03-O-0652

AN ORDINANCE 03-O-

BY COUNCILMEMBER CLETA WINSLOW

AN ORDINANCE AUTHORIZING THE MAYOR TO EXECUTE A COOPERATION AGREEMENT BY AND AMONG THE CITY OF ATLANTA, FULTON COUNTY, AND THE HOUSING AUTHORITY OF THE CITY OF ATLANTA, GEORGIA PERTAINING TO THE TERMS, CONDITIONS, DUTIES AND RESPONSIBILITIES OF THE PARTIES WITH RESPECT TO THE DEVELOPMENT AND MANAGEMENT OF THE NEW COMMUNITY AT HARRIS HOMES, A MIXED INCOME HOUSING COMMUNITY, AND FOR OTHER PURPOSES.

WHEREAS, the City of Atlanta, Fulton County, and The Housing Authority of the City of Atlanta, Georgia wish to enter into a "Cooperation Agreement" for The New Community at Harris Homes, which agreement shall govern various matters involving the relationships among the parties; and

WHEREAS, The New Community at Harris Homes is to be redeveloped as a mixed income community by private developers; and

WHEREAS, up to forty-one percent (41%) of the multi-family dwelling units (being approximately 299 units) in The New Community at Harris Homes will be reserved for usage by persons of low income.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF ATLANTA, GEORGIA, AS FOLLOWS:

Section 1. The Mayor is hereby authorized to execute the Cooperation Agreement by and among the City of Atlanta, Fulton County, and The Housing Authority of the City of Atlanta, Georgia pertaining to the terms, conditions, duties and responsibilities of the parties with respect to the

development and management of The New Community at Harris Homes, a mixed income housing community. Said Agreement shall be substantially in the form attached to this Ordinance.

Section 2. All ordinances or resolutions or parts of ordinances or resolutions in conflict herewith are hereby rescinded.

COOPERATION AGREEMENT

This Agreement, entered into as of this ____ day of April, 2003, by and between **The Housing Authority of the City of Atlanta, Georgia** (herein called the "Local Authority"), the **City of Atlanta, Georgia**, (herein called the "City"), and **Fulton County, Georgia** (herein called the "County")

W I T N E S S E T H :

In consideration of the mutual covenants hereinafter set forth, the parties hereto do agree as follows:

1. Whenever used in this Agreement:

(a) The term "Eligible Housing Unit" shall mean single or multi-family dwelling units and such community facilities as may be incidental or appurtenant thereto, provided that at least twenty percent (20%) of the multi-family dwelling units located within an apartment complex shall be occupied by or held available for occupancy by low and moderate income families, as that term is defined in O.C.G.A. §8-3-3.1(3), as same may be amended from time to time.

(b) The term "Housing Project" shall be as defined in O.C.G.A. Section 8-3-3-(10), as same may be amended from time to time.

(c) The term "Payments in Lieu of Taxes" shall mean the annual payments, made by the Local Authority to the Tax Commissioner of the County in accordance with the provisions of Section 3 below, which payments shall be in lieu of real and personal property taxes and special assessments and in payment for the public services and facilities furnished from time to time, without cost or charge, by the City and/or the County for or with respect to the Project.

(d) The term "Persons of Low Income" shall mean persons or families who lack the income necessary (as determined by the Local Authority) to enable them, without financial assistance, to live in decent, safe and sanitary dwellings without overcrowding.

(e) The term "Private Enterprise Agreement" shall be as defined in O.C.G.A. Section 8-3-3(13.1), as same may be amended from time to time.

(f) The term "Project" shall mean the Housing Project consisting of a mixed-income multi-family rental housing community and a mixed-income home ownership component to be hereafter developed as an entity by or for the

benefit of the Local Authority with financial assistance of the United States Department of Housing and Urban Development or its successor (herein called "HUD"): HUD Project No. _____ (The New Community at Harris Homes). The Project shall be developed in one or more phases. The Project consists of approximately 734 multi-family dwelling units, up to forty-one percent (41%) of which (being approximately 299 dwelling units) shall be occupied by or held available for occupancy by Persons of Low Income.

