, the undersigned, a Notary  
Public in and for said State, \_\_\_\_\_ personally appeared,  
personally known to me or proved to me on the basis of satisfactory evidence to be person  
described in and who executed the above certificate, who being by me duly sworn did depose and  
say that he has on office at \_\_\_\_\_, and he/she is a Manager of the  
Managing Member of said LP; that he is duly authorized to execute said certificate on behalf of  
said LP, and that he signed his name thereto pursuant to such authority.

Notary Public \_\_\_\_\_

Date: \_\_\_\_\_

**SCHEDULE “A”**  
**Affordable Housing Property Description**

DRAFT

**SCHEDULE “B”**  
**Form of Declaration of Restrictive Covenants**

DRAFT

**SCHEDULE “C”**  
Intentionally Omitted

DRAFT



**SCHEDULE “D”  
INFRASTRUCTURE IMPROVEMENTS PROJECT**

**A. SCOPE OF SERVICES**

The infrastructure improvements include, but are not limited to, on-site and street paving, curbing, sidewalks, retaining walls, storm water detention, drainage systems, sanitary sewer system, water lines, lighting, signage, landscaping, construction management and County administrative costs (the “Infrastructure Improvements”). The Infrastructure Improvements shall be constructed in accordance with the following plans: Infrastructure Improvements 161 South Lexington Avenue (161 South Lexington Avenue HIF Contract) as prepared by [REDACTED], dated and last revised, [REDACTED], 202\_ (the “Plans”).

**Project Manager**

The Municipality will retain and/or utilize a consultant to perform the construction management associated with the HIF funded infrastructure improvements, or in the alternative act as construction manager. The construction management will include:

- the review and approvals of shop drawings,
- review and approval request for payments,
- perform inspections and provide certifications associated with any County Health department requirements (if applicable),
- conduct site inspection to confirm compliance with the approved construction drawings.

The professional retained to perform the said inspection shall report directly to the municipal engineer and County staff on all services performed relating to the construction of the municipal infrastructure project.

**B. PAYMENT**

The County of Westchester will make progress payments to the Municipality for expenses incurred in constructing the Infrastructure Improvements associated with the construction of up to 168 units of affordable AFFH housing in the Municipality, in an amount not to exceed \$8,134,000, as set forth pursuant to the below Budget. All quantities are approximate, and the total amount shall not be exceeded.

Any and all requests for payments to be made, including any partial payment made in proportion to the work completed, shall be submitted on properly executed payment vouchers of the County and paid within 30 days after approval by the Commissioner of Planning of the County of Westchester or his or her duly authorized designee (hereinafter the “Commissioner”), which approval shall not be unreasonably withheld and subject to the terms of the IMDA. The

Municipality acknowledges and agrees that the New York State prevailing wage shall be paid. In the event prevailing wage is not paid the County's Department of Planning shall recalculate and reduce the below Budget. All payment vouchers must be accompanied by a numbered invoice and must contain the invoice number where indicated. All invoices submitted during each calendar year shall utilize sequential numbering and be non-repeating.

Payment shall substantially follow the following procedures, but the County reserves the right to require additional documentation and approval:

1. Documentation for the payment of work completed shall include verification from the Architect or Engineer responsible for the work to a) verify that the work was done, and b) that it was done properly;
2. If approved, a signed AIA form approving the work, materials and workmanship and the amount to be invoiced by the contractor shall be included along with a County voucher and lien release from the Contractor.
3. The Municipality submits the invoice, AIA form, lien release, and a county voucher to the County for payment;
4. The County reviews the request, if approved submits it for payment & prepares a check to the municipality provided however that the County shall retain not more than five per centum of each payment which amount shall be held until final payment upon the issuance of a Certificate of Completion for the Infrastructure Improvements.

It is also understood that the County's Planning Department staff may visit the site during construction and will inspect and approve the project for substantial completion and that the County shall be permitted such access.

