

## **Amended and Restated Agreement As of September 1, 2021**

**This Amended and Restated Agreement effective as of September 1, 2021 (the “Agreement”) by and between the Kennesaw Development Authority (hereinafter “KDA”) and the Housing Authority of Cobb County (the “Cobb Authority”)** is entered into between the Cobb Authority and KDA for the purpose of establishing the rights, obligations and revenue sharing arrangements relating to certain revenues and fees to be received by the Cobb Authority, or any owned nonprofit subsidiary in which it may have ownership thereof (collectively “Cobb Housing”) from (a) its ownership interest in Walton Ridenour 2 GP LLC as general partner (the “General Partner”) of Walton Ridenour 2, LP (the “Limited Partnership”) formed to acquire, renovate, own and operate an existing 258 unit affordable rent apartment (out of 261 total units) project currently known as Walton Ridenour Apartment Homes located at 1425 Ridenour Blvd (the “Project” and after renovation, the “Renovated Project”) in the city limits of the City of Kennesaw Georgia (the “City”) and (b) from an interest in certain development fees, administrative fees, bond fees and /or other fees accrued related to successfully, among other things, (i) obtaining through the State of Georgia [“State”] Department of Community Affairs [“DCA”] and successfully selling 4% Federal and State income tax credits [the “Tax Credits”] to finance part of the acquisition and rehabilitation costs, (ii) successfully obtaining a State tax-exempt bond volume cap carryforward allocation to KDA for sufficient tax-exempt bonds proceeds of sale the related bonds, together with proceeds of sale of the Tax Credits, proceeds of a subordinate loan and proceeds of an additional subordinate loan from the existing Walton Communities related owners of the Project are expected to be sufficient to finance the Renovated Project and (iii) successful acquisition of the Project and successful renovation of the Project. The portion of the General Partner entity not owned by Cobb Housing is owned by Walton Ridenour 2 Walton, LLC which entity is controlled or owned by certain Walton Communities related entities or individuals some of whom may, as individuals or entities, own interests in existing entities that own interests in the present general partner entity of the limited partnership entity that owns the Project (collectively the “Walton Entity”). Additionally, the parties desire to establish the division of any profits derived from a future sale or refinance of the Renovated Project.

**Whereas**, the Project was financed as a 100% affordable apartment project in 2004 (a) in part with multifamily housing revenue bonds issued through KDA and (b) with proceeds of sale by Walton Communities related entities of the tax credits. The bonds were refinanced through bonds issued by KDA in 2013. An amendment to the 2013 documents was approved by KDA in June or July 2018.

**Whereas**, the approximately ten year tax credit period (time from sale of Federal and State issued income tax credits to receipt of the last of the tax credit benefits by the tax credit purchasers) has been expired for several years.

**Whereas**, the Qualified Project Period [later of (a) approximately fifteen years from the date 50% or more of the financed apartment units are occupied or available for occupancy (b) or the last date on which any principal and interest is outstanding on any tax-exempt bonds issued in conjunction with the Project] is beyond the fifteen year point and will terminate on the any date the outstanding tax-exempt bonds and any interest due thereon are paid. Once the Qualified Project Period has expired, there would no longer be any applicable Internal Revenue Service regulation requiring tenant income (at initial lease) limitations.

**Whereas,** the City and KDA are very satisfied with the results of Walton Communities related entities construction, operation and maintenance of the Project as an affordable rental apartment project. The City and KDA are very pleased with the after school programs a Walton Communities related entity operates and wish to encourage Walton Communities related entities to continue to own and operate the Project as an affordable rental apartment project.

**Whereas,** towards the end of 2019 Walton Communities approached the City about partnering with a to be created group of Walton Communities related entities to acquire the Project, issue tax-exempt bonds through KDA (much as was done in 2004), acquire Tax Credits from DCA, rehabilitate the Project and operate the Rehabilitated Project as an affordable rental apartment project with a strong after school program. Facilitation of such an arrangement would require the City to create a City housing authority.

