

**LOAN AGREEMENT
(HOME PROGRAM)**

THIS LOAN AGREEMENT, in two parts, Part I and Part II, is made between the **CITY AND COUNTY OF DENVER**, a municipal corporation organized pursuant to the Constitution of the State of Colorado (“City”), and **BROTHERS REDEVELOPMENT, INC.**, a Colorado nonprofit corporation, whose address is 2250 Eaton St., Suite B, Denver, CO 80220 (“Borrower”).

WITNESSETH:

WHEREAS, the City is acting pursuant to federal grant conditions with respect to rental housing assistance pursuant to the Home Investment Partnership Program (“HOME Program”); and

WHEREAS, the Borrower is eligible to receive HOME Program funds pursuant to the National Affordable Housing Act of 1990, and implementing regulations under 24 C.F.R. Part 92, and is ready willing, and able to meet the conditions associated therewith; and

WHEREAS, the Borrower is the contract purchaser of the Property (as defined in Paragraph 2) located in the City and County of Denver; and

WHEREAS, the purpose of this Loan Agreement is for the City to provide financing costs related to the development and construction of 72 affordable multi-family dwelling units located on the Property (the “Project”); and

WHEREAS, the Borrower is the sole managing member of BRI Developer LLC, a Colorado limited liability company, acting as the sole managing member of Valor on the Fax, LLC, a Colorado limited liability company (the “Owner”), a tax credit entity, which will obtain ownership of the Property and develop and operate the Project; and

WHEREAS, the funds provided from the City to the Borrower will be loaned by the Borrower to the Owner for the development of the Project.

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

PART I

1. LOAN TO BORROWER:

A. **Loan to Borrower.** Subject to the terms of this Loan Agreement, the City agrees to lend Borrower the sum of \$1,440,000.00 (the “Loan”). In addition to this Loan Agreement, the Borrower will execute a promissory note in a form satisfactory to the City evidencing this Brothers Redevelopment, Inc.
Jaggaer No. HOST-202157469

Loan (the “Promissory Note”). The Loan will mature and be due and payable on the 99th anniversary of the Promissory Note (“Maturity Date”), if not paid sooner. The outstanding principal balance of the Loan shall bear simple interest at a rate of 0% per annum until paid in full or forgiven in accordance with the terms thereof. Repayment shall be forgiven by the City on the Maturity Date so long as Borrower is in compliance with the terms and conditions of this Loan Agreement.

B. **Borrower’s Use of Funds.** The Borrower will lend the entirety of the Loan proceeds to the Owner for the development of the Project in accordance with Exhibit A. Borrower’s loan to the Owner will be evidenced by a promissory note (“Owner Note”) that bears compounding interest at the rate of 5.00% per annum and has a term of approximately 42 years, and will be secured by a deed of trust on the Property (“Owner Deed of Trust”). The Owner Note will be repaid from, and to the extent available, cash flow until its maturity, at which time the Owner Note will be unconditionally due and payable in full by the Owner. All monies received by Borrower from the Owner pursuant to the Owner Note must be used to fund supportive housing services being provided to tenants of the Project. On or before each May 15th during the term of the Owner Note, the Borrower must provide the City with a report or reports in a form satisfactory to the City that demonstrates (i) the principal and interest payments made, if any, by the Owner to the Borrower on the Owner Note and (ii) how monies received will be used to fund supportive services for tenants of the Project. The Borrower must collaterally assign the Owner Note and Owner Deed of Trust to the City as security for the Loan. Borrower must cause the Owner to execute and record a covenant securing the Property for use as affordable housing as required by Section 6 hereof (the “HOME Covenant”). The HOME Covenant must be in a form approved by the City.

2. **SECURITY:** Repayment of the Promissory Note will be secured by a collateral assignment of the Owner Note and Owner Deed of Trust in a form satisfactory to City (the “Collateral Assignment”). The Owner Deed of Trust will be granted by the Owner and encumber the real property known and numbered as 7900 E. Colfax, Ave, Denver, CO 80220 (the “Property”).

3. **SUBORDINATION:**

A. **Borrower’s Subordination of Owner Deed of Trust.** Borrower may not subordinate the lien of the Owner Deed of Trust or any of its other security interests, liens, or any other encumbrances granted in connection with its loan to the Owner without the express written approval of the Executive Director or the Executive Director’s designee (the “Executive Director”)

of the Department of Housing Stability (“HOST”).

B. City’s Subordination of Owner Deed of Trust and HOME Covenant.

1. The Executive Director is authorized to consent to the Borrower’s subordination of the lien of the Owner Deed of Trust or execute documents necessary to subordinate the lien of the collaterally assigned Owner Deed of Trust and HOME Covenant so long as (i) the subordination agreement is substantially in the form attached hereto as Exhibit E; (ii) encumbrances prior to the Owner Deed of Trust do not exceed, as of the date of such subordination agreement, a principal sum of up to \$17,000,000.00, in the aggregate, under one or more construction loans and a principal sum of up to \$9,000,000.00, in the aggregate, under one or more permanent loans; (iii) Borrower is not then in default of its obligations pursuant to this Loan Agreement, the Promissory Note, or the Collateral Assignment and the Owner is not then in default of its obligations pursuant to the Owner Deed of Trust HOME Covenant; and (iv) all additional financing for the Project is committed.
2. The Executive Director is authorized to consent to the Borrower’s subordination of the lien of the Owner Deed of Trust or to execute documents necessary to subordinate the collaterally assigned Owner Deed of Trust and HOME Covenant to one or more land use restriction agreements (“LURAs”), such as the LURA required by the Colorado Housing and Finance Authority, so long as (i) the subordination agreement is in the form acceptable to the City Attorney; (ii) encumbrances prior to the Owner Deed of Trust do not exceed, as of the date of such subordination agreement, a principal sum of up to \$17,000,000.00, in the aggregate, under one or more construction loans and a principal sum of up to \$9,000,000.00, in the aggregate, under one or more permanent loans; (iii) Borrower is not then in default of its obligations pursuant to this Loan Agreement, the Promissory Note, or the Collateral Assignment and the Owner is not then in default of its obligations pursuant to the Owner Deed of Trust or HOME Covenant.

C. Other Documents. The Executive Director is authorized to execute documents necessary to accomplish the Loan, as set forth herein, so long as (i) such documents are in a form satisfactory to the City Attorney; (ii) encumbrances prior to the Owner Deed of Trust do not exceed,

as of the date of closing, \$17,000,000.00 under a construction loan or \$9,000,000.00 under a permanent loan; (iii) Borrower is not then in default of its obligations pursuant to this Loan Agreement, the Promissory Note, or the Collateral Assignment and the Owner is not then in default of its obligations pursuant to the Owner Deed of Trust or HOME Covenant.

4. USE AND DISBURSEMENT OF FUNDS:

A. 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 HOST approved forms, and otherwise comply with the financial administration requirements set forth in **Exhibit B** attached hereto and incorporated herein.

B. 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 (a) the submittal of an Affirmative Marketing Plan (as defined in Section 8); (b) final inspection and approval of the Project by the City; (c) receipt of proof of release of liens from all applicable contractors, subcontractors, and suppliers; and (d) the issuance of a certificate of occupancy.

C. In addition to the retainage specified in subparagraph B above, HOST shall retain Ten Thousand Dollars 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 under the HOME Program regulations and policies.

D. Soft costs as defined in and allowed pursuant to 24 C.F.R. § 92.206 that were incurred after November 12, 2020 are eligible for reimbursement. Hard costs incurred after the effective date of this Loan Agreement are eligible for reimbursement.

E. The City's disbursement of funds is subject to the availability of funds from the U.S. Department of Housing and Urban Development ("HUD") through its Cash Management System.

5. CLOSING; DEADLINE FOR DISBURSEMENT OF FUNDS; REQUIRED DOCUMENTATION:

A. Borrower must provide Evidence of Financing (as defined below) and satisfy all conditions set forth in this Loan Agreement on or before September 30, 2021 (the "Closing Deadline"). Failure to meet this deadline may result in the termination of this Loan Agreement at the Executive Director's sole discretion. "Evidence of Financing" shall mean such information

and documentation sufficient to satisfy the City, in the City's sole discretion, that the Borrower has secured all financing necessary to complete the Project. No funds shall be disbursed under this Loan Agreement until such time as all conditions of this Loan Agreement have been met.

B. Borrower agrees that (a) documentation for all draw down requests will be submitted no later than twenty-four (24) months after the date of the Promissory Note and (b) Borrower shall complete the Project within a twenty-four (24) month period after the date of the Promissory Note. These deadlines may be extended with the written approval of HOST. All cost overruns and/or funding shortfalls shall be the sole responsibility of the Borrower.

C. The Executive Director, or his or her designee, is 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.

6. RESTRICTIONS ON USE OF PROPERTY:

A. Affordability and Rent Limitations.

1. Land Use Restriction Agreement. As a condition of Borrower's acquisition of the Property, Borrower is required to record a Low-Income Housing Land Use Restriction Agreement (the "PSA LURA") at the time of closing on the land. The PSA LURA will provide that 72 affordable housing units (the "Affordable Units") must be constructed on the Property. The City's Loan to the Borrower is expressly conditioned on the Borrower complying with the terms and conditions of the PSA LURA. The violation of any of the terms of the PSA LURA shall be considered a default under this Loan Agreement.

