

STATE OF ALABAMA)

JEFFERSON COUNTY)

DEVELOPMENT AGREEMENT

This Development Agreement (the "Agreement") made as of the 10th day of July, 2014, by and between **AMT, LLC**, an Alabama limited liability company, (hereinafter referred to as "Recipient") and the **CITY OF BIRMINGHAM, ALABAMA**, a municipal corporation, (hereinafter referred to as the "City") through the City's Housing Division of its Department of Community Development in an amount not to exceed Two Million One Hundred Fifty Thousand and 00/100 Dollars (\$2,150,000.00) and shall terminate two years from the Effective Date of this Agreement as defined herein, unless amended by written instrument as provided herein.

WITNESSETH

WHEREAS, Title II of the Cranston-Gonzales National Affordable Housing Act (Title II, Public Law 101-723) provides for the making of grants by the Secretary of Housing and Urban Development (HUD) to eligible units of local government to assist them in implementing the Community Development Block Grant Disaster Recovery Program (hereinafter referred to as "CDBG-DR"); and

WHEREAS, the City has applied for and has been designated as a grantee of said grant; and

WHEREAS, subject to approval of the City Council of Birmingham and the satisfaction of certain conditions set forth in this Agreement, the Recipient will be awarded funds under CDBG-DR with approval to construct and operate multi-family new construction; and

WHEREAS, CDBG-DR does allow for the provision of multi-family new construction pursuant to 24 CFR 92 regulations; and

WHEREAS, the City is desirous of obtaining the services of the above-named Recipient to provide affordable housing rental units pursuant to the above referenced regulations, to be provided in a manner consistent with the terms of this Agreement.

NOW THEREFORE, for and in consideration of the mutual benefit herein provided for and expressed, the City and the above-named Recipient do hereby agree as follows:

ARTICLE I

STATEMENT OF WORK AND USE OF FUNDS

1.1. Use of CDBG-DR funds by Recipient shall be for the purposes of construction of affordable rental units in the Pratt City area.

1.2 The City shall cause a future advance mortgage (construction loan) of up to Two Million One Hundred Fifty Thousand and 00/100 Dollars (\$2,150,000.00) to be placed on the property during the construction phase. The property includes the parcels legally described in the Exhibit A as attached to this Agreement and hereafter referred to as (the "Property").

1.3 The City will place a restrictive covenant on each buildable parcel of land (lot) developed under this Agreement. The covenant shall run with the property upon sale or resale and its terms shall be based on applicable CDBG-DR Program Regulations.

1.4 Prior to the execution of this Agreement and commitment of any funds by the City under this Agreement and as a prerequisite to the commitment of any funds by the City, Recipient shall first complete each of the following:

- a. Receive approval from the City of the lots/site to be used for construction under this agreement including completion of a satisfactory environmental assessment; said approval shall be evidenced by a "Notice to Proceed." No work may begin prior to the issuance of a signed "Notice to Proceed" by the City.
- b. AMT, LLC shall submit plans to the Office of Community Development prior to the start of construction for design review and approval. No units can be built without design approval from the Office of Community Development.
- c. Acquire in fee simple all property on which construction is to take place.

1.5 The City shall be provided with a full scope of work and/or a set of working plans which must be approved by the City prior to commencement of any phase of construction and all phases of construction shall be properly permitted prior to beginning that phase of construction.

1.6 After completion of the Project, the City will release the future advance mortgage (construction loan) and place a CDBG-DR Mortgage (permanent loan) on the Property. The terms of the CDBG-DR Mortgage are as follows: the principal amount of the loan shall be \$1,170,000.00 which shall accrue interest at the rate of 2 % per annum. The CDBG-DR Mortgage shall have a term of 28 years. There will be a grant in the amount of \$980,000.

1.7 The City's CDBG-DR Mortgage must be in a position no less than second during the entirety of the Project.

1.8 AMT, LLC must own the property during the development and throughout the period of affordability.

1.9 The Project must achieve initial occupancy within 18 months of Project completion.

1.10 All tenants must meet all HUD income guidelines.

1.11 The City shall be provided rent rolls annually for review and approval.

1.12 The City shall be provided on an annual basis audited financial statements and proposed budget for the upcoming year for the Project. Copies of the replacement reserve and operating deficit reserve bank statements shall be provided when requested.

1.13 All change-orders must be approved in writing by the City and any such change orders shall not increase the overall cost of the Project.

1.14 The construction period shall not exceed twenty-four (24) months from the date this Agreement is fully executed.

1.15 All units built under this Agreement will meet HUD requirements (Section 504) for adaptable housing and be fully accessible in the event that a buyer's physical condition requires such accessibility. Whenever practical, housing will be designed to meet the concept of visitability.

All dwellings contain the following features of adaptive design:

- a. An accessible route into and through the dwelling;
- b. Useable doors (36" doors) - All the doors designed to allow passage into and within the premises are sufficiently wide enough to allow passage by disabled persons in wheelchairs;
- c. Light switches, electrical outlets, thermostats, and other environmental controls in accessible locations;
- d. Reinforcements in bathroom walls to allow later installation of grab bars;

and

- e. Useable kitchens and bathrooms such that an individual in a wheelchair can maneuver about the space.