**Whereas,** after careful thought and review, City Manager Dr. Jeff Drobney, City Finance Director Gina Auld, and now retired Director of Community Development Bob Fox, in consultation with KDA Counsel Fred Bentley, Jr. (collectively “City Staff”), determined that, given the staff reductions resulting from the COVID pandemic, the City was not in position to facilitate Walton Communities’ request. However, City Staff was very interested in being supportive of the Renovated Project and to that end recommended to Mayor and City Council that City Staff be authorized to approach the Cobb Authority about partnering with applicable Walton Communities’ related entities to facilitate acquisition, rehabilitation and continued operation of the Project as an affordable apartment rental project with a strong after-school program. The Mayor and City Council approved City Staff’s request. To demonstrate the seriousness of the City in inviting Cobb Authority to facilitate the Renovated Project, the City adopted a Resolution authorizing the Cobb Authority to operate within the City limits solely for the purpose of participating in acquisition, ownership, rehabilitation and operation of the Project (the “Resolution”). The effective date of the Resolution is the date of the last signature required on the revenue sharing agreement between the Cobb Authority and KDA, which last signature was November 11, 2020. The Resolution established a 90 day outside date for execution of a revenue sharing agreement. The City on October 19, 2020 adopted an amended and restated Resolution (the “Revised Resolution”) to provide a 60 day from October 19, 2020 outside date for execution of a revenue sharing agreement given the excellent progress of City Staff in negotiations with representatives of the Cobb Authority. The Revised Resolution is attached to and made part of this Agreement.

**Whereas,** City Staff approached Cobb Authority Chairman and Cobb Authority Counsel about partnering with Walton Communities related entities to acquire, rehabilitate and operate the Renovated Project as an affordable rental apartment project and continue the strong after school program all along the lines of and similar to Cobb Housing’s fall 2019 transaction on a Walton owned project. City Staff proposed that Cobb Authority share with the KDA on a reasonable basis monies generated by such an arrangement that could flow to Cobb Housing.

**Whereas,** in light of City Staff’s request and the seriousness of the City’s interest, as evidenced by the Resolution, Cobb Housing through its Chairman, Counsel and Financial Advisor (collectively the “Cobb Housing Team”) have undertaken a transaction with Walton Communities related entities, which transaction includes issuance by KDA of two series of tax-exempt bonds. The transaction is expected to close on August 31, 2021. Among other things, the agreed General Partner Operating Agreement provides that Cobb Housing will receive each year \$70,000 of a

\$71,000 General Partner Administration Fee. The bond financing documents provide that the bond trustee will annually pay directly to KDA an annual bond issue related fees (1/8<sup>th</sup> of 1% of the principal amount of any bonds issued by KDA outstanding at the end of each bond year. In addition the General Partner Operating Agreement provides that Cobb Housing will receive 25% of the annual General Partner operating cash flow (net of certain deductions such as debt service) and at sale or refinance of the Renovated Project Cobb Housing will receive 25% of any revenues net of any outstanding debt and net of certain preferred payments to certain Tax Credit investors. The Development Agreement provides that Cobb Housing will receive 25% of any paid developer fees. The sale or refinance is expected to occur approximately 15 years after the 18 months to two-year renovation and stabilization period. Except for the above mentioned \$70,000 (unless not paid as a result of the second to last “**Whereas**” below in which case any General Partner Administration Fee paid to Cobb Housing will become part of “Available Revenues”) and the 1/8<sup>th</sup> of 1% bond fees, all remaining revenues that flow to Cobb Housing are hereinafter referred to as “Available Revenues.”