**C. BUDGET (County HIF Funds):**

All quantities are approximate and the total amount shall not be exceeded

The Developer is responsible for funding the costs of construction of the Other Infrastructure Improvements not funded through the County HIF Funds.

#### SCHEDULE OF VALUES

SITework ITEM	GRAND TOTAL
REMOVALS	
EARTHWORK	
PAVEMENT	
STRUCTURES	
DRAINAGE	
INCIDENTAL SITEWORK	
LANDSCAPING	
MISCELLANEOUS	
UTILITIES	
BONDS INSURANCE MOBILIZATION	
CONTINGENCY	
STAFF AND LEGAL FEES	
ENGINEERING, CONST. MGMT	\$
	\$ 8,134,000.00

#### **D. CONSTRUCTION SCHEDULE FOR INFRASTRUCTURE IMPROVEMENTS**

Commencement Date for Construction of Infrastructure Improvements: No later than December 31, 2025.

Completion Date for Infrastructure Improvements: 365 days from the date of commencement of construction of the Infrastructure Improvements.

## **SCHEDULE "E(i)"**

### **STANDARD INSURANCE PROVISIONS** **(Municipality)**

1. Prior to commencing work, and throughout the term of the Agreement, the Municipality shall obtain at its own cost and expense the required insurance as delineated below from insurance companies licensed in the State of New York, carrying a Best's financial rating of A or better. Municipality shall provide evidence of such insurance to the County of Westchester ("County"), either by providing a copy of policies and/or certificates as may be required and approved by the Director of Risk Management of the County ("Director"). The policies or certificates thereof shall provide that ten (10) days prior to cancellation or material change in the policy, notices of same shall be given to the Director either by overnight mail or personal delivery for all of the following stated insurance policies. All notices shall name the Municipality and identify the Agreement.

If at any time any of the policies required herein shall be or become unsatisfactory to the Director, as to form or substance, or if a company issuing any such policy shall be or become unsatisfactory to the Director, the Municipality shall upon notice to that effect from the County, promptly obtain a new policy, and submit the policy or the certificate as requested by the Director to the Office of Risk Management of the County for approval by the Director. Upon failure of the Municipality to furnish, deliver and maintain such insurance, the Agreement, at the election of the County, may be declared suspended, discontinued or terminated.

Failure of the Municipality to take out, maintain, or the taking out or maintenance of any required insurance, shall not relieve the Municipality from any liability under the Agreement, nor shall the insurance requirements be construed to conflict with or otherwise limit the contractual obligations of the Municipality concerning indemnification.

All property losses shall be made payable to the "County of Westchester" and adjusted with the appropriate County personnel.

In the event that claims, for which the County may be liable, in excess of the insured amounts provided herein are filed by reason of Municipality's negligent acts or omissions under the Agreement or by virtue of the provisions of the labor law or other statute or any other reason, the amount of excess of such claims or any portion thereof, may be withheld from payment due or to become due the Municipality until such time as the Municipality shall furnish such additional security covering such claims in form satisfactory to the Director.

In the event of any loss, if the Municipality maintains broader coverage and/or higher limits than the minimums identified herein, the County shall be entitled to the broader coverage and/or higher limits maintained by the Municipality. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the County.

The Municipality may provide evidence of self-insurance.

2. The Municipality shall provide proof of the following coverage (if additional coverage is required for a specific agreement, those requirements will be described in the Agreement):

- a) Workers' Compensation and Employer's Liability. Certificate form C-105.2 or State Fund Insurance Company form U-26.3 is required for proof of compliance with the New York State Workers' Compensation Law. State Workers' Compensation Board form DB-120.1 is required for proof of compliance with the New York State Disability Benefits Law. Location of operation shall be "All locations in Westchester County, New York."

Where an applicant claims to not be required to carry either a Workers' Compensation Policy or Disability Benefits Policy, or both, the employer must complete NYS form CE-200, available to download at: <http://www.wcb.ny.gov>.

