

**LOAN AGREEMENT  
(LINKAGE FEE)**

THIS LOAN AGREEMENT (“**Agreement**”) is made as of the Effective Date (as defined below) between the CITY AND COUNTY OF DENVER, a municipal corporation organized pursuant to the Constitution of the State of Colorado (“**City**”), and 4965 WASHINGTON STREET LLLP, a Colorado limited liability limited partnership (“**Borrower**”), whose address is c/o Evergreen Real Estate Group, 566 West Lake Street, Suite 400, Chicago, Illinois 60661, each a “**Party**” and collectively the “**Parties**.”

**WITNESSETH:**

**WHEREAS**, the City owns certain land legally described in **Exhibit A** attached hereto and incorporated herein (“**Land**”);

**WHEREAS**, on or about the date of this Agreement, the City leased the Land to Borrower’s affiliated entity, Globeville Redevelopment Partners, LLC, a Colorado limited liability company (“**Sponsor**”), and Sponsor imposed upon its leasehold interest a small planned community structure under the Colorado Common Interest Ownership Act, CRS Section 38-33.3-116(1)(a), as amended; and

**WHEREAS**, Sponsor has assigned the lease and all of its rights and obligations as “Tenant” or “Lessee” thereunder to Borrower, and Borrower has assumed the lease and all such rights and obligations; and

**WHEREAS**, as contemplated by the lease, Borrower will construct on the Land, and the small planned community will consist of, two (2) buildings, a parking garage, and related improvements (collectively, the “**Project**”); and

**WHEREAS**, the Project will include an affordable housing unit consisting of one hundred seventy (170) individual income-restricted rental units, which housing unit is legally described on **Exhibit D** attached hereto and incorporated herein (the “**Property**”); and

**WHEREAS**, Sponsor has conveyed to Borrower the Property and all other units, limited common elements, and common elements included within the Project; and

**WHEREAS**, the funds provided to Borrower pursuant to this Agreement will be used to finance the construction and development of the Property by Borrower; and

**WHEREAS**, Borrower is eligible to receive funds from the City, and Borrower 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. Subject to the terms of this Agreement, the City agrees to lend Borrower the sum of Nine Million Eight Hundred Thousand and No/100 Dollars (\$9,800,000.00) (the “**Loan**”). In addition to this Agreement, Borrower will execute a promissory note in a form satisfactory to the City evidencing the Loan (the “**Promissory Note**”) and the Covenant securing the Property for use as affordable housing as defined in and required by Section 6 hereof. Simple interest at a rate of one percent (1%) per annum shall commence accruing on the outstanding principal balance of the Promissory Note on the date on which the first Disbursement (as defined in Exhibit B) of Loan funds is made.

B. Borrower shall be required to make annual, interest-only installment payments of Forty Thousand and No/100 Dollars (\$40,000.00) on Four Million and No/100 Dollars (\$4,000,000) of the principal amount of the Loan (the “**Interest-Only Portion**”). Such annual, interest-only installments shall be due and payable on or before the first July 1<sup>st</sup> following the date of the Promissory Note; provided, however, Borrower may elect to defer the payment of each of the first nine (9) such installments until the first July 1<sup>st</sup> following the ninth (9<sup>th</sup>) anniversary of the date of the Promissory Note. The Interest-Only Portion of the principal amount of the Loan, plus any accrued and unpaid interest on such Interest-Only Portion, shall be due and payable on the twenty-first (21<sup>st</sup>) anniversary of the date of the Promissory Note, if not paid sooner.

C. The remaining Five Million Eight Hundred Thousand and No/100 Dollars (\$5,800,000.00) of the principal amount of the Loan (the “**Cash Flow Portion**”), plus any accrued and unpaid interest on such Cash Flow Portion, shall be due and payable on the twenty-first (21<sup>st</sup>) anniversary of the date of the Promissory Note, if not paid sooner. Borrower shall make annual payments of principal and any accrued interest on the Cash Flow Portion in annual installments of the amount calculated in accordance with the order of priority and other provisions set forth in Exhibit F attached hereto and incorporated herein (“**Cash Flow Payment**”). Such annual installments shall commence and be due on or before the first July 1<sup>st</sup> following the date of the Promissory Note and on each July 1st thereafter.

D. Each year after repayment of the Loan has commenced, Borrower shall provide to the City, no later than June 1<sup>st</sup> of such year, (i) an audited financial statement for the

Property and Project for the preceding calendar year; and (ii) a statement or letter from an auditor that details (a) the total amount of Cash Flow Payment available for distribution, and (b) a calculation that details the amount(s) and the person(s) or entity(ies) to which any payments 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 the Covenant and a Leasehold Deed of Trust (the “**Deed of Trust**”), in form satisfactory to City, granted by Borrower and encumbering the Property.

3. **SUBORDINATION**:

A. The Executive Director or the Executive Director’s designee (the “**Executive Director**”), of the City’s Department of Housing Stability (“**HOST**”) is authorized to execute documents necessary to subordinate the lien of the City’s Deed of Trust and/or the Covenant so long as (i) the subordination agreement is substantially in the form attached hereto as **Exhibit E**; (ii) encumbrances prior to the City’s Deed of Trust and/or the Covenant do not exceed One Hundred Million and No/100 Dollars (\$100,000,000.00) under the construction loan(s) or Sixty-Five Million and No/100 Dollars (\$65,000,000.00) under the permanent loan(s); (iii) Borrower is not then in default of its obligations pursuant to this Agreement, the Promissory Note, the Deed of Trust or the Covenant; and (iv) all additional financing for the Project is committed.

B. The Executive Director is authorized to execute documents necessary to subordinate the City’s Deed of Trust and Covenant to land use restriction agreements or regulatory agreements (“**LURAs**”), such as the LURA required by the Colorado Housing and Finance Authority, so long as (i) the subordination agreement is in the form acceptable to the City Attorney; (ii) encumbrances prior to the City’s Deed of Trust do not exceed One Hundred Million and No/100 Dollars (\$100,000,000.00) under the construction loan(s) or Sixty-Five Million and No/100 Dollars (\$65,000,000.00) under the permanent loan(s); and (iii) Borrower is not in default of its obligations pursuant to this Agreement, the Promissory Note, the Deed of Trust, or the Covenant.

C. The Executive Director is authorized to execute documents necessary to accomplish the Loan, as set forth herein, so long as (i) such documents are in a form satisfactory to the City Attorney; (ii) encumbrances prior to the City’s Deed of Trust do not exceed One Hundred Million and No/100 Dollars (\$100,000,000.00) under the construction loan(s) or Sixty-Five Million and No/100 Dollars (\$65,000,000.00) under the permanent loan(s); and (iii) Borrower is not in default

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

**4. USE AND DISBURSEMENT OF FUNDS:**

A. Loan proceeds will be used to finance costs associated with the development and construction of the Property and Project so the Property can be used as affordable housing.