1.16 Every project is required to have signage that shows the City of Birmingham's participation. Signage must be displayed throughout the duration of the Project. Signage must specifically state "Built in Partnership with the City of Birmingham; Funds for this Project provided in part by the U.S. Department of Housing and Urban Development." Signage must also display Equal Housing Lender logo.

ARTICLE II

CONDITIONS AND REQUIREMENTS

2.1 Period of Affordability:

Units assisted under the CDBG-DR Program will remain affordable as determined under applicable HUD regulations, pursuant to deed restrictions, for not less than the appropriate period (20 years), beginning after Project completion, as specified in the following table, without regard to the term of the mortgage or to transfer of ownership.

2.2. Repayment:

The Recipient agrees that all repayment, interest and other return on investment of any funds obtained pursuant to this Agreement are to be remitted to the City and/or are to be earmarked for additional eligible activities.

2.3 Administration:

The Recipient shall oversee and facilitate the implementation of all CDBG-DR activities listed under Article I Statement of Work.

The requirements of OMB Circular No. A-122 and the following requirements of OMB Circular A-110 apply to CDBG-DR funds: Attachment B; Attachment F; Attachment H; Paragraph 2; Attachment O (Copies of OMB Circular No. A-122 and all referenced attachments are on file in the Department of Community Development, Housing Division at the City of Birmingham, Alabama).

2.4 Project Requirements:

The Recipient agrees to comply with all applicable project requirements as listed in 24 CFR 92 Subpart F as presently in effect or hereafter amended, which is hereby incorporated by reference into the terms and conditions of this Agreement in accordance with the type of project assistance. A copy of 24 CFR 92 Subpart F as presently in effect is referred to herein and is kept on file as an Attachment A of this Agreement in the Department of Community Development, Housing Division at the City of Birmingham, Alabama.

2.5 Housing Quality Standards:

Rehabilitation work performed under this Agreement shall meet all City of Birmingham applicable codes and ordinances.

The Recipient agrees to maintain the rental housing assisted with CDBG-DR funds in compliance with applicable local housing code requirements, including Housing Quality Standards for the duration of the Agreement (see Period of Affordability).

2.6 Other Federal Rules:

The Recipient shall carry out all activities authorized pursuant to this Agreement in compliance with all federal laws and regulations described in Subpart H of 24 CFR 92 as presently in effect and hereafter amended which is hereby incorporated by reference into the terms and conditions of this Agreement except that the Recipient does not assume the City's

responsibilities for environmental review in 92.352 or the intergovernmental review process. A copy of 24 CFR 92 Subpart H is referred to herein and is kept on file as Attachment B of this Agreement in the Department of Community Development, Housing Division at the City of Birmingham, Alabama.

2.7 Affirmative Marketing Agreement:

a. **Affirmative Marketing Plan**

(i) **Statement of Policy:**

In accordance with Regulations of Title 24 CFR 92.351 (m), and in furtherance of the City's commitment to non-discrimination and equal opportunity in housing, the City of Birmingham will conduct an Affirmative Marketing Plan for all CDBG-DR-assisted housing containing five or more units. The Affirmative Marketing Plan is designed to provide information to, and attract eligible persons from all racial, ethnic, and gender groups in the housing market to the available housing. All non-profit organizations, CHDOs, owners, and other prospective participants in the HUD Rental Rehabilitation Program will be required to enter into an agreement with the City confirming their participation in the Affirmative Marketing Plan.

(ii) **Affirmative Marketing Procedure:**

1. The City of Birmingham will inform all potential/prospective HUD Rental Rehabilitation Program participants of the City's policy on affirmative marketing. The City will use the Equal Housing Opportunity logo or slogan in all press releases, pamphlets and solicitations for owners and other written communication regarding fair housing to other groups.
2. All non-profit organizations, CHDOs, owners and other prospective participants in the HUD Rental Rehabilitation Program will be required to confirm through a written agreement that they will comply with all applicable fair housing laws, including the City of Birmingham's Fair Housing Ordinance Number 80-165, adopted

August 20, 1980; 2-4-71, et. sec., General Code of the City of Birmingham, 1980 as amended.

3. Owners must explicitly agree not to discriminate against prospective tenants on the basis of their receipt of, or eligibility for housing assistance under any Federal, State, or Municipal housing assistance program (except for a project for housing elderly/handicapped persons) or on the basis that tenants have a minor child/children who will be residing with them.
4. Owners will agree to adhere to the Affirmative Marketing Plan by assuring the display of the fair housing poster, and the use of Equal Housing Opportunity logo or slogan in press releases, advertisements, flyers, announcements, and other forms of community contact or solicitation which makes known the availability of housing units. A copy of any such advertisement will be forwarded to the City of Birmingham.
5. Owners will assure special outreach to persons who are not likely to apply for housing by notifying the following parties in the event of any vacancies: The City of Birmingham (Housing and Community Resources Divisions), the Housing Authority of the Birmingham District, Greater Birmingham Ministries, Birmingham Urban League, the Jefferson County Committee for Economic Opportunity, the Birmingham News and Post Herald, and The Birmingham Times.
6. Owners must agree to undertake the affirmative marketing requirements for the applicable period of affordability per HUD regulations from the date of the completion of the rehabilitation.
7. The City of Birmingham will review and assess the affirmative marketing actions of participants in the HUD Rental Rehabilitation Program semi-annually for period of affordability following the completion of rehabilitation. Participants with affirmative marketing deficiencies will be given a written statement which will define the deficiencies, and provide an opportunity for corrective action. Each participant will be informed that failure to comply with the affirmative marketing requirements within a specified time frame may result in disqualification from further participation in the HUD Rental Rehabilitation Program, or other similar programs administered by the City of Birmingham. All records of the affirmative marketing monitoring will be maintained in the Department of Community Development, Housing Division at the City of Birmingham, Alabama.