If the employer is self-insured for Workers' Compensation, he/she should present a certificate from the New York State Worker's Compensation Board evidencing that fact (Either SI-12, Certificate of Workers' Compensation Self-Insurance, or GSI-105.2, Certificate of Participation in Workers' Compensation Group Self-Insurance).

- b) Commercial General Liability Insurance with a combined single limit of \$1,000,000 (c.s.l) per occurrence and a \$2,000,000 aggregate limit naming the "County of Westchester" as an additional insured on a primary and non-contributory basis. This insurance shall include the following coverages:
  - i. Premises - Operations.
  - ii. Broad Form Contractual.
  - iii. Independent Contractor and Sub-Contractor.
  - iv. Products and Completed Operations.

- c) Commercial Umbrella/Excess Insurance: \$2,000,000 each Occurrence and Aggregate naming the "County of Westchester" as additional insured, written on a "follow the form" basis.

NOTE: Additional insured status shall be provided by standard or other endorsement that extends coverage to the County of Westchester for both on-going and completed operations.

- d) Automobile Liability Insurance with a minimum limit of liability per occurrence of \$1,000,000 for bodily injury and a minimum limit of \$100,000 per occurrence for property damage or a combined single limit of \$1,000,000 unless otherwise indicated in the contract specifications. This insurance shall include for bodily injury and property damage the following coverages and name the "County of Westchester" as additional insured:
  - (i) Owned automobiles.
  - (ii) Hired automobiles.
  - (iii) Non-owned automobiles.

3. All policies of the Municipality shall be endorsed to contain the following clauses:

(a) Insurers shall have no right to recovery or subrogation against the County (including its employees and other agents and agencies), it being the intention of the parties that the insurance policies so effected shall protect both parties and be primary coverage for any and all losses covered by the above-described insurance.

(b) The clause "other insurance provisions" in a policy in which the County is named as an insured, shall not apply to the County.

(c) The insurance companies issuing the policy or policies shall have no recourse against the County (including its agents and agencies as aforesaid) for payment of any premiums or for assessments under any form of policy.

(d) Any and all deductibles in the above described insurance policies shall be assumed by and be for the account of, and at the sole risk of, the Municipality.

## **SCHEDULE "E(ii)"**

### **STANDARD INSURANCE PROVISIONS**

#### **(Developer)**

1. Prior to commencing work, and throughout the term of the Agreement, the Developer shall obtain at its own cost and expense the required insurance as delineated below from insurance companies licensed in the State of New York, carrying a Best's financial rating of A or better. Developer shall provide evidence of such insurance to the County of Westchester ("County"), either by providing a copy of policies and/or certificates as may be required and approved by the Director of Risk Management of the County ("Director"). The policies or certificates thereof shall provide that ten (10) days prior to cancellation or material change in the policy, notices of same shall be given to the Director either by overnight mail or personal delivery for all of the following stated insurance policies. All notices shall name the Developer and identify the Agreement.

If at any time any of the policies required herein shall be or become unsatisfactory to the Director, as to form or substance, or if a company issuing any such policy shall be or become unsatisfactory to the Director, the Developer shall upon notice to that effect from the County, promptly obtain a new policy, and submit the policy or the certificate as requested by the Director to the Office of Risk Management of the County for approval by the Director. Upon failure of the Developer to furnish, deliver and maintain such insurance, the Agreement, at the election of the County, may be declared suspended, discontinued or terminated.

Failure of the Developer to take out, maintain, or the taking out or maintenance of any required insurance, shall not relieve the Developer from any liability under the Agreement, nor shall the insurance requirements be construed to conflict with or otherwise limit the contractual obligations of the Developer concerning indemnification.

All property losses shall be made payable to the "County of Westchester" and adjusted with the appropriate County personnel.

In the event that claims, for which the County may be liable, in excess of the insured amounts provided herein are filed by reason of Developer's negligent acts or omissions under the Agreement or by virtue of the provisions of the labor law or other statute or any other reason, the amount of excess of such claims or any portion thereof, may be withheld from payment due or to become due the Developer until such time as the Developer shall furnish such additional security covering such claims in form satisfactory to the Director.

