

**LOAN AGREEMENT
(GENERAL FUND)**

THIS LOAN AGREEMENT is made between the **CITY AND COUNTY OF DENVER**, a municipal corporation organized pursuant to the Constitution of the State of Colorado (“City”), and **SHERIDAN STATION APARTMENTS LLC** a Colorado limited liability company, whose address is 2000 S. Colorado Blvd., Suite 315, Denver, CO 80222 (“Borrower” or “Contractor”).

WITNESSETH:

WHEREAS, the City is making certain monies available to ensure the development of an affordable housing project to be known as Sheridan Station Apartments (the “Project”); and

WHEREAS, the Borrower is eligible to receive funds from the City, and is ready, willing and able to meet the conditions associated therewith;

WHEREAS, the Borrower is developing the Project on the Property (as defined below);

NOW, THEREFORE, in consideration of the mutual agreements herein contained, the parties agree as follows:

1. LOAN TO BORROWER: Subject to the terms of this Loan Agreement, the City agrees to lend Borrower the sum of One Million Nine Hundred Thousand Ninety-Five Dollars and No/100 (\$1,995,000.00) (the “Loan”). In addition to this Loan Agreement, the City and Borrower will enter into a promissory note in a form satisfactory to the City evidencing this Loan (the “Promissory Note”) and a covenant securing the Property for use as affordable housing as required by Section 6 hereof (the “Covenant”). Simple interest at a rate of one percent (1%) per annum shall commence accruing on the outstanding principal balance of the Promissory Note on January 1, 2020. Principal and interest shall be due and payable, at such place as may be designated by City, in annual installments equal to the lesser of (a) thirty-nine percent (39%) of the annual surplus Cash Flow amount, calculated in accordance with the order of priority and other provisions set forth on **Exhibit E** attached hereto, or (b) \$81,375.00. Such annual installments shall commence and be due on March 1, 2021 and each March 1st thereafter, with the entire unpaid balance of principal and accrued interest due and payable on January 1, 2061 (the “Maturity Date”), if not sooner paid.

2. SECURITY: Repayment of the Promissory Note shall be secured by a Deed of Trust (the “Deed of Trust”), in form satisfactory to City, granted by Borrower and encumbering

the real property known and numbered as 1079 Ames Street, Denver, Colorado (the “Property”) subject to prior encumbrances not exceeding Thirty-Two Million and No/100Dollars (\$32,000,000.00) in principal amount.

3. SUBORDINATION; DEADLINES: The Executive Director (the “Executive Director”) of the City’s Office of Economic Development (“OED”), or his or her designee, is authorized to execute documents necessary to subordinate the lien of the City’s Deed of Trust so long as (i) the subordination agreement is substantially in the form attached hereto as **Exhibit D** (recognizing that senior lenders may request revisions to the form, which may be accepted by the Executive Director in his or her sole discretion); (ii) encumbrances prior to the City’s Deed of Trust do not exceed \$32,000,000; (iii) Borrower is not then in default of its obligations pursuant to this Loan Agreement, the Promissory Note, the Deed of Trust or the Covenant; and (iv) all additional financing for the Project is committed. The Executive Director or his or her designee is additionally authorized to extend or modify any deadlines or schedules (other than repayment deadlines or schedules) set forth herein, provided that the Borrower also consents to any such change and that such changes are made in writing.

4. USE AND DISBURSEMENT OF FUNDS: Loan proceeds will be used to finance costs associated with development of the Property for use as affordable housing, in accordance with **Exhibit A**, attached hereto and incorporated herein. The Borrower shall submit to the City requisitions with documentation of incurred costs on OED approved forms, and otherwise comply with the financial administration requirements set forth in **Exhibit B** attached hereto and incorporated herein. Where the City’s funds are disbursed for construction, (i) the City shall monitor the construction activities for the purpose of verifying eligible costs, and (ii) the City shall retain ten percent (10%) of each disbursement of funds, which retainage shall be released upon final inspection and approval of the City and receipt of proof of release of liens from all applicable contractors, subcontractors, and suppliers. In addition, OED shall retain Ten Thousand and No/100 Dollars (\$10,000.00) of the total funds to be disbursed under this Loan Agreement, which retainage shall be released upon receipt from Borrower of all information necessary for the City’s reporting requirements. These budget items may be revised with the written approval of OED, provided the amounts to be paid from the Loan under revised budget do not exceed the amount of the Loan. Expenses incurred prior to January 1, 2018 are not eligible for reimbursement.

5. DEADLINE FOR DISBURSEMENT OF FUNDS: Borrower must provide evidence of private funding commitments necessary to develop the affordable housing project on the Property and the final executed partnership or operating agreement for the limited partnership or limited liability company owning the Project on or before March 31, 2019 (or such later date as may be acceptable to the Executive Director). Failure to meet this deadline shall result in the termination of this Loan Agreement. No funds shall be disbursed under this Loan Agreement until such time as these conditions are met. Further, all cost overruns and/or funding shortfalls shall be the sole responsibility of the Borrower.

Borrower further agrees that documentation for all draw down requests will be submitted no later than twenty-four (24) months after the date of the Promissory Note. This timeline includes requests for disbursement of the Ten Thousand and No/100 Dollars (\$10,000.00) retainage set forth in Section 4, above. These deadlines may be extended with the written approval of OED.

6. RESTRICTIONS ON USE OF PROPERTY:

A. Affordability limitations. One Hundred Twenty (120) of the units at the Property (the “60% Units”) shall have rents not exceeding the lesser of (i) fair market rent for comparable units in the area as published by the Colorado Housing and Finance Authority (“CHFA”), or (ii) a rent that does not exceed 30% of the adjusted income of a family whose annual income equals 60% of the median income for the Denver area, as published by CHFA, with adjustments for number of bedrooms in the unit. Eight (8) of the units at the Property (the “40% Units”) shall have rents not exceeding the lesser of (i) 30% of the annual income of a family whose income equals 40% of the median income for the area, as published by CHFA, with adjustments for number of bedrooms in the unit, or (ii) fair market rent for comparable units in the area as published by CHFA. Five (5) of the units at the Property (the “30% Units”) shall have rents not exceeding the lesser of (i) 30% of the annual income of a family whose income equals 30% of the median income for the area, as published by CHFA, with adjustments for number of bedrooms in the unit, or (ii) fair market rent for comparable units in the area as published by CHFA. The 60% Units, 40% Units and 30% Units are referred to collectively herein as the “City Units”. By executing this Loan Agreement, Borrower acknowledges receipt of CHFA's current rent guidelines from the OED. It shall be Borrower's responsibility to obtain updated guidelines from OED or CHFA to confirm the annual calculation of the maximum rents for the Denver area.

The City shall determine maximum monthly allowances for utilities and services annually

using the CHFA model or another method acceptable to the City. Rents shall not exceed the maximum rents as determined above minus the monthly allowance for utilities and services.

The City shall review rents for compliance within ninety (90) days after OED requests rent information from the Borrower.

B. Occupancy/Income Limitations. The 60% Units shall be occupied by tenants whose incomes are at or below sixty percent (60%) of the median income for the Denver area as published by CHFA. The 40% Units shall be occupied by tenants whose incomes are at or below forty percent (40%) of the median income for the Denver area as published by CHFA, with adjustments for family size. The 30% Units shall be occupied by tenants whose incomes are at or below thirty percent (30%) of the median income for the Denver area as published by CHFA, with adjustments for family size. By executing this Loan Agreement, Borrower acknowledges receipt of CHFA's current income guidelines from OED. It shall be Borrower's responsibility to obtain updated guidelines from OED or CHFA, and comply with same.

C. Designation of Units. All of the City Units are floating, and are designated as follows:

BEDROOMS	60% Units	40% Units	30% Units
1 Bedroom	83	4	5
2 Bedroom	27	2	0
3 Bedroom	10	2	0
TOTAL	120	8	5

D. Covenant Running with the Land. At closing, Borrower shall execute a covenant in form satisfactory to the City ("Covenant"), setting forth the rental and occupancy limitations described in subparagraphs A and B above, which shall be recorded in the real estate records of the City and County of Denver and which shall constitute a covenant running with the land. The Covenant shall encumber the Property for a period not less than forty (40) years from the date of the Covenant. The Covenant shall terminate upon foreclosure of the Property or a deed in lieu of foreclosure. Violation of said Covenant shall be enforceable as an event of default pursuant hereto.

7. **LEASES:** Borrower shall enter into a written lease with tenants for a period of not less than one year, unless by mutual agreement between the tenant and the Borrower a shorter period is specified.

8. **PROHIBITED LEASE TERMS:** Leases or other instruments pursuant to which City Units are occupied may not contain any of the following provisions:

A. Agreement to Be Sued. Agreement by the tenant to be sued, admit guilt, or to a judgment in favor of the owner in a lawsuit brought in connection with the lease.

B. Treatment of Property. Agreement by the tenant that the owner may take, hold or sell personal property of household members without notice to the tenant and a court decision on the rights of the parties. However, the owner may dispose of personal property remaining in the unit after the tenant has moved out, in accordance with Colorado law.

C. Excusing Owner from Responsibility. Agreement by the tenant not to hold the owner or the owner's agents legally responsible for actions or failure to act, whether intentional or negligent.

D. Waiver of Notice. Agreement by the tenant that the owner may institute a lawsuit without notice to the tenant.

E. Waiver of Legal Proceedings. Agreement by the tenant that the owner may evict the tenant or household members without instituting a civil court proceeding in which the tenant has the opportunity to present a defense, or before a court decision on the rights of the parties.

