

**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 **MONTBELLO FRESHLO LLC**, a Colorado limited liability company, whose address is 12000 East 47th Ave., Ste. 113, Denver, CO 80239 (“Borrower”), each a “Party” and collectively the “Parties.”

WITNESSETH:

WHEREAS, Borrower’s sole member is Montbello Organizing Committee, a Colorado nonprofit corporation; and

WHEREAS, Borrower is the majority owner of FreshLo LIHTC GP LLC, the general partner of FreshLo LIHTC LLLP, a Colorado limited liability limited partnership (the “Owner”);

WHEREAS, the funds provided to the Borrower pursuant to this Loan Agreement will be loaned by the Borrower to the Owner for the development and construction of ninety-seven (97) affordable rental units located on the Property (as defined in Section 2), which will be known as Montbello FreshLo Hub (the “Project”); and

WHEREAS, the City is making certain monies available to the Borrower ensure the development of 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:

A. **Loan to Borrower**. Subject to the terms of this Loan Agreement, the City agrees to lend Borrower the sum of Three Million Three Hundred Thousand Dollars and No/100 (\$3,300,000.00) (the “Loan”). In addition to this Loan Agreement, the Borrower will execute a promissory note in a form satisfactory to the City evidencing this Loan (the “Promissory Note”). The outstanding principal balance of the Loan shall bear simple interest at a rate of one percent (1%) per annum. Interest shall commence accruing on the date which the first draw on the Loan is made. The Loan will mature and be due and payable on the date that is eighteen years, six months following the execution of the Promissory Note (“Maturity Date”), if not paid sooner.

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. Borrower's loan to the Owner must be evidenced by a promissory note (the "Owner Note") and secured by a deed of trust on the Property (the "Owner Deed of Trust"). 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 "Covenant"). The Covenant must be in a form approved by the City.

C. **Repayment of City Loan**. Borrower shall make annual payments at such place as may be designated by City. The first annual payment shall be due on the first June 1st that is twenty-four (24) calendar months after the effective date of the Promissory Note and subsequent annual payments shall be due on each June 1st thereafter, with the entire unpaid balance of and accrued interest due and payable on the Maturity Date. Annual payments shall be made in accordance with the order of priority and other provisions set forth in **Exhibit F**, attached hereto and incorporated herein ("Cash Flow"). Each year after repayment of the Loan has commenced, Borrower shall provide to the City, no later than May 15, (i) an audited financial statement for the Project for the preceding calendar year; and (ii) a statement or letter from an auditor that details (a) the total amount of Cash Flow available for distribution, and (b) a calculation that details the amount(s) and the person(s) or entity (entities) to which the available Cash Flow will be distributed based on the order of priority and other provisions set forth in Exhibit F.

2. **SECURITY**: Repayment of the Promissory Note shall be secured by a collateral assignment of the Owner Note and Owner Deed of Trust in 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 12444 E. Albrook Drive, Denver, Colorado 80239 and legally described as set forth in Exhibit D (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 Covenant**.

i. 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 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 Thirty-Three Million Dollars and No/100 (\$33,000,000.00) under the construction loan or Thirteen Million Six Hundred Thousand Dollars and No/100 (\$13,600,000.00) under the 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 in default of its obligations pursuant to the Covenant or Owner Deed of Trust; and (iv) all additional financing for the Project is committed.

ii. 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 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 Owner Deed of Trust do not exceed Thirty-Three Million Dollars and No/100 (\$33,000,000.00) under the construction loan or Thirteen Million Six Hundred Thousand Dollars and No/100 (\$13,600,000.00) under the 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 in default of its obligations pursuant to the Covenant or Owner Deed of Trust.

C. **Other Documents.** The Executive Director is authorized to execute documents necessary to accomplish the Loan 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 Thirty-Three- Million Dollars and No/100 (\$33,000,000.00) under the construction loan or Thirteen Million Six Hundred Thousand Dollars and No/100 (\$13,600,000.00) under the permanent loan; and (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 in default of its obligations pursuant to the Covenant or Owner Deed of Trust.

4. USE AND DISBURSEMENT OF FUNDS:

A. Loan proceeds will be used to finance costs associated with development and construction of the Property for use as affordable housing. The Loan may be used for soft costs, hard

costs, site improvements, and professional fees. The Borrower shall submit to the City requisitions with documentation of incurred costs on HOST approved forms, and otherwise comply with the disbursement terms and conditions 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 the submittal of an Affirmative Marketing Plan (as defined below); (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 subsection 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 (the "Compliance Retainer"). This amount shall be released upon receipt from Borrower of all information necessary for the City's reporting requirements.

D. Expenses incurred prior to July 14, 2022 are not eligible for reimbursement.

5. DEADLINE FOR DISBURSEMENT OF FUNDS; REQUIRED DOCUMENTATION:

A. Borrower must satisfy all conditions set forth in this Loan Agreement on or before February 17, 2023 (the "Closing Deadline"). Failure to meet this deadline may result in the termination of this Loan Agreement at the Executive Director's sole discretion. No funds shall be disbursed under this Loan Agreement until such time as (i) all conditions of this Loan Agreement have been met and (ii) Borrower has closed on all financing necessary to complete construction of the Project, with the exception of financing being provided by the Colorado Division of Housing.

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 thirty (30) 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 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 Limitations.

i. Eighteen (18) of the units at the Property (the “70% Units”) 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 70% of the median income for the Denver area, as determined by HUD, with adjustments for number of bedrooms in the unit.

ii. Fifty-five (55) of the units at the Property (the “60% Units”) shall have rents not exceeding the lesser of (i) fair market rent for comparable units in the area as established by 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 60% of the median income for the Denver area, as determined by HUD, with adjustments for number of bedrooms in the unit.

iii. Seventeen (17) of the units at the Property (the “50% Units”) shall have rents not exceeding the lesser 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 determined by HUD, with adjustments for number of bedrooms in the unit.

iv. Seven (7) of the units at the Property (the “30% Units”) shall have rents not exceeding the lesser 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 determined by HUD, with adjustments for number of bedrooms in the unit.

v. The 70%, 60% 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 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.

vi. The City shall determine maximum monthly allowances for utilities and services 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. The City shall review rents for compliance within ninety (90) days after

HOST requests rent information from the Borrower.