In the event of any loss, if the Developer maintains broader coverage and/or higher limits than the minimums identified herein, the County shall be entitled to the broader coverage and/or higher limits maintained by the Developer. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the County.

2 The Developer shall provide proof of the following coverage (if additional coverage is required for a specific agreement, those requirements will be described in the Agreement):

- e) Workers' Compensation and Employer's Liability. Certificate form C-105.2 or State Fund Insurance Company form U-26.3 is required for proof of compliance with the New York State Workers' Compensation Law. State Workers' Compensation Board form DB-120.1 is required for proof of compliance with the New York State Disability Benefits Law. Location of operation shall be "All locations in Westchester County, New York."

Where an applicant claims to not be required to carry either a Workers' Compensation Policy or Disability Benefits Policy, or both, the employer must complete NYS form CE-200, available to download at: <http://www.wcb.ny.gov>.

If the employer is self-insured for Workers' Compensation, he/she should present a certificate from the New York State Worker's Compensation Board evidencing that fact (Either SI-12, Certificate of Workers' Compensation Self-Insurance, or GSI-105.2, Certificate of Participation in Workers' Compensation Group Self-Insurance).

- f) Commercial General Liability Insurance with a combined single limit of \$1,000,000 (c.s.1) per occurrence and a \$2,000,000 aggregate limit naming the "County of Westchester" as an additional insured on a primary and non-contributory basis. This insurance shall include the following coverages:

- v. Premises - Operations.
- vi. Broad Form Contractual.
- vii. Independent Contractor and Sub-Contractor.
- viii. Products and Completed Operations.

- g) Commercial Umbrella/Excess Insurance: \$2,000,000 each Occurrence and Aggregate naming the "County of Westchester" as additional insured, written on a "follow the form" basis.

NOTE: Additional insured status shall be provided by standard or other endorsement that extends coverage to the County of Westchester for both on-going and completed operations.

All Contracts involving the use of explosives, demolition and/or underground work shall provide proof that XCU is covered.

- h) Automobile Liability Insurance with a minimum limit of liability per occurrence of \$1,000,000 for bodily injury and a minimum limit of \$100,000 per occurrence for property damage or a combined single limit of \$1,000,000 unless otherwise indicated in the contract specifications. This insurance shall include for bodily injury and property damage the following coverages and name the "County of Westchester" as additional insured:

- (i) Owned automobiles.
- (ii) Hired automobiles.
- (iii) Non-owned automobiles.

As per the attached written agreement, and where indicated with a check mark below, the following insurance(s) will also be required:

X	<b><i>(e) Environmental Liability with a minimum limit of liability per occurrence of \$1,000,000.00. Policy shall be kept in full force and effect for three (3) years from the date of Closing and the County shall be provided with the endorsement naming the County of Westchester as an additional insured.</i></b>
X	<b><i>At acquisition of Property: (f) Property Insurance – Replacement Cost basis with County of Westchester named as loss payee as its interest may appear</i></b>
X	<b><i>At or before execution of a rehabilitation construction agreement: Builder's Risk -- Developer at their own cost and expense shall provide and maintain a Builder's Risk Form, All Risk Insurance Contract. The coverage shall be written for 100%</i></b>

	<i>of the completed value of the rehabilitation construction work, with the County of Westchester named as loss payee as its interest may appear.</i>
--	---

3. All policies of the Developer shall be endorsed to contain the following clauses:

(a) Insurers shall have no right to recovery or subrogation against the County (including its employees and other agents and agencies), it being the intention of the parties that the insurance policies so effected shall protect both parties and be primary coverage for any and all losses covered by the above-described insurance.

(b) The clause "other insurance provisions" in a policy in which the County is named as an insured, shall not apply to the County.

(c) The insurance companies issuing the policy or policies shall have no recourse against the County (including its agents and agencies as aforesaid) for payment of any premiums or for assessments under any form of policy.

