

**LOAN AGREEMENT
(GENERAL FUND)**

THIS LOAN AGREEMENT is made between the **CITY AND COUNTY OF DENVER**, a municipal corporation organized pursuant to the Constitution of the State of Colorado (“City”), and **48RACE RESIDENCES LLLP**, a Colorado limited liability limited partnership, whose address is 1718 Peachtree Street, Suite 684, Atlanta, GA 30309 (“Borrower” or “Contractor”).

WITNESSETH:

WHEREAS, the Borrower is the owner of the Property (as defined in Section 2) in the City and County of Denver;

WHEREAS, the purpose of this Loan Agreement is for the City to provide for financing costs related to the development and construction of one hundred fifty (150) affordable multi-family dwelling units located on the Property (the “Project”);

WHEREAS, the Borrower will own the improvements associated with the Project that are erected on the Property;

WHEREAS, the City is making certain monies available to ensure the development the Project; and

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

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

1. LOAN TO BORROWER: Subject to the terms of this Loan Agreement, the City agrees to lend Borrower the sum of THREE MILLION SEVEN HUNDRED FIFTY THOUSAND AND No/100 (\$3,750,000.00) (the “Loan”). In addition to this Loan Agreement, the City and Borrower will enter into a promissory note in a form satisfactory to the City evidencing this Loan (the “Promissory Note”) and a covenant securing the Property for use as affordable housing as required by Section 6 (the “Covenant”). Simple interest at a rate of one percent (1%) per annum shall commence accruing on the outstanding principal balance of the Promissory Note on the date on which the first draw on the Loan is made. Principal and any interest accrued on the Loan shall be due and payable, at such place as may be designated by City, in annual installments of the annual Cash Flow amount, calculated in accordance with the order of priority and other provisions set forth in **Exhibit F**, attached hereto and incorporated herein. Such annual installments shall

commence and be due on the first July 1st following the date that is twenty-four (24) calendar months after the effective date of the Promissory Note and each June 1st thereafter, with the entire unpaid balance of principal and accrued interest due and payable on the sixtieth (60) anniversary of the date of the Promissory Note (the “Maturity Date”), if not sooner paid. Each year after loan closing, Borrower must deliver to the City a property audited financial statement, which the City will use to verify Borrower’s Cash Flow.

2. **SECURITY**: Repayment of the Promissory Note shall be secured by a leasehold deed of trust (the “Deed of Trust”), in form satisfactory to City, granted by Borrower and encumbering the leasehold small planned community unit known and numbered as 2121 E. 48th Avenue, Denver, Colorado 80216 and legally described as set forth in **Exhibit D** (the “Property”), subject to prior encumbrances not exceeding Twenty-Seven Million and No/100 Dollars (\$27,000,000.00) in principal amount.

3. **SUBORDINATION; DEADLINES**:

A. The Executive Director (the “Executive Director”) of the City’s Department of Housing Stability (“HOST”), or his or her designee, is authorized to execute documents necessary to subordinate the lien of the City’s Deed of Trust and Covenant so long as (i) the subordination agreement is substantially in the form attached hereto as **Exhibit E**; (ii) encumbrances prior to the City’s Deed of Trust do not exceed Twenty-Seven Million and No/100 Dollars (\$27,000,000.00); (iii) Borrower is not then in default of its obligations pursuant to this Loan Agreement, the Promissory Note, the Deed of Trust or the Covenant; and (iv) all additional financing for the Project is committed.

B. The Executive Director, or his or her designee, is authorized to execute documents necessary to subordinate the City’s Deed of Trust and Covenant to 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 City’s Deed of Trust do not exceed Twenty-Seven Million and No/100 Dollars (\$27,000,000.00); and (iii) Borrower is not in default of its obligations pursuant to this Loan Agreement, the Deed of Trust, or the Covenant.

C. The Executive Director, or his or her designee, 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 City’s Deed of Trust do not exceed Twenty-Seven Million and No/100 Dollars (\$27,000,000.00); and (iii) Borrower is not in default of

its obligations pursuant to this Loan Agreement, the Deed of Trust, or the Covenant.

D. The Executive Director, or his or her designee, is additionally authorized to extend or modify any deadlines or schedules (other than repayment deadlines or schedules) set forth herein, provided that the Borrower also consents to any such change and that such change is made in writing.