B. Occupancy/Income Limitations.

i. The 70% Units shall be occupied by tenants whose incomes are at or below seventy percent (70%) of the median income for the Denver area as determined by HUD, with adjustments for family size.

ii. The 60% Units shall be occupied by tenants whose incomes are at or below sixty percent (60%) of the median income for the Denver area as determined by HUD, with adjustments for family size.

iii. 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 determined by HUD, with adjustments for family size.

iv. 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 determined by HUD, with adjustments for family size.

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

BEDROOMS	30% Units	50% Units	60% Units	70% Units
1 Bedroom	3	9	28	9
2 Bedroom	3	5	19	6
3 Bedroom	1	3	8	3
TOTAL	7	17	55	18

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 cause the Owner to execute a covenant in form satisfactory to the City (“Covenant”), setting forth the rental and occupancy limitations described in subsections 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 sixty (60) years from the date of the recording of the Covenant; provided that the Covenant may terminate upon a foreclosure or deed in lieu of foreclosure by U.S. Bank National Association as set forth in the Covenant. Violation of said 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 of City 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 Owner of the Project a shorter period is specified.

10. **PROHIBITED LEASE TERMS**: Leases 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.

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 charged 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 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; for completion of the tenancy period for transitional housing or failure to follow any required transitional supportive services plan; or for other good cause. 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. Notwithstanding the foregoing, nothing in this Agreement shall prevent the owner of the Project from terminating a tenancy in accordance with Colorado Revised Statutes § 13-40-107.5(4)(a) for a substantial violation as defined in that statute.

13. MANAGEMENT OF PROPERTY: Borrower shall provide and maintain good and efficient management of the Property satisfactory to the City. Borrower must execute and maintain in effect a management agreement for the Project with a qualified manager that has experience with affordable housing. Borrower shall notify the City of any (i) changes to the manager of the Property and (ii) of any significant changes staffing changes to the manager.

14. 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 or the Owner involving transactions related to this Loan Agreement. Borrower must also require its contractors and subcontractors and the Owner to allow access to such records when requested. The records maintained by Borrower and

the Owner 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 or cause to be submitted to the City the following information and reports on HOST approved forms or online system: (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 subsection (2) of this Section 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 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 thirty (30) 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.

15. FINANCIAL STATEMENTS: Borrower must furnish to the City annually, within ninety (90) days following the end of each calendar year, financial statements of the Borrower 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.

16. 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 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 any ownership interest Borrower has in the Owner; or (ii) sell, convey, assign, or otherwise transfer any interest in the Borrower; or (iii) change the control or management of the Borrower; provided, that the City's consent shall not be required for (iv) any transfer by Owner of the property to Borrower or any affiliate of Borrower, including Montbello Organizing Committee, as permitted by Borrower's partnership agreement, (v) any transfer of a limited partner interest in Owner as permitted by Owner's partnership agreement, or to Borrower or any affiliate of Borrower, or (vi) any collateral assignment of a general partner's partnership interests of Owner as security for senior loan financing of the Project, exercise of remedies thereunder or transfer thereafter. Subject to the foregoing sentence, the removal, replacement, or transfer of interest of the general partner of Owner as permitted by the Owner's partnership agreement shall not require the prior written consent of the City, but only if the replacement general partner of Owner is U.S. Bancorp Community Development Corporation or an affiliate thereof. Any subsequent replacement of the general partner of Owner shall require the prior written consent of the City, which shall not be unreasonably withheld, conditioned, or delayed, provided the replacement general partner has affordable housing experience and otherwise meets the City's reasonable standards being applied at such time.

17. CAPITAL NEEDS ASSESSMENT: During the term of the 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 every ten (10) years or, if performed earlier, whenever such assessments are performed.

18. 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.

19. 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.

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

A. **Environmental Reports.** The Borrower must provide the City with a Phase I Environmental Site Assessment (“ESA”) in form and substance acceptable to the City. If the ESA is not in the City’s name, the City must be provided with a reliance letter in the name of the City 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 policy insuring the City in the principal amount of the Loan. Borrower must provide the City with a copy of the lenders title policy within thirty (30) days of closing.

C. **Appraisal.** Borrower must provide the City with an as-built 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 limited liability company in good standing and, if required by law, evidence that it is 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; and (iii) all organizational documents related to Borrower and Owner, which must be acceptable to the City. Organization documents include, but are not limited to, Articles of Organization, operating agreement, and a certificate of good standing.

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. The management agreement must contain a provision that the City has the right to release the management company in the event of a foreclosure.

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

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

Owner Deed of Trust.

H. **Evidence of Financing.** Borrower must provide 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. Documentation sufficient to satisfy the City may include, but not be limited to, commitment letters for all other financing or funding.

I. **Insurance.** Borrower must provide the City with certificates of insurance or copies of the policies of insurance required under this Loan Agreement.

21. **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, the Promissory Note, or the Collateral Assignment or the Owner's breach or default of the Owner Deed of Trust or the 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, costs incurred for obtaining any documents or reports required pursuant to this Loan Agreement, and all other costs incurred by the City in connection with the Loan.

22. **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.

23. **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 Deed of Trust and Covenant, with the City named as loss payee.

E. Borrower shall maintain Automobile Liability with a minimum of \$1,000,000.00 combined single limit applicable to all owned, hired, and non-owned vehicles used in performing services under this Agreement.

F. Certificates of Insurance evidencing the above shall be submitted prior to the Closing Deadline. 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.

24. 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.

25. 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 Owner Deed of Trust, or the Collateral Assignment, or the Owner's breach of 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 Loan or on any other contractual or tax obligations as due;

4. Borrower fails to comply with any rule, regulation or provision referred to in the Loan Agreement; and

5. Borrower is generally unable to pay its debts as they become due, or shall make an assignment for the benefit of creditors; or the Borrower applies for or consents 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 is appointed without the application or consent of the Borrower, and such appointment continues undischarged for a period of ninety (90) days; or the Borrower 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 the Borrower terminates or dissolves.