(g) The term "Taxing Body" shall mean the State or any political subdivision or taxing unit thereof in which the Project is situated and which would have authority to assess or levy real or personal property taxes or to certify such taxes to a taxing body or public officer to be levied for its use and benefit with respect to the Project if it were not exempt from taxation.

(h) The term "Shelter Rent" shall mean the total of all charges to all tenants of a Project who are Persons of Low Income for those Eligible Housing Units in the Project that are occupied or reserved for occupancy by Persons of Low Income (excluding all other income of such Project), less the cost to the Local Authority of all utilities provided to or for the benefit of such tenants who are Persons of Low Income. As referenced above in subsection 1(f) of this Agreement, up to forty-one percent (41%) of the multi-family dwelling units in the Project shall be occupied or reserved for occupancy by Persons of Low Income.

(i) The term "Slum" shall mean any area where dwellings predominate which, by reason of dilapidation, overcrowding, faulty arrangement or design, lack of ventilation, light or sanitation facilities, or any combination of these factors, are detrimental to safety, health, or morals.

2. The Local Authority shall endeavor (a) to secure a contract or contracts with HUD for grants of public monies, loans and/or annual contributions, or any combination thereof, for the Eligible Housing Units in the Project occupied by, or held available for occupancy by, Persons of Low Income (or, in the event of a change in law such that such contracts with HUD are no longer utilized, then the Local Authority shall endeavor to secure another contract concerning the grant of public monies, including, without limitation, "block" grants, loans or annual contributions of public funds, or any combination thereof, with respect to such Eligible Housing Units) and (b) to develop and administer such Project pursuant to a Private Enterprise Agreement or otherwise as may be permitted by applicable law. The obligations of the parties hereto shall apply to the Project.

3. (a) Under the constitution and statutes of the State of Georgia, the property of the Local Authority is exempt from all real and personal property taxes and special assessments levied or imposed by any Taxing Body. The parties hereto acknowledge and agree that until such time as the Eligible Housing Units within

the redeveloped Project have been completed and are ready for occupancy (as evidenced by a certificate of occupancy), the property included within the Project shall remain exempt from all such real and personal property taxes and special assessments; thereafter, the property shall be subject to such taxes and special assessments, as and to the extent provided in this Agreement. With respect to the Project, so long as either (i) such Project is owned by a public body or governmental agency and is used for low-rent housing purposes, or (ii) any contract between the Local Authority and HUD for grants of public monies, loans or annual contributions, or any combination thereof, in connection with such Project remains in force and effect (or, in the event of a change in law such that such contracts with HUD are no longer utilized, then if any contract concerning the grant of public monies, including, without limitation, "block" grants, loans or annual contributions of public funds, or any combination thereof, in connection with such Project remains in force and effect), or (iii) any bonds issued in connection with such Project or any monies due to HUD in connection with such Project remain unpaid (whichever period is the longest), the City and the County each agree that neither of them will levy or impose any real or personal property taxes or special assessments upon either (a) the Eligible Housing Units in the Project occupied or reserved for occupancy by Persons of Low Income, or (b) the Local Authority with respect to such Project, other than such taxes or assessments which are hereafter required to be imposed or levied by general law. During such period, the Local Authority shall make Payments in Lieu of Taxes in lieu of such taxes and special assessments that are not levied or imposed in accordance with the preceding sentence and in payment for the public services and facilities furnished from time to time without other cost or charge for or with respect to such Project. Notwithstanding the foregoing provisions hereof to the contrary, no Payments in Lieu of Taxes shall be payable hereunder with respect to any tax year during which the Project may be exempt from property taxes by reason of its being included within a housing enterprise zone or similar tax abatement designation; provided, further, that Payments in Lieu of Taxes shall recommence during the tax "phase-in period" of the applicable housing enterprise zone or similar tax abatement legislation, in such percentages as are payable pursuant to such legislation with respect to the housing units in the Project other than the Eligible Housing Units occupied or reserved for occupancy by Persons of Low Income.