B. 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. If all or portions of the Loan funds that are the subject of a Disbursement Request (as defined in such exhibit) are to be used to pay hard construction costs, then five percent (5%) of such funds shall be retained and not released until all applicable conditions and requirements in such exhibit with respect to such funds are satisfied.

C. In addition to the retainage specified above, HOST shall retain Ten Thousand and No/100 Dollars (\$10,000.00) of the total funds to be disbursed under this Agreement (the “**Compliance Retainer**”), which retainage shall be released upon compliance with the applicable requirements in **Exhibit B**.

D. Expenses incurred prior to March 13, 2025, are not eligible for reimbursement.

**5. DEADLINE FOR DISBURSEMENT OF FUNDS: REQUIRED DOCUMENTATION:**

A. Borrower must satisfy all conditions set forth in this Agreement on or before April 2, 2026 (the “**Closing Deadline**”). Failure to meet this deadline may result in the termination of this Agreement at the Executive Director’s sole discretion. No funds shall be disbursed under this Agreement until such time as (i) all conditions of this Agreement have been met and (ii) Borrower and/or Sponsor have closed on all financing necessary to complete the development and construction of the Project.

B. Borrower agrees that (i) documentation for all Disbursement Requests shall be submitted no later than twenty-four (24) months after the date of the Promissory Note and (ii) Borrower shall complete the Project on or before November 30, 2027, provided that these deadlines may be extended with the written approval of the Executive Director. All cost overruns and/or funding shortfalls shall be the sole responsibility of Borrower and/or Sponsor.

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 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. Sixty-Three (63) of the affordable housing units comprising the Property (the “**80% Units**”) shall have rents not exceeding the lesser of (a) 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 (b) a rent that does not exceed thirty percent (30%) of the adjusted income of a family whose annual income equals eighty percent (80%) of the median income for the Denver area, as determined by HUD, with adjustments for number of bedrooms in the unit. Notwithstanding the foregoing, the 80% Units shall have rents not exceeding the lesser of (y) a rent calculated in accordance with the foregoing clause (b) of this paragraph, or (z) the following rents and utility allowances:

<b>BEDROOMS</b>	<b>1 Bedroom</b>	<b>2 Bedroom</b>	<b>3 Bedroom</b>	<b>4 Bedroom</b>
<b>80% Unit Rent Floor</b>	\$1,601	\$2,093	\$2,700	\$3,015
<b>Utility Allowance</b>	\$91	\$120	\$147	\$174

ii. Twenty-Two (22) of the affordable housing units comprising the Property (the “**70% Units**”) shall have rents not exceeding the lesser of (a) fair market rent for comparable units in the area as established by the HUD, under 24 C.F.R. 888.113, or (b) a rent that does not exceed thirty percent (30%) of the adjusted income of a family whose annual income equals seventy percent (70%) of the median income for the Denver area, as determined by HUD, with adjustments for number of bedrooms in the unit. Notwithstanding the foregoing, the 70% Units shall have rents not exceeding the lesser of (y) a rent calculated in accordance with the foregoing clause (b) of this paragraph, or (z) the following rents and utility allowances:

<b>BEDROOMS</b>	<b>1 Bedroom</b>	<b>2 Bedroom</b>	<b>3 Bedroom</b>	<b>4 Bedroom</b>
<b>70% Unit Rent Floor</b>	\$1,598	\$2,075	\$2,403	\$2,670
<b>Utility Allowance</b>	\$91	\$120	\$147	\$174

iii. Twenty-Five (25) of the affordable housing units comprising the Property (the “**50% Units**”) shall have rents not exceeding the lesser of (a) fair market rent for

comparable units in the area as established by the HUD, under 24 C.F.R. 888.113, or (b) a rent that does not exceed thirty percent (30%) of the adjusted income of a family whose annual income equals fifty percent (50%) of the median income for the Denver area, as determined by HUD, with adjustments for number of bedrooms in the unit.

iv. Sixty (60) of the affordable housing units comprising the Property (the “**30% Units**”) shall have rents not exceeding the lesser of (a) fair market rent for comparable units in the area as established by the HUD, under 24 C.F.R. 888.113, or (b) a rent that does not exceed thirty percent (30%) of the adjusted income of a family whose annual income equals thirty percent (30%) of the median income for the Denver area, as determined by HUD, with adjustments for number of bedrooms in the unit.

v. The 80% Units, 70% Units, 50% Units, and 30% Units are referred to collectively herein as the “**City Units.**” By executing this 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 Borrower.

B. Occupancy/Income Limitations.

i. The 80% Units shall be occupied by tenants whose incomes are at or below eighty percent (80%) of the median income for the Denver area as determined by HUD, with adjustments for family size.

ii. 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.

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 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 the City Units are floating, and are designated as follows:

<b>BEDROOMS</b>	<b>30% Units</b>	<b>50% Units</b>	<b>70% Units</b>	<b>80% Units</b>
1 Bedroom	33	12	10	15
2 Bedroom	7	3	2	3
3 Bedroom	10	5	5	32
4 Bedroom	10	5	5	13
<b>TOTAL</b>	<b>60</b>	<b>25</b>	<b>22</b>	<b>63</b>

D. Accessibility Requirements. Borrower or Sponsor 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 the Loan closing, Borrower shall 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 Property. The Covenant shall encumber the Property for ninety-nine (99) years from the date of the recording of the Covenant. Violation of said Covenant shall be enforceable as an event of default under this Agreement.

7. **PRIORITIZATION OF INCOME-RESTRICTED AFFORDABLE HOUSING ORDINANCE:** Borrower must comply with the City's Prioritization of Income-Restricted

Affordable Housing Ordinance, codified at D.R.M.C. §§ 27-241 *et seq*, and with the ordinance's implementing rules and regulations.

8. **TENANT SELECTION**: Borrower must adopt and have approved by the City written tenant selection policies. The tenant selection policies must be approved by the City prior to the City making any requested Disbursements under this Agreement. The tenant selection policies must, at a minimum, contain criteria that:

A. Are consistent with the purpose of providing housing for low-income and moderate-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 Investment Partnership Program ("**HOME Program**") tenant-based rental assistance program because of the status of the applicant as a holder of such certificate, voucher, or comparable HOME Program 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.