F. Waiver of Jury Trial. Agreement by the tenant to waive any right to a trial by jury.

G. Waiver of Right to Appeal. Agreement by the tenant to waive the tenant's right to appeal, or to otherwise challenge a court decision in connection with the lease.

H. Tenant Chargeable with Cost of Legal Actions Regardless of Outcome. Agreement by tenant to pay attorney fees or other legal costs even if the tenant wins in a court proceeding by the owner against the tenant.

I. Mandatory Supportive Services. Agreement by the tenant (other than a tenant in transitional housing) to accept supportive services that are offered.

9. **PROHIBITION OF CERTAIN FEES:** Borrower is prohibited from charging fees that are not customarily charged in rental housing (e.g. laundry room access fees), except that Borrower may charge the following; reasonable application fees to prospective tenants; parking fees to tenants only if such fees are customary for rental housing projects in the neighborhood, and; fees for services such as bus transportation or meals, as long as the services are voluntary and

fees are charged for services provided.

10. TERMINATION OF TENANCY: Borrower may not terminate the tenancy or refuse to renew the lease of a tenant of any of the City Units except for serious or repeated violations of the terms and conditions of the lease; for violation of applicable Federal, State, or local laws; or for other good cause. Any termination or refusal to renew must be preceded by not less than thirty (30) days by Borrower's service upon the tenant of a written notice specifying the grounds for the action.

11. MAINTENANCE AND REPLACEMENT: Borrower shall maintain the Property in compliance with all applicable housing quality standards and local code requirements. Newly constructed or substantially rehabilitated housing must meet applicable requirements referenced at 24 C.F.R. 92.251.

12. TENANT SELECTION: Borrower must adopt written tenant selection policies and criteria that:

A. Are consistent with the purpose of providing housing for very low-income and low-income families;

B. Are reasonably related to program eligibility and the applicant's ability to perform the obligations of the lease;

C. Give reasonable consideration to the housing needs of families that would have a preference under federal selection preferences for admission to public housing;

D. Provide for the selection of tenants from a written waiting list in the chronological order of their application, insofar as is practicable, with prompt written notification to any rejected applicant of the grounds for any rejection.

13. LEAD-BASED PAINT HAZARDS: Housing funded, in part, by funds provided through this Loan Agreement shall be subject to the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821 *et seq.*), and is therefore subject to 24 C.F.R. Part 35; the Borrower shall comply with these provisions in the construction of the Project.

14. AFFIRMATIVE MARKETING: Borrower shall comply with the affirmative marketing procedures outlined in the marketing plan, attached hereto as **Exhibit C** and incorporated herein, to provide information and otherwise attract eligible tenants from all racial, ethnic, and gender groups in the Property's housing market area in accordance with 24 CFR 92.351. Except Borrower may limit eligibility or give preference to a particular segment of the

population in accordance with 24 CFR 92.253(d).

15. **EXPENSE**: The Borrower agrees to pay all direct costs, expenses and attorney fees reasonably incurred by the City in connection with the Borrower's breach or default of this Loan Agreement or the Promissory Note, Deed of Trust, or Covenant, and agrees to pay reasonable loan closing costs, including the costs of title insurance or guarantee as determined by City.

16. **PUBLICATIONS/ANNOUNCEMENTS**: Contractors using radio or television announcements, newspaper advertisements, press releases, pamphlets, mail campaigns, or any other marketing methods funded by OED, or publicizing activities or projects funded by OED shall first receive approval from OED. In any event, all such publicizing activities must include the following statement: "The funding source for this activity is the City and County of Denver, Office of Economic Development." OED shall be acknowledged in any events regarding the project being funded, including groundbreaking and openings.

17. **EXAMINATION OF RECORDS/ANNUAL MONITORING**: The Borrower agrees that the City, or any of its duly authorized representatives shall, until the expiration of five (5) years after the expiration of the affordability period set forth in the section above entitled "**RESTRICTIONS ON USE OF PROPERTY**," have access to and the right to examine any directly pertinent books, documents, papers, and records of the Borrower involving transactions related to this Loan Agreement. Borrower must also require its contractors and subcontractors to allow access to such records when requested. Borrower shall fully cooperate with City in an annual monitoring of Borrower's performance and site inspection to verify compliance with the requirements of this Loan Agreement. The records maintained by Borrower shall include, without limitation, (i) records evidencing the income of each family occupying a City Unit, and (ii) a copy of the lease pursuant to which each City Unit is occupied.

Borrower shall submit to the City the following reports: (1) annual report on rents and occupancy of City Units to verify compliance with affordability requirements in Paragraph 6; (2) Reports (including financial reports) that enable the City to determine the financial condition and continued financial viability of the rental project; and (3) for floating units, information on unit substitution and filling vacancies to ensure that the Property maintains the required unit mix. The City shall also be entitled to conduct physical inspections of the Property once every three (3) years during the term of this Loan Agreement.

18. CONDITIONS:

A. The obligation of the City to lend the above sums is limited to funds appropriated for the purpose of this Loan Agreement and paid into the City treasury.

B. This Loan Agreement is also subject to the provisions of the City Charter and Revised Municipal Code as the same may be amended from time.

19. NO DISCRIMINATION IN EMPLOYMENT: In connection with the performance of work under this Loan Agreement, the Borrower agrees not to refuse to hire, discharge, promote or demote, or to discriminate in matters of compensation against any person otherwise qualified, solely because of race, color, religion, national origin, gender, age, military status, sexual orientation, gender identity or gender expression, marital status, or physical or mental disability; and further agrees to insert the foregoing provision in all subcontracts hereunder.

20. INSURANCE: Borrower or its contractor(s) shall procure and maintain insurance in the following types and amounts:

A. Where loan proceeds are disbursed for construction, Builders Risk Insurance or an Installation Floater in the amount of the value of the Property as improved and renovated, with the City and County of Denver named as loss payee.

B. Commercial General Liability Insurance covering all operations by or on behalf of Borrower, on an occurrence basis with limits not less than \$1,000,000 per occurrence, \$1,000,000 for each personal and advertising injury claims, \$2,000,000 products and completed operations aggregate, and \$2,000,000 policy aggregate. Borrower's contractor shall include all subcontractors as insureds under its policy or shall furnish separate certificates of insurance for each subcontractor.

C. Worker's Compensation and Employer's Liability Insurance at statutory limits and otherwise sufficient to ensure the responsibilities of Borrower and its contractor under Colorado law.

D. Special cause of loss form property insurance satisfactory to the City in the amount of the value of the property subject to the Deed of Trust and Covenant, with the City named as loss payee.

E. Certificates of Insurance evidencing the above shall be submitted to OED prior to the disbursement of funds hereunder. Policies shall include a waiver of subrogation and rights of recovery as against the City. Insurance companies providing the above referenced coverage

must be authorized to issue insurance in Colorado and be otherwise acceptable to the Director of Risk Management.

21. DEFENSE & INDEMNIFICATION:

A. Contractor agrees to defend, indemnify, and hold harmless City, its appointed and elected officials, agents and employees against all liabilities, claims, judgments, suits or demands for damages to persons or property arising out of, resulting from, or relating to the work performed under this Loan Agreement (“Claims”), unless and until such Claims have been specifically determined by the trier of fact to be due to the sole negligence or willful misconduct of the City. This indemnity shall be interpreted in the broadest possible manner to indemnify City for any acts or omissions of Contractor or its subcontractors either passive or active, irrespective of fault, including City’s concurrent negligence whether active or passive, except for the sole negligence or willful misconduct of City.

B. Contractor’s duty to defend and indemnify City shall arise at the time written notice of the Claim is first provided to City regardless of whether Claimant has filed suit on the Claim. Contractor’s duty to defend and indemnify City shall arise even if City is the only party sued by claimant and/ or claimant alleges that City’s negligence or willful misconduct was the sole cause of claimant’s damages.

C. Contractor will defend any and all Claims which may be brought or threatened against City and will pay on behalf of City any expenses incurred by reason of such Claims including, but not limited to, court costs and attorney fees incurred in defending and investigating such Claims or seeking to enforce this indemnity obligation. Such payments on behalf of City shall be in addition to any other legal remedies available to City and shall not be considered City’s exclusive remedy.

D. Insurance coverage requirements specified in this Loan Agreement shall in no way lessen or limit the liability of the Contractor under the terms of this indemnification obligation. The Contractor shall obtain, at its own expense, any additional insurance that it deems necessary for the City’s protection.

E. This defense and indemnification obligation shall survive the expiration or termination of this Loan Agreement.

22. DEFAULT AND ACCELERATION: Borrower expressly agrees that any breach of this Loan Agreement, the Promissory Note, the Deed of Trust, or the Covenant shall constitute

a default. The City also may declare a default if any warranty, representation or statement made or furnished to the City by or on behalf of Borrower in connection with this Loan Agreement proves to have been false in any material respect when made or furnished. Upon the existence of a default, and without necessity of notice, presentment, demand, protest, or notice of protest of any kind, all of which are expressly waived by the Borrower, the City shall have the right to accelerate any outstanding obligations of the Borrower, which shall be immediately due and payable, including payments under the Promissory Note, to foreclose upon the Property, and to enforce or assign its rights under the Deed of Trust. Upon default, the principal shall draw interest at the rate of fifteen percent (15%) per annum.