2. HOME Units. Eight of the units at the Property (the "HOME Units") shall be subject to the HOME Program rules and regulations and shall have rents not exceeding the lesser of (i) fair market rent for comparable units in the area as established by the U.S. Department of Housing and Urban Development ("HUD"), under 24 C.F.R. 888.113, or (ii) a rent that does not exceed 30% of the adjusted income of a family whose annual income equals 30% of the median income for the Denver area, as determined by HUD, with adjustments for number of bedrooms in the unit.

3. By executing this Loan Agreement, Borrower acknowledges receipt of HUD's current rent guidelines. It shall be Borrower's responsibility to obtain updated guidelines to confirm the annual calculation of the maximum rents for the Denver area.

4. The City shall determine maximum monthly allowances for utilities and services of HOME Units annually in accordance with 24 C.F.R. 92.252(d)(1) 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.

5. The City shall review rents of HOME Units for compliance within ninety (90) days after HOST requests rent information from the Borrower.

B. Occupancy/Income Limitations.

1. Affordable Units. The Affordable Units must be occupied by tenants in accordance with the terms and conditions of the PSA LURA.

2. HOME Units. The HOME Units must be occupied by tenants whose incomes are at or below 30% of the median income for the Denver area as determined by HUD, with adjustments for family size.

3. By executing this Loan Agreement, Borrower acknowledges receipt of HUD's current income guidelines from HOST. It shall be Borrower's responsibility to obtain updated guidelines from HOST and comply with the current guidelines.

C. Designation of HOME Units.

All the HOME Units are floating, and are designated as follows:

BEDROOMS	HOME
1 Bedroom	5
2 Bedroom	2
3 Bedroom	1
TOTAL	8

D. Accessibility Requirements. Borrower must design and construct five percent (5%) of the Affordable Units, or at least one (1) unit, whichever is greater, to be accessible for persons with mobility disabilities. An additional two percent (2%) of the Affordable Units, or at least one (1), whichever is greater, must be accessible for persons with hearing or visual disabilities. Collectively, these units are referred to as the "Accessible Units." The Accessible Units must be designed and constructed in accordance with American National Standards Institute ("ANSI") Standard A117.1. Public and common areas must be readily accessible for persons with mobility disabilities and be designed and constructed in accordance with ANSI Standard A117.1.

E. Covenant Running with the Land. At closing, Borrower shall cause the Owner to execute the HOME 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 HOME Covenant shall encumber the Property for 20 years from the date of project completion as defined in 24 C.F.R. § 92.2. Violation of the HOME Covenant shall be enforceable as an event of default pursuant hereto.

7. **TENANT SELECTION**: The owner of the Project must adopt, and have approved by the City, written tenant selection polices. The tenant selection policies must be approved by the City prior the City making any disbursements under this Loan Agreement. The tenant selection policies must, at a minimum, contain 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. Do not exclude an applicant with a certificate or voucher under the Section 8 Tenant-Based Assistance Housing Choice Voucher Program or an applicant participating in a HOME tenant-based rental assistance program because of the status of the applicant as a holder of such certificate, voucher, or comparable HOME tenant-based assistance document;

E. 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; and

F. Comply with the Violence Against Women Act requirements prescribed in 24 CFR § 92.359.

8. **AFFIRMATIVE MARKETING**: The owner of the Project shall comply with the procedures outlined in the affirmative marketing program, attached hereto as **Exhibit C** and incorporated herein (the “Affirmative Marketing Program”), 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). Prior to making any disbursement, Borrower must provide the plan required by the Affirmative Marketing Program (the “Affirmative Marketing Plan”) to HOST. The Affirmative Marketing Plan

must be approved by HOST prior to Borrower adopting it or engaging in any affirmative marketing of the Project.

9. **LEASES**: There must be a written lease between the tenants residing in Affordable Units or HOME Units and the owner of the Project for a period of not less than one year, unless by mutual agreement between the tenant and the Borrower a shorter period is specified.

10. **PROHIBITED LEASE TERMS**: Leases pursuant to which Affordable Units or HOME 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.

11. **PROHIBITION OF CERTAIN FEES:** A tenant may not be charged fees that are not customarily charged in rental housing (e.g. laundry room access fees), except that a tenant may be 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.

12. **TERMINATION OF TENANCY:** The owner of the Project may not terminate the tenancy or refuse to renew the lease of a tenant of any of the Affordable Units or HOME Units except for serious or repeated violations of the terms and conditions of the lease; for violation of applicable Federal, State, or local laws; for completion of the tenancy period for transitional housing or failure to follow any required transitional supportive services plan; or for other good cause. Good cause does not include an increase in the tenant's income or refusal to purchase housing. Any termination or refusal to renew must be preceded by service of written notice upon the tenant specifying the grounds for the action at least thirty (30) days before the termination of tenancy.

13. **EXAMINATION OF RECORDS/REPORTING REQUIREMENTS/ ANNUAL MONITORING; INSPECTIONS:**

A. **Examination of Records:** Borrower agrees that the Comptroller of the Unites States, HUD, the City, or any of their duly authorized representatives shall, until the expiration of five (5) years after the expiration of the affordability period set forth in Paragraph 6, 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. The records maintained by Borrower shall include, without limitation, (i) records evidencing the income of each family occupying a HOME Unit or Affordable Unit, and (ii) a copy of the lease pursuant to which each HOME Unit or Affordable Unit is occupied.

B. **Required Information and Reports.** Borrower shall submit to the City the following information and reports on HOST approved forms: (1) annual compliance statement; (2) report on rents and occupancy of HOME Units and Affordable Units to verify compliance with affordability requirements in Paragraph 6 and other requirements of this Loan Agreement; (3) data on evictions, terminations of tenancies, or tenancies not renewed for individuals residing in

HOME Units or Affordable Units; (4) reports (including financial reports) that enable the City to determine the financial condition and continued financial viability of the rental project; (5) for floating units, reports on unit substitution and filling vacancies to ensure that the Property maintains the required unit mix; and (6) template lease agreements for HOME Units and Affordable Units. The report required by subparagraph (2) of this Paragraph shall include, but not be limited to, information related to monthly rent amount, lease term, household size, total annual household income, and race and other demographic information. The reports and information required by this Paragraph shall be due within thirty (30) days of the City making a request for such reports and information. The failure to submit the reports and information requested by the City within thirty (30) days of the City's request may be treated as a default of this Loan Agreement.

C. Access and Inspections. For the purposes of assuring compliance with the Loan Agreement, the City shall have the reasonable right of access to the Property, without charges or fees, (i) during the period of construction and (ii) during the period of affordability set forth in Paragraph 6. During the period of affordability, the City shall be entitled to conduct annual physical inspections of the Property. Borrower shall fully cooperate with the City in an annual monitoring of Borrower's performance and site inspection to verify compliance with the requirements of this Loan Agreement.

14. FINANCIAL STATEMENTS: Borrower must furnish to the City annually, within ninety (90) days following the end of each calendar year, financial statements audited by an independent certified public accountant, which must include an annual balance sheet and profit and loss statement of the Borrower, in a form reasonably required by the City.

15. TRANSFERS: Borrower acknowledges that the City has examined and relied on the experience of Borrower and its general partners, directors, and members in owning and operating affordable housing projects, such as the Project, in agreeing to make the Loan, and the City will continue to rely on Borrower's ownership and control of the Property and Project as a means of maintaining the affordability requirements and the value of the Property as security for repayment of the Loan. Without the prior written consent of the City, which may not be unreasonably withheld, the Borrower shall not: (i) sell, convey, assign, or otherwise transfer or dispose of the Property or any part thereof (other than leases to tenants) or (ii) sell, convey, assign, or otherwise transfer any interest Borrower has in an entity that owns, manages, or operates the Property or Project.

16. CAPITAL NEEDS ASSESSMENT: During the term of the HOME Covenant, the Borrower must provide the City with any capital needs assessment or physical needs assessment performed on or related to the Property or any improvements on the Property whenever such

assessment is performed.

17. MAINTENANCE AND REPLACEMENT: The owner of the Project 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.

18. 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.*), the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4852 *et seq.*), and is therefore subject to 24 C.F.R. Part 35; the owner of the Project shall comply with these provisions in the construction of the Project.

19. CONDITIONS PRECEDENT TO CLOSING LOAN: In addition to any other conditions stated in the Loan Agreement, the following conditions must be satisfied prior to the Closing Deadline:

A. **Environmental Reports.** The Borrower must provide the City with a Phase I Environmental Site Assessment in form and substance acceptable to the City. Additionally, the City must be provided with a reliance letter from the environmental engineer, which must be satisfactory to the City.

B. **Title Insurance.** Borrower must obtain, on behalf of the City, a lenders title insurance policy insuring the City in the principal amount of the Loan. Borrower must provide the City with a copy of the title insurance policy within thirty (30) days of closing.

C. **Appraisal.** Borrower must provide the City with an appraisal of the Property, which must be satisfactory in form and substance to the City.

D. **Organizational Documents.** Borrower must provide the City with (i) evidence that it is a Colorado nonprofit in good standing and authorized to transact business in the State of Colorado; (ii) evidence in a form satisfactory to the City that the person executing this Loan Agreement and any other documents related to the Loan has the full power and authority to bind Borrower; (iii) all organizational documents related to Borrower, which must be acceptable to the City; and (iv) the operating agreement or partnership agreement of the Owner.

E. **Management Agreement.** Borrower must provide the City with a certified copy of the management agreement for the Property, which must be satisfactory in form and substance to the City.