9. **AFFIRMATIVE MARKETING**: Borrower shall comply with the procedures outlined in the affirmative marketing program, attached hereto as **Exhibit C** and incorporated herein (the "**Affirmative Marketing Program**"), to provide information and otherwise attract eligible tenants from all racial, ethnic, and gender groups in the Property's housing market area in accordance with 24 CFR 92.351; provided, however, 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 requested Disbursements, 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 Property.

10. **LEASES**: There must be a written lease between the tenants of City Units and Borrower for a period of not less than one year, unless by mutual agreement between the tenant and Borrower a shorter period is specified.

11. **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 Borrower or Sponsor in a lawsuit brought in connection with the lease.

B. **Treatment of Property**. Agreement by the tenant that Borrower or Sponsor 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, either Borrower or Sponsor 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 Borrower or Sponsor, or any of their respective agents, legally responsible for actions or failure to act, whether intentional or negligent.

D. **Waiver of Notice**. Agreement by the tenant that either Borrower or Sponsor may institute a lawsuit without notice to the tenant.

E. **Waiver of Legal Proceedings**. Agreement by the tenant that either Borrower or Sponsor 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 Borrower and/or Sponsor 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.

12. **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.

13. **TERMINATION OF TENANCY**: Borrower may not terminate the tenancy or refuse to renew the lease of a tenant of any of the City Units except for serious or repeated violations of the terms and conditions of the lease; for violation of applicable federal, state, or local laws; 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 Borrower 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.

14. **MANAGEMENT OF PROPERTY**: Borrower and/or Sponsor shall provide and maintain good and efficient management of the Property satisfactory to the City. Borrower and/or Sponsor must execute and maintain in effect a management agreement for the Property and 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/or the Project and (ii) of any significant changes staffing changes to the manager.

15. **AUDIT, EXAMINATION OF RECORDS, REPORTING REQUIREMENTS AND ANNUAL MONITORING; INSPECTIONS**:

A. Examination of Records and Audits: Any authorized agent of the City, including the City Auditor or his or her representative, has the right to access, and the right to examine, copy and retain copies, at the City's election in paper or electronic form, any pertinent books, documents, papers and records related to Borrower's performance pursuant to this Agreement, provision of any goods or services to the City, and any other transactions related to this Agreement. Borrower shall cooperate with City representatives and City representatives shall be

granted access to the foregoing documents and information during reasonable business hours and until the latter of three (3) years after the final payment under the Agreement or expiration of the applicable statute of limitations. When conducting an audit of this Agreement, the City Auditor shall be subject to government auditing standards issued by the United States Government Accountability Office by the Comptroller General of the United States, including with respect to disclosure of information acquired during the course of an audit. No examination of records and audits pursuant to this paragraph shall require Borrower to make disclosures in violation of state or federal privacy laws. Borrower shall at all times comply with D.R.M.C. 20-276.

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: (i) annual compliance statement; (ii) report on rents and occupancy of City Units to verify compliance with affordability requirements in Section 6 and other requirements of this Agreement; (iii) data on evictions, terminations of tenancies, or tenancies not renewed for individuals residing in City Units; (iv) reports (including financial reports) that enable the City to determine the financial condition and continued financial viability of the rental project; (v) for floating units, reports on unit substitution and filling vacancies to ensure that the Property maintains the required unit mix; and (vi) template lease agreements for City Units. The report required by clause (ii) of this Section shall include, but not be limited to, (a) information related to monthly rent amount, lease term, household size, total annual household income, and race and other demographic information; (b) records evidencing the income of each family occupying a City Unit; and (c) a copy of each lease pursuant to which each City Unit is occupied. 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 under this Agreement.

C. Access and Inspections. For purposes of assuring compliance with this Agreement, the City shall have the reasonable right of access to the Property and Project, 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 and Project. Borrower shall, and Borrower shall cause Sponsor to, fully cooperate with the City in an annual monitoring of Borrower's performance and site inspection to verify compliance with the requirements of this Agreement.

16. **FINANCIAL STATEMENTS**: In addition to and without limitation of the financial statements for the Property and the Project required by Section 1 above, Borrower must furnish to the City annually, within ninety (90) days after the end of Borrower's fiscal year or within thirty (30) days following a request by HOST, financial statements of Borrower and Sponsor audited by an independent certified public accountant, which must include an annual balance sheet and profit and loss statement of Borrower and Sponsor, in a form reasonably required by the City.

17. **TRANSFERS**: Borrower acknowledges that the City has examined and relied on the experience of Borrower and Sponsor, and their respective general partners, directors, and/or 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 and Sponsor'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, Borrower shall not, and Borrower shall not permit Sponsor to: (A) sell, convey, assign, or otherwise transfer or dispose of the Property or any part thereof (other than leases to tenants); (B) sell, convey, assign, or otherwise transfer any interest in or to Borrower or Sponsor; or (C) change the control or management of Borrower; provided, however, the City's consent shall not be required for (i) any transfer of the Property to any affiliate of Borrower as permitted by Borrower's partnership agreement, (ii) any transfer of a limited partner interest in Borrower as permitted by Borrower's partnership agreement, or to Borrower or any affiliate of Borrower, or (iii) any collateral assignment of a general partner's partnership interest in Borrower as security for senior loan financing of the Project, or the exercise of remedies thereunder or transfer thereafter. Notwithstanding the foregoing, the removal, replacement, or transfer of the interest of the general partner of Borrower as permitted by Borrower's partnership agreement shall not require the prior written consent of the City, but only if the replacement general partner of Borrower is NEF Assignment Corporation, an Illinois not-for-profit corporation, or an affiliate thereof. Any other replacement of the general partner of Borrower 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.

18. **CAPITAL NEEDS ASSESSMENT**: During the term of the Covenant, Borrower must provide the City with any capital needs assessment or physical needs assessment performed on

or related to the Property, the Project, and/or any improvements constructed on the Property and/or the Project, every ten (10) years or, if performed earlier, whenever such assessments are performed.

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

**20. LEAD-BASED PAINT HAZARDS:** Housing funded, in part, by funds provided through this Agreement shall be subject to the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821 et seq.) and the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4852 et seq.), and as a result such housing is subject to 24 C.F.R. Part 35. Borrower shall cause the Property and Project to comply with the foregoing requirements at all times during the construction of the Property and Project.

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

A. Environmental Reports. Borrower must provide the City with a Phase I Environmental Site Assessment (“ESA”) and, if necessary, a Phase II 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 in form and substance acceptable to the City.

B. Title Insurance. Borrower must obtain, on behalf of the City, a lenders title policy insuring Borrower’s interest in the Property in the principal amount of the Loan, which policy must be in form and substance acceptable to the City. A commitment for such lenders title policy must be provided to the City in advance of the Loan closing, and Borrower must provide the City with a copy of the lenders title policy within thirty (30) days after the Loan closing.