The City may also suspend or terminate this Loan Agreement in whole or in part, if Borrower materially fails to comply with any term of this Loan Agreement, including if Borrower becomes delinquent to the City on loan, contractual, or tax obligations as due, or with any rule, regulation or provision referred to herein; and the City may declare the Borrower ineligible for any further participation in City funding, in addition to other remedies as provided by law. In the event there is probable cause to believe the Borrower is non-compliant with any applicable rules, laws, regulations, or Loan Agreement terms, and only after the City provides a 30 day notice to cure that remains uncured by the Borrower, the City may withhold up to one hundred (100%) percent of said Loan Agreement funds until such time as the Borrower is found to be in compliance, or to exercise the City's rights under any security interest arising hereunder.

23. ASSIGNMENT AND SUBCONTRACTING: The City is not obligated or liable under this Loan Agreement to any party other than the Borrower. The Borrower shall not assign, sublet or subcontract with respect to any of the rights, benefits, obligations or duties under this Loan Agreement except upon prior written consent of the City.

24. ACKNOWLEDGEMENT OF FUNDING: Borrower will provide and install at the Property signs, in a form mutually agreeable to the Executive Director of OED and the Borrower, acknowledging the participation of the City and the City funding of the Project.

25. WAIVER: No waiver of any breach or default under this Loan Agreement shall be held to be a waiver of any other or later breach or default. All remedies afforded in this Loan Agreement shall be construed as cumulative, in addition to every other remedy provided herein or by law.

26. CITY NOT PARTY TO CONSTRUCTION CONTRACT: The City is not, and nothing in this Loan Agreement shall be construed to constitute the City, a party to any construction contract pursuant to which the loan or grant proceeds hereof are expended.

27. DURATION/BINDING EFFECT: This Loan Agreement shall remain in effect for the period of affordability specified in Section 6(D) above, and shall be binding upon the parties and shall inure to the benefit of their respective successors, assignees, representatives, and heirs.

28. COUNTERPARTS: This Loan Agreement may be executed in multiple counterparts, each of which, when executed and delivered, shall be deemed to be an original and, taken together, shall constitute one and the same instrument.

29. NOTICES: All notices required by the terms of this Loan Agreement must be hand delivered, sent by overnight courier service, mailed by certified mail, return receipt requested, or mailed via United States mail, postage prepaid, if to Borrower at the address:

George Thorn
SHERIDAN STATION APARTMENTS LLC
2000 S. Colorado Blvd., Suite 315
Denver, CO 80222

With a copy to:

David Brint
Brinshore Development, LLC
666 Dundee Road, Suite 1102
Northbrook, IL 60062

and if to the City at:

Executive Director of the Office of Economic Development or Designee
City and County of Denver
201 West Colfax Avenue, Dept. 204
Denver, Colorado 80202

With a copy of any such notice to:

Denver City Attorney's Office
1437 Bannock St., Room 353
Denver, Colorado 80202

Notices hand delivered or sent by overnight courier are effective upon delivery. Notices sent by certified mail are effective upon receipt. Notices sent by mail are effective upon deposit

with the U.S. Postal Service. The parties may designate substitute addresses where or persons to whom notices are to be mailed or delivered. However, these substitutions will not become effective until actual receipt of written notification.

30. DISPUTES: All disputes between the City and Borrower arising out of or regarding this Loan Agreement will be resolved by administrative hearing pursuant to the procedure established by D.R.M.C. § 56-106(b)-(f). For the purposes of that administrative procedure, the City official rendering a final determination shall be the Executive Director as defined in this Loan Agreement.

31. NONRECOURSE: Notwithstanding any other provision contained herein, or the Promissory Note, the Deed of Trust, or the Covenant, it is agreed that the execution of this Loan Agreement, the Promissory Note, the Deed of Trust, and the Covenant shall impose no personal liability on Borrower or any partner, member or manager of Borrower for payment of any of the obligations described herein or therein, and the City's sole recourse shall be against the Project.

32. ELECTRONIC SIGNATURES AND ELECTRONIC RECORDS: Borrower consents to the use of electronic signatures by the City. This Loan Agreement, and any other documents requiring a signature hereunder, may be signed electronically by the City in the manner specified by the City. The Parties agree not to deny the legal effect or enforceability of this Loan Agreement solely because it is in electronic form or because an electronic record was used in its formation. The Parties agree not to object to the admissibility of this Loan Agreement in the form of an electronic record, or a paper copy of an electronic document, or a paper copy of a document bearing an electronic signature, on the ground that it is an electronic record or electronic signature or that it is not in its original form or is not an original.

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Contract Control Number:

IN WITNESS WHEREOF, the parties have set their hands and affixed their seals at Denver, Colorado as of

SEAL

CITY AND COUNTY OF DENVER

ATTEST:

By _____

APPROVED AS TO FORM:

REGISTERED AND COUNTERSIGNED:

By _____

By _____

By _____



Contract Control Number: OEDEV-201840082-00

Contractor Name: Sheridan Station Apartments LLC

By: *George L. Thorn*
President, Mile High Development
MANAGING MEMBER

Name: GEORGE L. THORN
(please print)

PRESIDENT, MILE HIGH DEVELOPMENT, LLC

Title: MANAGING MEMBER
(please print)

ATTEST: [if required]

By: *Lisa Humphrey*

Name: LISA Humphrey
(please print)

Title: Chief Financial Officer
(please print)



EXHIBIT A

PROJECT TIMELINE – Sheridan Station

Financial Closing date:	December 17, 2018
General Contractor Notice to Proceed:	January 15, 2019
Construction Completion/ units Ready to be occupied - date:	September 1, 2020
Lease-up completion date	December 31, 2020

Sources and Uses and Project Activities

Sources	Total	%
Construction Loan	\$27,000,000	78.4%
CHFA - HOF Loan	\$0	0.0%
CDOH - HOME	\$1,330,000	3.9%
Denver	\$1,995,000	5.8%
Deferred Developer Fee	\$0	0.0%
LIHTC - 4%	\$3,178,365	9.2%
LIHTC - State	\$948,000	2.8%
Total	\$34,451,365	100.00%

Uses	Total	%
Land	\$50,000	0.1%
Hard Costs	\$28,421,896	82.5%
Construction Interim	\$3,228,959	9.4%
Soft Costs	\$1,634,550	4.7%
Financing Costs	\$814,286	2.4%
Reserves	\$0	0.0%
Developer Fee	\$301,674	0.9%
Total	\$34,451,365	100.00%

Project Activities	Cost	City Funds	Other Funds
Hard Costs	\$28,421,896	\$1,995,000	\$26,426,896
Soft Costs	\$1,634,550	In either category	\$1,634,550
Totals	\$30,056,446	\$1,995,000	\$28,061,446

EXHIBIT B

FINANCIAL ADMINISTRATION:

1.1 Compensation and Methods of Payment

- 1.1.1 Disbursements shall be processed through the Office of Economic Development (OED) - Financial Management Unit (FMU) and the City and County of Denver's Department of Finance.
- 1.1.2 The method of payment to the Contractor by OED shall be in accordance with established FMU procedures for line-item reimbursements. The Contractor must submit expenses and accruals to OED on or before the last day of each month for the previous month's activity. Voucher requests for reimbursement of costs should be submitted on a regular and timely basis in accordance with OED policies. Vouchers should be submitted within thirty (30) days of the actual service, expenditure or payment of expense, except for the final voucher for reimbursement.
- 1.1.3 The Contractor shall submit the final voucher for reimbursement no later than **forty-five (45) days after the end of the contract period.**
- 1.1.4 The Contractor shall be reimbursed for services provided under this Agreement according to the approved line-item reimbursement budget attached to and made a part of this Agreement (Exhibit A).

1.2 Vouchering Requirements

- 1.2.1 In order to meet Federal Government requirements for current, auditable books at all times, it is required that all vouchers be submitted monthly to OED in order to be paid.
 - a. The first exception will be that expenses cannot be reimbursed until the funds under this contract have been encumbered.
 - b. The second exception will be that costs cannot be reimbursed until they total a minimum of \$35 unless it is a final payment voucher, or the final voucher for the fiscal year (ending December 31).
- 1.2.2 No more than six (6) vouchers may be submitted per contract per month, without prior approval from OED.
- 1.2.3 All vouchers for all Agreements must be correctly submitted within forty-five (45) days of the Agreement end date to allow for correct and prompt closeout.
- 1.2.4 City and County of Denver Forms shall be used in back-up documents whenever required in the Voucher Processing Policy.

- 1.2.5 Only allowable costs determined in accordance with 2 CFR Chapter I, Chapter II, Parts 200, 215, 220, 225 and 230, “Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards” (the “OMB Omni Circular”) applicable to the organization incurring the cost will be reimbursed.
- 1.2.6 The reimbursement request, or draw request, for personnel and non-personnel expenses should be submitted to the City on a monthly basis, no later than the last day of the following month for expenses incurred in the prior month. The request for reimbursement should include:
- a. Amount of the request in total and by line item;
 - b. Period of services for current reimbursement;
 - c. Budget balance in total and by line item;
 - d. Authorization for reimbursement by the contract signatory (i.e., executive director or assistant director).
- 1.2.7 If another person has been authorized by the Contractor to request reimbursement for services provided by this contract, then the authorization should be forwarded in writing to OED prior to the draw request.
- 1.2.8 The standardized OED “Expense Certification Form” should be included with each payment request to provide the summary and authorization required for reimbursement.