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 this Loan Agreement. After Borrower's receipt of the written notice, Borrower or a person on behalf of Borrower 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 provides the City with a reasonably detailed written plan of how the Borrower will cure the nonmonetary default and the Borrower, 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 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. The limited partner of Owner shall be provided with a copy of any notice of default sent to Borrower and shall have the right, but not the obligation, to cure any default under the Loan documents during the Cure Periods and any cure tendered by the limited partner of Owner shall be accepted by the City as if tendered by Borrower.

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, and to enforce its rights under the collateral assignment of Deed of Trust. Borrower agrees to pay a late fee of five percent (5%) of any installment not received on or before the day the installment is due. 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. 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.

26. 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:

Montbello FreshLo LLC
c/o Montbello Organizing Committee
12000 East 47th Ave., Ste. 113
Denver, CO 80239
Attn: Donna Garnett

and

Bryan Cave Leighton Paisner LLP
1801 13th Street, Suite 300
Boulder, CO 80302-5386
Attn: Ben Doyle

and

Milgrom & Daskam
1550 Larimer Street, #503
Denver, CO 80202
Attn: Charles Knight

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

U.S. Bancorp Community Development Corporation
1307 Washington Avenue, Suite 300
Mail Code: SL MO RMCD
St. Louis, MO 63103
USB Project No: 27279
Attn.: Director of LIHTC Project Management
Phone: (314) 335-2600
Fax: (314) 335-2601

and

USB Colorado State Investor I LLC
c/o U.S. Bancorp Community Development Corporation
1307 Washington Avenue, Suite 300
Mail Code: SL MO RMCD
St. Louis, MO 63103
USB Project No: 27279
Attn.: Director of LIHTC Asset Management
Phone: (314) 335-2600
Fax: (314) 335-2601

and

Jill Goldstein, Esq.

Kutak Rock LLP
1650 Farnam Street
Omaha, NE 68102
Phone: (402) 346-6000

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.

27. 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.

28. 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.

29. 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

30. 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.

31. 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.

32. 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.

33. DURATION/BINDING EFFECT: This Loan Agreement shall remain in effect until all principal of the Loan and accrued interest is repaid in full and shall be binding upon the Parties and shall inure to the benefit of their respective successors, assignees, representatives, and heirs.

34. 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.

35. 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.

36. NO DISCRIMINATION IN EMPLOYMENT: In connection with the performance of work under this Loan Agreement, the Borrower may not refuse to hire, discharge, promote, demote, or discriminate in matters of compensation against any person otherwise qualified, solely because of race, color, religion, national origin, ethnicity, citizenship, immigration status, gender, age, sexual orientation, gender identity, gender expression, marital status, source of income, military status, protective hairstyle, or disability. The Borrower shall insert the foregoing provision in all subcontracts.

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

38. 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 – INTENTIONALLY OMITTED

Exhibit B – Disbursement Terms & Conditions

Exhibit C – Affirmative Marketing Program

Exhibit D – Legal Description of Property

Exhibit E – Form of Subordination Agreement

Exhibit F – Cash Flow Calculation

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

Contract Control Number: HOST-202264852-00
Contractor Name: MONTBELLO FRESHLO LLC

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-202264852-00
Contractor Name: MONTBELLO FRESHLO LLC

BORROWER

Montbello FreshoLo, LLC,
a Colorado limited liability company

By: Montbello Organizing Committee,
Member and Manager

By: **See attached signature page**

Donna Garnett, Executive Director

Contract Control Number: HOST-202264852-00
Contractor Name: MONTBELLO FRESHLO LLC

BORROWER

Montbello FreshoLo, LLC,
a Colorado limited liability company

By: Montbello Organizing Committee,
Member and Manager

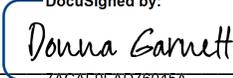
By: 
7ACAF0FAD76045A...
Donna Garnett, Executive Director

Exhibit A
INTENTIONALLY OMITTED

EXHIBIT B

DISBURSEMENT TERMS AND CONDITIONS

I. **Disbursement Request Procedures**

- a. Disbursements shall be processed through the Department of Housing Stability (“HOST”) and the Department of Finance (“DOF”).
- b. HOST will disburse Loan funds to the Borrower for “hard” and “soft” expenses (“Disbursement”) upon the Borrower’s written request delivered to HOST (the “Disbursement Request”). The Disbursement Request shall be in the form approved or required by HOST and DOF and may be submitted no more frequently than once every month. Disbursement Requests must be submitted by Borrower electronically to the assigned HOST staff member who will review the submission for completeness and accuracy.
- c. Prior to the first Disbursement Request, Borrower must provide to the City for review and approval, if necessary, the following items:
 - i. A completed ACH form with a voided check or deposit slip.
 - ii. A partnership agreement, operating agreement, corporate resolution, or other corporate documentation to demonstrate who has authority for the Borrower to submit Disbursement Requests.
 - iii. The affirmative marketing plan.
 - iv. The tenant selection plan.
 - v. The form lease agreement for dwelling units at the Project, which contains no prohibited provisions as described in the Loan Agreement.
- d. All Disbursements will be via ACH, unless a physical check or other method of disbursement is requested.
- e. Disbursements involving federal funds must have satisfied all environmental review requirements under 24 C.F.R. Part 58.
- f. The Borrower may not make a Disbursement Request until such funds are needed to pay costs of the Project. The amount of each Disbursement Request must be limited to the amount needed to pay costs actually incurred by the Borrower at the time of the Disbursement Request. The Disbursement Request may not include items previously submitted to and reimbursed by other lenders, amounts for prospective or future needs, funds to be placed into escrow accounts, or advances in lump sums to the Borrower.
- g. Each Disbursement Request must be accompanied by documentation acceptable to HOST and DOF that evidence payments for which a disbursement request has been made. HOST and DOF will review documentation for incurred costs that match the Disbursement Request. Documentation to be submitted with a Disbursement Request shall include, but not be limited to:

EXHIBIT B

- i. A completed HOST expense certification form.
 - ii. For hard cost draws, a completed standard AIA Form G702 and Form G703 certified by the architect and signed and notarized by the general contractor. If the Disbursement Request includes costs for minor construction not shown on the G702 and G703, the scope of work and contractor invoices must be submitted.
 - iii. Invoices and other evidence satisfactory to HOST and DOF for “hard” or direct costs provided to the Project with respect to the Disbursement Request. All invoices must show the Project name and address.
 - iv. Invoices and other evidence satisfactory to the City for “soft” or indirect costs provided to the Project with respect to the Disbursement Requests. All invoices must show the Project name and address.
 - v. Evidence satisfactory to HOST and DOF to demonstrate proof of payment of any cost or expense contained on a Disbursement Request. Evidence of proof of payment may include, but not be limited to: cancelled checks; copies of checks; documentation of cost or expense in a general ledger; credit or debit card statements; final signed settlement statements, wire transfer records, or bank statements.
 - vi. An updated itemized budget.
 - vii. Updated certificates of insurance at least 30 days prior to expiration.
 - viii. Project update summarizing construction progress, delays, timeframe to completion, and if remaining funding is sufficient to finish the project.
 - ix. Lien waivers from all applicable contractors, subcontractors, and suppliers.
 - x. Updated title policy with date down endorsement or copy of date down endorsement for senior lender dated within 15 days of draw request.
 - xi. Copy of construction inspection report (if available)
 - xii. For loan agreements receiving federal funding and to which the Davis-Bacon Act applies, Borrower must be current in submissions of all paperwork and documentation requested by the City to demonstrate compliance with the requirements of the Davis-Bacon Act.
 - xiii. For Disbursement Requests being funded at loan closing, the following items will be required: a) Preliminary closing statement; b) wire instructions on bank letterhead including date wire is required; and c) final settlement statement and recorded documents after closing.
- h. The Borrower must cooperate with HOST in obtaining or providing any additional documentation that may be required by HOST, DOF, or any other agency of the City.
 - i. The City will retain the first \$10,000.00 of Disbursements for the purposes of the Compliance Retainer as set forth in the Loan Agreement. The \$10,000.00 that is retained pursuant to this provision will be released under the terms described in Section II.

EXHIBIT B

- j. The City will disburse to the Borrower 90% of hard expenses for each Disbursement and all of the soft expenses. The retained 10% of hard expense (the “Retainage”) shall be disbursed as all or part of the final Disbursement under the terms described in Section II.
- k. At all times during the construction of the Project, the City shall have the right, but not the obligation, to enter and inspect all work done, and all materials, equipment, and other matters relating to the Project.
- l. HOST reserves the right, in its sole and absolute discretion, to revise or modify the processes, procedures, and requirements related to the disbursement procedures. HOST will notify Borrower of any such changes to the disbursement procedures.
- m. The City will not make any Disbursements of Loan proceeds to the Borrower for costs or expenses that:
 - i. Are prohibited by Federal or City regulations related to the funding source.
 - ii. Are not requested or otherwise not in accordance with Loan Agreement or the procedures for a Disbursement Request set forth herein.
 - iii. Were requested or incurred, or both, after the termination of the Loan Agreement or outside the time periods set forth in the Loan Agreement.
 - iv. Were requested during the occurrence and continuation of an event of default specified in the Loan Agreement.

II. Disbursement of Compliance Retainer and Retainage

- a. *Compliance Retainer.* For the City to release the Compliance Retainer, a Disbursement Request must be submitted along with the following information:
 - i. A completed HOST expense certification form.
 - ii. For loans funded with federal funds, an Integrated Disbursement and Information System (“IDIS”) set up form. The City must review and approve any completed IDIS set up form for any federally funded loan agreement.
 - iii. All documents or items required to be submitted to the City pursuant to the Loan Agreement not previously provided.
 - iv. A certificate of occupancy or a temporary certificate of occupancy.
 - v. Updated certificates of insurance at least 30 days prior to expiration
 - vi. Updated title policy with date down endorsement or copy of date down endorsement for senior lender dated within 15 days of draw request.
 - vii. The Project must pass a Housing Quality Standards (“HQS”) inspection performed by the City. In the event the City cannot perform the inspection, the Borrower will provide a signed authorization providing the City with the right to inspect the Project and a sample of the fully constructed dwelling units in the future.

EXHIBIT B

- viii. Lease-up information on the City Units or HOME Units, as applicable. The information must include number of bedrooms in the unit, household size, tenant household incomes, date of income certification, tenant paid portion of rent, total lease rent, voucher amounts, voucher type (project based or tenant based), utility allowance amount, lease start and end dates, and demographic data. HOST will review this information to confirm the Project's lease-up is in compliance with the affordability restrictions contained in the Loan Agreement and Rental & Occupancy Covenant.

- b. *Retainage*. For the City to release the Retainage, a Disbursement Request must be submitted along with the following information:
 - i. A completed HOST expense certification form.
 - ii. Final lien waivers or proof of release of liens in form and substance satisfactory to the City from all applicable contractors, subcontractors, and suppliers, as applicable.
 - iii. A copy of the completed AIA G704 Form for the senior lender, signed by the architect, general contractor, and Borrower that shows -\$0.00- as the cost estimate of work that is incomplete or defective.
 - iv. A copy of the completed AIA G706 Form for the senior lender, signed by the general contractor and notarized, verifying that all debts and claims have been settled.
 - v. A copy of the completed AIA G706A Form for the senior lender, signed by the general contractor and notarized, stating that all releases or waivers of liens have been received.
 - vi. All documents or items required to be submitted to the City pursuant to the Loan Agreement not previously provided.
 - vii. A certificate of occupancy or a temporary certificate of occupancy.
 - viii. Updated certificates of insurance at least 30 days prior to expiration
 - ix. Updated title policy with date down endorsement or copy of date down endorsement for senior lender dated within 15 days of draw request.
 - x. The Project must also pass a Housing Quality Standards ("HQS") inspection performed by the City. In the event the City cannot perform the inspection, the Borrower will provide a signed authorization providing the City with the right to inspect the Project and a sample of the fully constructed dwelling units in the future.
 - xi. Uniform Relocation Assistance and Real Property Acquisition Policies Act ("URA") Determination, as applicable.
 - xii. Final approved OPMR, as applicable.
 - xiii. Environmental mitigation memorandum of understanding, as applicable.
 - xiv. Any other documents required by HOST.