F. **Survey.** Borrower must provide the City with a current ALTA survey of the Brothers Redevelopment, Inc.
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Property. The ALTA survey must be prepared by a licensed land surveyor, certified to the City, and satisfactory to the City.

G. **Promissory Note; Owner Deed of Trust; Collateral Assignment of Note and Deed of Trust; HOME Covenant.** Borrower must execute and deliver to the closing agent the Promissory Note. Borrower must cause the Owner to execute and record the HOME Covenant and Owner Deed of Trust. Borrower must execute and deliver to the closing agent for recordation the Collateral Assignment.

20. **COSTS AND EXPENSES:** 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, or Collateral Assignment, or the Owner's breach or default of the Owner Deed of Trust or HOME Covenant. Borrower agrees to pay reasonable loan closing costs, including all recording charges, title insurance charges, costs of surveys, costs for certified copies of instruments, and all other costs incurred by the City in connection with the Loan.

21. **CONDITIONS:**

A. This Loan Agreement is subject to the Home Investment Partnership Program Grant Agreement entered into between the City and HUD; the National Affordable Housing Act of 1990 (the "Act"); the Act's implementing regulations at 24 C.F.R. Part 92; and the terms and conditions set forth in Part II, attached hereto and incorporated herein.

B. 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.

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

22. **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, \$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. Property insurance satisfactory to the City in the amount of the value of the property subject to the Owner Deed of Trust and HOME Covenant, with the City named as loss payee.

E. Certificates of Insurance evidencing the above shall be submitted prior to the disbursement of funds hereunder. Policies shall include a waiver of subrogation and rights of recovery against the City. Insurance companies providing the above referenced coverage must be authorized and licensed to issue insurance in Colorado and be otherwise acceptable to the Risk Management Office.

23. DEFENSE & INDEMNIFICATION:

A. Borrower 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 Borrower 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. Borrower'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. Borrower'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. Borrower 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 Borrower under the terms of this indemnification obligation. The Borrower 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.

24. DEFAULT AND ACCELERATION:

A. Default. The occurrence of any of the following events shall constitute a default by the Borrower:

1. Any breach by Borrower or Owner (as applicable) of this Loan Agreement, the Promissory Note, the Owner Deed of Trust, the Collateral Assignment, the HOME Covenant, or the SH Contract (as defined below);

2. The City determines that 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;

3. Borrower or Owner (as applicable) becomes delinquent on the Loan or on any other contractual or tax obligations owed to the City as due after any applicable notice and cure rights;

4. Borrower or Owner (as applicable) fails to comply with any rule, regulation or provision referred to in the Loan Agreement;

5. Borrower or any entity that Borrower owns or controls is removed as the sole managing member of Owner;

6. Borrower fails to maintain a cash balance that is sufficient to cover sixty (60) days of Borrower's operating expenses; or

7. Borrower or Owner is generally unable to pay its debts as they become due, or makes an assignment for the benefit of creditors; or the Borrower or Owner applies for or consent to the appointment of any receiver, trustee or similar officer for

it or for all or any substantial part of its property; or such a receiver, trustee or similar officer shall be appointed without the application or consent of the Owner, and such appointment shall continue undischarged for a period of ninety (90) days; or the Borrower or Owner institutes (by petition, application, answer or otherwise) any bankruptcy, insolvency, reorganization, readjustment of debt, dissolution, liquidation or similar proceedings under the laws of any jurisdiction; or any such proceeding shall be instituted against the Borrower or Owner; or the Borrower or Owner terminates or dissolves.

B. Cure Period. Upon a default, the City shall give written notice of the default to Borrower, the Owner and other persons entitled to notice of a default pursuant to Paragraph 25. After Borrower's receipt of the written notice, Borrower or a person on behalf of Borrower including, without limitation, the Owner and/or its investor member, shall have ten (10) calendar days to cure any monetary default and thirty (30) calendar days to cure any nonmonetary default (collectively, the "Cure Period"). If a nonmonetary default is not a type which can be cured within the Cure Period, the City, at its reasonable discretion, may extend the cure period if the Borrower or a person on behalf of the Borrower, including, without limitation, the Owner and/or its investor member, provides the City with a reasonably detailed written plan of how the nonmonetary default will be cured and the Borrower or a person on behalf of the Borrower, including, without limitation, the Owner and/or its investor member, at all times within such additional time period actively and diligently pursues such plan. For purposes of this Loan Agreement, the term "monetary default" means a failure by Borrower to make any payment required of it pursuant to the applicable Promissory Note or any other Loan document, and the term "nonmonetary default" means a failure by Borrower or any other person on behalf of the Borrower to perform any obligation contained in the Loan Agreement, HOME Covenant, Collateral Assignment, or Promissory Note, other than the obligation to make payments provided for in the Promissory Note or other Loan documents.

C. Acceleration; Interest Upon Default; and Withholding Disbursements. Upon the existence of a default and the failure to cure within the Cure Period, and without necessity of further 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 and if the default remains after the Cure Period, the principal shall draw interest at the rate of fifteen percent (15%) per annum (but not to exceed the maximum interest rate that can be levied under law). If any of the Loan funds have not been disbursed to Borrower, the City may suspend or terminate the Loan Agreement, in whole or in part, and withhold one hundred percent (100%) of any undisbursed funds.

D. Effect of Default on Eligibility for Further Funding. If Borrower is in default, the City may declare the Borrower ineligible for any further participation in City funding, in addition to other remedies as provided by law.

25. 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:

Brothers Redevelopment, Inc.
Attn: Executive Director
2250 Eaton St, Suite B
Denver, CO 80214

With a copy to:

Law Office of Mark Berry
1 Wren
Littleton, CO 80127

And a copy to:

Valor on the Fax LLC
Attn: Brothers Redevelopment, Inc.
2250 Eaton St, Suite B
Denver, CO 80214

If written notice of a default, with a copy to:

Enterprise Neighborhood Impact Fund III, LLC
Attn: Enterprise Housing Credit Investments, LLC
70 Corporate Center
11000 Broken Land Parkway, Suite 700
Columbia, Maryland 21044
Attn: General Counsel

With a copy to:

Holland & Knight LLP

10 St. James Ave., 11th Floor
Boston, MA 02116
Attn: Dayna Hutchins, Esq.

and if to the City at:

Executive Director of the Department of Housing Stability
City and County of Denver
201 West Colfax Avenue, Dept. 615
Denver, Colorado 80202

With a copy 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.

26. AUDIT REQUIREMENT: Non-profit organizations that expend Seven Hundred Fifty Thousand Dollars and 00/100 (\$750,000.00) or more in a year in federal awards shall have a single or program-specific audit conducted for that year in accordance with the provisions of 2 C.F.R. Chapter I, Chapter II, Parts 200, 215, 220, 225, and 230, "Uniform Administrative Requirements, Costs Principles, and Audit Requirements for Federal Awards" (the "OMB Omni Circular") and applicable federal regulations.

27. SECTION 3 COMPLIANCE: This Loan Agreement is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968 and implementing regulations thereunder, as more fully described in Part II attached hereto.

28. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY, AND VOLUNTARY EXCLUSION:

A. The Borrower represents and warrants that it and its principals are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency.

B. The Borrower will not enter into any lower tier transaction with a person

who is debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in a covered transaction unless authorized by the federal agency from which the transaction originated.

C. The Borrower shall include the certification contained in subparagraph A of this Section in any and all subcontracts hereunder and shall require any subcontractors or sub-consultants to comply with any and all applicable federal laws, rules and regulations, policies and procedures or guidance concerning the federal debarment, suspension, and exclusion program.

D. The Borrower will immediately notify HOST in writing if at any time it learns that it failed to disclose that it or any of its principals were excluded at the time the parties executed this contract if due to changed circumstances the Borrower or any of its principals have subsequently been excluded by a federal agency.

E. The representation made in subparagraph A of this Section is a material representation of fact upon which reliance was placed when this transaction was entered into.

29. COMMUNITY HOUSING DEVELOPMENT ORGANIZATION: It is understood that the Borrower has certified that it is and will maintain Community Housing Development Organization (“CHDO”) status for the term of the Loan Agreement in accordance with 24 CFR § 92. Borrower agrees to provide information as may be requested by the City to document its continued compliance, including, but not limited to, an annual board roster and certification of continued compliance. Any funds advanced as CHDO pre-development funds must be in compliance with 24 CFR § 92.301, and are forgivable only under the terms in 24 CFR § 92.301. Any funds advanced to the Borrower as CHDO operating expenses must be expended in compliance with 24 CFR § 92.208. Any funds that the Borrower is permitted to retain as CHDO proceeds from this project shall be used in compliance with 24 CFR § 92.300(a)(2) or as specified in this Loan Agreement. If the project is rental, the Borrower will create and follow a tenant participation plan as required in 24 CFR § 92.303.

30. 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.

31. 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

32. PUBLICATIONS/ANNOUNCEMENTS: HOST approval must be obtained prior to publicizing activities or projects funded by HOST or prior to any radio or television announcements, newspaper advertisements, press releases, pamphlets, mail campaigns, or any other marketing methods for any activities or projects funded by HOST. 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, Department of Housing Stability.” HOST shall be acknowledged in any events regarding the project being funded, including groundbreakings and openings.

33. 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.

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

35. 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.