1.3 Payroll

- 1.3.1 A summary sheet should be included to detail the gross salary of the employee, amount of the salary to be reimbursed, the name of the employee, and the position of the employee. If the employee is reimbursed only partially by this contract, the amount of salary billed under other contracts with the City or other organizations should be shown on the timesheet as described below. Two items are needed for verification of payroll: (1) the amount of time worked by the employee for this pay period; and (2) the amount of salary paid to the employee, including information on payroll deductions.
- 1.3.2 The amount of time worked will be verified with timesheets. The timesheets must include the actual hours worked under the terms of this contract, and the actual amount of time worked under other programs. The total hours worked during the period must reflect all actual hours worked under all programs including leave time. The employee’s name, position, and signature, as well as a signature by an appropriate supervisor, or executive director, must be included on the timesheets. If the timesheet submitted indicates that the employee provided services payable under this contract for a portion of the total time worked, then the amount of

reimbursement requested must be calculated and documented in the monthly reimbursement request.

- 1.3.3 A payroll register or payroll ledger from the accounting system will verify the amount of salary. Copies of paychecks are acceptable if they include the gross pay and deductions.

1.4 Fringe Benefits

- 1.4.1 Fringe benefits paid by the employer can be requested by applying the FICA match of 7.65 percent to the gross salary paid under this contract. Fringe benefits may also include medical plans, retirement plans, worker's compensation, and unemployment insurance. Fringe benefits that exceed the FICA match may be documented by 1) a breakdown of how the fringe benefit percentage was determined prior to first draw request; or, 2) by submitting actual invoices for the fringe benefits. If medical insurance premiums are part of the estimates in item #1, one-time documentation of these costs will be required with the breakdown. Payroll taxes may be questioned if they appear to be higher than usual.

1.5 General Reimbursement Requirements

- 1.5.1 Invoices: All non-personnel expenses need dated and readable invoices. The invoices must be from a vendor separate from the Contractor, and must state what goods or services were provided and the delivery address. Verification that the goods or services were received should also be submitted. This may take the form of a receiving document or packing slips, signed and dated by the individual receiving the good or service. Copies of checks written by the Contractor, or documentation of payment such as an accounts payable ledger which includes the check number shall be submitted to verify that the goods or services are on a reimbursement basis.
- 1.5.2 Mileage: A detailed mileage log with destinations and starting and ending mileage must accompany mileage reimbursement. The total miles reimbursed and per mile rate must be stated. Documentation of mileage reimbursement to the respective employee must be included with the voucher request.
- 1.5.3 Pager/Cell Phone: Written statement from executive director will be required certifying that cell phone is necessary and reasonable to run the program. And, if the monthly usage charge is exceeded in any month, a detailed phone log will be required for the amount of the overage.
- 1.5.4 Administration and Overhead Cost: Other non-personnel line items, such as administration, or overhead need invoices, and an allocation to this program documented in the draw request. An indirect cost rate can be applied if the Contractor has an approved indirect cost allocation plan. The approved indirect cost rate must be submitted to and approved by OED.

1.5.5 Service Period and Closeout: All reimbursed expenses must be incurred during the time period within the contract. The final payment request must be received by OED within forty-five (45) days after the end of the service period stated in the contract.

2.1 Intentionally Omitted

3.1 Financial Management Systems

The Contractor must maintain financial systems that meet the following standards:

- 3.1.1 Financial reporting must be accurate, current, and provide a complete disclosure of the financial results of financially assisted activities and be made in accordance with federal financial reporting requirements.
- 3.1.2 Accounting records must be maintained which adequately identify the source and application of the funds provided for financially assisted activities. The records must contain information pertaining to contracts and authorizations, obligations, unobligated balances, assets, liabilities, outlays or expenditures, and income. Accounting records shall provide accurate, separate, and complete disclosure of fund status.
- 3.1.3 Effective internal controls and accountability must be maintained for all contract cash, real and personal property, and other assets. Adequate safeguards must be provided on all property and it must be assured that it is used solely for authorized purposes.
- 3.1.4 Actual expenditures or outlays must be compared with budgeted amounts and financial information must be related to performance or productivity data, including the development of cost information whenever appropriate or specifically required.
- 3.1.5 Applicable OMB Omni Circular cost principles, agency program regulations, and the terms of the agreement will be followed in determining the reasonableness, allowability and allocability of costs.
- 3.1.6 Source documents such as cancelled checks, paid bills, payrolls, time and attendance records, contract documents, etc., shall be provided for all disbursements. The Contractor will maintain auditable records, i.e., records must be current and traceable to the source documentation of transactions.
- 3.1.7 The Contractor shall maintain separate accountability for OED funds as referenced in 24 C.F.R. 85.20 and the OMB Omni Circular.
- 3.1.8 The Contractor must properly report to Federal, State, and local taxing authorities for the collection, payment, and depositing of taxes withheld. At a minimum,

this includes Federal and State withholding, State Unemployment, Worker's Compensation (staff only), City Occupational Privilege Tax, and FICA.

3.1.9 A proper filing of unemployment and worker's compensation (for staff only) insurance shall be made to appropriate organizational units.

3.1.10 The Contractor shall participate, when applicable, in OED provided staff training sessions in the following financial areas including, but not limited to (1) Budgeting and Cost Allocation Plans; (2) Vouchering Process.

4.1 Audit Requirements

4.1.1 If the Contractor expends seven hundred and fifty thousand dollars (\$750,000) or more of federal awards in the Contractor's fiscal year, the Contractor shall ensure that it, and its sub recipients(s), if any, comply with all provisions of the OMB Omni Circular.

4.1.2 A copy of the final audit report must be submitted to the OED Financial Manager within the earliest of thirty (30) calendar days after receipt of the auditor's report; or nine (9) months after the end of the period audited.

4.1.3 A management letter, if issued, shall be submitted to OED along with the reporting package prepared in accordance with the Single Audit Act Amendments and the OMB Omni Circular. If the management letter is not received by the Contractor at the same time as the Reporting Package, the Management Letter is also due to OED within thirty (30) days after receipt of the Management Letter, or nine (9) months after the end of the audit period, whichever is earlier. If the Management Letter has matters related to OED

funding, the Contractor shall prepare and submit a Corrective Action Plan to OED in accordance with the Single Audit Act Amendments and the OMB Omni Circular, as set forth in 24 C.F.R. Part 45 for each applicable management letter matter.

4.1.4 All audit related material and information, including reports, packages, management letters, correspondence, etc., shall be submitted to **OED Financial Management Unit**.

4.1.5 The Contractor will be responsible for all Questioned and Disallowed Costs.

4.1.6 The Contractor may be required to engage an audit committee to determine the services to be performed, review the progress of the audit and the final audit findings, and intervene in any disputes between management and the independent auditors. The Contractor shall also institute policy and procedures for its sub recipients that comply with these audit provisions, if applicable.

5.1 Budget Modification Requests

5.1.1 Minor modifications to the services provided by the Contractor or changes to each line item budget equal to or less than a ten percent (10%) threshold, which do not increase the total funding to the Contractor, will require only notification to OED with the next monthly draw. Minor modifications to the services provided by Contractor, or changes to each line item budget in excess of the ten percent (10%) threshold, which do not increase the total funding to Contractor, may be made only with prior written approval by OED. Such budget and service modifications will require submittal by Contractor of written justification and new budget documents. All other contract modifications will require an amendment to this Agreement executed in the same manner as the original Agreement.

5.1.2 The Contractor understands that any budget modification requests under this Agreement must be submitted to OED prior to the last Quarter of the Contract Period, unless waived in writing by the OED Director.

6.1 Procurement

6.1.1 The Contractor shall follow the City Procurement Policy to the extent that it requires that at least three (3) documented quotations be secured for all purchases or services (including insurance) supplies, or other property that costs more than five thousand dollars (\$5,000) in the aggregate.

6.1.2 The Contractor will maintain records sufficient to detail the significant history of procurement. These records will include, but are not limited to the following: rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price.

6.1.3 If there is a residual inventory of unused supplies exceeding five thousand dollars (\$5,000) in total aggregate upon termination or completion of award, and if the supplies are not needed for any other federally sponsored programs or projects the Contractor will compensate the awarding agency for its share.

7.1 Bonding

7.1.1 OED may require adequate fidelity bond coverage, in accordance with 24 C.F.R. 84.21, where the Contractor lacks sufficient coverage to protect the City's interest.

8.1 Records Retention

8.1.1 The Contractor must retain for five (5) years financial records pertaining to the contract award. The retention period for the records of each fund will start on the day the single or last expenditure report for the period, except as otherwise noted, was submitted to the awarding agency.

8.1.2 The awarding agency shall have the right of access, upon reasonable notice, to any pertinent books, documents, papers, or other records which are pertinent to the contract, in order to make audits, examinations, excerpts, and transcripts.

9.1 Contract Close-Out

9.1.1 All Contractors are responsible for completing required OED contract close-out forms and submitting these forms to their appropriate OED Contract Specialist within sixty (60) days after the Agreement end date, or sooner if required by OED in writing.

9.1.2 Contract close out forms will be provided to the Contractor by OED within thirty (30) days prior to end of contract.

9.1.3 OED will close out the award when it determines that all applicable administrative actions and all required work of the contract have been completed, and that any repayment required according to the terms of this Agreement has been received or forgiven. If Contractor fails to perform in accordance with this Agreement, OED reserves the right to unilaterally close out a contract, “unilaterally close” means that no additional money may be expended against the contract.