III. **Conditions Precedent to All Disbursements**

- a. The making of each Disbursement shall be subject to the satisfaction of each of the following additional conditions precedent, and a waiver of any condition to any Disbursement shall not constitute a waiver as to any subsequent

EXHIBIT B

Disbursement. The City may, in its sole discretion, withhold all or a portion of a Disbursement if any of the following conditions have not been satisfied or if the Borrower has not submitted the required documentation and information required by the Loan Agreement, including the documentation and information required by these terms and conditions.

- i. *No Default.* The Borrower must be in full compliance with, and must not be in default under the Promissory Note, the Deed of Trust, or the Covenant or any other document executed by the Borrower in connection with the Loan.
- ii. *Time to Complete the Project.* In the sole opinion of the City, there must be sufficient time remaining to complete the construction of the Project in accordance with Exhibit A, and in conformance with federal regulations and requirements for federally funded loans.
- iii. *Sufficient Funds Available to Complete the Project.* If requested by the City, the Borrower shall furnish evidence satisfactory to the City, in its sole discretion, that the amount of the Loan yet to be disbursed, together with any other sources of funds available to the Borrower and not yet disbursed, will be sufficient to complete the Project in compliance with the Loan Agreement and to pay all costs therefore, and all other direct or indirect costs relating to the Loan and the Project.
- iv. *Lien waivers.* If requested by the City, the Borrower shall furnish data in a form satisfactory to the City with respect to prior Disbursements and expenditures relating to the Project, and shall furnish lien waivers from the contractor and all subcontractors for work done and materials supplied to the Project to the date of the Disbursement Request.
- v. *Use of Funds.* Subject to the terms of the Loan Agreement, the Borrower shall use the proceeds of the Loan exclusively for the costs of the Project.
- vi. *Compliance with Federal Requirements.* As applicable, Borrower must be compliant with all federal requirements, including, but not limited to, compliance with the Davis-Bacon Act and Section 3 of the Housing and Urban Development Act of 1968, and all reporting obligations under any such federal requirements.
- vii. *Pass-Through Loans.* If the Loan Agreement is structured as a “pass-through” loan, Borrower must demonstrate that Borrower has the authority to submit disbursement requests on behalf of the Project owner, which may be done by providing HOST with an operating agreement or partnership agreement establishing such authority. A “pass-through” loan is defined as a loan made by the City to the Borrower where Loan proceeds will be granted or loaned by the Borrower to the developer or owner of the Project for construction and development costs.

IV. Financial Management Systems

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

EXHIBIT B

- a. Financial reporting must be accurate, current, and provide a complete disclosure of the financial results of financially assisted activities and be made in accordance with federal financial reporting requirements.
- b. 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.
- c. 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.
- d. 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.
- e. For contracts subject to Federal Agreements, applicable 2 C.F.R. Part 200 cost principles, agency program regulations, and the terms of the agreement will be followed in determining the reasonableness, allowability and allocability of costs.
- f. Source documents such as cancelled checks, paid bills, payrolls, time and attendance records, contract documents, etc., shall be provided for all disbursements. The Borrower will maintain auditable records, i.e., records must be current and traceable to the source documentation of transactions.
- g. For contracts subject to Federal Agreements, the Borrower shall maintain separate accountability for HOST funds as referenced in 2 C.F.R. Part 200.
- h. The Borrower 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.
- i. A proper filing of unemployment and worker's compensation (for staff only) insurance shall be made to appropriate organizational units.
- j. The Borrower 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.

V. Audit Requirements

EXHIBIT B

- a. For contracts subject to Federal Agreements, if the Borrower expends seven hundred and fifty thousand dollars (\$750,000) or more of federal awards in the Borrower's fiscal year, the Borrower shall ensure that it, and its sub recipients(s), if any, comply with all provisions of the 2 C.F.R. Part 200.
- b. 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.
- c. 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 2 C.F.R. Part 200. 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 2 C.F.R. Part 200, as set forth in 2 C.F.R. 200.511(c) for each applicable management letter matter.
- d. All audit related material and information, including reports, packages, management letters, correspondence, etc., shall be submitted to **HOST Financial Services Team**.
- e. The Borrower will be responsible for all Questioned and Disallowed Costs.
- f. The Borrower 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 Borrower shall also institute policy and procedures for its sub recipients that comply with these audit provisions, if applicable.

VI. Procurement

- a. The Borrower 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.
- b. The Borrower 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, Borrower selection or rejection, and the basis for the contract price.
- c. 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

EXHIBIT B

supplies are not needed for any other federally sponsored programs or projects the Borrower will compensate the awarding agency for its share.

VII. Bonding

- a. HOST may require adequate fidelity bond coverage, in accordance with 2 C.F.R. 200.304(b), where the subrecipient lacks sufficient coverage to protect the Federal Government's interest.
- b. 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.

VIII. Collection of amounts due

- a. Any funds paid to a Borrower in excess of the amount to which the Borrower is finally determined to be entitled under the terms of the award constitute a debt to the Federal Government and/or 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 Borrower, or 3) Pursue other action permitted by law.