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

37. HOUSING ASSISTANCE PAYMENTS CONTRACT: Borrower has or will enter into a housing assistance payments (“HAP”) contract with the Denver Housing Authority, State Division of Housing, or another entity that administers HAP contracts so that 72 rental units at the Project may receive project-based voucher payments in accordance with the provisions of 24 C.F.R. Part 983. The City acknowledges that the HAP contract is vital for the financial viability of the Project. If the HAP contract applicable to the Project expires, is terminated, is not renewed, or

the financial terms otherwise change, the City agrees that HOST will, in good faith, engage in discussions to renegotiate the affordability provisions contained in this Loan Agreement. Any changes or amendments to the affordability provisions will not be effective or binding on the City until an amendment to this Loan Agreement has been fully executed by all required signatories of the City, and if required by Charter, approved by the City Council.

38. SUPPORTIVE HOUSING CONTRACT: Borrower has or will enter into a supportive housing contract with the City (the “SH Contract”). Borrower acknowledges and agrees that compliance with the terms and conditions of the SH Contract shall be a condition of this Loan Agreement. For so long as the SH Contract remains in full force and effect in accordance with its terms, any breach or default by Borrower under the terms and conditions of the SH Contract shall constitute a breach of this Loan Agreement and may be treated as a default of this Loan Agreement.

39. 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.

40. RECITALS: All of the recitals above are hereby confirmed and incorporated herein as part of this Loan Agreement.

41. 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.

List of Exhibits to Loan Agreement

Exhibit A – Project Timeline and Costs

Exhibit B – HOST Financial Administration Requirements

Exhibit C – Affirmative Marketing Program

Exhibit D – [INTENTIONALLY OMITTED]

Exhibit E – Form of Subordination Agreement

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

Contract Control Number:
Contractor Name:

HOST-202157469
BROTHERS REDEVELOPMENT, INC.

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:

Attorney for the City and County of Denver

By:

By:

By:

Contract Control Number:
Contractor Name:

HOST-202157469
BROTHERS REDEVELOPMENT, INC.

By: See Attached

Name: _____
(please print)

Title: _____
(please print)

ATTEST: [if required]

By: _____

Name: _____
(please print)

Title: _____
(please print)

Contract Control Number:
Contractor Name:

HOST-202157469-00
BROTHERS REDEVELOPMENT, INC.

By: 

Name: Jeff Martinez
(please print)

Title: President
(please print)

ATTEST: [if required]

By: _____

Name: _____
(please print)

Title: _____
(please print)

EXHIBIT A

Project Timeline – 7900 East Colfax
7900 East Colfax, Denver, CO 80220

Construction financing closes	March 2021
General Contractor notice to proceed	April 2021
Construction completion	August 2022
Lease-up completion date of restricted units	January 2023

SOURCES & USES

Sources	Total	%
First Mortgage	\$ 7,300,000	30.9%
Second Mortgage	\$ 600,000	2.5%
Federal LIHTC Equity	\$ 12,088,788	51.1%
CHFA Cap Mag Grant	\$ 120,000	0.5%
HOST Loan	\$ 1,440,000	6.1%
DOH Loan	\$ 1,440,000	6.1%
Deferred Developer Fee	\$ 425,000	1.8%
WF Priority Comm Grant	\$ 200,000	0.8%
Owner Equity	\$ 23,118	0.1%
Total	\$23,636,906	100.0%

Uses	Total	%
Land/Buildings	\$515,617	2.2%
Hard Costs	\$15,854,218	67.1%
Soft Costs	\$3,778,469	16.0%
Developer Fee	\$2,106,000	8.9%
Reserves	\$1,382,602	5.8%
Total	\$23,636,906	100.0%

PROJECT ACTIVITIES

The \$1,440,000 may be used for soft costs, professional fees, or hard construction (new construction) costs as shown in the following table. Financing costs, property taxes, developer fee, reserves, and interest fees are not reimbursable.

Uses	Total	%
Land/Buildings	\$515,617	2.2%
Hard Costs	\$15,854,218	67.1%
Soft Costs	\$3,778,469	16.0%
Developer Fee	\$2,106,000	8.9%
Reserves	\$1,382,602	5.8%
Total	\$23,636,906	100.0%

EXHIBIT B

FINANCIAL ADMINISTRATION:

1.1 Compensation and Methods of Payment

- 1.1.1 Disbursements shall be processed through the Department of Housing Stability (HOST) and the City and County of Denver's Department of Finance.
- 1.1.2 The method of payment to the Contractor by HOST shall be in accordance with established HOST procedures for line-item reimbursements. The Contractor must submit expenses to HOST 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 HOST policies. Vouchers should be submitted within thirty (30) days of the actual service, expenditure or payment of expense.
- 1.1.3 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 Government requirements for current, auditable books at all times, it is required that all vouchers be submitted monthly to HOST in order to be paid. Expenses cannot be reimbursed until the funds under this contract have been encumbered.
- 1.2.2 No more than four (4) vouchers may be submitted per contract per month, without prior approval from HOST.
- 1.2.3 All vouchers for all Agreements must be correctly submitted within thirty (30) 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 For contracts subject to Federal Agreements, 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 HOST prior to the draw request.
- 1.2.8 The standardized HOST “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 an electronic time system is used, signatures are not required. 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 -less pre-tax deductions, if applicable,

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 **Cell Phone**: If the monthly usage charge is exceeded in any month, an approval from the Executive Director or designee will be required.
- 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 HOST.
- 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 HOST within thirty (30) days after the end of the service period stated in the contract.

2.1 Program Income

- 2.1.1 For contracts subject to Federal Agreements, program income includes, without limitation, income from fees for services performed, from the use or rental of real or personal property acquired with contract funds, from the sale of commodities or items fabricated under a contract agreement, and from payments of principal and interest on loans made with contract funds.

- 2.1.2 Program income may be deducted from total allowable costs to determine net allowable costs and may be used for current reimbursable costs under the terms of this contract. Program income which was not anticipated at the time of the award may be used to reduce the award contribution rather than to increase the funds committed to the project. ALL PROGRAM INCOME GENERATED DURING ANY GIVEN PERIOD SUBMITTED FOR PAYMENT SHALL BE DOCUMENTED ON THE VOUCHER REQUEST.
- 2.1.3 The Contractor, at the end of the program, may be required to remit to the City all or a part of any program income balances (including investments thereof) held by the Contractor (except AS PRE-APPROVED IN WRITING BY HOST, INCLUDING those needed for immediate cash needs).

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 and/or city 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 For contracts subject to Federal Agreements, 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 For contracts subject to Federal Agreements, the Contractor shall maintain separate accountability for HOST 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 HOST 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 For contracts subject to Federal Agreements, 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 HOST 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 HOST 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 subrecipient at the same time as the Reporting Package, the Management Letter is also due to HOST 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 HOST funding, the Contactor shall prepare and submit a Corrective Action Plan to HOST 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 **HOST Financial Services Team**.
- 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 HOST may, at its option, restrict the transfer of funds among cost categories, programs, functions or activities at its discretion as deemed appropriate by program staff, HOST executive management or its designee.
- 5.1.2 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 notification to HOST program staff and upon approval may be submitted 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 HOST program staff. 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.
- 5.1.3 The Contractor understands that any budget modification requests under this Agreement must be submitted to HOST prior to the last Quarter of the Contract Period, unless waived in writing by the HOST 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 ten thousand dollars (\$10,000) 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 For contracts subject to federal agreements, 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 For contracts subject to federal agreements, HOST may require adequate fidelity bond coverage, in accordance with 24 C.F.R. 84.21 (d), where the subrecipient lacks sufficient coverage to protect the Federal Government's interest.

8.1 Records Retention

- 8.1.1 The Contractor must retain for seven (7) 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 and the Comptroller General of the United States, or any of their authorized representatives, 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 HOST contract close-out forms and submitting these forms to their appropriate HOST Contract Specialist within sixty (60) days after the Agreement end date, or sooner if required by HOST in writing.
- 9.1.2 Contract close out forms will be provided to the Contractor by HOST within thirty (30) days prior to end of contract.
- 9.1.3 HOST will close out the award when it determines that all applicable administrative actions and all required work of the contract have been completed. If Contractor fails to perform in accordance with this Agreement, HOST 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 Federal Government and the City. If not paid within a reasonable period after demand, HOST 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 HOME 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 HOME 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 HOME Programs will:

- (1) prohibit discrimination in the rental of housing rehabilitated through the City’s HOME 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

[INTENTIONALLY OMITTED]

Exhibit E

SUBORDINATION AGREEMENT

THIS SUBORDINATION AGREEMENT (this “Agreement”) dated [INSERT DATE], is made between the **CITY AND COUNTY OF DENVER**, a municipal corporation of the State of Colorado, the present holder of a certain deed of trust, whose address is Department of Housing Stability, 201 W. Colfax Ave., Dept. 615, Denver, Colorado 80202 (the “Junior Lender”) and **COLORADO HOUSING AND FINANCE AUTHORITY**, a body corporate and political subdivision of the State of Colorado whose address is 1981 Blake Street, Denver, Colorado 80202 (the “Senior Lender”).