C. Appraisal. Borrower must provide the City with an as-built appraisal of the Property and Project, which must be in form and substance acceptable to the City.

D. Organizational Documents. Borrower must provide the City with (i) evidence that it is a Colorado limited liability limited partnership in good standing and authorized to transact business in the State of Colorado; (ii) evidence in a form satisfactory to the City that the person executing this 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, which must be in form and substance acceptable to the City. Organization documents shall include, but are not limited to, a certificate of limited partnership, a partnership agreement, and a certificate of good standing.

E. Management Agreement. Borrower must provide the City with a copy of the management agreement for the Property and Project, which must be in form and substance acceptable to the City. The management agreement must contain a provision that the City has the right to terminate the agreement in the event of a foreclosure.

F. Survey. Borrower must provide the City with a current ALTA survey of the Property and Project. The ALTA survey must be prepared by a licensed land surveyor, certified to the City and the title company that will issue the lenders title policy to the City, and in form and substance acceptable to the City.

G. Promissory Note; Deed of Trust; Covenant. Borrower must execute and deliver to the closing agent the Promissory Note, the original of which shall be delivered to the City promptly after the Loan closing. Borrower must execute and deliver to the closing agent for recordation the Deed of Trust and Covenant.

H. Evidence of Financing. Borrower must provide such information and documentation sufficient to satisfy the City, in the City's sole discretion, that Borrower and/or Sponsor have secured all financing necessary to complete the Project. Documentation sufficient to satisfy the City may include, but not be limited to, commitment or award 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 Agreement.

J. Construction Budget; Timeline. Borrower must provide the City with a copy of the construction budget and development timeline, which must be in form and substance acceptable to the City.

22. **COSTS AND EXPENSES**: Borrower agrees to pay all direct costs, expenses and attorneys' fees reasonably incurred by the City in connection with Borrower's breach or default of this Agreement, the Promissory Note, the Deed of Trust or the Covenant. Borrower agrees to pay reasonable loan closing costs, including without limitation 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 Agreement, and all other costs incurred by the City in connection with the Loan.

**23. CONDITIONS:**

A. The obligation of the City to lend the Loan amount is limited to funds appropriated by the Denver City Council, paid into the Treasury of the City, and encumbered for the purpose of this Agreement. The City does not by this Agreement irrevocably pledge present cash reserves for payment or performance in future fiscal years, and this Agreement does not and is not intended to create a multiple-fiscal year direct or indirect debt or financial obligation of the City.

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

**24. INSURANCE:** Borrower, Sponsor, and/or their 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 or Sponsor, 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 and/or Sponsor's contractor(s) shall include all subcontractors as insureds under their 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, Sponsor, and their contractor(s) 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 and County of Denver named as loss payee.

E. Automobile Liability with limits of \$1,000,000 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 provided to the City 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 coverages must be authorized and licensed to issue insurance in Colorado and be otherwise acceptable to the City's Risk Management Office.

**25. DEFENSE & INDEMNIFICATION:**

A. Borrower agrees to defend, indemnify, and hold harmless the City and its appointed and elected officials, agents and employees against and from 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 Agreement ("**Claims**"), except only for any Claims that 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 the City for any acts or omissions of Borrower, Sponsor, and their contractors and subcontractors, either passive or active, irrespective of fault, including without limitation the City's concurrent negligence whether active or passive, except for the sole negligence or willful misconduct of the City.

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

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

D. Insurance coverage requirements specified in this Agreement shall in no way lessen or limit the liability of Borrower under the terms of this Section 25. Borrower shall obtain, at its own expense, any additional insurance that it deems necessary for the City's protection.

E. The provisions of this Section 25 shall survive the expiration or termination of this Agreement.



**26. DEFAULT AND ACCELERATION:**

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

- i. Any breach of this Agreement, the Promissory Note, the Deed of Trust, or the Covenant;
- ii. 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 Agreement proves to have been false in any material respect when made or furnished;
- iii. Borrower becomes delinquent with its Loan payments or with any other loan, contractual or tax obligations owed to the City when same are due;
- iv. Borrower fails to comply with any rule, regulation or provision referred to in this Agreement;
- v. Borrower fails to maintain a cash balance that is sufficient to cover sixty (60) days of Borrower's operating expenses; and/or
- vi. Borrower is generally unable to pay its debts as they become due, or shall make an assignment for the benefit of creditors; 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; a receiver, trustee or similar officer is appointed without the application or consent of Borrower, and such appointment continues undischarged for a period of ninety (90) days; 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 Borrower; and/or 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 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 Borrower provides the City with a reasonably detailed written plan of how Borrower will

cure the nonmonetary default and Borrower, at all times within such additional time period, actively and diligently pursues such plan. Any notices permitted or required to be sent to Borrower by City shall simultaneously be provided to Borrower's limited partner, NEF Assignment Corporation, at its address provided in Section 27 below, or at such other address as may be provided by Borrower or its limited partner in accordance with the provisions of said section. Borrower's limited partner shall have the opportunity, but not an obligation, to cure any default under this Agreement within the Cure Period (as same may be extended at the discretion of City as provided above in this section), and City shall accept such cure as if it were made by the Borrower. For purposes of this Agreement, the term "**monetary default**" means a failure by Borrower to make any payment required of it under this Agreement, the Promissory Note, the Deed of Trust, or any other document relating to the Loan, and the term "**nonmonetary default**" means a failure by Borrower or any other person or entity to perform any obligation contained in this Agreement, the Promissory Note, the Deed of Trust, the Covenant, or any other documents relating to the Loan.

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 Borrower, the City shall have the right, in addition to and without limitation of all other rights and remedies of the City under this Agreement, the Promissory Note, the Deed of Trust, the Covenant, and any other documents relating to the Loan, to accelerate any outstanding obligations of Borrower, including without limitation any outstanding obligations of both the Interest-Only Portion and the Cash Flow Portion of the Loan, which shall be immediately due and payable along with all other outstanding obligations under the Promissory Note. Borrower agrees to pay a late fee of five percent (5%) of any installment not received by the date the installment is due. Upon default and if the default remains after the Cure Period, the principal amount of the Promissory Note shall draw interest at the rate of fifteen percent (15%) per annum, and if any of the Loan funds have not been disbursed to Borrower, the City may suspend or terminate this 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 Borrower ineligible for any further participation in City funding, in addition to other remedies as provided by law.