EXHIBIT C
(Affirmative Marketing)

City and County of Denver
Affirmative Marketing Program

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

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

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

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

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

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

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

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

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

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

Exhibit D

LEGAL DESCRIPTION

The following real property located in the City and County of Denver, State of Colorado:

PARCEL I:

A PORTION OF BLOCK 1, MONTBELLO NO. 8, CITY AND COUNTY OF DENVER, COLORADO, BEING IN THE WEST HALF OF SECTION 24, TOWNSHIP 3 SOUTH, RANGE 67 WEST OF THE 6TH PRINCIPAL MERIDIAN, CITY AND COUNTY OF DENVER, COLORADO, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS: COMMENCING AT THE NORTHWEST CORNER OF SAID SECTION 24, WHENCE THE WEST QUARTER CORNER OF SAID SECTION 24 BEARS $S00^{\circ}00'00''W$ A DISTANCE OF 2650.20 FEET; THENCE $S31^{\circ}35'49''E$ A DISTANCE OF 757.61 FEET TO A POINT ON THE NORTHEASTERLY LINE OF SAID BLOCK 1, SAID POINT ALSO BEING THE POINT OF BEGINNING; THENCE $S67^{\circ}59'34''E$ ALONG THE NORTHEASTERLY LINE OF SAID BLOCK 1 A DISTANCE OF 294.00 FEET; THENCE $S22^{\circ}01'20''W$ A DISTANCE OF 147.67 FEET; THENCE $S75^{\circ}54'11''W$ A DISTANCE OF 19.98 FEET; THENCE $S50^{\circ}00'02''W$ A DISTANCE OF 110.07 FEET; THENCE $N44^{\circ}21'21''W$ A DISTANCE OF 246.87 FEET; THENCE $N22^{\circ}00'26''E$ A DISTANCE OF 157.66 FEET TO THE POINT OF BEGINNING.

PARCEL II:

NON-EXCLUSIVE EASEMENT AND RIGHT-OF-WAY, INCLUDING THE RIGHT TO ENTER UPON OCCUPY AND TRANSGRESS THE REAL ESTATE HEREINAFTER DESCRIBED AS FOLLOWS: A PORTION OF BLOCK 1, MONTBELLO NO. 8, CITY AND COUNTY OF DENVER, COLORADO, BEING IN THE WEST HALF OF SECTION 24, TOWNSHIP 3 SOUTH, RANGE 67 WEST OF THE 6TH PRINCIPAL MERIDIAN, CITY AND COUNTY OF DENVER, COLORADO, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS: COMMENCING AT THE NORTHWEST CORNER OF SAID SECTION 24, WHENCE THE WEST QUARTER CORNER OF SAID SECTION 24 BEARS $S00^{\circ}00'00''W$ A DISTANCE OF 2650.20 FEET; THENCE $S31^{\circ}35'49''E$ A DISTANCE OF 757.61 FEET TO A POINT ON THE NORTHEASTERLY LINE OF SAID BLOCK 1, SAID POINT ALSO BEING THE POINT OF BEGINNING; THENCE $S22^{\circ}00'26''W$ A DISTANCE OF 157.66 FEET; THENCE $N44^{\circ}21'21''W$ A DISTANCE OF 43.66 FEET; THENCE $N22^{\circ}00'26''E$ A DISTANCE OF 140.16 FEET; THENCE $S67^{\circ}59'34''E$ ALONG THE NORTHEASTERLY LINE OF SAID BLOCK 1 A DISTANCE OF 40.00 FEET TO THE POINT OF BEGINNING.

For informational purposes only: 12444 E. Albrook Drive, Denver, Colorado

Exhibit E

SUBORDINATION AGREEMENT

THIS SUBORDINATION AGREEMENT (this "Agreement") dated _____, 202_, 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 **U.S. BANK NATIONAL ASSOCIATION**, a national banking association, whose address is 1307 Washington Avenue, Suite 300, St. Louis, Missouri 63103 (the "Senior Lender").

PRELIMINARY STATEMENTS

A. The Junior Lender has made a loan to Montbello FreshLo LLC, a Colorado limited liability company (the "Borrower") in the principal amount of \$[INSERT DOLLAR AMOUNT], evidenced by that certain Promissory Note, dated as of _____, 202_ made by the Borrower and payable to the Junior Lender (the "City Note").

B. Borrower has made a loan to FreshLo LIHTC LLLP, a Colorado limited liability limited partnership (the "Owner") 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 Owner and payable to the Borrower (the "Partnership Note") and secured by that certain Deed of Trust (the "Junior Deed of Trust") made as of _____, 202_ and recorded on _____, 202_ at Reception No. _____ 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.

C. Pursuant to that certain Collateral Assignment of Note and Deed of Trust dated as of _____, 202_ made by Borrower for the benefit of the Junior Lender and recorded on _____, 202_ at Reception No. _____ 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.

D. The Senior Lender plans to grant or has granted Owner loans in the aggregate amount of \$[INSERT NUMERIC AMOUNT], which loans will be evidenced by those certain promissory notes ("Senior Notes") in the aggregate like amount and secured by that certain deed of trust ("Senior Deed of Trust") which will cover and encumber all or part of the Mortgaged Property (the Senior Notes 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.

E. 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 Owner 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 each and every debt, liability and obligation of every type and description that the Borrower or Owner may now or at any time hereafter owe to the Junior Lender in connection with the Junior Deed of Trust and Junior 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

2. Subordination. All Junior Obligations are hereby expressly subordinated to the extent and in the manner hereinafter set forth to 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, 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 Borrower's name or in the Owner'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. Senior Lender may amend any of the loan documents executed in connection with the Senior Deed of Trust without the consent of Junior Lender provided such amendment does not: (i) shorten the term of the Senior Obligations, (ii) increase the principal balance of the Senior Obligations (except for protective advances, provided that Senior Lender shall not make a protective advance in excess of 10% of the amount of the Senior Obligations without the prior consent of Junior Lender), or (iii) increase the interest rate spread due on the Senior Obligations (except for any default interest).

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 or join in any action or proceeding with respect to the Mortgaged Property or against the Borrower or the Owner, 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 the Owner or with respect to the Mortgaged Property upon Borrower's or Owner's default with respect to the Junior Obligations, without the Senior Lender's prior written consent, which shall not be unreasonably withheld or delayed.

7. Notice of Default to Senior Lender. Any notice provided to the Borrower or the Owner 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 Owner. 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 Owner 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 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.

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 Owner 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.