(d) Any and all deductibles in the above described insurance policies shall be assumed by and be for the account of, and at the sole risk of, the Developer.



**SCHEDULE “F”  
ENVIRONMENTAL REPORTS**

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**SCHEDULE “G”**

**Required Easement from the Housing Authority to County and Municipality  
(form of attached hereto)**

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## INFRASTRUCTURE IMPROVEMENTS EASEMENT

**THIS EASEMENT**, made by:

**WHITE PLAINS HOUSING AUTHORITY**, a public housing authority established under the laws of the State of New York and having an office and place of business at 223 Dr. Martin Luther King Blvd., White Plains, NY, 10601, (the “Grantor”)

### W I T N E S S E T H:

**WHEREAS**, Grantor is the fee owner of that certain parcel of real property located at 161 South Lexington Avenue, City of White Plains, County of Westchester, State of New York, as more particularly described in Exhibit “A” attached hereto and made a part hereof (the “Property”) and wishes to grant an easement in, on, over, under and through a portion of said property to the **COUNTY OF WESTCHESTER**, a municipal corporation of the State of New York having an office and place of business in the Michaelian Office Building, 148 Martine Avenue, White Plains, New York 10601 (the “County”), and the **CITY OF WHITE PLAINS**, a municipal corporation of the State of New York, having an office and place of business at City Hall, 255 Main Street, White Plains, New York 10601 (the “Municipality” and, together with the County, collectively referred to as the “Grantees”); and

**NOW, THEREFORE**, the Grantor agrees as follows:

The Grantor in consideration of the sum of One (\$1.00) Dollar lawful money of the United States, paid by the Grantees, receipt of which is hereby acknowledged, does hereby grant and release unto the Grantees, its successors and assigns, a non-exclusive easement (the “Easement”) in, on, over, under and through the area depicted on the map annexed hereto as Exhibit “B” (the “Easement Area”) for the purpose of operating and accessing certain County owned public improvements, including, but not be limited to on-site and street paving, curbing, sidewalks, storm water detention, drainage systems, sanitary sewer system, water lines, lighting, signage, landscaping and construction management costs (the “Infrastructure Improvements”).

It is acknowledged that the foregoing shall not diminish the terms and conditions of that certain Declaration of Restrictive Covenants entered into with respect to the Property dated the date hereof. The Grantor has received any approval necessary in connection herewith and the grant of the Easement will not result in any breach of or constitute a default under other instruments or documents to which the Grantor is a party or by which it may be bound or affected.

The Easement granted herein is subject to the following restrictions:

The Grantor further Covenants that neither it, nor its successors or assigns shall do anything, or allow anything to be done, which in the reasonable opinion of the Grantees would injure, endanger or impair the Infrastructure Improvements contained within the Easement or the operation thereof.

This non-exclusive Easement is granted on the following terms and conditions:

The Grantees, its employees, agents and contractors, shall have the right at any time of access, ingress, egress and regress into and from the Easement at any time upon reasonable notice during normal business hours (except in the case of an emergency) for the purpose of excavating, grading, constructing, reconstructing, enlarging, repairing, monitoring and maintaining the Infrastructure Improvements without becoming or being held liable for trespass.

Upon final completion of construction with respect to the Infrastructure Improvements and issuance of a Certificate of Occupancy with respect to such Infrastructure Improvements, the Municipality's rights under this Easement shall terminate.

The Grantor acknowledges that the Infrastructure Improvements constructed in, on, over, under or through the Easement shall be owned by the County for so long as the bonds of the County (the "Bonds"), which made funds available for said Infrastructure Improvements, are outstanding, pursuant to the terms of the certain Inter-Municipal/Developer Agreement of even date herewith by and between the Grantor, the Developer, the Municipality and the County. Upon maturity or full redemption of the aforesaid Bonds, title to the Infrastructure Improvements will vest in the Grantor, and this Indenture and the Easement granted herein to the Grantees shall terminate. Upon such termination, the County and the Municipality agree to execute a termination of this Easement to be recorded against the Property upon request of the Grantor.