27. **NOTICES**: All notices required by the terms of this Agreement must be hand delivered, sent by overnight courier service, or mailed by certified mail, return receipt requested, if to Borrower at the address:

4965 Washington Street LLLP  
c/o Evergreen Real Estate Group  
566 W. Lake Street, Suite 400  
Chicago, Illinois 60661  
Attn: David Block and Javonni Butler

With copies to:

New Communities Law PLLC  
1624 Market Street, Ste. 204  
Denver, Colorado 80202  
Attn: Alex Gano

NEF Assignment Corporation  
540 W. Madison Street, Ste. 1900  
Chicago, Illinois 60661  
Attn: General Counsel

and

Barnes & Thornburg LLP  
41 S. High Street, Ste. 3300  
Columbus, Ohio 43215  
Attn: Jordan R. Carr

With copies to:

Housing Authority of the City and County of Denver, Colorado  
1035 Osage St.  
Denver, Colorado 80202  
Attn: Chief Executive Officer

and

Kutak Rock LLP  
2001 16th Street  
Suite 1800  
Denver, Colorado 80202  
Attn: John A. Henry, Jr.

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

All notices sent under this Agreement shall be effective upon delivery or attempted delivery. 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.

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

**29. ASSIGNMENT AND SUBCONTRACTING:** The City is not obligated or liable under this Agreement to any party other than Borrower and Borrower is not obligated or liable under this Agreement to any party other than the City. Borrower shall not assign, sublet or subcontract with respect to any of the rights, benefits, obligations or duties under this Agreement, except as allowed in Section 17, without prior written consent of the City.

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

**31. 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 without limitation groundbreakings and openings.

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

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

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

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

36. **NONRECOURSE**: Notwithstanding any other provision contained herein or in the Promissory Note, the Deed of Trust, or the Covenant, it is agreed that the execution of this 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 Property and Project.

37. **NO DISCRIMINATION IN EMPLOYMENT**: In connection with the performance of work under this Agreement, 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. Borrower shall insert the foregoing provision in all contracts and subcontracts for or relating to the Property and/or Project.

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

**39. ELECTRONIC SIGNATURES AND ELECTRONIC RECORDS:**

Borrower consents to the use of electronic signatures by the City. This 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 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 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.

**40. CITY'S EXECUTION OF AGREEMENT; EFFECTIVE DATE:** This Agreement shall not be or become effective or binding on the City until full execution by all signatories set forth below. The effective date of this Agreement ("**Effective Date**") shall be the date City delivers a fully executed copy of this Agreement to Borrower, which delivery may be made by electronic mail.

**[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]**

List of Exhibits to Loan Agreement

Exhibit A – Legal Description of Land

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-202579814-00

**Contractor Name:**

4965 WASHINGTON STREET LLLP

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

**SEAL**

**CITY AND COUNTY OF DENVER:**

**ATTEST:**

By:

\_\_\_\_\_

\_\_\_\_\_

**APPROVED AS TO FORM:**

**REGISTERED AND COUNTERSIGNED:**

Attorney for the City and County of Denver

By:

By:

\_\_\_\_\_

\_\_\_\_\_

By:

\_\_\_\_\_



**Contract Control Number:**  
**Contractor Name:**

HOST-202579814-00  
4965 WASHINGTON STREET LLLP

By:  \_\_\_\_\_  
120C4049122F425

Name: David Block  
(please print)

Title: Manager  
(please print)

ATTEST: [if required]

By: \_\_\_\_\_

Name: \_\_\_\_\_  
(please print)

Title: \_\_\_\_\_  
(please print)

## **EXHIBIT A**

### **LEGAL DESCRIPTION OF LAND**

#### **PARCEL A:**

THAT PART OF THE SOUTHEAST 1/4 OF THE SOUTHEAST 1/4 OF SECTION 15, TOWNSHIP 3 SOUTH, RANGE 68 WEST OF THE 6TH P.M., (BEING SHOWN ON THE PLAT OF W.H. CLARK'S SECOND SUBDIVISION), DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON A COUNTY ROAD 230 FEET SOUTH AND 60 FEET WEST OF THE NORTHEAST CORNER OF SAID SOUTHEAST 1/4 OF THE SOUTHEAST 1/4;

THENCE SOUTH AND PARALLEL WITH THE EAST LINE OF SAID SECTION, A DISTANCE OF 50 FEET;

THENCE WEST AT RIGHT ANGLES, A DISTANCE OF 230.5 FEET;

THENCE NORTH AT RIGHT ANGLES, A DISTANCE OF 50 FEET; THENCE EAST AT RIGHT ANGLES, A DISTANCE OF 230.5 FEET TO THE POINT OF BEGINNING,

CITY AND COUNTY OF DENVER, STATE OF COLORADO.

#### **PARCEL B:**

THE NORTH 125 FEET OF PLOT 9, W.H. CLARK'S SECOND SUBDIVISION, CITY AND COUNTY OF DENVER, STATE OF COLORADO.

#### **PARCEL C:**

THE SOUTH 25 FEET OF THE EAST 50 FEET OF PLOT 10, W.H. CLARK'S SECOND SUBDIVISION, CITY AND COUNTY OF DENVER, STATE OF COLORADO.

#### **PARCEL D:**

THAT PART OF THE SOUTHEAST 1/4 OF THE SOUTHEAST 1/4 OF SECTION 15, TOWNSHIP 3 SOUTH, RANGE 68 WEST OF THE 6TH P.M., (BEING SHOWN ON THE PLAT OF W.H. CLARK'S SECOND SUBDIVISION), DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHEAST CORNER OF SAID SECTION 15;

THENCE NORTH ALONG THE EAST LINE OF SAID SECTION FOR 1100.8 FEET;

THENCE WEST AT RIGHT ANGLES 60 FEET TO THE TRUE POINT OF BEGINNING; THENCE NORTH AT RIGHT ANGLES 25 FEET;

## EXHIBIT A

THENCE WEST AT RIGHT ANGLES 218 FEET MORE OR LESS TO THE EAST LINE OF PLOT 10, W.H. CLARK'S SECOND SUBDIVISION;

THENCE SOUTH ALONG THE EAST LINE 25 FEET;

THENCE EAST TO THE POINT OF BEGINNING,

CITY AND COUNTY OF DENVER, STATE OF COLORADO.

PARCEL E:

THE EAST 50 FEET OF PLOT 10, EXCEPT THE SOUTH 25 FEET THEREOF, W.H. CLARK'S SECOND SUBDIVISION, CITY AND COUNTY OF DENVER, STATE OF COLORADO.