(b) Each such annual Payment in Lieu of Taxes shall be made after the end of the fiscal year established for such Project, and shall be in an amount equal to the lesser of (i) ten (10%) percent of the Shelter Rent actually collected during such fiscal year in respect of such Project (but in no event to exceed ten (10%) percent of the Shelter Rent charged by the Local Authority in respect of such Project during such fiscal year) or (ii) the amount permitted to be paid by the Housing Authorities Law, O.C.G.A. Section 8-3-1 et. seq., the Housing

Cooperation Law, O.C.G.A. Section 8-3-150 et. seq., or other applicable State law in effect on the date such payment is made.

(c) Each year for which Payments in Lieu of Taxes are payable pursuant to the terms hereof, the City and County shall compute the total amount of taxes, including real property taxes, sewer taxes, bond taxes, school taxes, hospitalization taxes, and any other separate taxes, charges and assessments upon the Project (collectively, the "Taxes"), as if the Project were not exempt in part from taxation, and shall notify the Local Authority in writing of said computation, and the Local Authority shall thereupon at the time herein provided remit the Payments in Lieu of Taxes to the Tax Commissioner of the County, and the County shall promptly thereafter remit to the City the City's portion of the Payments in Lieu of Taxes, (which shall be proportionate to the amount of Taxes that would have been payable to the City but for the partial exemption of the Project therefrom). In no event shall the sum of (a) the Payment in Lieu of Taxes for any year and (b) the Taxes actually payable during such year with respect to the portion of the Project that is not exempt from Taxes pursuant to the terms hereof exceed the amount of Taxes that would have been payable to the City or County for such year if the Project was not partially exempt from Taxes pursuant to the terms hereof.

(d) Upon failure of the Local Authority to make any Payment in Lieu of Taxes, no lien against the Project or any assets of the Local Authority shall attach, nor shall any interest or penalties accrue or attach on account thereof; provided, however, the City and County shall otherwise be entitled to pursue legal remedies in the event of a breach by the Local Authority of its obligations hereunder.

4. **[Intentionally Deleted]**

5. During the period commencing with the date of the acquisition of any part of the site or sites of the Project and continuing so long as either (i) the Project is owned by a public body or governmental agency and is used for purposes of providing Eligible Housing Units, or (ii) any contract between the Local Authority and HUD for grants of public monies, loans or annual contributions, or any combination thereof, in connection with such Project remains in force and effect (or, in the event of a change in law such that such contracts with HUD are no longer utilized, then if any contract concerning the grant of public monies, including, without limitation, "block" grants, loans or annual contributions of public funds, or any combination thereof, in connection with such Project remains in force and effect), or (iii) any bonds issued in connection with such Project or any monies due to HUD in connection with such Project remain unpaid, whichever period is the longest, the City and the County (within their respective jurisdictions and authority), without cost or charge to the Local Authority or the Persons of Low Income who are tenants of Eligible Dwelling Units in the Project (other than the Payments in Lieu of Taxes), shall:

(a) Furnish or cause to be furnished to the Local Authority and the tenants of Eligible Dwelling Units in the Project public services and facilities of the same character and to the same extent (it being understood, however, that the City and County shall be entitled to exercise their routine discretion in making decisions as to where to locate public facilities, and accordingly, such facilities may not serve the Project exclusively, but instead may be located in a service area including the Project) as are furnished from time to time without cost or charge, other than through the assessment of property taxes, to other dwellings and inhabitants in the City or the County;

(b) Insofar as the City and County may lawfully do so, vacate such streets, roads, and alleys within the area of the Project as may be necessary in the development thereof, and convey without charge to the Local Authority such interest as the City or the County may have in such vacated areas; and, insofar as it is lawfully able to do so without cost or expense to the Local Authority or to the City and the County, cause to be removed from such vacated areas, insofar as it may be necessary, all public or private utility lines and equipment;

(c) Insofar as the City and the County may lawfully do so, (i) grant such deviations from the building code of the City or the County as are reasonable and necessary to promote economy and efficiency in the development and administration of the Project, and at the same time safeguard health and safety, and (ii) make such changes in any zoning of the site and surrounding territory of the Project as are reasonable and necessary for the development and protection of the Project and the surrounding territory;

(d) Accept grants of easements necessary for the development of the Project; and

(e) Cooperate with the Local Authority by such other lawful action or ways as the City or the County and the Local Authority may find necessary in connection with the development and administration of the Project.