The exercise of any rights hereunder shall be done in compliance with all applicable laws, ordinances, rules, regulation, orders and requirements of any governmental authority having jurisdiction thereof, while undertaking such measures as may reasonably be required to protect against personal injury and/or property damage.

The Easement granted herein shall be nonexclusive, and Grantor and/or its successors or assigns, at its sole discretion, may use or permit other parties to use the Easement Area for any purpose that does not prevent the exercise of the rights granted to Grantee herein and the Grantee's use of the Easement Area shall not interfere with the Grantor's quiet enjoyment of the Property.

This Indenture may not be modified or amended unless by written instrument signed by the Grantor and Grantees hereto.

The non-exclusive Easement shall run with the land and the provisions contained herein shall be binding upon and inure to the benefit of and be enforceable by the Grantees, their successors and assigns.

This Indenture contains the entire agreement between the parties relating to the rights herein granted and the obligations herein assumed. Any oral or other written understandings, agreements and negotiations between the parties shall be of no force and effect.

No waiver by either party of any failure or refusal by the other party to comply with its respective obligations under this Indenture shall be valid unless in writing and signed by the party to be charged and no such waiver shall be deemed a waiver of any other or subsequent failure or refusal to so comply.

**TO HAVE AND TO HOLD** the Easement granted herein unto the Grantees, their successors and assigns until such time as the Bonds have matured or have been fully redeemed.

**IN WITNESS WHEREOF**, the Grantor has executed this instrument the day and year first above written.

**WHITE PLAINS HOUSING AUTHORITY**

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

RECORDING REQUESTED BY AND  
WHEN RECORDED MAIL TO:  
County Attorney  
148 Martine Avenue, Room 600  
White Plains, New York 10601  
Attn: David Vutera

**UNIFORM ACKNOWLEDGMENT**

STATE OF NEW YORK                    )  
  )ss.:  
COUNTY OF \_\_\_\_\_)

On the \_\_\_\_\_ day of \_\_\_\_\_ in the year 2024, before me the undersigned personally appeared \_\_\_\_\_ personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

\_\_\_\_\_  
Notary Public

**EXHIBIT “A”**  
Property

All that certain tract, piece or parcel of land situate in the City of White Plains, County of Westchester, State of New York, lying, and being more particularly bounded and described as follows:

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**EXHIBIT “B”**  
Easement Area

All that certain tract, piece or parcel of land situate in the City of White Plains, County of Westchester, State of New York, lying generally West of the Westerly terminus of, and being more particularly bounded and described as follows:

DRAFT



**SCHEDULE "H"**  
**REQUIRED DISCLOSURE OF RELATIONSHIPS TO COUNTY**

*A potential County contractor must complete this form as part of the proposed County contract.*

- 1.) Are any of the employees that the Contractor will use to carry out this contract also a County officer or employee, or the spouse, child, or dependent of a County officer or employee?

Yes \_\_\_\_\_ No \_\_\_\_\_

If yes, please provide details (attach extra pages, if necessary): \_\_\_\_\_  
\_\_\_\_\_

- 2.) Are any of the owners of the Contractor or their spouses a County officer or employee?

Yes \_\_\_\_\_ No \_\_\_\_\_

If yes, please provide details (attach extra pages, if necessary): \_\_\_\_\_  
\_\_\_\_\_

- 3.) Do any County officers or employees have an **interest**<sup>1</sup> in the Contractor or in any approved subcontractor that will be used for this contract?

Yes \_\_\_\_\_ No \_\_\_\_\_

If yes, please provide details (attach extra pages, if necessary): \_\_\_\_\_  
\_\_\_\_\_

By signing below, I hereby certify that I am authorized to complete this form for the Contractor.