12. Bankruptcy Provisions. To the extent any payment under the Senior Deed of Trust (whether by or on behalf of Owner, as proceeds of security or enforcement of any right of set-off, or otherwise) is declared to be fraudulent or preferential, set aside or required to be paid to a trustee, receiver or other similar party under the Bankruptcy Code or any federal or state bankruptcy, insolvency, receivership or similar law, then if such payment is recovered by, or paid over to, such trustee, receiver or other similar party, the Senior Obligations or part thereof originally intended to be satisfied shall be deemed to be reinstated and outstanding as if such payment had not occurred.

13. Casualty Insurance Proceeds; Condemnation Proceeds. In the event Senior Lender shall release, for the purposes of restoration of all or any party of the improvements, its right, title and interest in and to the proceeds under policies of insurance thereon, and/or its right, title and interest in and to any awards or its right, title and interest in and to other compensation made for any damages, losses or compensation for other rights by reason of a taking in eminent domain, Junior Lender shall simultaneously release all of Junior Lender's interests in all such insurance proceeds, awards or compensation. Senior Lender may hold and disburse any such proceeds pursuant to the terms of the Senior Deed of Trust.

[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”

U.S. BANK NATIONAL ASSOCIATION, a national banking association

By: _____

Name: Amanda Willbrand

Title: Assistant Vice President

STATE OF _____)
) SS.
COUNTY OF _____)

The undersigned, a Notary Public in and for the said County, in the State aforesaid, DO HEREBY CERTIFY that Amanda Willbrand, the Assistant Vice President of U.S. BANK NATIONAL ASSOCIATION, a national banking association, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he/she signed and delivered said instrument as his/her own free and voluntary act and as the free and voluntary act of said bank, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this _____ day of _____, 20__.

Notary Public

My Commission Expires:

ATTACHMENT A

[INSERT LEGAL DESCRIPTION]

EXHIBIT F

CASH FLOW CALCULATION

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

Notwithstanding anything to the contrary, the calculation of cash flow includes regular monthly or annual deposits into a replacement reserve account or capital reserve account but does not include capital expenditures. For the purposes of this calculation, the allowable annual deposits into the reserve accounts are \$29,100, escalated annually by three percent (3%).

Distribution of Cash Flow

(Exhibit A-5 of the Partnership Agreement)

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

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

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

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

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

Fifth, to the Limited Partner to repay any loans or other advances made by the Limited Partner.

Sixth, to pay 50% of the DHDP Special Limited Partner Asset Management Fee pursuant to the terms of the DHDP Special Limited Partner Asset Management Agreement.

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

Eighth, to pay 50% of the DHDP Special Limited Partner Asset Management Fee pursuant to the terms of the DHDP Special Limited Partner Asset Management Agreement.

Ninth, from 50% of available Cash Flow as follows: (i) 50% to repayment of principal and interest on the MOC HOST Loan until repaid in full; and (iii) 50% to repayment of principal and interest on the CDOH Loan until repaid in full.

Tenth, to the PILOT and all accrued and unpaid PILOT and interest thereon;

Eleventh, to the General Partner to repay any Development Advance, Operating Deficit Advance, Credit Adjuster Advance or Development Fee Advance then payable or any other loans made by the General Partner hereunder.

Twelfth, from 100% of available Cash Flow to pay applicable principal and interest on the MOC ARPA Loan, until paid in full.

Thirteenth, from 100% of available Cash Flow to repayment of principal and interest on the MOC CMF Loan until repaid in full;

Fourteenth, from 100% of available Cash Flow to repayment of principal and interest on the Seller Loan until repaid in full;

Fifteenth, twenty-five percent (25%) of the remaining balance, if any, to be deposited in the Property Tax Escrow Account pursuant to the terms of the DHDP Addendum;

Sixteenth, from 90% of remaining Cash Flow, to the General Partner to pay the Partnership Management Fee pursuant to the Partnership Management Agreement, attached to this Partnership Agreement as Exhibit E, for services rendered to the Partnership as set forth therein, payable in the amount set forth in such Agreement solely from and to the extent of remaining Cash Flow, if any.

Seventeenth, the balance to the General Partner, the Federal Credit Limited Partner, the State Credit Limited Partner and the DHDP Special Limited Partner in accordance with their Percentage Interests.

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

Notwithstanding any other provision of this Exhibit A-5 to the contrary, a sufficient amount of Cash Flow shall be distributed to the Limited Partner in each year such that, when such distribution is added to all other distributions of Cash Flow made to the Limited Partner with respect to such Fiscal Year, the Limited Partner will have received an amount of Cash Flow equal to at least 10% of all Cash Flow which remains after repayment of the loans referred to in Section Fourteenth with respect to such year.

Applicable Defined Terms

The following terms are used in Exhibit A-5 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 or adapted from other provisions of the Partnership Agreement.

Addendum: The Addendum to Amended and Restated Agreement of Limited Liability Limited Partnership dated as of the date of the Partnership Agreement and incorporated by reference into it, pursuant to which the DHDP Special Limited Partner is admitted as the DHDP Special Limited Partner of the Partnership.

Asset Management Fee: The annual fee payable to USBCDC respecting Project and Partnership review, as set forth in Section 11.2.

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

(1) All gross revenue collected directly or indirectly from the operations of the Project (excluding Loans, condemnation and casualty proceeds, Capital Proceeds, and tenant security deposits, and interest thereon, unless forfeited to the Partnership) and of the Partnership (excluding Capital Contributions and interest earned on Reserves which is retained as part of the Reserve plus amounts released from Reserves other than to fund Partnership Expenses, until released from the Reserve) ("*Partnership Net Revenues*"), as reduced, dollar for dollar, by the following:

(2) Partnership Expenses.

CDOH Loan: that certain construction/permanent loan from Montbello Organizing Committee to the Partnership in the amount of \$3,300,000.

Change in Law: An amendment to the Code or Treasury Regulations that is applicable to a Credit as set forth on Exhibit A-3 respecting the Project and that provides for the reduction or elimination of such Credit or substantially changes the requirements for qualifying for such Credit in a manner which the Partners reasonably agree cannot be satisfied by the Partnership.