10.1 Collection of amounts due

10.1.1 Any funds paid to a Contractor in excess of the amount to which the Contractor is finally determined to be entitled under the terms of the award constitute a debt to the City. If not paid within a reasonable period after demand, OED may 1) Make an administrative offset against other requests for reimbursements, 2) Withhold advance payments otherwise due to the Contractor, or 3) other action permitted by law.

EXHIBIT C
(Affirmative Marketing)

City and County of Denver
Affirmative Marketing Program

The City and County of Denver is committed to the goal of adequate housing for all its citizens and to affirmatively furthering fair housing opportunities. The City has developed written material explaining the City's Housing Programs for dissemination and will inform the public, owners, and potential tenants about Federal fair housing laws. These materials will display the "equal housing opportunity" slogan and logo. The City will also publicize its Housing programs through press releases, solicitations to property owners and written communications to fair housing groups and local lenders. The City will display the "equal housing opportunity" slogan on all such communications.

All contracts, grant agreements and/or loan agreements between the City or its agents and property owners executed in connection with the Housing Programs will:

- (1) prohibit discrimination in the rental of housing rehabilitated through the City's Housing programs on the basis of race, color, religion, sex, national origin, age, handicap, or household composition;
- (2) require compliance with all applicable fair housing and equal opportunity laws, and
- (3) include a copy of our Affirmative Marketing Program and require compliance with all procedures contained herein for the period of affordability of the term of the loan, whichever is greater.

In the City's Housing Loan Program, the objective of the Affirmative Marketing Program and a project's Affirmative Marketing Plan will be to increase the racial/ethnic diversity of the project's tenant population so that the tenant population is not made up exclusively of persons of one race/ethnicity.

In order to accomplish this, owners will be required to adopt a plan that will inform and solicit applications from persons in the housing market who are least likely to apply for the housing without special outreach. In general, persons who are not of the race/ethnicity of the majority of the residents of the neighborhood in which the property is located will be considered as persons least likely to apply.

The City will work with the project owner to identify which racial/ethnic groups in the population are least likely to apply for housing in each project without special outreach. The City will assist the owner in developing a project specific Affirmative Marketing Plan which includes special outreach efforts and the City will approve the Plan. The property manager or rental agent will be required to maintain records enabling the City to assess the results of the owner's actions to affirmatively market units. These records will include rental applications, all vacancy notices, and rental receipts. The City or its agent will review the owner's records and these records must be made available to

the City. Additionally, the City will require the owner to submit annual tenant reports that will include tenant characteristics including race/ethnicity. The project's Plan will identify specific actions the owner must take when becoming aware of an impending vacancy. In some cases the owner will also be required to advertise the vacancy in a general circulation newspaper.

Owners who rent exclusively to one segment of the population to the exclusion of applicants from other segments will be notified of potential noncompliance. The City will provide technical assistance to the owners in expanding outreach efforts. If necessary, specific corrective actions will be required.

Owners who discriminate or who fail to comply with the requirements of this Affirmative Marketing Program may be found in breach of contract or in default on their grant or loan agreement, and the City may take action to recover all funds made available to the owner by the City plus applicable penalties.

The City has adopted a policy to aggressively encourage landlords to rehabilitate units that are accessible to persons with physical disabilities.

EXHIBIT D
SUBORDINATION AGREEMENT

RECORDING REQUESTED BY:
AND WHEN RECORDED MAIL TO:

[_____]

Freddie Mac Loan Number: _____
Property Name:

[Space Above This Line For Recorder's Use]

SUBORDINATION AGREEMENT

GOVERNMENTAL ENTITY

(Direct Purchase of Tax-Exempt Loans)
(Revised 9/1/2014)

THIS SUBORDINATION AGREEMENT ("**Agreement**") is entered into as of June __, 2018, by and between U.S. BANK NATIONAL ASSOCIATION, a national banking association (together with its permitted successors and assigns, "**Senior Mortgagee**"), and the CITY AND COUNTY OF DENVER, a municipal corporation of the State of Colorado ("**Subordinate Mortgagee**").

RECITALS

- A. SHERIDAN STATION APARTMENTS LLC, a limited liability company organized under the laws of the State of Colorado ("**Borrower**") is the owner of certain land located in the City and County of Denver, Colorado, described in Exhibit A ("**Land**"). The Land is to be improved with a multifamily rental housing project ("**Improvements**").
- B. [xx] ("**Governmental Lender**"), the original holder of the Senior Note, has made a loan to Borrower in the original principal amount of ("**Senior Loan**") upon the terms and conditions of a Project Loan Agreement dated as of June __, 2018 ("**Senior Loan Agreement**") among Governmental Lender, Senior Mortgagee (in its capacity as Fiscal Agent under the Funding Loan Agreement (defined below)) and Borrower in connection with the Mortgaged Property. The Senior Loan is secured by a [Construction Deed of Trust, Assignment of Leases and Rents, Security Agreement and Fixture Filing] dated as of [_____] __, 2018 ("**Senior Mortgage**") encumbering the Land, the Improvements and related personal and other property described and defined in the Senior Mortgage as the "**Mortgaged Property**."
- C. Pursuant to a Loan Agreement dated _____, 2018, between Subordinate Mortgagee and Borrower ("**Subordinate Loan Agreement**"), Subordinate Mortgagee has made or is making a loan to Borrower in the original principal amount of

("Subordinate Loan"). The Subordinate Loan is or will be secured by a Deed of Trust dated _____, 2018 ("Subordinate Deed of Trust") encumbering all or a portion of the Mortgaged Property.

- D. The Senior Mortgage will be recorded in the Official Records of the City and County of Denver Clerk and Recorder ("**Recording Office**") prior to recordation of this Agreement. The Subordinate Deed of Trust will be recorded in the Recording Office following the recording of the Senior Mortgage.
- E. The Senior Note was assigned by the Governmental Lender to Senior Mortgagee as security for the loan made by the Initial Funding Lender (as defined below) to the Governmental Lender pursuant to the Funding Loan Agreement (the "**Funding Loan**"). The Senior Mortgage was assigned by the Governmental Lender to Senior Mortgagee as security for the Funding Loan pursuant to an [Assignment of Deed of Trust and Related Documents] dated of even date herewith to be recorded contemporaneously herewith.
- F. Subject to the terms and conditions of that certain [Construction Phase Financing Agreement (the "**Construction Phase Financing Agreement**")], dated as of [____] __, 2018, between Borrower, [_____] ("**Initial Funding Lender**"), Federal Home Loan Mortgage Corporation and [Northmarq] ("**Permanent Funding Lender**"), Initial Funding Lender shall subsequently assign (without recourse) and deliver the documents comprising the Funding Loan to the Permanent Funding Lender and, in connection therewith, the Senior Note (as defined herein) and the Senior Mortgage will be amended and restated, and thereafter assigned to the Senior Mortgagee, in its capacity as fiscal agent under the Funding Loan Agreement ("**Conversion**").
- G. Pursuant to [Section 8.17 of the Senior Mortgage and Sections 6.03, 8.02, 11.01 and 11.05 of the Funding Loan Agreement dated as of [__] __, 2018], among Initial Funding Lender, Governmental Lender and Senior Mortgagee (the "**Funding Loan Agreement**"), the Funding Lender has the right to direct all actions of the Senior Mortgagee with respect to the Senior Mortgage, the Mortgaged Property and the Senior Loan Agreement and, upon Conversion, shall have the right to amend and restate the Senior Note and the Senior Mortgage, as well as the right to amend, waive, postpone, extend, renew, replace, reduce or otherwise modify any provision of any of the Senior Loan Documents (as defined herein), without notice to or the consent or joinder of the Subordinate Mortgagee.

NOW, THEREFORE, for valuable consideration, the receipt and sufficiency of which are acknowledged, the parties agree as follows:

- 1. **Definitions.** The following terms, when used in this Agreement (including, as appropriate, when used in the above recitals), will have the following meanings.
 - (a) The terms "**Condemnation**," "**Imposition Reserve Deposits**," "**Impositions**," "**Leases**," "**Rents**" and "**Restoration**," as well as any term used in this Agreement and not otherwise defined in this Agreement, will have the meanings given to those terms in the Continuing Covenant Agreement attached as Exhibit J to the Construction Phase Financing Agreement ("**Continuing Covenant Agreement**").