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 Borrower shall facilitate the City's monitoring of construction activities for the purpose of verifying eligible costs by providing copies of Borrower's monthly draw package upon the City's request, and (ii) the City shall retain ten percent (10%) of each disbursement of funds, which retainage shall be released no later than 30 days after satisfaction of each of the following: (a) the submittal by Borrower of an Affirmative Marketing Plan (as defined in Section 14); (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 stated in section 17(B) below.

D. Expenses incurred prior to December 12, 2019 are not eligible for reimbursement.

5. DEADLINE FOR DISBURSEMENT OF FUNDS; REQUIRED DOCUMENTATION:

A. Borrower must provide Evidence of Financing (as defined below) and the final executed partnership agreement for the limited partnership owning the Project on or before September 1, 2020. Failure to meet this deadline shall result in the termination of this Loan Agreement. No funds shall be disbursed under this Loan Agreement until such time as these conditions are met. "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.

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, subject to Force Majeure, and (b) Borrower shall complete the Project within a twenty-four (24) month period after the date of the Promissory Note, subject to Force Majeure. 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. As used in this Subsection, Force Majeure is defined to mean any circumstance or occurrence beyond the reasonable control of Borrower, such as, but not limited to: acts of God; strikes; work stoppages; unavailability of or delay in receiving labor or materials (except due to non-payment by Borrower); severe and unusual weather conditions; drought or conditions existing in anticipation of a drought; war; terrorism or its aftereffects; fire, flood, earthquake, hurricane or other casualty; epidemic, pandemic or other public health emergency; a declaration of emergency or “shelter in place” order issued by any Governmental Agency (defined below) affecting the ability of any contractor or subcontractor to continue construction of the Project; or a government or physician ordered quarantine of, or hospitalization of, any principal of Borrower or any other party whose cooperation is necessary for Borrower to meet its obligations hereunder. “Governmental Agency” means any federal, state, county, municipal or other governmental or regulatory authority, agency, board, department, bureau, body, commission, or instrumentality, or quasi-governmental authority, and any court, arbitrator, or other administrative, judicial or quasi-judicial tribunal, or any other public or quasi-public authority.

6. RESTRICTIONS ON USE OF PROPERTY:

A. Affordability Limitations. Seventy-five (75) of the units at the Property (the “80% Units”) shall have rents not exceeding the greater 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 80% of the median income for the Denver area, as published by the Colorado Housing and Finance Authority (“CHFA”), with adjustments for number of bedrooms in the unit. Thirty (30) of the units at the Property (the “50% Units”) shall have rents not exceeding the greater of (i) fair market rent for comparable units in the area as established by the 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 50% of the median income for the Denver area, as published by CHFA, with adjustments for number of bedrooms in the unit. Forty-

five (45) of the units at the Property (the “30% Units”) shall have rents not exceeding the greater of (i) fair market rent for comparable units in the area as established by the 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 published by CHFA, with adjustments for number of bedrooms in the unit. The 80% Units, 50% Units, and 30% Units are referred to collectively herein as the “City Units.” By executing this Loan Agreement, Borrower acknowledges receipt of HUD's current rent guidelines from the HOST. It shall be Borrower's responsibility to obtain updated guidelines from HOST to confirm the annual calculation of the maximum rents for the Denver area.

The City shall determine maximum monthly allowances for utilities and services annually in accordance with CHFA allowances or another method acceptable to the City.

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

B. Occupancy/Income Limitations. The 80% Units shall be occupied by tenants whose incomes are at or below eighty percent (80%) of the median income for the Denver area as published by CHFA, with adjustments for family size. The 50% Units shall be occupied by tenants whose incomes are at or below fifty percent (50%) of the median income for the Denver area as published by CHFA, with adjustments for family size. The 30% Units shall be occupied by tenants whose incomes are at or below thirty percent (30%) of the median income for the Denver area as published by CHFA, with adjustments for family size. By executing this Loan Agreement, Borrower acknowledges receipt of CHFA’s current income guidelines from HOST. It shall be Borrower’s responsibility to obtain updated guidelines from HOST and comply with the current guidelines.

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

BEDROOMS	80% Units	50% Units	30% Units
Studio	3	2	3
1 Bedroom	32	13	22
2 Bedroom	25	9	12
3 Bedroom	15	6	8
TOTAL	75	30	45

D. Accessibility Requirements. Borrower must design and construct five percent

(5%) of the City 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 City 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 execute a covenant in form satisfactory to the City (“Covenant”), setting forth the rental and occupancy limitations described in subparagraphs A and B above, which shall be recorded in the real estate records of the City and County of Denver and which shall constitute a covenant running with the land. The Covenant shall encumber the Property for a period of sixty (60) years from the date of the Covenant. Violation of said Covenant shall be enforceable as an event of default.