\_\_\_\_\_  
Name: \_\_\_\_\_

Title: \_\_\_\_\_


<sup>1</sup> "Interest" means a direct or indirect pecuniary or material benefit accruing to a County officer or employee, his/her spouse, child or dependent, whether as the result of a contract with the County or otherwise. For the purpose of this form, a County officer or employee shall be deemed to have an "interest" in the contract of:

- 1.) His/her spouse, children and dependents, except a contract of employment with the County;
- 2.) A firm, partnership or association of which such officer or employee is a member or employee;
- 3.) A corporation of which such officer or employee is an officer, director or employee; and
- 4.) A corporation of which more than five (5) percent of the outstanding capital stock is owned by any of the aforesaid parties.

Date: \_\_\_\_\_

DRAFT

## SCHEDULE "I"

	<b>Westchester County • Department of Finance • Treasury Division</b>  <b>Electronic Funds Transfer (EFT)</b> <b>Vendor Direct Payment Authorization Form</b>	Authorization is: <i>(check one)</i> <input type="checkbox"/> New <input type="checkbox"/> Change
<b>INSTRUCTIONS:</b> Please complete both sections of this Authorization Form and attach a voided check. See the reverse side for more information and instructions.		
<b>Mail to:</b> Westchester County, Department of Finance, Treasury Division, 148 Martine Avenue, White Plains, NY 10601 <b>Attention:</b> Vendor Direct		
<b>Section I - Vendor Information</b>		
1. Vendor Name:		
2. Taxpayer ID Number or Social Security Number:		
3. Vendor Primary Address		
4. Contact Person Name:		
Contact Person Telephone Number:		
5. Vendor E-Mail Addresses for Remittance Notification:		
6. Vendor Certification: <i>I have read and understand the Vendor Direct Payment Program and hereby authorize payments to be received by electronic funds transfer into the bank that I designate in Section II. I further understand that in the event that an erroneous electronic payment is sent, Westchester County reserves the right to reverse the electronic payment. In the event that a reversal cannot be implemented, Westchester County will utilize any other lawful means to retrieve payments to which the payee was not entitled.</i>		
Authorized Signature	Print Name/Title	Date
<b>Section II- Financial Institution Information</b>		
7. Bank Name:		
8. Bank Address:		
9. Routing Transit Number:		
10. Account Type: (check one) <input type="checkbox"/> Checking <input type="checkbox"/> Savings		
11. Bank Account Number:		
12. Bank Account Title:		
13. Bank Contact Person Name:		
Telephone Number:		
14. FINANCIAL INSTITUTION CERTIFICATION (required <b>ONLY</b> if directing funds into a Savings Account <b>OR</b> if a voided check is not attached to this form): <i>I certify that the account number and type of account is maintained in the name of the vendor named above. As a representative of the named financial Institution, I certify that this financial Institution is ACH capable and agrees to receive and deposit payments to the account shown.</i>		
Authorized Signature	Print Name / Title	Date
(Leave Blank - to be completed by Westchester County) - Vendor number assigned		

## Electronic Funds Transfer (EFT) Vendor Direct Payment Authorization Form

### GENERAL INSTRUCTIONS

Please complete both sections of the Vendor Direct Payment Authorization Form and forward the completed form (along with a voided check for the account to which you want your payments credited) to: Westchester County Department of Finance, 148 Martine Ave, Room 720, White Plains, NY 10601, Attention: Vendor Direct. Please see item 14 below regarding attachment of a voided check.

### Section I - VENDOR INFORMATION

1. Provide the name of the vendor as it appears on the W-9 form.
2. Enter the vendor's Taxpayer ID number or Social Security Number as it appears on the W-9 form.
3. Enter the vendor's complete primary address (not a P.O. Box).
4. Provide the name and telephone number of the vendor's contact person.
5. Enter the business e-mail address for the remittance notification. **THIS IS VERY IMPORTANT.** This is the e-mail address that we will use to send you notification and remittance information two days prior to the payment being credited to your bank account. We suggest that you provide a group mailbox (if applicable) for your e-mail address. You may also designate multiple e-mail addresses.
6. Please have an authorized Payee/Company official sign and date the form and include his/her title.