PRELIMINARY STATEMENTS

A. The Junior Lender has made a loan to [INSERT BORROWER NAME], a [INSERT STATE][INSERT ENTITY TYPE] (the “Borrower”) in the principal amount of \$[INSERT DOLLAR AMOUNT], evidenced by that certain Promissory Note, dated as of [INSERT DATE OF PROMISSORY NOTE], made by the Borrower and payable to the Junior Lender (the “City Note”). Borrower has made a loan to [PARTNERSHIP NAME], a [INSERT STATE][INSERT ENTITY TYPE] (the “Partnership”) in the principal amount of \$[INSERT DOLLAR AMOUNT], evidenced by that certain Promissory Note, dated as of [INSERT DATE OF PROMISSORY NOTE], made by the Partnership and payable to the Borrower (the “Partnership Note”) and secured by that certain Deed of Trust (the “Junior Deed of Trust”) made as of [INSERT DATE OF DEED OF TRUST] and recorded on [INSERT RECORDATION DATE] at Reception No. [INSERT RECEPTION NUMBER] of the real property records in the office of the Clerk and Recorder of the City and County of Denver, State of Colorado (the “Junior Deed of Trust” and together with the Partnership Note and all other documents evidencing, securing or executed in connection with the Junior Obligations (defined below), are collectively, the “Junior Loan Documents”), encumbering the following described property (the “Mortgaged Property”):

See Exhibit A attached hereto and incorporated herein by this reference.

B. Pursuant to that certain Collateral Assignment of Note and Deed of Trust dated as of [INSERT DATE OF ASSIGNMENT] made by Borrower for the benefit of the Junior Lender and recorded on [INSERT RECORDATION DATE] at Reception No. [INSERT RECEPTION NUMBER] of the real property records in the office of the Clerk and Recorder of the City and County of Denver, State of Colorado (the “Collateral Assignment”), Borrower has assigned to Junior Lender, as collateral for the City Note, the rights of Borrower under the Partnership Note and the Junior Deed of Trust.

C. The Senior Lender plans to grant or has granted Partnership a loan of \$[INSERT NUMERIC AMOUNT], which loan will be evidenced by that certain Promissory Note (“Senior Note”) in like amount and secured by that certain a deed of trust (“Senior Deed of Trust”) which will cover and encumber all or part of the Mortgaged Property (the “Senior Note,” and together with the Senior Deed of Trust and all other documents evidencing, securing or executed in connection with the Senior Obligations (defined below) are collectively, the “Senior Loan

Documents”); and the Senior Deed of Trust will be recorded in the records of the office of the Clerk and Recorder of the City and County of Denver, State of Colorado.

C. It is the desire of the parties and to the mutual benefit of all parties that the lien of the Junior Deed of Trust and Junior Obligations be subordinated to the lien of the Senior Deed of Trust and Senior Obligations.

AGREEMENT

For and in consideration of the mutual benefits accruing to the parties hereto, and the promises set forth, and other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

1. Definitions. Capitalized terms used herein and not otherwise defined herein shall have the meanings given such terms in the Junior Deed of Trust. As used herein, the following terms shall have the meanings assigned to them:

"Senior Obligations" means each and every debt, liability and obligation of every type and description that the Partnership may now or at any time hereafter owe to the Senior Lender in connection with the Senior Deed of Trust and Senior Loan Documents, whether such debt, liability or obligation now exists or is hereafter assumed, created or incurred and whether it is or may be direct or indirect, due or to become due, or absolute or contingent.

"Junior Obligations" means any deed of trust or other mortgage, lien or encumbrance made by the Partnership to and for the benefit of the Borrower and subsequently assigned to the Junior Lender, including, without limitation, the Junior Deed of Trust and any and all security interests, liens or other encumbrances granted in connection with the loan by the Borrower to the Partnership.

2. Subordination. All Junior Obligations and Junior Loan Documents are hereby expressly subordinated to the extent and in the manner hereinafter set forth to the payment in full of the Senior Obligations and the terms of the Senior Loan Documents. The Junior Lender hereby agrees that (regardless of any priority otherwise available to the Junior Lender by law or by agreement) any security interest that the Junior Lender might now hold in the Mortgaged Property, is fully subordinate to any security interest that the Senior Lender may now or hereafter hold in the Mortgaged Property.

3. Collateral and Security Interest. Until all of the Senior Obligations have been paid in full, the Junior Lender shall not demand, receive or accept, except as otherwise described in this Agreement (i) a pledge of any of the Mortgaged Property as security for the Junior Obligations, or (ii) a grant of any security interest or any other right or interest in any of the Mortgaged Property.

4. Payments Before Default Under Senior Loan Documents. Until the Junior Lender receives notice from the Senior Lender that a default has occurred in connection with the Senior

Loan Documents as set forth in Section 8 herein, the Junior Lender shall be entitled to retain for its own account all payments made in connection with the Junior Obligations.

5. Waiver and Consent. The Senior Lender shall have no obligation to the Junior Lender with respect to the Mortgaged Property or the Senior Obligations. The Senior Lender may in accordance with the Senior Deed of Trust (a) exercise collection rights, (b) take possession of, sell or dispose of, and otherwise deal with, the Mortgaged Property, (c) in the Senior Lender's name, the Junior Lender's name or in the Partnership's name, demand, sue for, collect or receive any money or property at any time payable or receivable on account of, the Mortgaged Property; (d) prosecute, settle and receive proceeds on any insurance claims relating to the Mortgaged Property, and (e) exercise and enforce any right or remedy available to the Senior Lender with respect to the Mortgaged Property, whether available before or after the occurrence of any default; all without notice to or consent by anyone except as specifically required by law. The Senior Lender may apply the proceeds of the Mortgaged Property in any order the Senior Lender deems appropriate in its sole discretion, except as required by law.

6. No Action. Except to the extent that Junior Lender obtains Senior Lender's permission pursuant to the following sentence, the Junior Lender will not commence any action or proceeding with respect to the Mortgaged Property or against the Partnership, will not take possession of, sell or dispose of, or otherwise deal with, the Mortgaged Property, and will not exercise or enforce any other right or remedy that may be available to the Junior Lender against the Partnership or with respect to the Mortgaged Property upon Partnership's default with respect to the Junior Obligations, without the Senior Lender's prior written consent, which shall not be unreasonably withheld or delayed. In addition, and without limiting the generality of the foregoing, if the Partnership is in default under the Senior Loan Documents and the Senior Lender forecloses on the Mortgaged Property or accepts a deed in lieu of foreclosure, the Junior Lender shall, upon the Senior Lender's request, promptly execute and deliver such instruments as may reasonably be necessary to terminate and release any security interest or lien the Junior Lender acquired in connection with Junior Loan.

7. Notice of Default to Senior Lender. Any notice provided to the Borrower or the Partnership by the Junior Lender of any default under the Junior Deed of Trust shall also be sent to Senior Lender. Junior Lender shall afford Senior Lender the right but not the obligation to cure any default or Event of Default within sixty (60) days after Senior Lender receives such notice, and Junior Lender agrees to accept such performance as if it were undertaken by Partnership.

8. Notice of Default to Junior Lender. Senior Lender shall deliver to the Junior Lender a default notice within ten business days in each case where Senior Lender has given a default notice to the Partnership. The Junior Lender shall have the right, but not the obligation, to cure any default under the Senior Loan Documents within the same time, and the same manner, as the Partnership pursuant to the Senior Loan Documents. All amounts paid by the Junior Lender to Senior Lender to cure a default under the Senior Loan Documents shall be deemed to have been advanced by the Junior Lender pursuant to, and shall be secured by the lien of, the Junior Deed of Trust.

9. Default under Senior Loan Documents. Junior Lender agrees that a default under the Senior Loan Documents shall not constitute a default under the Junior Loan Documents if no other default has occurred and is continuing under the Junior Loan Documents until either (i) Senior Lender has accelerated the maturity of the Senior Note or Senior Deed of Trust, or (ii) Senior Lender has taken affirmative action to exercise its rights under the Senior Loan Documents to collect rent, to appoint (or seek the appointment of) a receiver or to foreclose on (or to exercise a power of sale contained in) the Senior Deed of Trust. If at any time the Partnership cures any default under the Senior Loan Documents to the satisfaction of Senior Lender, as evidenced by written notice from Senior Lender to Junior Lender, any default under the Junior Loan Documents arising therefrom shall be deemed cured and the Junior Obligations shall be retroactively reinstated as if such default had never occurred.

10. No Representations or Warranties Concerning Mortgaged Property. Neither the Junior Lender nor the Senior Lender (i) makes any representation or warranty concerning the Mortgaged Property or the validity, perfection or (except as to the subordination effected hereby) priority of any security interest therein, or (ii) shall have any duty to preserve, protect, care for, insure, take possession of, collect, dispose of or otherwise realize upon any of the Mortgaged Property.

11. Junior Lender Representations. Junior Lender further represents and warrants that each of the following is true as of the date of this Agreement: (i) the Junior Loan Documents are now in full force and effect; (ii) the Junior Loan Documents have not been modified or amended; (iii) no Junior Deed of Trust Default has occurred; (iv) Junior Lender is the beneficiary of the Junior Loan Documents; and (v) none of the rights of Junior Lender under any of the Junior Loan Documents are subject to the rights of any third parties, by way of subrogation, indemnification or otherwise.

12. Binding Effect; Miscellaneous. This Agreement shall be binding upon the Junior Lender and its respective successors and assigns and shall inure to the benefit of the Senior Lender and its participants, successors and assigns, but neither the Partnership nor any other secured party shall be entitled to rely on or enforce this Agreement. This Agreement cannot be waived or changed or ended, except by a writing signed by the party to be bound thereby. This Agreement shall be governed by and construed in accordance with the substantive laws of the State of Colorado. Each party consents to the personal jurisdiction of the state and federal courts located in the State of Colorado in connection with any controversy related to this Agreement, waives any argument that venue in any such forum is not convenient, and agrees that any litigation initiated by either of them in connection with this Agreement shall be venued in the City and County of Denver. This Agreement may be executed in any number of counterparts, each of which shall be an original, but all of which together shall constitute one instrument. The Junior Lender waives notice of the Senior Lender's acceptance hereof.