2.8 Conditions for Religious Organizations:

The Recipient shall operate its program in a manner which will be free from religious influences and it will provide no religious instruction or counseling, conduct no religious

worship or services, engage in no religious proselytizing, and exert no other religious influence in the provision of HUD assisted housing described herein (24 CFR 92.257).

2.9 Requests for Disbursements of Funds:

a. For purposes of this Agreement, expenses duly incurred by the Recipient in the performance of services herein described shall be deemed eligible for payment or a pro rata share by the City upon the Recipient's satisfaction of either of the following conditions:

(i) Submission of invoices or other such documentation in a format acceptable to the City reflecting the payment of said expenses, and the execution of a statement certifying that said expenses have in fact been paid; or

(ii) Submission of invoices or other such documentation in a format acceptable to the City reflecting that said expenses have been duly incurred by the Recipient and the execution of a statement by the Recipient certifying that payment of said expenses is in process and shall be paid within three (3) days from the date of deposit of funds by the Recipient.

In either event, payment of said expenses by the Recipient is subject to subsequent verification by the U.S. Department of Housing and Urban Development, the City, or a duly appointed designee pursuant to the terms of this Agreement. This information should be submitted by 12:00 noon on Monday of each week. Requests received after such day and time will be processed the following week. A form for this submittal shall be provided by the Community

Development Department. No payment request will be honored without the completion of such submittal form.

b. No work performed pursuant to this Agreement shall be contracted to any other person, organization, consultant, or corporation without prior written approval by the City. Recipients requiring the use of professional services deemed necessary for the support of this Agreement shall ensure compliance with OMB Circular A-110, Attachment "O", Procurement Standards.

c. No funds budgeted as contingency funds pursuant to the terms of this Agreement shall be approved for expenditure without the prior written consent of the Director of the City's Department of Community Development.

2.10 Reversion of Assets:

The Recipient agrees that upon expiration of this Agreement, the Recipient must transfer to the City any CDBG-DR funds on hand at the time of expiration and any accounts receivable attributable to the use of CDBG-DR funds.

2.11 Records and Reports:

a. The Recipient shall submit a monthly report outlining all activities undertaken pursuant to this Agreement to the Director of Community Development. All monthly reports shall include, but will not be limited to a statistical report reflecting the actual work completed on the Project, and a narrative description of assistance provided, which shall include a statement regarding the progress made toward meeting performance goals. All monthly reports shall be submitted by the 15th day of the following month covered in said report. Said report should cover calendar days within a specific month.

Consistent tardiness or non-submittal of monthly reports may result in a delay of contractual reimbursements.

b. The Recipient shall maintain detailed records of all CDBG-DR activities pursuant to this Agreement. Representatives of the City, U.S. Department of Housing and Urban Development (HUD), or their designees may examine any records or information accumulated pursuant to this Agreement. All confidential information shall be treated as such by the City.

c. Financial records, supporting documents, statistical records, and all other records pertinent to this Agreement shall be retained by the Recipient for a period of three (3) years from the termination or completion of this Agreement in accordance with Attachment C of OMB Circular A-110. If any litigation, claim or audit is started before the expiration of the 3-year period, the records shall be retained until all litigation, claims, or audit findings involving the records have been resolved.

2.12 Enforcement of the Agreement:

The Recipient understands that the City shall have the power of enforcement over the expenditure of CDBG-DR funds and to establish the criteria of intended beneficiaries.

The means of enforcement may include liens on real property, deed restrictions, or other provisions as deemed appropriate by the City.

The affordability requirements outlined in § 2.1 *Period of Affordability* will be enforced by deed restriction. The remedies for breach of the provisions of the Agreement will include, but will not be limited to, foreclosure, assignment of mortgage, assignment of rents and enforcement through any lawful suit or action as permitted under the laws of the State of Alabama. In such

events, the losing party shall pay the prevailing party's reasonable attorney's fees and all costs, including any incurred on appeal.

By acceptance of the Agreement, the Recipient specifies that in accordance with 24 CFR 85.43, as presently in effect and hereafter amended, suspension or termination may occur if the Recipient materially fails to comply with any term of this Agreement, and that this Agreement may be terminated for convenience in accordance with 24 CFR 85.44 as presently in effect and hereafter amended.

A copy of 24 CFR 85.43 and 24 CFR 85.44 as referred to herein is kept on file in the Department of Community Development, Housing Division at the City of Birmingham, Alabama.

2.13 Duration of the Agreement:

The Recipient hereby agrees that the term of this Agreement is for the time specified in §2.1 Period of Affordability based on use of funds.

2.14 Monitoring:

The Recipient shall work under the direction of the City's Community Development Department/Housing Division, which will monitor and evaluate the performance of this Agreement.