PARCEL F:

PLOT 1, W.H. CLARK'S SECOND SUBDIVISION, EXCEPT THAT PART OF SAID PLOT 1, BEING A PART OF THE SOUTHEAST 1/4 OF THE SOUTHEAST 1/4 OF SECTION 15, TOWNSHIP 3 SOUTH, RANGE 68 WEST OF THE 6TH P.M., DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHEAST CORNER OF SAID SECTION 15;

THENCE NORTH ALONG THE EAST LINE OF SAID SECTION, A DISTANCE OF 1100.8 FEET;

THENCE WEST AT RIGHT ANGLES, A DISTANCE OF 60 FEET TO THE TRUE POINT OF BEGINNING;

THENCE NORTH AT RIGHT ANGLES, A DISTANCE OF 25 FEET;

THENCE WEST AT RIGHT ANGLES, A DISTANCE OF 218 FEET, MORE OR LESS, TO THE EAST LINE OF PLOT 10, W.H. CLARK'S SECOND SUBDIVISION;

THENCE SOUTH ALONG SAID EAST LINE, A DISTANCE OF 25 FEET;

THENCE EAST TO A POINT THAT IS 60 FEET WEST OF THE EAST LINE OF SAID SECTION 15, SAID POINT BEING THE TRUE POINT OF BEGINNING;

AND EXCEPT THAT PART OF SAID PLOT 1, BEING A PART OF THE SOUTHEAST 1/4 OF THE SOUTHEAST 1/4 OF SECTION 15, TOWNSHIP 3 SOUTH, RANGE 68 WEST OF THE 6TH P.M., AS CONVEYED TO THE CITY AND COUNTY OF DENVER IN DEED RECORDED JANUARY 19, 1971 IN BOOK 273 AT PAGE 563,

CITY AND COUNTY OF DENVER, STATE OF COLORADO.

## EXHIBIT A

### PARCEL G:

THAT PART OF THE SOUTHEAST 1/4 OF THE SOUTHEAST 1/4 OF SECTION 15, TOWNSHIP 3 SOUTH, RANGE 68 WEST OF THE 6TH P.M., DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT 280 FEET SOUTH AND 60 FEET WEST OF THE NORTHEAST CORNER OF THE SOUTHEAST 1/4 OF THE SOUTHEAST 1/4 OF SAID SECTION 15;

THENCE SOUTH 50 FEET;

THENCE AT RIGHT ANGLES WEST 230 1/2 FEET;

THENCE AT RIGHT ANGLES NORTH 50 FEET;

THENCE AT RIGHT ANGLES EAST 230 1/2 FEET TO THE POINT OF BEGINNING, BEING A PART OF PLOT 2, W.H. CLARK'S SECOND SUBDIVISION,

CITY AND COUNTY OF DENVER, STATE OF COLORADO.

### PARCEL H:

THE SOUTH 1/2 OF THE NORTH 1/2 OF THE SOUTH 1/2 OF PLOT 9, W.H. CLARK'S SECOND SUBDIVISION, CITY AND COUNTY OF DENVER, STATE OF COLORADO

### PARCEL I:

THE SOUTH 1/2 OF THE SOUTH 1/2 OF PLOT 9, W.H. CLARK'S SECOND SUBDIVISION, CITY AND COUNTY OF DENVER, STATE OF COLORADO.

NOTE: SAID PARCELS A THROUGH I ARE ALSO DESCRIBED AS FOLLOWS:

PLOT 1, EXCEPT THAT PART OF SAID PLOT 1 AS CONVEYED TO THE CITY AND COUNTY OF DENVER IN DEED RECORDED JANUARY 19, 1971 IN BOOK 273 AT PAGE 563,

THE NORTH 1/2 OF PLOT 2,

ALL OF PLOT 9, AND

THE EAST 50 FEET OF PLOT 10,

ALL IN W.H. CLARK'S SECOND SUBDIVISION, CITY AND COUNTY OF DENVER, STATE OF COLORADO.

## **EXHIBIT A**

PARCEL J:

THE SOUTH 120.00 FEET OF THE WEST 125.00 FEET AND THE EAST 13.00 FEET OF THE WEST 138.00 FEET OF LOT 10 IN W.H. CLARK'S SECOND SUBDIVISION,

CITY AND COUNTY OF DENVER, STATE OF COLORADO.

PARCEL K:

THAT PART OF LOT 10, W.H. CLARK'S SECOND SUBDIVISION DESCRIBED AS FOLLOWS:

COMMENCING AT A POINT 50.00 FEET WEST OF THE NORTHEAST CORNER OF LOT 10, W.H. CLARK'S SECOND SUBDIVISION AND IN NORTH LINE OF SAID LOT;

THENCE SOUTH 200.00 FEET;

THENCE WEST 30.00 FEET;

THENCE NORTH 200.00 FEET;

THENCE EAST 30.00 FEET TO THE BEGINNING;

BEING PART OF SAID LOT 10 AND 30.00 FEET FRONT AND 200.00 FEET DEEP,

CITY AND COUNTY OF DENVER, STATE OF COLORADO.

EXCEPTING FROM SAID PARCEL A THROUGH K, INCLUSIVE, THOSE PORTIONS LAYED OUT, OPENED AND ESTABLISHED AS PUBLIC STREETS BY RESOLUTIONS OF THE CITY AND COUNTY OF DENVER RECORDED MAY 14, 2025 UNDER RECEPTION NOS. 2025044726, 2025044727 AND 2025044728.

NOTE: SAID PARCELS A THROUGH K (COMBINED) ARE ALSO DESCRIBED AS FOLLOWS:

A PARCEL OF LAND BEING A PORTION OF PLOTS 1, 2, 9, AND 10, W. H. CLARK'S SECOND SUBDIVISION, SITUATED IN THE SOUTHEAST QUARTER OF SECTION 15, TOWNSHIP 3 SOUTH, RANGE 68 WEST OF THE SIXTH PRINCIPAL MERIDIAN, CITY AND COUNTY OF DENVER, STATE OF COLORADO, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHEAST CORNER OF SAID PLOT 9;

## EXHIBIT A

THENCE NORTH  $89^{\circ}43'50''$  WEST ALONG THE SOUTH LINE OF SAID PLOT 9, A DISTANCE OF 193.45 FEET TO A LINE PARALLEL WITH AND 12.00 FEET EAST OF THE WEST LINE OF SAID PLOTS 9 AND 10;

THENCE NORTH  $00^{\circ}15'02''$  EAST ALONG SAID PARALLEL LINE, A DISTANCE OF 320.00 FEET TO A LINE PARALLEL WITH AND 120 FEET NORTH OF THE SOUTH LINE OF SAID PLOT 10;