13. Notice. Any notice required under this Agreement shall be deemed to have been given when mailed by certified mail, return receipt requested, or by overnight express mail or courier service, to the addresses of the Junior Lender or the Senior Lender, as the case may be, set out in the first paragraph of this Agreement.

14. Term. This Agreement shall continue until the earliest to occur of the following events: (i) the payment of all principal, interest, and other amounts payable under the Senior Obligations; (ii) the payment of all principal, interest and other amounts payable under the Junior Obligations; (iii) the acquisition by Senior Lender of title to the Mortgaged Property pursuant to a foreclosure, or deed in lieu of foreclosure, or the exercise of a power of sale contained in the Senior Deed of Trust; or (iv) the acquisition by Junior Lender of title to the Mortgaged Property pursuant to a foreclosure, or a deed in lieu of foreclosure, or the exercise of a power of sale contained in the Junior Deed of Trust, but only if such acquisition of title does not violate any of the terms of this Agreement.

15. Enforceability. If any provision of this Agreement shall be invalid or unenforceable to any extent, the remainder of this Agreement shall not be affected thereby and shall be enforced to the greatest extent permitted by law.

16. Entire Agreement. This Agreement contains the entire agreement between and among the parties hereto with respect to the subordination of the Junior Deed of Trust and the other Junior Loan Documents as to the Senior Deed of Trust, and the Senior Loan Documents.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date written above.

“JUNIOR LENDER”

CITY AND COUNTY OF DENVER, a Colorado Municipal Corporation

By: _____

Title: _____, Department of Housing Stability

State of Colorado)
) ss.
County of)

The foregoing instrument was subscribed to and acknowledged before me this ____ day of ____, 20____, by _____ as _____ of the Department of Housing Stability 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

“SENIOR LENDER”

Colorado Housing and Finance Authority, a body corporate and political subdivision of the State of Colorado

By: _____

Title: _____

State of Colorado)
) ss.
County of)

The foregoing instrument was subscribed to and acknowledged before me this ____ day of _____, 20____, by _____ as _____ of _____

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

Notary Public

Acknowledged by PARTNERSHIP:

[INSERT BORROWER NAME], a [INSERT STATE]
[INSERT ENTITY TYPE]

By: _____

Title: _____

Acknowledged by BORROWER:

[INSERT BORROWER NAME], a [INSERT STATE]
[INSERT ENTITY TYPE]

By: _____

Title: _____

ATTACHMENT A

[INSERT LEGAL DESCRIPTION]

PART II
SUPPLEMENTARY GENERAL CONDITIONS (HOME)

ARTICLE I
FEDERAL REQUIREMENTS

Except as specifically set forth herein, the following conditions take precedence over any conflicting conditions in the Agreement.

Sec. 100. Definitions. As used in this Part II:

A. “City” means City and County of Denver or a person authorized to act on its behalf.

B. “Contractor” means a person or entity that has entered into an Agreement with the City under which the person or entity will receive federal funds under the Home Investment Partnership Program (“HOME”). “Subcontractor” means any person or entity that enters into an agreement or contract with a Contractor.

C. “HOST” means the City’s Department of Housing Stability or a person authorized to act on its behalf.

D. “HUD” means the United States Department of Housing and Urban Development or a person authorized to act on its behalf.

E. “Construction contract or agreement” means a contract for construction, rehabilitation, alteration and/or repair, including painting and decorating.

Sec. 101. Cranston-Gonzales National Affordable Housing Act. This Agreement is subject to Title II of the Cranston-Gonzales National Affordable Housing Act of 1990 (42 U.S.C. 12701-12839), and HUD regulations at 24 C.F.R. Part 92.

Sec. 102. Uniform Administrative Requirements. This Agreement is subject to the requirements of 2 CFR Part 200, “Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards” (the “OMB Omni Circular”), and applicable sections of 24 C.F.R. Parts 84 and 85 as they relate to the acceptance and use of Federal funds.

Sec. 103. Nondiscrimination Under Title VI of the Civil Rights Act of 1964.

A. This Agreement is subject to the requirements of Title VI of the Civil Rights Act of 1964 (P.L. 88-352) and implementing regulations at 24 C.F.R. Part 1, prohibiting discrimination on the basis of race, color, or national origin in any program or activity receiving federal financial assistance.

B. In the sale, lease or other transfer of land acquired, cleared or improved with assistance provided under this Agreement, the Contractor shall cause or require a covenant running with the land to be inserted in the deed or lease for such transfer, prohibiting discrimination upon the basis of race, color, religion, sex or national origin, in the sale, lease or rental, or in the use or occupancy of such land or any improvements erected or to be erected thereon, and providing that the Contractor and the United States are beneficiaries of and entitled to enforce such covenant. The Contractor agrees to take such measures as are necessary to enforce such covenant and will not itself so discriminate.

Sec. 104. Nondiscrimination in Housing Under Title VIII of the Civil Rights Act of 1968. This Agreement is subject to the requirements of Title VIII of the Civil Rights Act of 1968 (P.L. 90-284), and implementing regulations at 24 C.F.R. 100, prohibiting housing discrimination on the basis of race, color, religion, sex, disability/handicap, familial status, or national origin. The Contractor agrees to carry out the services under this Agreement in a manner so as to affirmatively further fair housing.

Sec. 105. Nondiscrimination Under Age Discrimination Act of 1975. This Agreement is subject to the requirements of the Age Discrimination Act of 1975 (42 U.S.C. 6101 et seq.) and implementing regulations at 24 C.F.R. 146. Except as provided in the Act, no person shall, on the basis of age, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving funds under this Agreement. The Contractor will include the provisions of the above clause in every subcontract which is paid for in whole or in part with assistance provided under this Agreement.

Sec. 106. Compliance with Section 109 of the Housing and Community Development Act of 1974. This Agreement is subject to Section 109 of the Housing and Community Development Act of 1974, as amended, and implementing regulations (24 C.F.R. Part 6 and Section 570.602), providing that no person in the United States shall be excluded from participation (including employment), denied program benefits or subjected to discrimination on the basis of race, color, national origin, religion or sex under any program or activity funded in whole or in part under Title I of the Act.

Sec. 107. Nondiscrimination and Equal Opportunity in Housing Under Executive Order 11063. This Agreement is subject to Executive Order 11063, issued November 20, 1962, as amended by Executive Order 12259, issued December 31, 1980, and implementing regulations at 24 C.F.R. Part 107, requiring equal opportunity in housing by prohibiting discrimination on the basis of race, color, religion, sex or national origin in the sale or rental of housing provided, rehabilitated, or operated with federal assistance or are owned or operated by the Federal Government.

Sec. 108. Nondiscrimination on the Basis of Handicap Under Rehabilitation Act of 1973. This Agreement is subject to Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), as amended, and regulations at 24 C.F.R. Part 8, providing that no otherwise qualified individual with handicaps in the United States shall, solely by reason of a handicap, be excluded from

participation (including employment), denied program benefits or subjected to discrimination under any program or activity receiving federal funds.

Sec. 109. Violence Against Women Reauthorization Act of 2013. This Agreement is subject to the Violence Against Women Reauthorization Act of 2013, which provides protections to victims of domestic violence in public housing, as well as in housing funded by the HOME program.

Sec. 110. “Section 3” Compliance in the Provision of Training, Employment and Business Opportunities.

A. The work to be performed under this contract is subject to the requirements of section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (Section 3). The purpose of section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by section 3 shall, to the greatest extent feasible, be directed to low and very low-income persons, particularly persons who are recipients of HUD assistance for housing.

B. The parties to this contract agree to comply with HUD’s regulations in 24 C.F.R. Part 135, which implement section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the Part 135 regulations.

C. The Contractor agrees to send to each labor organization or representative of workers with which the contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers’ representative of the Contractor’s commitments under this section 3 clause, and will post copies of this notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.

D. The Contractor agrees to include this section 3 clause in every subcontract subject to compliance with regulations in 24 C.F.R. Part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 C.F.R. Part 135. The Contractor will not subcontract with any subcontractor where the Contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 C.F.R. Part 135.

E. The Contractor will certify that any vacant employment positions, including training positions, that are filled (1) after the Contractor is selected but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 C.F.R. Part 135

require employment opportunities to be directed, were not filled to circumvent the Contractor's obligations under 24 C.F.R. Part 135.

F. Noncompliance with HUD's regulations in 24 C.F.R. Part 135 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD-assisted contracts.

Sec. 111. Relocation Assistance and Property Acquisition Requirements. This Agreement is subject to the relocation and acquisition requirements of the Uniform Relocation Assistance and Real Property Acquisition Policy Act of 1970, as amended, and implementing regulations at 49 C.F.R. Part 24; Section 104(d) of the Housing & Community Development Act, as amended, and implementing regulations at 24 C.F.R. Parts 42 and 92. The Contractor must comply with the City's Anti Displacement and Relocation Assistance Plan on file.

Sec. 112. Conflict of Interest. The provisions of 24 C.F.R. 92.356 regarding "Conflict of Interest" are expressly incorporated herein by this reference.

Sec. 113. Political Activity Prohibited. None of the funds provided under this Agreement shall be used directly or indirectly for any partisan political activity, or to further the election or defeat of any candidate for public office.