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

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

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

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

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

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

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

parties.

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

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

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

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

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

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

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

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

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

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

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

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

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

14. AFFIRMATIVE MARKETING: Borrower shall comply with the 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). Within six (6) months of the effective date of the Promissory Note, Borrower shall 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.

15. 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, Deed of Trust, or Covenant, and agrees to pay reasonable loan closing costs, including the costs of title insurance or guarantee as determined by City.

16. PUBLICATIONS/ANNOUNCEMENTS: Contractors using radio or television announcements, newspaper advertisements, press releases, pamphlets, mail campaigns, or any other marketing methods funded by HOST, or publicizing activities or projects funded by HOST shall first receive approval from 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.

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

A. Examination of Records: The Borrower agrees that the City, or any of its duly authorized representatives shall, until the expiration of five (5) years after the expiration of the affordability period set forth in Section 6, have access to and the right to examine any directly pertinent books, documents, papers, and records of the Borrower involving transactions related to this Loan Agreement. Borrower must also require its contractors and subcontractors to allow access to such records when requested. The records maintained by Borrower shall include, without limitation, (i) records evidencing the income of each family occupying a City Unit, and (ii) a copy of the lease pursuant to which each City Unit is occupied.

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 City Units to verify compliance with affordability requirements in Section 6 and other requirements of this Loan Agreement; (3) data on evictions, terminations of tenancies, or tenancies not renewed for individuals residing in City 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 City Units. The report required by subparagraph (2) of this Section shall include 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 Section 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 ninety (90) days of the City's request shall be considered 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 Section 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.

18. CONDITIONS:

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

B. This Loan Agreement is subject to the provisions of the City Charter and

Revised Municipal Code as the same may be amended from time.

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

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

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

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

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

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

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

21. DEFENSE & INDEMNIFICATION:

A. 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 Contractor or its subcontractors either passive or active, irrespective of fault, including City’s concurrent negligence whether active or passive, except for the sole negligence or willful misconduct of City.

B. 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. Contractor’s duty to defend and indemnify City shall arise even if City is the only party sued by claimant and/ or claimant alleges that City’s negligence or willful misconduct was the sole cause of claimant’s damages.

C. 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.

22. DEFAULT AND ACCELERATION:

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

1. Any breach of this Loan Agreement, the Promissory Note, the Deed of Trust, or the Covenant;
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 becomes delinquent to the City on loan, contractual, or tax obligations as due, or with any rule, regulation or provision referred to in the Loan Agreement.

B. Cure Period. Upon a default, the City shall give written notice of the default to Borrower and other persons entitled to notice of a default pursuant to Section 29. After Borrower's receipt of the written notice, Borrower or a person on behalf of Borrower shall have thirty (30) 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 and Borrower or a person on behalf of Borrower gives written notice that a cure is actively and diligently being pursued, the City shall allow a reasonable period of time given the nature of the default following the end of the Cure Period, provided that at all times within such additional time period a cure is actively and diligently being pursued. 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 to perform any obligation contained in the Loan Agreement, Covenant, Deed of Trust, or Promissory Note, other than the obligation to make payments provided for in the Promissory note or 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. If the default remains after the Cure Period, the principal shall draw interest at the rate of fifteen percent (15%) per annum until the date the default is cured and, thereafter, the principal shall again draw interest at the rate in Section 1. 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.

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

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

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

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

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

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

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

48Race Residences LLLP
c/o Columbia Ventures, LLC
1718 Peachtree Road, NW, Suite 684
Atlanta, GA 30309
Attn: Dillon Baynes, Manager

With a copy to:

Bryan Cave Leighton Paisner LLP
One Boulder Plaza
1801 13th Street, Suite 300

Boulder, CO 80302-5386
Attn: Ben Doyle, Esq.