- (b) "**Bankruptcy Proceeding**" means any bankruptcy, reorganization, insolvency, composition, restructuring, dissolution, liquidation, receivership, assignment for the benefit of creditors, or custodianship action or proceeding under any federal or state law with respect to Borrower, any guarantor of any of the Senior Indebtedness, any of their respective properties, or any of their respective partners, members, officers, directors, or shareholders.
- (c) "**Borrower**" means all persons or entities identified as "Borrower" in the first Recital of this Agreement, together with their successors and assigns, and any other person or entity who acquires title to the Mortgaged Property after the date of this Agreement; provided that the term "Borrower" will not include Senior Mortgagee or Funding Lender if Senior Mortgagee or Funding Lender acquires title to the Mortgaged Property.
- (d) "**Casualty**" means the occurrence of damage to or loss of all or any portion of the Mortgaged Property by fire or other casualty.
- (e) "**Enforcement Action**" means any of the following actions taken by or at the direction of Subordinate Mortgagee solely pursuant to the Subordinate Mortgagee's rights under the Subordinate Loan Agreement: the acceleration of all or any part of the Subordinate Indebtedness, the advertising of or commencement of any foreclosure or trustee's sale proceedings, the exercise of any power of sale, the acceptance of a deed or assignment in lieu of foreclosure or sale, the collecting of Rents, the obtaining of or seeking of the appointment of a receiver, the seeking of default interest, the taking of possession or control of any of the Mortgaged Property, the commencement of any suit or other legal, administrative, or arbitration proceeding based upon the Subordinate Note or any other of the Subordinate Loan Documents, the exercising of any rights of set-off or recoupment or the exercise of any other remedial action against Borrower.
- (f) "**Enforcement Action Notice**" means a written Notice from Subordinate Mortgagee to Funding Lender, given following one or more Subordinate Deed of Trust Default(s) and the expiration of any Notice or cure periods provided for such Subordinate Deed of Trust Default(s) in the Subordinate Loan Documents, setting forth in reasonable detail the Subordinate Deed of Trust Default(s) and the Enforcement Actions proposed to be taken by Subordinate Mortgagee.
- (g) "**Funding Lender**" shall mean Initial Funding Lender prior to Conversion and Permanent Funding Lender from and after Conversion, together with their respective successors and assigns.
- (h) "**Governmental Note**" means the Governmental Notes (as defined in the Funding Loan Agreement), delivered by the Governmental Lender evidencing the Funding Loan.
- (i) "**Loss Proceeds**" means all monies received or to be received under any insurance policy, from any condemning authority, or from any other source, as a result of any Condemnation or Casualty.
- (j) "**Notice**" is defined in Section 6(d).

- (k) "**Rental and Occupancy Covenant**" means that certain Rental and Occupancy Covenant dated as of _____, 2018, made by Borrower for the benefit of the Subordinate Mortgagee, as the same may from time to time be extended, consolidated, substituted for, modified, amended or supplemented.
- (l) "**Senior Indebtedness**" means the "Indebtedness" of Borrower as evidenced by the Senior Loan Documents.
- (m) "**Senior Loan Documents**" means the "Project Loan Documents" as defined in the Funding Loan Agreement.
- (n) "**Senior Mortgage Default**" means any act, failure to act, event, condition, or occurrence which constitutes, or which with the giving of Notice or the passage of time, or both, would constitute, an "Event of Default" as defined in the Senior Loan Documents.
- (o) "**Senior Mortgagee**" means the person or entity named as such in the first paragraph of this Agreement. When any other person or entity becomes the legal holder of the Senior Note, such other person or entity automatically will become Senior Mortgagee.
- (p) "**Senior Note**" means the Project Notes as defined in the Funding Loan Agreement.
- (q) "**Subordinate Indebtedness**" means all indebtedness of any kind at any time evidenced or secured by, or arising under, the Subordinate Loan Documents, whether incurred, arising or accruing before or after the filing of any Bankruptcy Proceeding.
- (r) "**Subordinate Loan Documents**" means the Subordinate Deed of Trust, the Subordinate Note, the Subordinate Loan Agreement, the Rental and Occupancy Covenant and all other documents at any time evidencing, securing, guaranteeing, or otherwise delivered in connection with the Subordinate Indebtedness, as the same may be amended.
- (s) "**Subordinate Deed of Trust Default**" means any act, failure to act, event, condition, or occurrence which allows (but for any contrary provision of this Agreement), or which with the giving of Notice or the passage of time, or both, would allow (but for any contrary provision of this Agreement), Subordinate Mortgagee to take an Enforcement Action.
- (t) "**Subordinate Mortgagee**" means the entity named as such in the first paragraph of this Agreement and any other person or entity who becomes the legal holder of the Subordinate Note after the date of this Agreement.
- (u) "**Subordinate Note**" means the promissory note or other evidence of the Subordinate Indebtedness referred to in the Subordinate Deed of Trust and any replacement of the Subordinate Note.

2. **Subordination of Subordinate Indebtedness.**

- (a) The Subordinate Indebtedness is and will at all times continue to be subject and subordinate in right of payment to the prior payment in full of the Senior Indebtedness.

- (b) Until the occurrence of a Senior Mortgage Default, Subordinate Mortgagee will be entitled to retain for its own account all payments made on account of the principal of and interest on the Subordinate Indebtedness in accordance with the requirements of the Subordinate Loan Documents; until the Senior Indebtedness is paid in full, the Subordinate Lender shall not increase required payments of the Subordinate Indebtedness in such a manner that would cause bankruptcy of the Borrower or default on the Subordinate Indebtedness. Subordinate Mortgagee acknowledges that a Subordinate Deed of Trust Default constitutes a Senior Mortgage Default. Accordingly, upon the occurrence of a Subordinate Deed of Trust Default, Subordinate Mortgagee will be deemed to have actual knowledge of a Senior Mortgage Default.
- (c) Reserved.
- (d) Reserved.
- (e) The subordination of the Subordinate Indebtedness will continue if any payment under the Senior Loan Documents (whether by or on behalf of Borrower, as proceeds of security or enforcement of any right of set-off or otherwise) is for any reason repaid or returned to Borrower or its insolvent estate, or avoided, set aside or required to be paid to Borrower, a trustee, receiver or other similar party under any bankruptcy, insolvency, receivership or similar law.
- (f) Reserved.

3. Subordination of Subordinate Loan Documents.

- (a) Each of the Subordinate Loan Documents is, and will at all times remain, subject and subordinate in all respects to the liens, terms, covenants, conditions, operations, and effects of each of the Senior Loan Documents.
- (b) The subordination of the Subordinate Loan Documents and of the Subordinate Indebtedness will apply and continue notwithstanding (i) the actual date and time of execution, delivery, recording, filing or perfection of each of the Senior Loan Documents and of each of the Subordinate Loan Documents, (ii) the availability of any collateral to Senior Mortgagee or Funding Lender, including the availability of any collateral other than the Mortgaged Property and (iii) the amendment and restatement of the Senior Note and the Senior Mortgage at Conversion, so long as such amounts do not exceed \$[_____].
- (c) By reason of, and without in any way limiting, the full subordination of the Subordinate Indebtedness and the Subordinate Loan Documents provided for in this Agreement, all rights and claims of Subordinate Mortgagee arising under the Subordinate Loan Documents in or to all or any portion of the Mortgaged Property are expressly subject and subordinate in all respects to the rights and claims of Senior Mortgagee or Funding Lender under the Senior Loan Documents in or to the Mortgaged Property.
- (d) If Subordinate Mortgagee, by indemnification, subrogation or otherwise exercising its rights arising solely under the Subordinate Loan Documents, acquires any lien, estate,

right or other interest in any of the Mortgaged Property, then that lien, estate, right or other interest will be fully subject and subordinate to the receipt by Senior Mortgagee or Funding Lender of payment in full of the Senior Indebtedness, and to the Senior Loan Documents, to the same extent as the Subordinate Indebtedness and the Subordinate Loan Documents are subordinate pursuant to this Agreement.

- (e) Nothing in this Agreement is intended, nor will it be construed, to in any way limit the exercise by Subordinate Mortgagee of its governmental powers (including police, regulatory and taxing powers) with respect to Borrower or the Mortgaged Property to the same extent as if it were not a party to this Agreement or the transactions contemplated by this Agreement.

4. **Additional Representations and Covenants.**

- (a) Subordinate Mortgagee represents and warrants that each of the following is true:

- i. Subordinate Mortgagee is now the owner and holder of the Subordinate Loan Documents.
- ii. The Subordinate Loan Documents are now in full force and effect.
- iii. The Subordinate Loan Documents have not been modified or amended.
- iv. No Subordinate Deed of Trust Default has occurred.
- v. The current unpaid principal balance of the Subordinate Indebtedness is [\$_____].
- vi. No scheduled annual payments under the Subordinate Note have been prepaid.
- vii. None of the rights of Subordinate Mortgagee under any of the Subordinate Loan Documents are subject to the rights of any third parties, by way of subrogation, indemnification or otherwise.

- (b) Without the prior written consent of Funding Lender in each instance, Borrower will not do any of the following:

- i. Amend, modify, waive, extend, renew, or replace any provision of any of the Subordinate Loan Documents to the extent such modification would have a material adverse effect on Senior Lender or the Senior Indebtedness.
- ii. Request that the Subordinate Mortgagee take any action which has the effect of increasing the Subordinate Indebtedness.
- iii. Take any action concerning environmental matters affecting the Mortgaged Property.