The Recipient agrees and will permit the City, the United States Government or their perspective designees to examine and inspect all work funded in whole or in part with funds provided under this Agreement.

The Recipient agrees to cooperate with the City to insure compliance with the requirements of this Agreement and will take appropriate action to resolve any and all performance problems outlined by the City during monitoring.

The Recipient of rental housing assisted with CDBG-DR funds agrees to provide the City no less than annually (during the period of affordability) the following:

1. Proof of compliance with affordability;
2. Rental housing containing one to four dwelling units must have an on-site inspection at least once within each two year period to determine compliance with housing codes;
3. Submit performance and activity report on all units funded by CDBG-DR funds under this Agreement; and
4. Income recertification of all tenants occupying units assisted with CDBG-DR funds.

2.15 Equal Opportunity:

The Recipient hereby agrees that it does not and shall not discriminate based on an individual's race, national origin, sex or religion. The Recipient also agrees to comply with Executive Order 11246 entitled "Equal Employment Opportunity", as amended by Executive Order 11375, and supplemented in Department of Labor regulations (24 CFR, Part 60).

The Fair Housing Act prohibits discrimination in the provision of housing because of race, color, religion, sex, national origin, handicap, or familial status. Human Immunodeficiency Virus is identified as a physical or mental impairment protected under the definition of handicap. Therefore, agencies cannot deny their services to those who are HIV positive. Questions regarding the existence of the virus can be asked assuming that all applicants are asked the same question and the questions are for a legitimate purpose as specified in the Fair Housing Act Regulations.

2.16 Audit:

The Recipient shall maintain records in compliance with the criteria established in Chapter 3, Part 3 of the U.S. Government Office Publication Standards for audit of governmental

organizations, programs, activities and functions. Recipients shall comply with the audit standards of OMB Circular No. A-133.

2.17 Outreach to Minority and Women-Owned Businesses:

a. Statement of Policy:

In accordance to the requirements of Executive Order 11625 and 12432 (concerning Minority Business Enterprise), and 12138 (concerning Women's Business Enterprise), the City of Birmingham will conduct outreach to minority and women owned businesses. The outreach plan will ensure, to the maximum extent possible, opportunities for minorities and women, and entities owned by minorities and women to participate in the CDBG-DR Program. Without limitation this shall include outreach for participation by minorities and women, and entities owned by minorities and women in all contracting activities, whether public or private. The outreach will target participation in all phases of procurement of property and services, and will include, but will not be limited to real estate firms, construction firms, appraisal firms, management firms, financial institutions, investment banking firms, underwriters, accountants, and providers of legal services.

b. Procedure for Outreach:

1. The Recipient will work with the Community Enterprises/Economic Development Division of the Community Development Department, City of Birmingham to identify and maintain an inventory of certified minority-and women-owned business enterprises (MBEs and WBEs). The Economic Development Department currently maintains a directory of MBEs and WBEs which catalogs each entity by capability, and the type of service, supply and/or product provided. In addition, the City has undertaken an extensive outreach effort, through the Birmingham Plan, to train, provide technical assistance, and prepare MBEs and WBEs for business certification. Under the Birmingham Plan, the City has established major support units to foster the participation of minorities and women in the procurement of business and/or services.

2. Direct solicitation of business with MBEs and WBEs by the Recipient will be ongoing. The City's Housing Division, participating non-profit organizations, CHDOs, and other HUD participants will be provided with listings of certified MBEs and WBEs which will identify each entity by capability, and the type of service, supply and/or product provided. If any subcontracts are let, the prime contractor will be required to take affirmative steps to include MBEs and WBEs.
3. Eligible MBEs and WBEs will, likewise, be provided information on opportunities for participation in prospective projects. This information will detail procurement procedures and avenues for participation as vendors and suppliers of goods and services. When economically feasible the Recipient will divide total contract requirements into small tasks or quantities, or extend delivery schedules, so as to permit maximum participation by minority- and women-owned businesses.
4. Recipient acknowledges and agrees that the City of Birmingham, as a matter of public policy, encourages minority- and women-owned business participation to the maximum extent possible. This policy includes historically under-utilized business enterprises such as architectural firms, engineering firms, investment banking firms, other professional service providers, and construction contractors as part of the City's business, economic and community revitalization programs.
5. Organizations participating in the CDBG-DR program will be required to certify the participation of minorities and women, and entities owned by minorities and women in all phases of contracting under the CDBG-DR Program. This data will be systematically analyzed to monitor and identify annual and semi-annual participation goals.

2.18 Drug Free Workplace:

The Recipient will provide a drug-free workplace by:

1. Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the workplace and specifying the actions that will be taken against employees for violation of such prohibition;
2. Establishing an ongoing drug-free awareness program to inform employees about:

- a. the dangers of drug abuse in the workplace;
 - b. the participating jurisdiction's policy of maintaining a drug-free workplace;
 - c. any available drug counseling, rehabilitation, and employee assistance programs; and
 - d. the penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;
3. Making it a requirement that each employee be engaged in the performance of a CDBG-DR project be given a copy of the statement required by paragraph (1);
4. Notifying the employee in the statement required by paragraph (1) that, as a condition of employment under the grant, the employee will:
 - a. abide by the terms of the statement; and
 - b. notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;
5. Notifying the City in writing, within ten calendar days after receiving notice under paragraph 4(b) from an employee or otherwise receiving actual notice of such conviction. Employers of a convicted employee must provide notice, including position title, to the City or other contractor on whose activity the convicted employee was working, unless the Federal agency has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected CDBG-DR project;

6. Taking one of the following actions, within 30 calendar days of receiving notice under paragraph 4(b), with respect to any employee who is so convicted:

a. Taking appropriate personal action against such an employee, including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

b. Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a federal, state, or local health, law enforcement, or other appropriate agency;

7. Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs 1, 2, 3, 4, 5, and 6.