THENCE SOUTH  $89^{\circ}43'54''$  EAST ALONG SAID PARALLEL LINE, A DISTANCE OF 113.00 FEET TO A LINE PARALLEL WITH AND 125 FEET EAST OF THE WEST LINE OF SAID PLOT 10;

THENCE NORTH  $00^{\circ}15'02''$  EAST ALONG SAID PARALLEL LINE, A DISTANCE OF 78.00 FEET TO A LINE PARALLEL WITH AND 2.00 FEET SOUTH OF THE NORTH LINES OF SAID PLOT 10 AND PLOT 1;

THENCE SOUTH  $89^{\circ}43'59''$  EAST ALONG SAID PARALLEL LINE, A DISTANCE OF 266.08 FEET;

THENCE ALONG THE ARC OF A CURVE TO THE RIGHT AN ARC LENGTH OF 59.64 FEET, SAID CURVE HAVING A RADIUS OF 49.50 FEET, A CENTRAL ANGLE OF  $69^{\circ}01'52''$ , AND A CHORD WHICH BEARS SOUTH  $34^{\circ}17'29''$  EAST A CHORD DISTANCE OF 56.10 FEET;

THENCE SOUTH  $00^{\circ}13'27''$  WEST, A DISTANCE OF 75.86 FEET;

THENCE ALONG THE ARC OF A CURVE TO THE LEFT AN ARC LENGTH OF 91.83 FEET, SAID CURVE HAVING A RADIUS OF 588.00 FEET, A CENTRAL ANGLE OF  $08^{\circ}56'54''$ , AND A CHORD WHICH BEARS SOUTH  $04^{\circ}15'00''$  EAST A CHORD DISTANCE OF 91.74 FEET TO A POINT OF REVERSE CURVATURE;

THENCE ALONG THE ARC OF SAID CURVE TO THE RIGHT AN ARC LENGTH OF 57.51 FEET, SAID CURVE HAVING A RADIUS OF 512.00 FEET, A CENTRAL ANGLE OF  $06^{\circ}26'08''$ , AND A CHORD WHICH BEARS SOUTH  $05^{\circ}30'22''$  EAST A CHORD DISTANCE OF 57.48 FEET TO A POINT ON THE EAST LINE OF SAID PLOT 2, SAID POINT BEING 72.69 FEET SOUTH OF THE SOUTHEAST CORNER OF SAID PLOT 1;

THENCE SOUTH  $00^{\circ}14'38''$  WEST ALONG SAID EAST LINE OF SAID PLOT 2, A DISTANCE OF 27.32 FEET;

THENCE NORTH  $89^{\circ}43'52''$  WEST, A DISTANCE OF 230.44 FEET TO THE EAST LINE OF SAID PLOT 9;

THENCE SOUTH  $00^{\circ}14'56''$  WEST ALONG SAID EAST LINE OF PLOT 9, A DISTANCE OF 100.00 FEET TO THE POINT OF BEGINNING.

## **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 or grant funds to Borrower or Grantee (referred to herein as the "Borrower") for "hard cost expenses," "soft cost expenses," and "acquisition cost expenses" (each a "Disbursement" and collectively the "Disbursements") upon Borrower's written request delivered to HOST (each a "Disbursement Request" and collectively the "Disbursement Requests"). 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 the following items:
  - i. A partnership agreement, partnership resolution, or other documentation to demonstrate who has authority for Borrower to submit Disbursement Requests.
  - ii. The Affirmative Marketing Plan.
  - iii. The tenant selection plan.
  - iv. The form lease agreement for dwelling units comprising the Property, which contains no prohibited provisions as described in the Agreement.
- d. All Disbursements will be via check sent by regular mail unless ACH or other method of disbursement is requested and all required information and documentation for same has been provided.
- e. Disbursements involving federal funds must have satisfied all environmental review requirements under 24 C.F.R. Part 58.
- f. Borrower may not make a Disbursement Request until such funds are needed to pay costs for the development and construction of the Property and Project. The amount of each Disbursement Request must be limited to the amount needed to pay costs actually incurred by Borrower at the time of the Disbursement Request. The Disbursement Request may not include double reimbursement of items amounts for prospective or future needs, funds to be placed into escrow accounts, or advances in lump sums to Borrower.
- g. Each Disbursement Request must be accompanied by documentation acceptable to HOST and DOF that evidences payments for which a Disbursement Request

## EXHIBIT B

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, as applicable, but not be limited to:

- i. A completed and signed 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 Property and 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 Property and 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; and/or bank statements.
  - vi. An updated itemized budget.
  - vii. Current certificates of insurance.
  - viii. Lien waivers from all applicable contractors, subcontractors, and suppliers.
  - ix. For 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.
  - x. For acquisition Disbursement Requests being funded at a scheduled 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. 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 defined and set forth in the 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 Borrower 95% of hard expenses for each Disbursement and all of the soft expenses. The retained 5% 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 Property and 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 Property and 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 or grant proceeds to 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 the Agreement or the procedures for a Disbursement Request set forth herein.
  - iii. Were requested or incurred, or both, after the termination of the Agreement or outside the time periods set forth in the Agreement.
  - iv. Were requested during the occurrence and continuation of an event of default specified in the 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, as applicable:
  - i. A completed HOST expense certification form.
  - ii. For agreements funded with federal funds, any required federal forms or reports. The City must review and approve any completed federal forms or reports for any federally funded agreement.
  - iii. All documents or items required to be submitted to the City pursuant to the Agreement not previously provided.
  - iv. A certificate of occupancy for the Property.
  - v. Current certificates of insurance.
  - vi. Updated title policy with date down endorsement or copy of date down endorsement for senior lender.
  - vii. The Property must pass a HUD standard inspection performed by the City.
  - viii. Lease-up information on all units restricted by the City through the use of City funds or Federal funds, 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),

## EXHIBIT B

utility allowance amount, lease start and end dates, and demographic data. HOST will review this information to confirm the Property's lease-up is in compliance with the affordability restrictions contained in the Agreement and with the Covenant.

ix. Any other documents required by HOST.

b. *Retainage*. For the City to release the Retainage, a Disbursement Request must be submitted along with the following information, as applicable:

- i. A completed HOST expense certification form.
- ii. Final unconditional lien waivers or proof of release of liens in form and substance satisfactory to the City from all applicable contractors, subcontractors, and suppliers.
- 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, as applicable, with respect to the Property.
- 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, as applicable.
- 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, as applicable.
- vi. All documents or items required to be submitted to the City pursuant to the Agreement not previously provided.
- vii. A certificate of occupancy for the Property.
- viii. Current certificates of insurance.
- ix. Updated title policy with date down endorsement or copy of date down endorsement for senior lender.
- x. The Project must also pass a HUD standard inspection performed by the City.
- xi. Uniform Relocation Assistance and Real Property Acquisition Policies Act ("URA") Determination, as applicable.
- xii. Environmental mitigation memorandum of understanding, as applicable.
- xiii. 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 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 Borrower has not submitted the required documentation and information required by the Agreement, including without limitation the documentation and information required by these terms and conditions.