With a copy to:

Wincopin Circle LLLP
c/o Enterprise Community Asset Management, Inc.
70 Corporate Center
11000 Broken Land Parkway, Suite 700
Columbia, Maryland 21044
Tel: (410) 964-0552; Fax: (410) 772-2630
Attention: Asset Management
With a copy to:
Email: sshack@enterprisecommunity.com
Attention: General Counsel

And a copy to:

With a copy to:
Craig A. Emden, Esq.
Bocarsly Emden Cowan Esmail & Arndt LLP
7700 Old Georgetown Road, Suite 600
Bethesda, MD 20814
Tel: (301) 634-0500; Fax: (301) 654-4007
Email: cemden@bocarsly.com

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

Cabretta Race Colorado, LLC
2108 Drayton Street
Savannah, GA 31401
Attn: Michael B. Watts, President

Wincopin Circle LLLP, its successors, assigns, & transferees
Enterprise Housing Equity Fund IV, LLLP c/o Enterprise Community Management, Inc.
70 Corporate Center
11000 Broken Land Parkway, Suite 700
Columbia, MD 21044
Attn: Asset Management

Citibank, N.A.
388 Greenwich Street, Trading 6th Floor
New York, New York 10013
Attention: Transaction and Asset Management Group
Re: Viña Apartments
Deal ID No. 60000481
Facsimile: (212) 723-8209

Citibank, N.A.
325 East Hillcrest Drive, Suite 160
Thousand Oaks, California 91360
Attention: Operations Manager/Asset Manager
Re: Viña Apartments
Deal ID No. 60000481
Facsimile: (805) 557-0924

Citibank, N.A.
c/o Berkadia Commercial Servicing Department
323 Norristown Road, Suite 300
Ambler, Pennsylvania 19002
Attention: Client Relations Manager
Re: Viña Apartments
Deal ID No. 60000481
Facsimile: (215) 328-0305

Citibank, N.A.
388 Greenwich Street, 17th Floor
New York, New York 10013
Attention: General Counsel's Office
Re: Viña Apartments
Deal ID No. 60000481
Facsimile: (646) 291-5754

CHFA
1981 Blake Street
Denver, CO 80202
Attn: Asset Management

48Race LLC
c/o Urban Land Conservancy
1600 Downing Street, Suite 300
Denver, CO 80218
Attn: Aaron Miripol, President and CEO

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.

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

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

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

33. 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 – Legal Description of Property

Exhibit E – Form of Subordination Agreement

Exhibit F – Cash Flow Calculation

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Contract Control Number: HOST-202053962-00
Contractor Name: 48Race Residences LLLP

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: HOST-202053962-00
Contractor Name: 48Race Residences LLLP

48RACE RESIDENCES LLLP, a Colorado limited liability limited partnership
By: 48th and Race Sponsor, LLC, a Georgia limited liability company, its General Partner
By: Columbia Ventures, LLC, a Georgia limited liability company, its Manager

By:  _____

Name: Dillon Baynes
(please print)

Title: Managing Partner
(please print)

ATTEST: [if required]

By: _____

Name: _____
(please print)

Title: _____
(please print)

EXHIBIT A

Project Timeline – 48th and Race
4800 Race Street

Construction financing closes	September 2020
General Contractor notice to proceed	September 2020
Construction completion	May 2022
Full lease-up	December 2022

Sources	Total	%
Citibank 1st Mortgage	\$13,470,000	35.4%
Taxable Tail to CMF	\$750,000	2.0%
City of Denver OED	\$3,750,000	9.8%
CDOH - HTF	\$1,125,000	2.9%
Deferred Developer Fee	\$1,593,215	4.2%
Federal Tax Credit Equity	\$13,363,495	35.1%
State Tax Credit Equity	\$4,021,911	10.6%
Total	\$38,073,621	100%

Uses	Total	%
Land, Buildings, Demo	\$446,060	1.2%
Construction	\$24,916,332	65.4%
Construction Interim Costs	\$4,081,545	10.7%
Financing Costs	\$1,251,277	3.3%
Soft Costs	\$2,404,025	6.3%
Syndication Costs	\$75,000	0.2%
Developer Fees	\$3,927,382	10.3%
Project Reserves	\$972,000	2.6%
Total	\$38,073,621	100%

PROJECT ACTIVITIES			
ACTIVITY	TOTAL COST	CITY FUNDS	OTHER FUNDS
Land	\$446,060		\$446,060
Hard Costs	\$24,916,332	\$3,750,000	\$28,978,179
Soft Costs	\$7,811,847		
Developer Fee	\$3,927,382		\$3,927,382
TOTAL	\$38,073,621	\$3,750,000	\$34,323,621

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 City's Housing Programs for dissemination and will inform the public, owners, and potential tenants about Federal fair housing laws. These materials will display the "equal housing opportunity" slogan and logo. The City will also publicize its Housing programs through press releases, solicitations to property owners and written communications to fair housing groups and local lenders. The City will display the "equal housing opportunity" slogan on all such communications.