2.19 Liability:

The Recipient shall not, without prior written permission of the City, specifically authorizing them to do so, represent or hold themselves out to others as an agent of or act on behalf of the City.

The Recipient hereby expressly agrees that it shall save and hold harmless the City against liability of any kind resulting from any sale, act, omission, transaction, contract, or thing whatsoever done, made or entered into by the Recipient and/or their agents, servants, employees, associates, subcontractors, or other such representatives related to services furnished by the Recipient under this Agreement.

2.20 Acknowledgment of Support

The Recipient shall, in any publication, or media presentation regarding this Project, provide the following statement:

"This project was supported, in part by funds awarded through the Community Development Block Grant Disaster Program - City of Birmingham, Alabama."

2.21 Environmental Review Requirements

Notwithstanding any provision of this Agreement, the parties hereto agree and acknowledge that this Agreement does not constitute a commitment of funds or site approval, and that such commitment of funds or approval may occur only upon satisfactory completion of environmental review and receipt by the City, or a release of funds from the U.S. Department of Housing and Urban Development under 24 CFR Part 58. The parties further agree that the provision of any funds to the Project is conditioned on the City's, determination to proceed with, modify or cancel the Project based on the results of a subsequent environmental review.

ARTICLE III

GENERAL TERMS

3.1 Effective Date. This Agreement shall become effective on the date upon which it is executed by the last party to sign (the "Effective Date").

3.2 Indemnity. Recipient shall release, save, hold harmless and indemnify the Indemnified Parties, and any of them, from and against any and all claims, loss, damage, liability or expense, on account of or arising from or in connection with (i) any breach or default by Recipient in the performance of any obligation herein, (ii) the Project or any activity of Recipient or any of Recipient's agents, contractors or employees in connection with the Project, or (iii) any damage to property and injuries, including death, to all persons arising from Recipient's design or construction of the Project and from and against all costs, attorney's fees, expenses and liabilities incurred in the defense of any such claim or any action against the Indemnified Parties, or any of them, by reason of any such claim, and Recipient, upon notice from the City, shall, at

its own expense, defend any suits or other proceedings brought against the Indemnified Parties, or any of them, in connection with (i), (ii) or (iii) above and shall pay all expenses and satisfy all judgments which may be incurred by or rendered against them or any of them in connection therewith; provided, however, that Recipient shall have no such obligations under this Section for any loss, cost, damage liability or expense arising out of or related to any actions of the Indemnified Parties. The foregoing indemnity obligation shall include, but is not limited to, indemnification of the Indemnified Parties, or any of them, against any claim for payment brought by any contractor, subcontractor, materialman, supplier, laborer, design professional or the like in connection with work, labor and/or materials supplied in connection with the Project and out of any defect, deficiency or negligence of the architect's or engineer's designs and specifications incorporated into any improvements constructed in accordance therewith. The foregoing indemnity obligation shall survive the expiration or earlier termination of this Agreement.

3.3 Assignment. Recipient acknowledges that the identity and reputation of Recipient are of particular concern to the City. Recipient further recognizes that it is because of such identity and reputation that the City is entering into this Agreement with Recipient. Accordingly, no voluntary or involuntary successor-in-interest of Recipient shall acquire any rights or powers under this Agreement except as expressly set forth herein. Recipient may not assign or transfer this Agreement or any interest herein or any part hereof to another entity without the written consent of the City. Any assignment or transfer inconsistent with the terms hereof shall nullify and make void any obligation of the City otherwise required herein.

3.4 Default and Termination.

(a) For purposes of this Agreement, an event of default shall be defined as: (i) Recipient's breach or violation of any term or condition of this Agreement which is not cured within thirty (30) days after written notice from the City; (ii) any material representation made by Recipient in this Agreement, or in any certificate, notice, or request made by Recipient in writing and delivered to the City pursuant to or in connection with this Agreement shall prove to be untrue or incorrect in any material respect as of the date made; (iii) the entry of a decree or order for relief by a court having jurisdiction concerning Recipient in an involuntary case under the federal bankruptcy laws, as now or hereafter constituted, or any other applicable Federal or state bankruptcy, insolvency or other similar law, or appointing a receiver, liquidator, trustee (or similar official) of Recipient for any substantial part of its property, or ordering the winding-up or liquidation of its affairs and the continuance of any such decree or order unstayed and in effect for a period of sixty (60) consecutive days; (iv) the commencement by Recipient of a voluntary case under the Federal bankruptcy laws, as now or hereafter constituted, or any other applicable federal or state bankruptcy, insolvency or other similar law; (v) the consent by Recipient to the appointment of or taking possession by a receiver, liquidator, trustee (or other similar official) of Recipient or of any substantial part of Recipient's property; or (vi) the making by Recipient of any assignment for the benefit of creditors.