6. In respect of the Project, the City and County (within their respective jurisdictions and authority) each further agree that within a reasonable time after receipt of a written request therefor from the Local Authority:

(a) It will accept the dedication of all previously undedicated interior streets, roads, alleys, and adjacent sidewalks within the area of the Project, together with all storm and sanitary sewer mains in such dedicated areas, after the Local Authority, without expense to the City or County, has completed or caused to be completed the grading, improvement, paving and installation thereof in accordance with specifications acceptable to the City or the County.

(b) It will accept necessary dedication of land for, and will grade, improve, pave and provide sidewalks for, all streets bounding the Project or necessary to provide adequate access thereto (in consideration whereof the Local Authority shall pay or cause to be paid to the City or the County such amount as would be assessed against the Project site for such work if such site were privately owned); and

(c) It will provide, or cause to be provided, water mains, and storm and sanitary sewer mains, leading to the Project and serving the bounding streets thereof (in consideration whereof the Local Authority shall pay or cause to be paid to the City or the County such amount as would be assessed against the Project site for such work if such site were privately owned).

7. If by reason of the City or County's failure or refusal to furnish or cause to be furnished any public services or facilities which it has agreed hereunder to furnish or to cause to be furnished to the Local Authority or to the tenants of the Project, the Local Authority incurs any expense to obtain such services or facilities, then the Local Authority may deduct the amount of such expense from any Payments in Lieu of Taxes due or to become due to the City and the County in respect to the Project or any other low-rent housing projects owned or operated by the Local Authority, including, without limitation, Housing Projects that may be subject to Private Enterprise Agreements.

8. No Cooperation Agreement heretofore entered into between the City and the County and the Local Authority shall be construed to apply to the Project covered by this Agreement.

9. So long as any contract between the Local Authority and HUD for grants of public monies, loans (including preliminary loans) or annual contributions, or any combination thereof, in connection with the Project remains in force and effect, or so long as any bonds issued in connection with the Project or any monies due to HUD in connection with the Project remain unpaid, this Agreement shall not be abrogated, changed, or modified without the consent of HUD. The privileges and obligations of the City and the County hereunder shall remain in full force and effect with respect to the Project so long as (a) the Project qualifies as a Housing Project (even though the Project may be the subject of a Private Enterprise Agreement), or (b) the beneficial title to the Project (or the portion thereof that is exempt from Taxes pursuant to the terms hereof) is held by the Local Authority or by any other public body or governmental agency, including HUD, authorized by law to engage in the development or administration of low-rent housing projects. If at any time the beneficial title to, or possession of, the Project is held by such other public body or governmental agency, including HUD, the provisions hereof shall inure to the benefit of and may be enforced by such other public body or governmental agency, including HUD.

10. This Cooperation Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which shall be deemed to constitute one and the same agreement.

[signature pages follow]

IN WITNESS WHEREOF, the City, the County and the Local Authority have respectively signed this Agreement and caused their seals to be affixed and attested as of the day and year first above written.

THE HOUSING AUTHORITY OF
THE CITY OF ATLANTA, GEORGIA

(SEAL)

By:_____
President and Chief Executive Officer

Attest:

_____
Assistant Secretary

This is the signature page for the Cooperation Agreement for The New Community at Harris Homes entered into by and between The Housing Authority of the City of Atlanta, Georgia, the City of Atlanta and Fulton County.

This is the signature page for the Cooperation Agreement for The New Community at Harris Homes entered into by and between The Housing Authority of the City of Atlanta, Georgia, the City of Atlanta and Fulton County.

CITY OF ATLANTA, GEORGIA

(SEAL)

By:_____
Mayor

Attest:

_____
City Clerk

Approved as to form:

_____
City Attorney

This is the signature page for the Cooperation Agreement for The New Community at Harris Homes entered into by and between The Housing Authority of the City of Atlanta, Georgia, the City of Atlanta and Fulton County.

FULTON COUNTY, GEORGIA

(SEAL)

By:_____
Chairman

Attest:

_____
Deputy Clerk

Approved as to form:

_____
County Attorney