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

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

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

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

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

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

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

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

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

City of Denver Loan Agreement

Exhibit D

Legal Description for Viña Apartments

HOUSING UNIT, 48TH & RACE SMALL PLANNED COMMUNITY, TOGETHER WITH AN UNDIVIDED 84.5% INTEREST AS TENANTS IN COMMON IN THE COURTYARD ACCESSORY UNIT, ACCORDING TO THE DECLARATION FOR 48TH & RACE SMALL PLANNED COMMUNITY RECORDED _____, 2020 IN THE OFFICE OF THE CLERK AND RECORDER OF THE CITY AND COUNTY OF DENVER, COLORADO, AT RECEPTION NO. _____, AND THE 48TH & RACE PLANNED COMMUNITY MAP RECORDED _____, 2020 IN SUCH OFFICE AT RECEPTION NO. _____, AS AMENDED AND SUPPLEMENTED FROM TIME TO TIME AS PERMITTED UNDER SUCH DECLARATION, CITY AND COUNTY OF DENVER, STATE OF COLORADO.

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 [INSERT LENDER NAME], a [INSERT STATE][INSERT ENTITY TYPE], whose address is [INSERT LENDER'S ADDRESS] (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 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 [INSERT COUNTY] County, State of Colorado, encumbering the following described property (the "Property"):

[FILL IN LEGAL DESCRIPTION OR SEE LEGAL DESCRIPTION – ATTACHMENT A]

B. The Senior Lender plans to grant Borrower a loan of \$[INSERT NUMERIC AMOUNT], and will execute a deed of trust ("Senior Deed of Trust") which will cover and encumber all or part of the Property and securing a note in like amount, and the Senior Deed of Trust is to be recorded in the records of the office of the Clerk and Recorder of [INSERT COUNTY] County, 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 be subordinated to the lien of the Senior Deed of Trust.

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 Borrower may now or at any time hereafter owe to the Senior Lender in connection with the Senior Deed of Trust, 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 Borrower to and for the benefit of 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 and in favor of the Junior Lender.

2. Subordination. All Junior Obligations are hereby expressly subordinated to the extent and in the manner hereinafter set forth to the payment in full of the Senior Obligations. 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 (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 Borrower'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 Borrower, 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 Borrower or with respect to the Mortgaged Property upon Borrower'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 Borrower is in default under the Senior Deed of Trust, any credit agreement or other agreement in favor of the Senior Lender (the "Senior Loan Documents") and the Senior Lender or Borrower intends to sell any part of the Mortgaged Property to an unrelated third party, the Junior Lender shall, upon the Senior Lender's request, promptly execute and deliver to such purchaser such instruments as may reasonably be necessary to terminate and release any security interest or lien the Junior Lender might have in the Mortgaged Property to be sold.

7. Notice of Default to Senior Lender. Any notice provided to Borrower by the Junior Lender of any default under the Junior Deed of Trust shall also be sent to Senior Lender.

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 Borrower. 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 Borrower 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. No Representations or Warranties. 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.

10. 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 Borrower 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.

11. 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.

[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 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”

[INSERT SENIOR LENDER NAME], a [INSERT STATE][INSERT ENTITY TYPE]

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 BORROWER:

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

By: _____

Title: _____

ATTACHMENT A

[INSERT LEGAL DESCRIPTION]

EXHIBIT F

The provisions of this Exhibit F are found in the First Amended and Restated Agreement of Limited Partnership of 48Race Residences LLLP (the "Partnership Agreement"). A copy of the fully executed Partnership Agreement will be provided to the City after execution.