- (c) Subordinate Mortgagee will deliver to Funding Lender a copy of each Notice received or delivered by Subordinate Mortgagee pursuant to the Subordinate Loan Documents or in connection with the Subordinate Indebtedness, simultaneously with Subordinate Mortgagee's delivery or receipt of such Notice. Funding Lender will deliver to Subordinate Mortgagee in the manner required in Section 5(b) a copy of each Notice of a Senior Mortgage Default delivered to Borrower by Funding Lender. Neither giving nor failing to give a Notice to Funding Lender or Subordinate Mortgagee pursuant to this Section 4(c) will affect the validity of any Notice given by Funding Lender or Subordinate Mortgagee to Borrower, as between Borrower and such of Funding Lender or Subordinate Mortgagee as provided the Notice to Borrower.
- (d) Without the prior written consent of Funding Lender in each instance in its sole discretion, Subordinate Mortgagee will not commence, or join with any other creditor in commencing, any Bankruptcy Proceeding.
- (e) Reserved.
- (f) All original policies of insurance required pursuant to the Senior Loan Documents will be held by Funding Lender. Nothing in this Section 4(f) will preclude Subordinate Mortgagee from requiring that (a) it be named as a mortgagee and loss payee, as its interest may appear, under all policies of property damage insurance maintained by Borrower with respect to the Mortgaged Property, provided such action does not affect the priority of payment of Loss Proceeds, or (b) that Subordinate Mortgagee be named as an additional insured under all policies of liability insurance maintained by Borrower with respect to the Mortgaged Property.
- (g) In the event of a Condemnation or a Casualty, all of the following provisions will apply:
 - i. The rights of Subordinate Mortgagee (solely under the Subordinate Loan Documents) to participate in any proceeding or action relating to a Condemnation or a Casualty, or to participate or join in any settlement of, or to adjust, any claims resulting from a Condemnation or a Casualty, will be and remain subordinate in all respects to Senior Mortgagee's and Funding Lender's rights under the Senior Loan Documents with respect thereto.
 - ii. All Loss Proceeds will be applied either to payment of the costs and expenses of Restoration or to payment on account of the Senior Indebtedness, as and in the manner determined by Funding Lender in its sole discretion, up to the amount of the outstanding Senior Indebtedness. Subordinate Mortgagee may apply remaining Loss Proceeds in the manner determined by Subordinate Mortgagee, in its sole discretion.
 - iii. If Funding Lender applies or releases Loss Proceeds for the purposes of Restoration of the Mortgaged Property, then Subordinate Mortgagee will release for such purpose all of its right, title and interest, if any, in and to such Loss Proceeds. If Funding Lender holds Loss Proceeds, or monitors

the disbursement thereof, Subordinate Mortgagee will not do so. Nothing contained in this Agreement will be deemed to require Funding Lender to act for or on behalf of Subordinate Mortgagee in connection with any Restoration or to hold or monitor any Loss Proceeds in trust for or otherwise on behalf of Subordinate Mortgagee, and all or any Loss Proceeds up to the total amount of the outstanding Senior Indebtedness may be commingled with any funds of Funding Lender.

- iv. If Funding Lender elects to apply Loss Proceeds to payment on account of the Senior Indebtedness, and if the application of such Loss Proceeds results in the payment in full of the entire Senior Indebtedness, any remaining Loss Proceeds held by Funding Lender will be paid to Subordinate Mortgagee unless another party has asserted a claim to the remaining Loss Proceeds.

(h) Reserved.

- (i) Except as provided in this Section 4(i), and regardless of any contrary provision in the Subordinate Loan Documents, Subordinate Mortgagee will not collect payments for the purpose of escrowing for any cost or expense related to the Mortgaged Property or for any portion of the Subordinate Indebtedness solely as may be secured by, or arising under the Subordinate Loan Documents. However, if Funding Lender is not collecting escrow payments for one or more Impositions, Subordinate Mortgagee may collect escrow payments for such Impositions; provided that all payments so collected by Subordinate Mortgagee will be held in trust by Subordinate Mortgagee to be applied only to the payment of such Impositions.

- (j) Within 10 days after request by Funding Lender, Subordinate Mortgagee will furnish Funding Lender with a statement, duly acknowledged and certified setting forth the then-current amount and terms of the Subordinate Indebtedness, confirming that there exists no default under the Subordinate Loan Documents (or describing any default that does exist), and certifying to such other information with respect to the Subordinate Indebtedness as Funding Lender may request.

- (k) Senior Mortgagee or Funding Lender may amend, waive, postpone, extend, renew, replace, reduce or otherwise modify any provision of any of the Senior Loan Documents without the necessity of obtaining the consent of or providing Notice to Subordinate Mortgagee, and without affecting any of the provisions of this Agreement. Notwithstanding the foregoing, neither Senior Mortgagee nor Funding Lender may modify any provision of the Senior Loan Documents that increases the Senior Indebtedness, except for increases in the Senior Indebtedness that result from advances made by Senior Mortgagee or Funding Lender to protect the security or lien priority of Senior Mortgagee or Funding Lender under the Senior Loan Documents or to cure defaults under the Subordinate Loan Documents so long as such amounts do not exceed \$[_____].

5. **Default Under Loan Documents.**

- (a) For a period of 90 days following delivery to Funding Lender of an Enforcement Action Notice, Funding Lender will have the right, but not the obligation, to cure any Subordinate Deed of Trust Default, provided that if such Subordinate Deed of Trust Default is a non-monetary default and is not capable of being cured within such 90-day period and Funding Lender has commenced and is diligently pursuing such cure to completion, Funding Lender will have such additional period of time as may be requested in writing and consented to by the Subordinate Mortgagee. Neither Senior Mortgagee nor Funding Lender will be subrogated to the rights of Subordinate Mortgagee under the Subordinate Loan Documents by reason of Funding Lender having cured any Subordinate Deed of Trust Default. However, Subordinate Mortgagee acknowledges that all amounts advanced or expended by Funding Lender in accordance with the Senior Loan Documents or to cure a Subordinate Deed of Trust Default will be added to and become a part of the Senior Indebtedness and will be secured by the lien of the Senior Mortgage, so long as such amounts do not exceed \$[_____].
- (b) Funding Lender will deliver to Subordinate Mortgagee a copy of any Notice sent by Funding Lender to Borrower of a Senior Mortgage Default within 5 Business Days of sending such Notice to Borrower. Failure of Funding Lender to send Notice to Subordinate Mortgagee will not prevent the exercise of Funding Lender's rights and remedies under the Senior Loan Documents. Subordinate Mortgagee will have the right, but not the obligation, to cure any monetary Senior Mortgage Default within 30 days following the date of such Notice; provided, however, that Funding Lender will be entitled during such 30-day period to continue to pursue its remedies under the Senior Loan Documents.

Subordinate Mortgagee may, within 90 days after the date of the Notice, cure a non-monetary Senior Mortgage Default if during such 90-day period, Subordinate Mortgagee keeps current all payments required by the Senior Loan Documents. If such a non-monetary Senior Mortgage Default creates an unacceptable level of risk relative to the Mortgaged Property, or Senior Mortgagee's or Funding Lender's secured position relative to the Mortgaged Property, as determined by Funding Lender in its sole discretion, then during such 90-day period Funding Lender may exercise all available rights and remedies to protect and preserve the Mortgaged Property and the Rents, revenues and other proceeds from the Mortgaged Property. Subordinate Mortgagee will not be subrogated to the rights of Senior Mortgagee or Funding Lender under the Senior Loan Documents by reason of Subordinate Mortgagee having cured any Senior Mortgage Default. However, Senior Mortgagee and Funding Lender acknowledge that all amounts paid by Subordinate Mortgagee to Senior Mortgagee or Funding Lender to cure a Senior Mortgage Default will be deemed to have been advanced by Subordinate Mortgagee pursuant to, and will be secured by the lien of, the Subordinate Deed of Trust. Notwithstanding anything in this Section 5(b) to the contrary, Subordinate Mortgagee's right to cure any Senior Mortgage Default will terminate immediately upon the occurrence of any Bankruptcy Proceeding.

- (c) In the event of a Subordinate Deed of Trust Default, Subordinate Mortgagee will not commence any Enforcement Action until 90 days after Subordinate Mortgagee has delivered to Funding Lender an Enforcement Action Notice with respect to such

Enforcement Action, provided that during such 90-day period or such longer period as provided in Section 5(a), Subordinate Mortgagee will be entitled to seek specific performance to enforce covenants and agreements of Borrower relating to income, rent, or affordability restrictions contained in the Rental and Occupancy Covenant, subject to Funding Lender's right to cure a Subordinate Deed of Trust Default set forth in Section 5(a). Subordinate Mortgagee may not commence any other Enforcement Action, including any foreclosure action under the Subordinate Loan Documents, until the earlier of (i) the expiration of such 90-day period or such longer period as provided in Section 5(a), or (ii) the delivery by Funding Lender to Subordinate Mortgagee of Funding Lender's written consent to such Enforcement Action by Subordinate Mortgagee. Subordinate Mortgagee acknowledges that Funding Lender may grant or refuse consent to Subordinate Mortgagee's Enforcement Action in Funding Lender's sole and absolute discretion. At the expiration of such 90-day period or such longer period as provided in Section 5(a) and, subject to Funding Lender's right to cure set forth in Section 5(a), Subordinate Mortgagee may commence any Enforcement Action. Any Enforcement Action on the part of Subordinate Mortgagee will be subject to the provisions of this Agreement.

- (d) Senior Mortgagee or Funding Lender may pursue all rights and remedies available to it under the Senior Loan Documents, at law, or in equity, regardless of any Enforcement Action Notice or Enforcement Action by Subordinate Mortgagee. No action or failure to act on the part of Senior Mortgagee or Funding Lender in the event of a Subordinate Deed of Trust Default or commencement of an Enforcement Action will constitute a waiver on the part of Senior Mortgagee or Funding Lender of any provision of the Senior Loan Documents or this Agreement.
- (e) If the Enforcement Action taken by Subordinate Mortgagee is the appointment of a receiver for any of the Mortgaged Property, all of the Rents, issues, profits and proceeds collected by the receiver will be paid and applied by the receiver solely to and for the benefit of Senior Mortgagee or Funding Lender until the Senior Indebtedness will have been paid in full.
- (f) Subordinate Mortgagee consents to and authorizes the release by Senior Mortgagee or Funding Lender of all or any portion of the Mortgaged Property from the lien, operation, and effect of the Senior Loan Documents. Subordinate Mortgagee acknowledges that without Notice to Subordinate Mortgagee and without affecting any of the provisions of this Agreement, and so long as the prior encumbrances on the Mortgaged Property do not exceed \$[_____], Senior Mortgagee or Funding Lender may (i) extend the time for or waive any payment or performance under the Senior Loan Documents; (ii) modify or amend in any respect any provision of the Senior Loan Documents; and (iii) modify, exchange, surrender, release, and otherwise deal with any additional collateral for the Senior Indebtedness.
- (g) Reserved.