(b) Upon the occurrence of an event of default by Recipient which is not cured within the applicable time periods set forth above, the City may, in its discretion, pursue any one or more of the following remedies without any notice or demand whatsoever, other than any notice expressly provided for in this Agreement:

- (i) seek and obtain injunctive relief or declaratory relief;
- (ii) terminate this Agreement; or
- (iii) exercise any and all other remedies available to the City at law or in equity.

(c) The City shall have the right to recover all provable damages, as well as reasonable attorney's fees and court costs, caused by the default of Recipient. Anything herein to the contrary notwithstanding, neither the City nor Recipient shall in any event be responsible or liable for consequential, exemplary or punitive damages as a result of any act or omission in connection with this Agreement.

(d) Notwithstanding any other provision of this Agreement, prior to the Completion Date, the City may terminate this Agreement immediately upon receipt of formal notice that Recipient no longer has the intent of undertaking the Project if the City determines, in its discretion, that the Recipient is not capable of completing the Project as contemplated by the term of the Agreement in which event the obligations of the City and the Recipient hereunder shall cease.

3.5 Governing Law. This Agreement, all rights of the parties hereunder, and all disputes which may arise hereunder shall be subject to and governed in accordance with the laws of the State of Alabama. By executing this Agreement, Recipient consents to the jurisdiction and venue of the courts of Jefferson County, Alabama, with respect to any matter arising hereunder.

3.6 Severability. In case any one or more of the provisions contained in this Agreement shall for any reason be held invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision hereof and this

Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

3.7 Notices. All communications and notices expressly provided herein shall be sent, by first class mail, postage prepaid, by personal delivery, or by a nationally recognized overnight courier for delivery on the following business day, as follows:

To the City: City of Birmingham
Mayor's Office
Third Floor City Hall
710 North 20th Street
Birmingham, Alabama 35203
Attention: William A. Bell, Sr., Mayor

with a copy to: City of Birmingham
City Attorney
710 North 20th Street, Room 600
Birmingham, Alabama 35203
Attention: Melissa E. Smiley, Assistant City Attorney

In addition, where this Agreement requires the submission of plans or other items to the City's Department of Community Development, such items should be addressed as follows:

City of Birmingham
Department of Community Development
710 North 20th Street,
Birmingham, Alabama 35203
Attention: John Colón, Director

To Recipient: AMT, LLC
2016 Nova Scotia Circle
Birmingham, Alabama 35022
Attention: Alto Tarver, III, Member

or to such other address as the parties shall designate from time to time by written notice.

3.8 Cost and Expense. Each party agrees to pay its own costs incurred in connection with the negotiation and preparation of this Agreement. Recipient acknowledges that it shall be responsible for all costs of developing the Project, including but not limited to, the cost of

acquisition of any portion of the Property and all improvements to the Property required to implement the Project and the cost of planning, developing and maintaining the Property, such as legal, engineering, architectural, construction and environmental services. Recipient shall not hold itself out as an agent of the City and shall not make any representation or take any action which shall convey the impression to any contractor, subcontractor, laborer or supplier that the City has any obligation or responsibility for any payment to such contractor, subcontractor, laborer or supplier in connection with the Project.

3.9 Section Titles and Headings. The article and section titles and headings are for convenience only and do not define, modify or limit any of the terms and provisions hereof.

3.10 Representations and Warranties. Recipient makes the following representations and warranties as the basis for its undertakings pursuant to this Agreement:

(a) Recipient is a duly organized and existing limited liability company, in good standing, and has the power to enter into and to perform and observe the agreements and covenants on its part contained in this Agreement.

(b) The execution and delivery of this Agreement on the part of Recipient's undersigned officer have been duly authorized by a resolution duly adopted by Recipient's governing body and by all other necessary actions.

(c) All actions and proceedings required to be taken by or on behalf of Recipient to execute and deliver this Agreement, and to perform the covenants, obligations and agreements of Recipient hereunder, have been duly taken.

(d) The execution and performance of this Agreement by Recipient do not: (i) constitute and will not result in the breach or violation of any contract, lease, mortgage, bond, indenture, franchise, permit or agreement of any nature to which Recipient is a party; (ii)

contravene, conflict with, or result in a violation of, or give any governmental body or other person the right to challenge any of the transactions contemplated hereby or to exercise any remedy or obtain any relief under any legal requirement or any order to which Recipient, or any of the assets owned or used by Recipient may be subject; (iii) contravene, conflict with, or result in a violation or breach of any provision of, or give any person the right to declare a default or exercise any remedy under, or to accelerate the maturity or performance of, any contract, agreement, instrument or understanding by which Recipient is bound; or (iv) result in the imposition or creation of any lien, security interest, or encumbrance upon or with respect to any of the assets owned or used by Recipient.

(e) Recipient represents and agrees that the redevelopment of the Property and other undertakings pursuant to this Agreement are and will be used for the purpose of development of the Project and not for speculation in landholding. Recipient further recognizes:

- (i) the importance of the development of the Project to the general welfare of the City as a whole; and
- (ii) that substantial public aid has been made available by law and by the City for the purpose of making such development possible.