Distribution of Cash Flow

(Exhibit A-4 of the Partnership Agreement)

Payments contingent on Cash Flow shall be made in the following order of priority:

First, pro-rata, to the Credit Limited Partners, an amount equal to their respective Credit Deficiency;

Second, pro-rata, to the Credit Limited Partner, an amount sufficient to pay federal income taxes on net taxable income allocated to the Credit Limited Partner for such Fiscal Year by the Partnership, assuming the Credit Limited Partner is subject to the maximum corporate federal income tax rate then in effect;

Third, to pay the Investor Services Fee in accordance with the Investor Services Agreement, attached to the Partnership Agreement as Exhibit I;

Fourth, to pay the State Investor Services Fee in accordance with the Investor Services Agreement, attached to the Partnership Agreement as Exhibit I;

Fifth, from and after the Fourth Installment of the Limited Partner's Capital Contribution to fund the Operating Reserve up to the Operating Reserve Amount;

Sixth, to pay any deferred portion of the Property Management Fee in accordance with the Property Management Agreement;

Seventh, to the Special Limited Partner, an amount equal to 50% of the SLP Asset Management Fee as required under the Addendum;

Eighth, to pay the Deferred Development Fee, if any, in accordance with the Development Services Agreement, attached to the Partnership Agreement as Exhibit C;

Ninth, to the to the Special Limited Partner, an amount equal to the remaining 50% of the SLP Asset Management Fee as required under the Addendum;

Tenth, to the General Partner to repay any Operating Deficit Contribution and, if required under Section 5.13 of the Partnership Agreement, Development Advances;

Eleventh, to pay to the General Partner up to \$10,000 of the Partnership Administration Fee in accordance with the Partnership Administration Agreement, attached to the Partnership Agreement as Exhibit E

Twelfth, (i) 46.9% to pay the City of Denver under the City Loan, and (ii) 15.6% to pay the State of Colorado under the DOH Loan;

Thirteenth, any Cash Flow remaining after item Twelfth shall be applied to pay to DHA the Annual PILOT under the Addendum, including accrued and unpaid Annual PILOT payments, until the Annual PILOT has been paid in full;

Fourteenth, to pay to the General Partner the balance of the Partnership Administration Fee in accordance with the Partnership Administration Agreement, attached to the Partnership Agreement as Exhibit E;

Fifteenth, 25% of any Cash Flow remaining after item Fourteenth shall be deposited in the Property Tax Reserve as required under the Addendum; and

Any remaining Cash Flow shall constitute Net Cash Flow which is distributable to the Partners in accordance with Section 8.01 of the Partnership Agreement.

Section 8.01 of the Partnership Agreement

8.01 Distributions of Net Cash Flow

Net Cash Flow, to the extent available, shall be distributed to and among the Partners, within seventy-five (75) days after the close of each Fiscal Year, ten percent (10%) to the Federal Limited Partner, **five percent (5%)** to the State Limited Partner, five one-thousandths of one percent (0.005%) to the Special Limited Partner, and **eighty-four and nine hundred and ninety-five thousandths percent (84.995%)** to the General Partner. Notwithstanding the foregoing, the amount of "Cash Flow" distributed in any year shall be limited to available "surplus cash" of the Partnership as defined in the HUD Regulatory Agreement.

Applicable Defined Terms

The following terms are used in Exhibit A-4 and / or Section 8.01 of the Partnership Agreement or relate to the Project financing, and are defined in Article II (Definitions) of the Partnership Agreement or elsewhere in the Partnership Agreement. Unless otherwise indicated, the definitions are in Article II of the Partnership Agreement.

Addendum: The Addendum to this Agreement as defined in the Recitals, and as attached to and made a part of this Agreement.

Annual PILOT: The annual payment in lieu of taxes payable to DHA under the terms of the Addendum.

Cash Flow: The amount, determined for any Fiscal Year or portion thereof, equal to the excess, if any, of

(i) Operating Revenue plus any amounts no longer deemed necessary for the efficient operations of the Partnership by the General Partner, in the reasonable exercise of its

discretion (with the Consent of the Limited Partner), which are released from Partnership reserves which are deposited into the Partnership's general accounts, over

(ii) Project Expenses.

Cash Flow shall not be reduced by payments of any items described in the preceding clause (ii) made from the proceeds of any loans, from condemnation or insurance proceeds or directly from any reserve, or by depreciation and amortization taken into account for federal income tax purposes.

City Loan: As defined in Exhibit A-3 of the Partnership Agreement.