### Section II - FINANCIAL INSTITUTION INFORMATION

7. Provide bank's name.
8. Provide the complete address of your bank.
9. Enter your bank's 9 digit routing transit number.
10. Indicate the type of account (check one box only).
11. Enter the vendor's bank account number.
12. Enter the title of the vendor's account.
13. Provide the name and telephone number of your bank contact person.
14. If you are directing your payments to a Savings Account OR you can not attach a voided check for your checking account, this line needs to be completed and signed by an authorized bank official. IF YOU DO ATTACH A VOIDED CHECK FOR A CHECKING ACCOUNT, YOU MAY LEAVE THIS LINE BLANK.

NEW/CHANGE VEN EFT 9/08

## SCHEDULE “J”

### **QUESTIONNAIRE REGARDING BUSINESS ENTERPRISES OWNED AND CONTROLLED BY WOMEN OR PERSONS OF COLOR**

As part of the County’s program to encourage the meaningful and significant participation of business enterprises owned and controlled by persons of color or women in County contracts, and in furtherance of Section 308.01 of the Laws of Westchester County, completion of this form is required.

A “business enterprise owned and controlled by women or persons of color” means a business enterprise, including a sole proprietorship, limited liability partnership, partnership, limited liability corporation, or corporation, that either:

- 1.) meets the following requirements:
  - a. is at least 51% owned by one or more persons of color or women;
  - b. is an enterprise in which such ownership by persons of color or women is real, substantial and continuing;
  - c. is an enterprise in which such ownership interest by persons of color or women has and exercises the authority to control and operate, independently, the day-to-day business decisions of the enterprise; and
  - d. is an enterprise authorized to do business in this state which is independently owned and operated.
- 2.) is a business enterprise certified as a minority business enterprise (“MBE”) or women business enterprise (“WBE”) pursuant to Article 15-a of the New York State Executive Law and the implementing regulations, 9 New York Code of Rules and Regulations subtitle N Part 540 et seq., **OR**
- 3.) is a business enterprise certified as a small disadvantaged business concern pursuant to the Small Business Act, 15 U.S.C. 631 et seq., and the relevant provisions of the Code of Federal Regulations as amended.

Please note that the term “persons of color,” as used in this form, means a United States citizen or permanent resident alien who is and can demonstrate membership of one of the following groups:

- (a) Black persons having origins in any of the Black African racial groups;
- (b) Hispanic persons of Mexican, Puerto Rican, Dominican, Cuban, Central or South American descent of either Indian or Hispanic origin regardless of race;
- (c) Native American or Alaskan native persons having origins in any of the original peoples of North America; or
- (d) Asian or Pacific Islander persons having origins in any of the Far East countries, South

East Asia, the Indian subcontinent or the Pacific Islands.

1. Are you a business enterprise owned and controlled by women or persons of color in accordance with the standards listed above?

\_\_\_\_\_ No

\_\_\_\_\_ Yes

**Please note:** If you answered “yes” based upon certification by New York State and/or the Federal government, official documentation of the certification must be attached.

2. If you answered “Yes” above, please check off below whether your business enterprise is owned and controlled by women, persons of color, or both.

\_\_\_\_\_ Women

\_\_\_\_\_ Persons of Color (*please check off below all that apply*)

\_\_\_\_\_ Black persons having origins in any of the Black African racial groups

\_\_\_\_\_ Hispanic persons of Mexican, Puerto Rican, Dominican, Cuban, Central or South American descent of either Indian or Hispanic origin regardless of race

\_\_\_\_\_ Native American or Alaskan native persons having origins in any of the original peoples of North America

\_\_\_\_\_ Asian or Pacific Islander persons having origins in any of the Far East countries, South East Asia, the Indian sub-continent or the Pacific Islands

Name of Business Enterprise: \_\_\_\_\_

Address: \_\_\_\_\_

Name and Title of person completing questionnaire: \_\_\_\_\_

Signature: \_\_\_\_\_

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Notary Public

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Date

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