(f) There are no approvals, authorizations, consents or other actions by or filings with any person which are required to be obtained or completed by Recipient in connection with the execution and delivery of this Agreement or in connection with any other action required to be taken by Recipient hereunder. Recipient is not and will not be required to give any notice to or obtain any consent from any person or entity in connection with the execution and delivery of this Agreement or the consummation or performance of any of the transactions contemplated hereby.

(g) Recipient is not in default under, or in violation of, any law or regulation or under any order of any court, board, commission or agency whatsoever. Recipient has

received no notice of any pending or impending civil or criminal investigation, audit, proceeding, action, or litigation or any nature from any federal, state or local board, commission or agency.

(h) There are no outstanding judgments, orders, writs, injunctions, or decrees of any government entity, no pending Legal Proceedings or material threats of Legal Proceedings, against or affecting Recipient before or by any court, board, commission or agency whatsoever which would have a material effect on Recipient performance of its obligations under this Agreement. For purposes of this Agreement, "Legal Proceedings" means any action, litigation, arbitration, administrative proceeding, claim and other legal or equitable proceedings of any kind

(i) Neither Recipient nor its principals have experienced bankruptcy, insolvency or any other form of legal relief from claims of creditors.

(j) Recipient certifies that it has not employed or retained any company or person to solicit or secure its selection to enter into this Agreement or to obtain any contract or business of any nature from the City, and that it has not paid or agreed to pay any person, company, corporation, individual or firm, any fee, commission, percentage, gift or other consideration contingent upon or resulting from the award or making of this Agreement or obtaining any contract or business of any nature from the City. For the breach or violation of this provision, the City shall have the right to terminate this Agreement and the Ground Lease without liability at its discretion.

The representations, warranties and covenants made by Recipient herein shall survive the performance of any obligations to which such representations, warranties and covenants relate.

3.11. Public Purpose of the Project; Mutual Benefit. The City does hereby ascertain,

determine, declare and find that:

(a) The Project is in the best interest of the City and is consistent with and in furtherance of the City's economic development and planning objectives.

(b) The Project will serve a public purpose and enhance the public benefit and welfare by, among other things, preventing and eliminating blight and blighting factors and community deterioration in the City of Birmingham, which is expected to advance economic development in the City, increasing employment opportunities in the City, and by fostering carefully planned and aesthetically pleasing development in the City of Birmingham, which, in turn, will increase the City's tax base, thereby making a positive contribution to economic growth of the City. The above-cited items constitute important public benefits to the City and its citizens.

(c) This Agreement provides mutual benefits to both parties and a consideration on both sides. Recipient commits to undertake the Project subject to municipal regulation. Recipient's design and construction responsibilities with respect to the Project will serve the surrounding area, as well as the City of Birmingham. The City receives the benefit of the development of a project that will prevent and combat blight and blighting conditions and bring positive development to the City of Birmingham. The Project will enhance and encourage future development in the City of Birmingham.

(d) The improvement of the Property pursuant to this Agreement and the fulfillment generally of this Agreement are in the vital and best interests of the City and the health, safety and welfare of its residents and in accordance with the public purposes and provisions of applicable federal, state and local laws and requirements.

3.12 Relationship of Parties. The City and Recipient agree that nothing contained in

this Agreement, or any act of Recipient or of the City, shall be deemed or construed by either of the parties hereto, or by third persons, to create any relationship of third party beneficiary hereof, or of principal and agent, or of a limited or a general partnership or of a joint venture or of any association or relationship between Recipient and the City other than as independent contractors in a contract entered into at arm's length. Notwithstanding any of the provisions of this Agreement, it is agreed that the City has no investment or equity interest in the business of Recipient, and shall not be liable for any debts of Recipient, nor shall the City be deemed or construed to be a partner, joint venturer or otherwise interested in the assets of Recipient, nor shall Recipient at any time or times use the name or credit of the City in purchasing or attempting to purchase any equipment, supplies or other thing whatsoever. Recipient shall not hold itself out as an agent of the City and shall not make any representation or take any action which shall convey the impression to any contractor, subcontractor, laborer or supplier that the City has any obligation or responsibility for any payment to such contractor, subcontractor, laborer or supplier in connection with the Project.

3.13 Compliance with Laws.

(a) Recipient shall comply, and shall cause its officers, agents, and employees to comply, with all applicable federal, state and local statutes, regulations, rules, ordinances and other laws, including, but not limited to, the Americans with Disabilities Act, which are applicable to the development of the Project.

(b) Recipient shall obtain all licenses and permits including, but not limited to, all business licenses required by the City.

(c) Recipient shall not enter into, execute, or be a party to any covenant, agreement, lease, deed, assignment, conveyance, or any other written instrument, which restricts

the lease, use or occupancy of the Property, or any part thereof, or any improvements placed thereon, upon the basis of race, ethnicity, color, religion, sex, national origin, age or handicapped status. Recipient shall comply with all federal, state and local laws, in effect from time to time, prohibiting discrimination in employment.

3.14 Binding Effect. This Agreement and all terms, provisions and obligations set forth herein shall be binding upon and shall inure to the benefit of Recipient and its successors and assigns and shall be binding upon and shall inure to the benefit of the City and its successors and assigns.