6. **Miscellaneous Provisions.**

- (a) If there is any conflict or inconsistency between the terms of the Subordinate Loan Documents and the terms of this Agreement, then the terms of this Agreement will control.
- (b) This Agreement will be binding upon and will inure to the benefit of the respective legal successors and permitted assigns of the parties hereto. No other party will be entitled to any benefits hereunder, whether as a third-party beneficiary or otherwise.
- (c) This Agreement does not constitute an approval by Senior Mortgagee or Funding Lender of the terms of the Subordinate Loan Documents.
- (d) Each Notice, request, demand, consent, approval or other communication (collectively, "**Notices**," and singly, a "**Notice**") which is required or permitted to be given pursuant to this Agreement will be in writing and will be deemed to have been duly and sufficiently given if (i) personally delivered with proof of delivery (any Notice so delivered will be deemed to have been received at the time so delivered), or (ii) sent by a national overnight courier service (such as FedEx) designating earliest available delivery (any Notice so delivered will be deemed to have been received on the next Business Day following receipt by the courier), or (iii) sent by United States registered or certified mail, return receipt requested, postage prepaid, at a post office regularly maintained by the United States Postal Service (any Notice so sent will be deemed to have been received on the date of delivery as confirmed by the return receipt), addressed to the respective parties as follows:

- i. Notices intended for Senior Mortgagee will be addressed to:

U.S. Bank National Association
1307 Washington Avenue, Suite 300
St. Louis, Missouri 63103
Attention: Director of CLD Asset Management

With a copy to:

Kutak Rock LLP
1801 California Street, Suite 3000
Denver, Colorado 80202-2626
Attention: John A. Henry, Jr., Esq.

- ii. Notices intended for Subordinate Mortgagee will be addressed to:

Executive Director of the Office of Economic Development or Designee
City and County of Denver
201 West Colfax Avenue, Dept. 204
Denver, Colorado 80202

With a copy of any such notice to:

Denver City Attorney's Office
1437 Bannock St., Room 353
Denver, Colorado 80202

iii. Notices intended for Funding Lender will be addressed to:

(Prior to Conversion)

(From Conversion)

With a copy to:

Any party, by Notice given pursuant to this Section, may change the person or persons and/or address or addresses, or designate an additional person or persons or an additional address or addresses, for its Notices, but Notice of a change of address will only be effective upon receipt. Neither party will refuse or reject delivery of any Notice given in accordance with this Section.

- (e) Nothing in this Agreement or in any of the Senior Loan Documents or Subordinate Loan Documents will be deemed to constitute Senior Mortgagee or Funding Lender as a joint venturer or partner of Subordinate Mortgagee.
- (f) This Agreement will be governed by the laws of the State in which the Land is located.
- (g) If any one or more of the provisions contained in this Agreement, or any application of any such provisions, is invalid, illegal, or unenforceable in any respect, the validity, legality, enforceability, and application of the remaining provisions contained in this Agreement will not in any way be affected or impaired.
- (h) The term of this Agreement will commence on the date of this Agreement and will continue until the earliest to occur of the following events: (i) the payment of all of the Senior Indebtedness; provided that this Agreement will be reinstated in the event any payment on account of the Senior Indebtedness is avoided, set aside, rescinded or repaid by Senior Mortgagee or Funding Lender as described in Section 2(e) of this Agreement, (ii) the payment of all of the Subordinate Indebtedness, (iii) the acquisition by Senior Mortgagee or Funding Lender or by a third party purchaser of title to the Mortgaged Property pursuant to a foreclosure of, deed in lieu of foreclosure, or trustee's sale or other exercise of a power of sale or similar disposition under the Senior Mortgage; or (iv) without limiting the provisions of Section 5(d), the acquisition by Subordinate Mortgagee of title to the Mortgaged Property subject to the Senior Mortgage pursuant to a foreclosure, or a deed in lieu of foreclosure, of (or the exercise of a power of sale under) the Subordinate Deed of Trust.

- (i) No failure or delay on the part of any party to this Agreement in exercising any right, power, or remedy under this Agreement will operate as a waiver of such right, power, or remedy, nor will any single or partial exercise of any such right, power or remedy preclude any other or further exercise of such right, power, or remedy or the exercise of any other right, power or remedy under this Agreement.
- (j) Each party to this Agreement acknowledges that if any party fails to comply with its obligations under this Agreement, the other parties will have all rights available at law and in equity, including the right to obtain specific performance of the obligations of such defaulting party and injunctive relief.
- (k) This Agreement shall inure to the benefit of any subsequent holder of the Senior Indebtedness.
- (l) This Agreement may be amended, changed, modified, altered or terminated only by a written instrument or written instruments signed by the parties to this Agreement.
- (m) This Agreement may be executed in two or more counterparts, each of which will be deemed an original but all of which together will constitute one and the same instrument.
- (n) Notwithstanding anything herein to the contrary, pursuant to [Section 17(c) of the Senior Mortgage and Section 6.03 of the Funding Loan Agreement], all acts, consents, approvals and undertakings of Senior Mortgagee hereunder shall be solely at the written direction of the Funding Lender. The parties acknowledge and agree that Funding Lender is a third party beneficiary of this Agreement, with full rights as such.

[Signature and acknowledgment pages follow]

SUBORDINATE MORTGAGEE:

**CITY AND COUNTY OF DENVER, a
municipal corporation of the State of Colorado**

By: _____
Name: _____
Title: _____
_____,
Office of Economic Development

NOTARY ACKNOWLEDGMENT

State of Colorado)
) ss.
City and County of Denver)

The foregoing instrument was subscribed to and acknowledged before me this ____ day of _____, 2018, by _____ as _____ of Office of Economic Development for the City and County of Denver, a municipal corporation of the State of Colorado, for and on behalf of the City.

Witness my hand and official seal.
My commission expires: _____.

Notary Public

CONSENT OF BORROWER

Borrower acknowledges receipt of a copy of this Subordination Agreement, dated [_____] __, 2018, by and between U.S. Bank National Association, a national banking association and City and County of Denver and consents to the agreement of the parties set forth in this Agreement.

By: K Sheridan LLC
its managing member

By: Koelbel and Company
its manager

By: _____
Name: _____
Its: _____

STATE OF COLORADO)
CITY AND)ss.
COUNTY OF DENVER)

The foregoing DEED OF TRUST was acknowledged before me this ____ day of _____, 2018, by _____ as _____ of Koelbel and Company, manager or K Sheridan LLC, managing member of SHERIDAN STATION APARTMENTS LLC.

Witness my hand and official seal.

My commission expires: _____.

Notary Public

EXHIBIT A

LEGAL DESCRIPTION

Real property in the City of Denver, County of Denver, State of Colorado,
described as follows:

[INSERT LEGAL DESCRIPTION]

Exhibit E

Cash Flow Payment Priorities

Terms in this Exhibit shall have the meanings ascribed thereto in the Amended and Restated Operating Agreement of Sheridan Station Apartments LLC, dated November 16, 2018 (the "Operating Agreement").

Subject to the provisions of Section 8.1 of the Operating Agreement, payment of fees and other expenses contingent on Cash Flow and distributions to Members from Cash Flow shall be made in the following order of priority:

First, to pay the Asset Management Fee and any accrued and unpaid Asset Management Fee from prior periods.

Second, to pay any outstanding and unpaid Credit Deficiencies and Tax Equivalency Payments then due including, without limitation, amounts owed due to a Change in Law, together with interest thereon, if any.

Third, as directed by the Investor Member to pay any Default Cash Flow Priority (pursuant to Section 5.15(b)) then due, if any.

Fourth, first to fund amounts payable to the Company Replacement Reserve pursuant to Exhibit A-7 and thereafter to replenish the Operating Reserve pursuant to Exhibit A-7, if applicable.

Fifth, to the Investor Member to repay any loans or other advances made by the Investor Member.

Sixth, to pay unpaid Development Fee (and interest thereon, if applicable).

Seventh, to pay principal and interest on the City of Denver Loan the lesser of (a) thirty-nine percent (39%) of the remaining Cash Flow or (b) \$81,375.00.

Eight, from 50% of remaining Cash Flow to pay principal and interest on the CDOH HOME Loan until the CDOH HOME Loan is repaid in full.

Ninth, to the Managing Member to repay any Development Advance (which shall bear interest at four percent (4%) per annum), Operating Deficit Advance, Credit Adjuster Advance or Development Fee Advance then payable or any other loans made by the Managing Member hereunder.

Tenth, to the Managing Member to pay the Company Management Fee, payable pursuant to the Company Management Agreement, attached hereto as Exhibit E, for services rendered to the Company as set forth therein, payable in the amount set forth in such Agreement **[solely from and to the extent of 90% of remaining Cash Flow]**, if any.

Eleventh, the balance to the Managing Member, the Special Investor Member and the Investor Member in accordance with their Percentage Interests.

To the extent that insufficient Cash Flow is available to pay any of the amounts set forth in Sections First through Eighth when due, such amount shall accrue and be payable in the future when there is available Cash Flow, after prior payment of all higher priority payments from Cash Flow, as set forth above.