**Whereas**, City Staff proposed to Cobb Authority Team (excluding Cobb Authority Financial Advisor who also represents KDA in certain matters and therefore is conflicted out of any revenue sharing discussions between KDA and Cobb Authority, but such conflict did not preclude provision of any requested information from either City Staff or remaining Cobb Authority Team so long as such questions and/or requests for information and response were shared with remaining Cobb Team and City Staff) that Cobb Housing and KDA share equally in any revenues received by Cobb Housing. City Staff further requested that the annual General Partner Administration Fee be paid within 10 business days of receipt by Cobb Housing to KDA to be theirs without further accountability except as may be required as a lawful use under the Development Authorities Law. KDA currently receives an annual bond issuance related fee on the presently outstanding bonds, which will be retired as part of issuance of the bonds and acquisition of the Project. KDA is the issuer of the bonds and thus will get the new annual bond issuance fee, so receipt of these funds in their entirety by KDA will approximate KDA’s existing cash flow. Payment of the Administration Fee to KDA will enable KDA to similarly facilitate cash flow for certain City projects under an executed between KDA and the City agreement. Such agreements as from time to time entered into between KDA and the City will not require any input or approvals of Cobb Housing. The Cobb Team (exclusive of the Financial Advisor) agreed to this request subject to the percentage split of Available Revenues, based on the pro-forma provided to Cobb Authority Team during its negotiations with the Walton Communities related entities’ representatives and attached to a memorandum between Cobb Authority and Walton, be set such that over time and based on the most recent pro-forma the revenue split between KDA and Cobb Housing be approximately 50%. Given the opportunity to participate in the Renovated Project, the congeniality of the negotiations and the fact that the City evidenced its support of City Staff pursuing this Agreement by adoption of the original Resolution and Revised Resolution, Cobb Housing Team (excluding Financial Advisor) suggested to City Staff that, even though Cobb Housing Team negotiated the \$70,000 General Partner Administration Fee Payment going directly to Cobb Housing, had disposition of the General Partner Administrative Fee paralleled the fall 2019 Walton transaction, Cobb Housing would have received 25% of the \$70,000 and therefore only 25% of the \$70,000 should count in the overall 50/50 split. KDA should get the entirety of the remaining 75%. City Staff agreed and this recommended revenues split is reflected in the attached hereto and made a part hereof Excel spread sheet that reflects (a) cumulatively over time a 50/50 split of certain revenues plus (b) KDA being credited with 75% of the \$70,000 General Partner Administration Fee outside of the 50/50

split computation. The result is that the Excel spread sheet shows more monies going to KDA than to Cobb Housing.

**Whereas**, KDA is not a party to the General Partnership Operating Agreement nor the Development Agreement mentioned above. In order to maintain the expected revenue sharing negotiated and reflected herein, revenue losses due to document amendments made by Cobb Housing that are not approved by KDA, are addressed as provided herein.

**Whereas**, both the Cobb Housing Team (excluding the Financial Advisor) and City Staff understand and agree that (a) the attached Excel spread sheet (based on the most recent Walton Communities' provided pro-forma is the best available information on which to decide on the initial percentage revenue split between KDA and Cobb Housing [shown on the attached hereto Excel spread sheet at column enumerated "B" and on lines enumerated "35" and "37" (the "Revenue Split Cells")], (b) the actual performance of the Renovated Project over a 15 year operation period will be different than the pro-forma and (c) sale or refinancing of the project could (but not likely will) occur before the end of the 15<sup>th</sup> year of operation or it could (and very possibly might) occur beyond 15 years of operation. Among other outcomes, positive variations from the pro-forma could result in Cobb Housing receiving greater than a 50% share of applicable revenues over time and negative variations could result in Cobb Housing receiving less than 50%. It is unknown how delays in refinance or sale beyond 15 years of operation would affect the relative percentages. Both negotiating teams, however agree that trying to cover every possible consequence would make the Agreement a very complicated and unwieldy document and both teams agree that a simple one time set percentage split based on a Walton Communities provided pro-forma at, or within ten business days after, closing by Cobb Housing and Walton Communities related persons and entities on acquisition of the Project (the "Final Pro-forma") is the best pro-forma information for the one time setting of the percentage revenue split. Closing by Cobb Housing and Walton Communities related and persons on acquisition of the Project is expected to occur on or about August 31, 2021 and since this Agreement is dated as of September 1, 2021 the Excel spread sheet to be attached hereto will be the based on the Final Pro-Forma provided by Walton Communities related entities by September 10, 2021.

**NOW THEREFORE, FOR AND IN CONSIDERATION OF TEN AND NO/100 DOLLARS AND THE MUTUAL RECITALS SET FORTH ABOVE**, and the receipt and sufficiency of which is hereby acknowledged, the Cobb Authority and the KDA hereby agree as follows:

1. Cobb Housing will endeavor to acquire and establish an ownership interest in a yet to be formed entity to be the general partner of a to be formed limited partnership entity to acquire, rehabilitate, own and operate the existing 261 unit Walton Ridenour Apartment Homes (of which 258 are affordable units) located at 1425 Ridenour Blvd., Kennesaw Georgia. Cobb Housing will own a 25% interest in the General Partner. Walton Entity will be the other General Partner owner entity.
2. Cobb Housing will enter into a development agreement under terms of which Cobb Housing is a co-developer with Walton Communities, LLC and will receive from the Limited Partnership at least 25% of any development fee paid.