3.15 Immigration Act Compliance.

(a) Recipient represents and warrants that it does not knowingly employ, hire for employment, or continue to employ an “unauthorized alien,” as defined by the Beason-Hammon Alabama Taxpayer and Citizen Protection Act, Act No. 2011-535 (H. B. 56), as amended from time to time (the “Act”) and that, during the performance of this Agreement, Recipient shall participate in the E-Verify program as required under the terms of the Act.

(b) Recipient agrees to comply with all applicable provisions of the Act with respect to its contractors by entering into an agreement with or by obtaining an affidavit from such contractors providing work for Recipient on the Project that such contractors are in compliance with the Act with respect to their participation in the E-verify program. Recipient represents and warrants that Recipient shall not hire, retain or contract with any contractor to work on the Project which Recipient knows is not in compliance with the Act.

(c) By signing this contract, the contracting parties affirm, for the duration of this Agreement, that they will not violate federal immigration law or knowingly employ, hire for employment, or continue to employ an unauthorized alien within the State of Alabama.

(d) Furthermore a contracting party found to be in violation of this provision shall be deemed in breach of this Agreement and shall be responsible for all damages resulting therefrom.

3.16 "Buy Local". Recipient agrees that in any contracts for the construction of any portion of the Project, it will encourage the general contractors thereunder to buy and/or lease supplies, materials and equipment from vendors located within the corporate limits of the City of Birmingham.

3.17 Local Hiring. Recipient will use its commercially reasonable efforts to identify, recruit and hire qualified residents of the City for its available employment positions with its business operations located on the Property.

3.18 Offset for Overdue Fees, Taxes, Etc. Pursuant to Executive Order of the Mayor of Birmingham No. 76-09 (effective as of August 21, 2009), Recipient acknowledges and agrees that the City has the right to deduct from the total amount of consideration to be paid, if any, to Recipient under this Agreement all unpaid, delinquent, or overdue license fees, taxes, fines, penalties and other amounts due the City from Recipient.

3.19 Entire Agreement; Amendment. This Agreement constitutes one entire and complete agreement, and neither of the parties hereto shall have any rights arising from any separate component of this Agreement without complying in all respects with its duties and obligations under all parts and components hereof. This Agreement constitutes and includes all promises and representations, expressed or implied, made by the City and Recipient. No

stipulations, agreements or understandings of the parties hereto shall be valid or enforceable unless contained in this Agreement. No oral conditions, warranties or modifications hereto shall be valid between the parties. On matters of time the Recipient may request additional time for performance and the Director of Community Development may authorize the same in his discretion. This Agreement may be amended only by a written instrument executed by both parties.

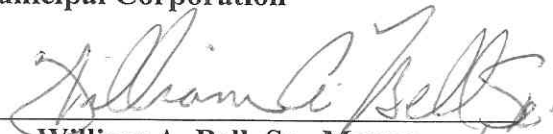
[SIGNATURES APPEAR ON THE FOLLOWING PAGE]

IN WITNESS WHEREOF, the undersigned parties have executed this Development Agreement on the year and date set forth above.

ATTEST:

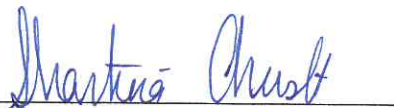
By: 
City Clerk

CITY OF BIRMINGHAM, ALABAMA,
a Municipal Corporation

By: 
William A. Bell, Sr., Mayor

Date: _____

WITNESS:


Martina Christ

AMT, LLC, an Alabama Limited Liability Company

By: 
Alto Tarver, III, Member

Date: 7/3/14

APPROVED AS TO FORM:

By: 
Assistant City Attorney/Date

Submitted by: The Mayor
Recommended by: Community Development Department

RESOLUTION NO. 1099-14

WHEREAS, the City of Birmingham, on April 27, 2011, was directly hit with a devastating storm and high winds, damaging and destroying homes, businesses and public infrastructure; and

WHEREAS, in the aftermath of the devastation, the United States Congress, through Public Law 113-2, has appropriated Community Development Block Grant Disaster Recovery ("CDBG-DR") funds that will help the region recover and the Department of Housing and Urban Development ("HUD") has announced allocations of those funds to the City of Birmingham; and

NOW, THEREFORE BE IT RESOLVED by the Council of the City of Birmingham that the Mayor be and hereby is authorized to enter into an agreement, in substantially the same form as on file in the Office of the City Clerk (the "Agreement"), with **AMT, LLC** under which the City will provide up to Two Million One Hundred-Fifty Thousand and No/100 Dollars (\$2,150,000.00) from Disasters Funds to be utilized as construction financing for the construction of up to 86 multi-family low/moderate income units, with such loan to be secured by a construction mortgage on the multi-family low/moderate income units.

Adopted by the Council May 20, 2014 and Approved by the Mayor May 27, 2014



A CERTIFIED COPY
Lee Pitzer, City Clerk
Birmingham, AL
Lee Pitzer

Submitted by: The Mayor
Recommended by: Community Development Department

RESOLUTION NO. 1099-14

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Adopted by the Council May 20, 2014 and Approved by the Mayor May 27, 2014



A CERTIFIED COPY
Lee Frances, City Clerk
Birmingham, AL
Lee Frances