Sec. 114. Lobbying Prohibited. None of the funds provided under this Agreement shall be used for publicity or propaganda purposes designed to support or defeat legislation pending before the U.S. Congress.

Sec. 114(a). Prohibition on Use of Federal Funds for Lobbying; Requirements for Disclosure Statements, and Certification. Section 319, P.L. 101-121. Any contractor, subcontractor and/or grantee receiving federal appropriated funds certifies by signing this Agreement, in two parts Part I, and Part II and signing and/or entering into any other agreement in connection with this Agreement, to the best of his or her knowledge and belief, that:

A. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a member of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

B. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall

complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

C. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31 U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Sec. 115. Copyrights. If this Agreement results in a book or other copyright material, the author is free to copyright the work but HUD and the City reserve a royalty-free, nonexclusive and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, all copyrighted material and all material which can be copyrighted, as stated in 24 C.F.R. 84.36.

Sec. 116. Patents. Any discovery or invention arising out of or developed in the course of work under this Agreement shall be promptly and fully reported to HUD for determination as to whether patent protection on such invention or discovery should be sought, and how the rights under any patent shall be allocated and administered in order to protect the public interest.

Sec. 117. Program Income. Unless otherwise specified in Part I of this Agreement, all program income as defined by HUD at 24 C.F.R. 570.500(a) shall be returned to the City. Any program income on hand when this Agreement expires, or received after this Agreement expires shall be paid to the City.

ARTICLE II

DISBURSEMENTS AND ACCOUNTING

Sec. 201. Eligible and Ineligible Costs. Costs under this Agreement are governed by the OMB Omni Circular as applicable. All costs incurred by the Contractor using monies under this Agreement must be reasonable and relate clearly to the specific purposes and end product of the Agreement. To be eligible for reimbursement, expenditures must: (A) Be necessary and reasonable for proper and efficient performance of the contractual requirements and in accordance with the approved budget; (B) Be allocable to Federal awards under the provisions of the OMB Omni Circular; (C) Be authorized or not prohibited under State or local laws or regulations; (D) Conform to any limitations or exclusions set forth in these principles, Federal laws, terms and conditions of the Federal award, or other governing regulations as to types of amounts of cost items; (E) Be consistent with policies, procedures and practices applied uniformly to activities of the City, both Federally assisted and non-Federally assisted; (F) Be accorded consistent treatment—a cost may not be assigned to a Federal award as a direct cost if any other cost incurred for the same purpose

in like circumstances has been allocated to the Federal award as an indirect cost; (G) Be determined in accordance with generally accepted accounting principles; (H) Not be allocable to or included as a cost of any other Federally financed program; (I) Be net of all applicable credits, such as purchase discounts, rebates or allowances, sales of publications or materials, or other income or refunds; and (J) Be fully documented.

The following costs or expenditures by the Contractor are specifically ineligible for reimbursement: bad debts, contingency reserves, contributions and donations, entertainment and fines and penalties.

Sec. 202. Documentation of Costs. All costs must be supported by properly executed payrolls, time records, invoices, contracts or vouchers, or other documentation evidencing in proper detail the nature and propriety of the charges. All checks, payrolls, invoices, contracts, vouchers, orders or other accounting documents pertaining in whole or in part to this Agreement shall be clearly identified and readily accessible.

Sec. 203. Charges Against Project Account.

A. Payments under the Agreement shall be made on an actual basis for services that are performed and fully documented as having been performed. The City shall not reimburse or pay any expenditures, costs or payments that are inconsistent with the last approved budget. The budget for this Agreement may be revised upon written request of the Contractor, and written approval from the Community Development Administration.

B. At any time prior to final payment, the City may have the invoices and statements of costs audited. Each payment shall be subject to reduction for amounts which are found by the City not to constitute allowable costs. Any payment may be reduced for overpayments, or increased for underpayments, on preceding invoices or vouchers.

C. In the absence of error or manifest mistake, all payments when approved shall be evidence of the services performed, except that all payments made by the City to the Contractor are subject to correction in accordance with the audit findings of the City or HUD. The Contractor shall promptly repay the City the amounts determined to be due on the basis of such audit.

D. Prior to final payment, the Contractor shall first furnish the City evidence in affidavit form that all claims, liens, or other obligations incurred by it and all of its subcontractors or agents in connection with the performance of their services have been properly paid and settled.

E. Contract funds remaining unspent by the Contractor at the termination of the Agreement for any cause shall be returned to the City within the time specified by the City. Interest shall accrue in the favor of the City at the rate of eight percent (8%) per annum on such funds thereafter.

F. Unless otherwise specified in this Contract or the exhibits hereto, the effective indirect cost rate shall be at a rate of zero percent (0.00%) per annum.

Sec. 204. Method of Payment and Disbursements. The Contractor must submit properly executed invoices and requests for payment to HOST. The City agrees to establish a payment procedure that will provide funds in a timely and regular manner. When disbursing funds for construction, the City may withhold the final ten percent (10%) of the money made available under the Agreement pending final payment. The Contractor agrees to disburse funds within seventy-two (72) hours of receiving payment from the City.

Sec. 205. Travel Expenses. Reimbursement for travel and related subsistence, local mileage and parking, is limited to those costs and amounts for which the City reimburses City employees for official travel. First class air-fare is not allowable. Any travel outside of the Denver metropolitan area must be specifically authorized in advance by the City.

Sec. 206. Designation of Depository. The Contractor shall designate a commercial bank which is a member of the Federal Deposit Insurance Corporation (“FDIC”) for deposit of funds under this Agreement. Any balance deposited in excess of FDIC insurance coverage must be collaterally secured. The Contractor is encouraged to use minority or female-owned banks.

Sec. 207. Refunds. The Contractor agrees to refund to the City any payment or portions of payments which HUD and/or the City determine were not properly due to the Contractor.

ARTICLE III **CONSTRUCTION CONTRACTS AND LABOR STANDARDS**

Sec. 301. Lead-Based Paint Hazards. The construction or rehabilitation of residential structures with assistance provided under this Agreement is subject to the HUD Lead-Based Paint Regulations, 24 C.F.R. 92.355. The Contractor is responsible for the inspections and certifications required.

Sec. 302. Davis-Bacon Act. Except for the construction or rehabilitation of residential property that contains less than twelve (12) HOME units, the Contractor and all subcontractors hired under contracts for more than \$2,000.00 for the construction or repair of any building or work financed in whole or in part with assistance provided under this Agreement, shall comply with the Davis-Bacon Act, 40 U.S.C. 276a to 276a-5, and applicable regulations of the Department of Labor under 29 C.F.R. Part 5, requiring the payment of wages at rates not less than those prevailing on similar construction in the locality as determined by the Secretary of Labor. The current Davis-Bacon wage rate schedule must be included in all bid and contract documents, as well as the “Federal Labor Standards Provisions,” Form HUD-4010.

Sec. 303. Contract Work Hours and Safety Standards Act. All federally assisted construction contracts of more than \$2,000.00 and all other contracts employing mechanics or laborers of more than \$2,500.00 must comply with the Contract Work Hours and Safety Standards Act of 1962 (40 U.S.C. 327, *et seq.*) and Department of Labor regulations (29 C.F.R. 5), requiring

that wages be paid at not less than one and one-half times the basic wage rates for all hours worked

in excess of forty in a work week. No mechanic or laborer shall be required to work under conditions which are unsanitary, hazardous or dangerous to health and safety.

Sec. 304. Anti-Kickback Act. If this Agreement involves construction or repair, then it is subject to the Copeland “Anti-Kickback” Act of 1934 (40 U.S.C. 276c) and Department of Labor regulations (29 C.F.R. Part 5), prohibiting and prescribing penalties for “kickbacks” of wages. Wages must be paid at least once a week in accordance with the requirements of 29 C.F.R. 5.5.

Sec. 305. Equal Employment Opportunity Under Executive Order No. 11246, as Amended. If this Agreement involves a federally assisted construction project in excess of \$10,000.00 then it is subject to Executive Order No. 11246, as amended by Executive Orders 11375 and 12086, HUD regulations at 24 C.F.R. Part 130, and the Department of Labor Regulations at 41 C.F.R. Chapter 60.

The Contractor agrees that it will be bound by the equal opportunity clause set forth below and other provisions of 41 C.F.R. Chapter 60, with respect to its own employment practices when it participates in federally assisted construction work, provided that if the Contractor so participating is a State or local government, the equal opportunity clause set forth below is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the Agreement.

The Contractor agrees that it will incorporate into any contract for construction work, or modification thereof, as defined in the regulations of the Secretary of Labor at 41 C.F.R. Chapter 60, which is paid for in whole or in part with funds obtained pursuant to this Agreement, the following equal opportunity clause:

“During the performance of this Agreement, the Contractor agrees as follows:

(1) The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex or national origin. Such action shall include, but not be limited to, the following: Employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

(2) The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all employment is without regard to race, color, religion, sex or national origin.

(3) The Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement, or other contract or understanding, a notice to be provided by the Contract Compliance Officer advising the said labor union or workers' representatives of the Contractor's commitment under this section and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(4) The Contractor will comply with all provisions of Executive Order No. 11246 of September 24, 1965, and the rules, regulations and relevant orders of the Secretary of Labor.

(5) The contractor will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, and by the rules, regulations and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records and accounts by the Department and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations and orders.