3. Cobb Housing will pay to KDA \_\_\_\_\_% of any Available Revenues, as defined herein within ten (10) business days after receipt of any such Available Revenues. Cobb Housing will also pay to KDA within ten (10) business days after receipt 100% of the \$70,000 General Partner Administration Fee that it receives from the General Partner except, in any year beginning with calendar year 2022, that the City has received or will receive ad valorem taxes assessed against at least 50% of the real property located on the land associated with the Project and/or on the land or the estate for years thereof, the \$70,000 payment set forth above will be reduced by an amount equal to the amount of above taxes received by the City for that year, up to a maximum reduction of \$70,000 each applicable year.
4. If Cobb Housing, voluntarily amends any agreement, other than this Agreement, related to the Project in a way that negatively impacts revenues to be paid to KDA under this Agreement, and such amendment increases revenues to be received by Cobb Housing without the written consent of KDA (which consent shall not be unreasonably withheld), Cobb Housing shall pay to KDA, solely from any such additional revenues received by Cobb Housing as a result of the amendment, an amount equal to the additional sum so received by Cobb Housing.
5. This Agreement shall terminate on the date that the Cobb Authority no longer owns an interest in the general partner entity of a limited partnership that owns and operates the Renovated Project and after all Available Revenues from the General Partner due to Cobb Housing are paid to KDA and any theretofore received by Cobb Housing but not yet paid to KDA General Partner Administration Fee.
6. The KDA and Cobb Housing agree that this Agreement shall be construed in accordance with the laws of Georgia.
7. The KDA and Cobb Housing Authority agree that any disputes between the parties shall be resolved in binding arbitration, unless resolved following mediation, through the rules of the American Arbitration Association, Commercial Division, by a single arbitrator.
8. The KDA shall be entitled to reasonable inspection of the books and records of the Cobb Authority upon providing seven-business day's written notice thereof. Additionally, Cobb Authority shall provide email notice to the parties addresses below within 48 hours of funds being distributed into its account arising out of the above-described transaction.
9. Any NOTICE required hereunder shall be made by email and regular U. S. mail to the following:

**Kennesaw Development Authority**

C/O Luke Howe  
2595 J O Stephenson Ave.  
Kennesaw, GA 30152  
[lhowe@kennesaw-ga.gov](mailto:lhowe@kennesaw-ga.gov)

with a copy to:

Fred D. Bentley, Jr.  
Bentley, Bentley & Bentley  
241 Washington Ave.  
Marietta, GA 30060  
[fred@thebentleyfirm.com](mailto:fred@thebentleyfirm.com)

**Housing Authority of Cobb County**

C/O Scott Cochran  
Cochran & Edwards  
2950 Atlanta Road, SE  
Smyrna, GA 30080  
[Scott@cochranedwardslaw.com](mailto:Scott@cochranedwardslaw.com)

with a copy to:

Marvin Shams  
[mar36sha@bellsouth.net](mailto:mar36sha@bellsouth.net)

(CORPORATE SEAL)

**KENNESAW DEVELOPMENT AUTHORITY**

By: \_\_\_\_\_  
Chairman

Signed, sealed and delivered this  
\_\_\_\_ day of \_\_\_\_\_, 2020.

\_\_\_\_\_  
Unofficial Witness

\_\_\_\_\_  
Notary Public  
My Commission Expires:

\_\_\_\_\_  
(NOTARIAL SEAL)

(CORPORATE SEAL)

**HOUSING AUTHORITY OF COBB COUNTY**

By: \_\_\_\_\_  
Chairman

Signed, sealed and delivered this  
\_\_\_\_ day of \_\_\_\_\_, 2020.

\_\_\_\_\_  
Unofficial Witness

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

My Commission Expires:

\_\_\_\_\_  
(NOTARIAL SEAL)