Completion Date: The later of:

(i) The date on which the Partnership has completed the construction and/or rehabilitation of the buildings in accordance with the relevant Project Documents, approved by the Credit Limited Partner and any construction consultant engaged by the Credit Limited Partner and evidenced by a certificate prepared and executed by the Architect indicating that construction and/or rehabilitation of the buildings has been completed in accordance with the relevant Project Documents, except for punch list items that do not impede occupancy on a full rent paying basis, and that the Project is ready for occupancy, provided the Partnership has furnished funds or cash equivalents in escrow to provide for the completion of such punch list items, in an amount and manner satisfactory to the Credit Limited Partner; and

(ii) The receipt of a temporary certificate of occupancy (or local equivalent) permitting full occupancy of the Project for all of the buildings comprising the Partnership Property including one hundred percent (100%) of the Units in the Project.

The intended Completion Date (the "**Target Completion Date**") is May 30, 2022.

Credit: Together, the Federal Credits and the State Credits.

Credit Adjuster Advance: An advance to the Partnership pursuant to Section 3.03 by the General Partner, which shall not affect its Interest or Percentage Interest but shall be considered a Capital Contribution to the Partnership.

Credit Deficiency: The amount by which the Credits received by the Credit Limited Partners is less than the Projected Credits as adjusted by any reductions in Capital Contributions and any Credit Adjuster Advances pursuant to the provisions of Section 3.03. For this purpose, the Credit Limited Partners shall be considered to have received Credits in the amount allocated to the Federal Limited Partner on the Partnership's federal income tax return and in the amount allocated to the State Limited Partner on the Partnership's State tax return, as each may be reduced by: (i) any adjustment of the Credits reported on the Partnership's tax return that is made by the Partnership, or by the IRS, a State agency, or a court in a Final Determination; and (ii) the amount of any recapture of such Credits other than recapture caused by the action of the respective Credit Limited Partner.

Credit Limited Partner(s): Together, the Federal Limited Partner and the State Limited Partner.

Deferred Development Fee: The deferred portion of the Development Fee, as defined in the Development Services Agreement attached as Exhibit C to this Agreement.

Development Advances: As defined in Section 5.13 of the Partnership Agreement.

Development Fee: The fees pursuant to Section 4 of the Development Services Agreement attached hereto as Exhibit C and payable to the Person indicated on Exhibit A-4.

Development Services Agreement: The Development Services Agreement attached as Exhibit C to the Partnership Agreement.

DHA: Housing Authority of the City and County of Denver, Colorado

DOH Loan: As defined in Exhibit A-3 of the Partnership Agreement.

Federal Credit: The Low-Income Housing Tax Credit provided for under Section 42 of the Code, including the thirty percent (30%) present value new construction and rehabilitation credit and/or the thirty percent (30%) present value acquisition credit, as applicable.

Federal Limited Partner: Wincopin Circle LLLP, a Maryland limited liability limited partnership, and any person who becomes a Substitute Limited Partner as provided herein with respect to the Federal Limited Partner's Interest.

Fiscal Year: The calendar year or such other year that the Partnership is required by the Code to use as its taxable year.

Fourth Installment: As defined in Exhibit A-3 of the Partnership Agreement.

Investor Services Agreement: The Investor Services Agreement attached as Exhibit I to the Partnership Agreement.

Investor Services Fee: The fee payable to the Servicer pursuant to the Investor Services Agreement attached hereto as Exhibit I.

Management Agent: New Columbia Residential Property Management, LLC, a Georgia limited liability company, or such other property management company that is reasonably acceptable to the Federal Limited Partner.

Management Agreement: The Agreement between the Management Agent and the Partnership attached as Exhibit F to the Partnership Agreement.

Operating Deficit Contribution: A capital contribution to the Partnership by the General Partner, which shall be required under the circumstances described in Section 5.14 and shall be treated as Capital Contributions of the General Partner.

Operating Reserve: The reserve to be funded pursuant to Section 5.18 as described in paragraph (i) of Exhibit A-6.

Operating Reserve Amount: The amount of the Operating Reserve shown on Exhibit A-2.

Operating Revenue: For any specified period of time, the amount of gross revenues from all sources derived from the Project as the result of the normal operation of the Project received on a cash basis, including (a) proceeds from rental interruption insurance, (b) proceeds from temporary condemnation in the nature of a lease, and (c) rental and operating subsidies which shall be calculated on an accrual basis but only if received within sixty (60) days of such accrual, and excluding (i) non-recurring revenue such as Sale Proceeds and Refinancing Proceeds or (ii) tenant-based voucher rental income exceeding maximum allowable rents allowed by Section 42 of the Code.

Partnership Administration Agreement: The Partnership Administration Agreement attached as Exhibit E to the Partnership Agreement.