(6) In the event of the Contractor's noncompliance with the nondiscrimination clauses of this Agreement or with any of such rules, regulations or orders, this Agreement may be cancelled, terminated or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts or federally assisted construction contract procedures authorized in Executive Order No. 11246 of September 24, 1965, or by rule, regulation or order of the Secretary of Labor, or as otherwise provided by law.

(7) The Contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions or paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The subcontract or purchase orders shall include such terms and conditions as the Department may direct as a means of enforcing such provisions including sanctions for non-compliance; provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the Department, the Contractor may request the United States to enter into such litigation to protect the interest of the United States.

The Contractor further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work; provided, that if the Contractor so participating is a State or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government, which does not participate in work on or under the Agreement.

The Contractor agrees that it will assist and cooperate actively with the Department and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations and relevant orders of the Secretary of Labor; that it will furnish the Department and the Secretary of Labor such information as they may require for the supervision of such compliance; and that it will otherwise assist the Department in and the discharge of its primary responsibility for securing compliance.

The Contractor further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order No. 11246 of September 24, 1965, with a contractor debarred from or who has not demonstrated eligibility for Government contracts and federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontracts by the Department or the Secretary of Labor pursuant to Part II, Subpart D, of the Executive Order. In addition, the Contractor agrees that if it fails or refuses to comply with the requirements contained herein, the City may take any or all of the following actions: Cancel, terminate or suspend, in whole or in part this grant, contract, agreement or loan; refrain from extending any further assistance to the Contractor under the program with respect to which the failure or refusal occurred until satisfactory assurance of future compliance has been received from such Contractor; and refer the case to the Department of Justice for appropriate legal proceedings.”

ARTICLE IV

ENVIRONMENTAL AND HISTORIC CONDITIONS

Sec. 401. Environmental Clearance. Pursuant to 24 CFR 58.22, no funds under this Agreement may be obligated or spent for acquisition, demolition or construction, or disposition, refinancing and other real property-affecting activities, such as granting easements and covenants, until Contractor has received written environmental clearance from HOST. Any special environmental and historic conditions imposed by the City must be incorporated into the design and construction of the project.

Sec. 402. Compliance with Clean Air and Water Acts. Contractor and all subcontractors must comply with all applicable standards, orders, or requirements issued under Section 306 of the Clean Air Act (42 USC 1857(h)), Section 508 of the Clean Water Act, (33 USC 1368), the Federal Water Pollution Control Act, (33 USC 1251 *et seq.*), Executive Order 11738, and Environmental Protection Agency (“EPA”) regulations (40 C.F.R. Part 15), which prohibit the use of facilities included on the EPA List of Violating Facilities.

Sec. 403. Additional Environmental and Historic Conditions. This Agreement is also subject to the following statutes, executive orders and regulations, when the Contractor is so instructed by the City or the United States of America.

- A. National Environmental Policy Act of 1969 (42 U.S.C. 4321, *et seq.*), HUD regulations (24 C.F.R. Part 58) and the Council on Environmental Quality regulations (40 C.F.R. Parts 1500-1508) providing for establishment of national policy and procedures for environmental quality;
- B. National Historic Preservation Act of 1966 (16 U.S.C. 470, *et seq.*), requiring consideration of the effect of a project on any site or structure that is included in or eligible for inclusion in the National Register of Historic Places;
- C. Executive Order 11593, Protection and Enhancement of the Cultural Environment, May 13, 1971 (36 FR 8921, *et seq.*), requiring that federally-funded projects contribute to the preservation and enhancement of sites, structures and objects of historical, architectural or archaeological significance;
- D. Reservoir Salvage Act of 1960 (16 U.S.C. 469, *et seq.*) as amended by the Archaeological and Historical Data Preservation Act of 1974, (16 U.S.C. 469, *et seq.*), providing for the preservation of historic and archaeological data that would be lost due to federally-funded development and construction activities;
- E. Flood Disaster Protection Act of 1973, (42 U.S.C. 4001, *et seq.*), relating to mandatory purchase of flood insurance in areas having special flood hazards;
- F. Executive Order 11988, Flood Plain Management, May 24, 1977 (42 FR 26951, *et seq.*) prohibiting certain activities in flood plains unless there is no practical alternative, in which case the action must be designed to minimize potential damage;
- G. Executive Order 11990, Protection of Wetlands, May 24, 1977 (42 FR 26961, *et seq.*), requiring review of all actions affecting a wetland;
- H. Safe Drinking Water Act of 1974, (42 U.S.C. 300h-3), prohibiting federal financial assistance for any project which the Environmental Protection Agency determines may contaminate an aquifer which is the sole or principal drinking water source for an area;
- I. Endangered Species Act of 1973, (16 U.S.C. 1531, *et seq.*), requiring that actions funded by the federal government do not jeopardize endangered and threatened species;
- J. Wild and Scenic Rivers Act of 1968, (16 U.S.C. 1271, *et seq.*), prohibiting federal assistance in the construction of any water resources project that would have a direct and adverse effect on the National Wild and Scenic Rivers System;
- K. Clean Air Act, (42 U.S.C. 7401 – 7671q, implementing regulations at 40 C.F.R. Part 51), prohibiting federal assistance for any activity which does not conform to the State implementation plan for national primary and secondary ambient air quality standards;

L. Farmland Protection Policy Act of 1981, (7 U.S.C. 4201, *et seq.*) relating to the effects of federally assisted programs on the conversion of farmland to non-agricultural uses;

M. HUD Environmental Criteria and Standards, (24 C.F.R. Part 51) providing national standards for noise abatement and control, acceptable separation distances from explosive or fire prone substances and suitable land uses for airport runway clear zones.

N. Environmental Justice in Minority Populations and Low-Income Populations, (Executive Order 12898) providing for the achievement of environmental justice as part of each Federal agencies mission.

ARTICLE V **TERMINATION**

Sec. 501. Termination Due to Loss of Funding. This Agreement is funded with monies provided by the U.S. Department of Housing and Urban Development. If such funds or any part thereof are not appropriated by City Council or paid into the City Treasury, the City may immediately terminate this Agreement.

Sec. 502. Termination for Cause.

A. The City may terminate this Agreement whenever the Contractor materially fails to perform any of its obligations under this Agreement in a timely and proper manner, or is otherwise in default, and shall fail to cure such default within a period of ten (10) days (or such longer period as the City may allow) after receipt from the City of a notice specifying the default.

B. If the City has sustained damages due to the Contractor's breach of this Agreement, the City may withhold payment as a set off until the amount of damages due to the City is determined.

Sec. 503. Termination for Convenience. The City may terminate this Agreement at any time the City desires. The City shall effect such termination by giving written notice of termination to the Contractor and specifying the effective date thereof, at least twenty (20) days before the effective date of such termination.

Sec. 504. Payment After Termination. The Contractor shall be reimbursed only for that portion of work satisfactorily completed at the effective date of the termination.

Sec. 505. Return of HOME funds. Upon termination of this Agreement for any reason, or upon expiration of this Agreement, any HOME funds on hand and any accounts receivable attributable to the use of HOME funds must be immediately returned to the City. If HOME funds are spent on a project that is terminated before completion, the funds must be repaid to the City's HOME Investment Trust Fund.

ARTICLE VI
MISCELLANEOUS

Sec. 601. Personnel. The Contractor represents that it has or will secure all personnel required in performing its services under this Agreement. All services required of the Contractor will be performed by the Contractor or under its supervision, and all personnel engaged in the work shall be fully qualified and authorized or permitted under State and local laws to perform such services.

Sec. 602. Subject to Local Laws. This Agreement shall be construed and enforced in accordance with Colorado law, and the Charter and Revised Municipal Code of the City and County of Denver. Venue for any legal action relating to this Agreement shall lie in the District Court in and for the City and County of Denver, Colorado.

Sec. 603. Contractual Relationship. The Contractor shall not be considered for any purpose whatsoever to be an agent or an employee of the City. It is understood and agreed that the status of the Contractor shall be that of an independent contractor.

Sec. 604. When Rights and Remedies Not Waived. Payment by the City shall not be construed to be a waiver of any breach which may then exist on the part of the Contractor, and no assent, expressed or implied, to any breach shall be deemed a waiver of any other breach.

Sec. 605. Sales and Use Taxes. The Contractor or any subcontractor is not exempt from payment of the City Sales Tax or Use Tax. In accordance with applicable State and local law, the Contractor will pay, and/or require subcontractors to pay, all sales and use taxes on tangible personal property, including that built into a project or structure, acquired under this Agreement.

Sec. 606. Patented Devices, Materials, and Processes. If the Contractor employs any design, device, material or process covered by letter of patent or copyright, it shall provide for such use by suitable legal agreement with the patentee or owner. The Contractor shall defend, indemnify and save harmless the City from any and all claims for infringement by reason of the use of any such patented design, device, material or process, or any trademark or copyright, and shall indemnify the City for any costs, expenses, and damages which the City may be obliged to pay by reason of any infringement.

Sec. 607. Titles and Subheadings. The titles and subheadings used in this Agreement are for the convenience of reference only and shall not be taken as having any bearing on the interpretation of this Agreement.

Sec. 608. Notices. All notices shall be given by certified mail. Notices to the City shall be separately addressed to the Mayor and the Director of HOST. Either of the parties may designate in writing substitute addresses or persons to receive notices.

Sec. 609. Published Information and Announcements. The contractor agrees to coordinate with HOST to assure that the activity financed in whole or in part by this agreement is properly referenced by the contractor in press releases, brochures, annual reports, speeches and other published information and announcements.

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