Credit Adjuster Advance: an advance made by the General Partner to the extent that any Completion Adjustment Amount, Downward Initial Year Adjustment Amount, Annual Credit Reduction amount, Continuing Credit Reduction amount or Recapture Adjustment Amount exceeds then unfunded Capital Contributions of a Limited Partner.

Credit Deficiency: All adjustments to Credit pursuant to Section 3.3, other than any Upward Adjusters pursuant to Sections 3.3(b) and 3.3(c).

Default Cash Flow Priority: priority Cash Flow distributions as directed by the Limited Partner, having that priority set forth in Section 8.1 and Exhibit A-5, together with interest thereon,

if any, upon any failure by the General Partner and/or any Guarantor to fully and timely satisfy their respective obligations under the Partnership Agreement or the Guaranty, applied to the payment of the applicable default, until such default has been fully cured.

Development Advances: The advances to the Partnership to be made by the General Partner in the amounts and under the circumstances provided in Section 5.9(b) of the Partnership Agreement.

Development Fee: The fees earned and payable pursuant to the Development Services Agreement.

Development Fee Advance: An advance to the Partnership by the General Partner pursuant to Section 5.11 of the Partnership Agreement.

DHDP Special Limited Partner: Denver Housing Development Partners, Inc., a Colorado nonprofit corporation, its successors and permitted assigns, and any additional or substitute special limited partners of the Partnership named in any duly adopted amendment to the Partnership Agreement.

DHDP Special Limited Partner Asset Management Agreement: That certain DHDP Special Limited Partner Asset Management Agreement dated as of the date of the Partnership Agreement by and between the Partnership and the DHDP Special Limited Partner.

DHDP Special Limited Partner Asset Management Fee: That certain DHDP Special Limited Partner Asset Management Fee payable to the DHDP Special Limited Partner pursuant to the DHDP Special Limited Partner Asset Management Agreement.

Federal Credit Limited Partner: U.S. Bancorp Community Development Corporation, a Minnesota corporation, its successors and permitted assigns, and any Person who becomes a Substitute Federal Credit Limited Partner as provided herein, in each such person's capacity as a limited partner. If there is more than one federal credit limited partner of the Partnership, the term "Federal Credit Limited Partner" shall refer collectively to all such limited partners.

General Partner: FreshLo LIHTC GP LLC, a Colorado limited liability company.

Limited Partner: Collectively, the Federal Credit Limited Partner and the State Credit Limited Partner, and their respective successors and permitted assigns, and any Person who becomes a Substitute Limited Partner of either, as provided herein, in each such person's capacity as a limited partner. If there is more than one limited partner of the Partnership, the term "Limited Partner" shall refer collectively to all such limited partners. The defined term "Limited Partner" when used herein shall not include the DHDP Special Limited Partner unless otherwise specified.

MOC ARPA Loan: that certain construction/permanent loan from Montbello Organizing Committee to the Partnership in the amount of \$5,000,000.

MOC CMF Loan: that certain permanent loan from Montbello Organizing Committee to the Partnership in the amount of \$150,000.

MOC HOST Loan: that certain construction/permanent loan from Montbello FreshLo LLC to the Partnership in the amount of \$3,300,000.

Operating Deficit Advance: A loan to the Partnership by the General Partner, which shall be required under the circumstances described in Section 5.10 of the Partnership Agreement.

Operating Reserve: An Operating Reserve of approximately \$739,000, to be funded on the date of payment of the Third Capital Installment into a segregated, interest bearing Partnership Reserve Account at U.S. Bank National Association.

Partnership Management Agreement: The Partnership Management Agreement attached to the Partnership Agreement as Exhibit E, as amended from time to time.

Partnership Management Fee: Annual fee paid by the Partnership to the General Partner, over the term of the Partnership Management Agreement, solely to the extent that there are funds available to pay same in any year, in amount up to \$15,000, payable from Cash Flow remaining, if any, at the payment priority level set forth in Exhibit A-5 of the Partnership Agreement and further subject to reduction, pursuant to and in accordance with Section 5.15 of the Partnership Agreement.

Replacement Reserve: The Project replacement reserve to be funded pursuant to Exhibit A-7.

Percentage Interest: As to any Partner, the percentage in the Partnership shown opposite the name of such Partner in Exhibit A and Exhibit A-3, as they may be amended from time to time in accordance with this Agreement.

PILOT Agreement: That certain Agreement for Payments in Lieu of Taxes dated as of the date of this Agreement between Housing Authority of the City and County of Denver and the Partnership.

Property Tax Escrow Account: A property tax reserve, established pursuant to Section 8 of the Addendum, to be funded from Cash Flow in the order and priority set forth in Exhibit A-5 and Capital Proceeds pursuant to Section 8.2, and maintained during such time that the DHDP Special Limited Partner is a Partner in the Partnership.

Seller Loan: that certain construction/permanent loan from Montbello Organizing Committee to the Partnership in the amount of approximately \$700,000.

State Credit Limited Partner: U.S. Bank National Association, a national banking association, its successors and permitted assigns, and any Person who becomes a Substitute State Credit Limited Partner as provided herein, in each such person's capacity as a limited partner. If there is more than one state credit limited partner of the Partnership, the term "State Credit Limited Partner" shall refer collectively to all such state credit limited partners.

Tax Equivalency Payment: A payment to the Limited Partner in the amount of the federal and state income tax liability, together with any interest and penalty thereon, that would be imposed on the Limited Partner from the recognition of any net income from operations or gain from capital events or dispositions (in each case, after taking into account such payment), from Cash Flow, Capital Proceeds, Credit Adjuster payments or other amounts resulting in an income tax liability, as well as any tax liability assessed against the Limited Partner, whether upon the cancellation or forgiveness of a Partnership obligation, upon the recharacterization of any Partnership obligation or otherwise, which aggregate payment shall be grossed up by any such tax liability payable respecting the Tax Equivalency Payment itself, assuming that the Limited Partner is subject to tax at a combined rate equal to the greater of (i) 25.3% or (ii) the actual combined federal and net effective state tax rate (taking into account the deductibility of state income taxes for federal income tax purposes) payable by the Limited Partner.