Partnership Administration Fee: The fee payable to the General Partner pursuant to the Partnership Administration Agreement attached hereto as Exhibit E.

Project Expenses: All costs and expenses of any type incurred on an accrual basis incident to the equipping, financing, ownership and operation of the Project, including, without limitation, amounts required to be funded into the Replacement Reserve (including prior unfunded annual deposits) or any other reserve required to be funded under Exhibit A-6 or by any lender, payments of fees to the Partners or their Affiliates (other than fees, the payment of which is contingent on the amount of Cash Flow or Capital Proceeds), taxes, required payments of principal and interest on any Loans or obligations that are not contingent on the amount of Cash Flow or Capital Proceeds, and costs of capital improvements to the Partnership Property incurred after the Completion Date and not funded or to be funded from Capital Proceeds or the Partnership's Replacement Reserve (described on Exhibit A-6). For purposes of the foregoing calculation, debt service and other amounts payable in connection with any Loan or other loan shall equal the regularly scheduled payments under the Loan Documents (absent default or maturity). Additionally, Project Expenses shall include (a) real estate taxes at the amount that would be payable in the current year, to the extent not abated or reduced by statute, (b) reserve requirements imposed on the Project by the Project Documents, the Loan Documents or this Agreement and, (c) on an annualized basis, all projected expenditures, including those of a seasonal nature, which might be expected to be incurred on an unequal basis during a full annual period of operation.

Projected Credits: Individually or collectively, the Projected Federal Credits and Projected State Credits.

Projected Federal Credits: The aggregate amount of Federal Credits projected to be received by the Federal Limited Partner based on the projections prepared in accordance with Sections 3.03(a) and 3.03(c), subject to adjustment pursuant to Section 3.03(b).

Projected State Credits: The aggregate amount of State Credits projected to be allocated to the State Limited Partner based on the projections prepared in accordance with Sections 3.03(a) and 3.03(c), subject to adjustment pursuant to Section 3.03(b).

Property Management Fee: As specified in Exhibit A-4, the fee payable to the Management Agent under the Management Agreement.

Property Tax Reserve: The reserve for property taxes as required under the Addendum.

Refinancing Proceeds: The excess of the gross proceeds of any borrowings by the Partnership other than the initial Loans set forth on Exhibit A-3 and any other Loans approved by the Limited Partner over the sum of the following to the extent paid out of such gross proceeds: (i) any amounts disbursed to repay then existing loans of the Partnership and to pay and provide for all debts and obligations of the Partnership then to be paid or which are otherwise then due (not including, however, any amounts funded by Operating Deficit Contributions made to the Partnership by the General Partner), (ii) all reasonable expenses of such borrowings, including, without limitation, all commitment fees, brokers' commissions, and attorneys' fees, (iii) all amounts paid to improve the Partnership Property or for any other purpose in order to satisfy conditions to or established in connection with such borrowings, and (iv) any amounts used to meet the operating expenses of the Partnership Property or set aside by the General Partner for reserves.

Replacement Reserve: The reserve to be funded pursuant to Section 5.18 as described in paragraph (ii) of Exhibit A-6.

Sale Proceeds: The excess of all cash receipts and other consideration arising from the sale or other disposition of all or any portion of the Partnership Property or any proceeds realized from condemnation, insured casualty, or insured title defect, but excluding proceeds from rental interruption insurance or a temporary condemnation in the nature of a lease, if any, over the sum of the following to the extent paid out of such cash receipts and other consideration: (i) the amount of cash disbursed or to be disbursed in connection with or as an expense of such sale or other disposition, (ii) the amount necessary for the payment of all debts and obligations of the Partnership arising from or otherwise related to such sale or other disposition or to which the Partnership Property is subject and which are otherwise then due (not including, however, any Capital Contributions made to the Partnership by the General Partner), (iii) the amount of insured casualty proceeds required by the Limited Partner to be used to restore the Partnership Property, and (iv) any amounts set aside by the General Partner for reserves.

SLP Asset Management Fee: As defined in the DHA Addendum

State Credit: The Colorado low-income housing tax credit provided for under Colo. Rev. Stat. § 39-22-2101, *et seq.*

State Limited Partner: Cabretta Race Colorado LLC, a Georgia limited liability company, and any person who becomes a Substitute Limited Partner as provided herein with respect to the State Limited Partner's Interest.