- i. *No Default*. 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

## EXHIBIT B

any other document executed by Borrower in connection with the Agreement.

- 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 Property and Project in accordance with the terms of the Agreement, and in conformance with federal regulations and requirements for federally funded agreements.
- iii. *Sufficient Funds Available to Complete the Project.* If requested by the City, Borrower shall furnish evidence satisfactory to the City, in its sole discretion, that the amount of the loan or grant yet to be disbursed, together with any other sources of funds available to Borrower and not yet disbursed, will be sufficient to complete the Property and Project in compliance with the Agreement and to pay all costs therefor, and all other direct or indirect costs relating to the loan or grant and the Property or Project.
- iv. *Lien waivers.* If requested by the City, Borrower shall furnish data in a form satisfactory to the City with respect to prior Disbursements and expenditures relating to the Property and Project and shall furnish lien waivers from the contractor and all subcontractors for work done and materials supplied to the Property and Project to the date of the Disbursement Request.
- v. *Use of Funds.* Subject to the terms of the Agreement, the Borrower shall use the proceeds of the loan or grant exclusively for the costs of the development and construction of the Property and 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 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 a 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.

## **EXHIBIT B**

### **IV. Financial Management Systems – Borrower must maintain financial systems that meet the following standards:**

- 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 without limitation 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. 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, Borrower shall maintain separate accountability for HOST funds as referenced in 2 C.F.R. Part 200.
- h. 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. 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, and (2) vouchering process.

## **EXHIBIT B**

### **V. Audit Requirements**

- a. For contracts subject to federal agreements, if Borrower expends seven hundred fifty thousand dollars (\$750,000) or more of federal awards in Borrower's fiscal year, 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 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 general contractor shall prepare and submit a corrective action plan to HOST in accordance with the Single Audit Act Amendments and 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 without limitation reports, packages, management letters, correspondence, etc., shall be submitted to HOST.
- e. Borrower shall be responsible for all questioned and disallowed costs.
- f. 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. Borrower shall also institute policy and procedures for its subrecipients that comply with these audit provisions, if applicable.

### **VI. Procurement [NOT APPLICABLE]**

- a. Borrower shall follow the City procurement policy to the extent 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 twenty-five thousand dollars (\$25,000) in the aggregate.
- b. Borrower shall 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 supplies are not needed for any other federally sponsored programs or projects, Borrower will compensate the awarding agency for its share.

## **EXHIBIT B**

### **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 Borrower in excess of the amount to which 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 Borrower, or 3) pursue any 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 OF PROPERTY

Housing Unit, 4965 N. Washington Street Small Planned Community according to the Declaration recorded \_\_\_\_\_, 2025 in the office of the Clerk and Recorder of the City and County of Denver, Colorado, at Reception No. \_\_\_\_\_, and the 4965 N. Washington Street Small Planned Community Map recorded \_\_\_\_\_, 2025 in such office at Reception No. \_\_\_\_\_, as amended and supplemented from time to time as permitted under such Declaration, City and County of Denver, Colorado.

After recording return to:

Kutak Rock LLP  
2001 16<sup>th</sup> Street  
Suite 1800  
Denver, Colorado 80202  
Attention: John A. Henry, Jr.

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## SUBORDINATION AND STANDSTILL AGREEMENT

THIS SUBORDINATION AND STANDSTILL AGREEMENT (the "Agreement"), is made and entered into as of [\_\_\_\_], 2025, by and among 4965 WASHINGTON STREET LLLP, a Colorado limited liability limited partnership ("Borrower"), HOUSING AUTHORITY OF THE CITY AND COUNTY OF DENVER, COLORADO, a body corporate and politic of the State of Colorado ("Senior Lender"), and the CITY AND COUNTY OF DENVER, a municipal corporation organized pursuant to the Constitution of the State of Colorado ("Subordinate Lender"). Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Senior Loan Agreement (as defined below).

### RECITALS:

A. Borrower is constructing a 170-unit multifamily affordable housing project ("Project") on certain real property located at 4965 Washington Street in Denver, Colorado, legally described on Exhibit A attached hereto and incorporated herein by reference (the "Mortgaged Property"). The affordable housing project is part of a small-planned community (the "Community") to be constructed by Borrower on land owned by Subordinate Lender (the "Land"), which Land has been leased by Subordinate Lender to Borrower's affiliated entity, Globeville Redevelopment Partners, LLC, a Colorado limited liability company ("GRP"), in connection with that certain Land Lease recorded on or about the date of this Agreement (the "Land Lease"), and which Land Lease, together with the rights, benefits, covenants and obligations of the "Tenant" and/or the "Lessee" thereunder, have been assigned by GRP and assumed by Borrower in connection with that certain Assignment and Assumption of Land Lease recorded on or about the date of this Agreement. The Community will primarily be comprised of three units, consisting of the 170 affordable rental housing units comprising the Project, certain commercial space (the "Commercial Unit"), and a public library (the "Library Unit"), and together with the Project and the Commercial Unit, collectively, the "Community Units"). The improvements to be constructed by Borrower on the Mortgaged Property and Land in connection with the development of the Community Units and the Community are collectively referred to herein as the "Improvements".

B. In connection with the financing of the construction of the Improvements, Senior Lender is issuing its Multifamily Housing Revenue Bonds (4965 Washington Street Project) Tax-Exempt Series 2025A (the "Tax-Exempt Bonds") in the original principal amount of \$[\_\_\_\_], and using the proceeds thereof to make a construction loan in the amount of up to \$[\_\_\_\_] (the "Tax-Exempt Construction Loan") and its Multifamily Housing Revenue Bonds (4965 Washington Street Project) Federally Taxable Series 2025B (the "Taxable Bonds," and together with the Tax-Exempt Bonds, the "Bonds") in the original principal amount of \$[\_\_\_\_], and using the proceeds thereof to make a construction loan in the amount of up to

\$[ ] (the "Taxable Construction Loan," and together with the Tax-Exempt Construction Loan, collectively, the "Construction Loan"). The Construction Loan is expected to convert to a permanent loan to the Borrower in the amount of up to \$[ ] (the "Permanent Loan," and together with the Construction Loan, collectively, the "Senior Loan");

C. The Senior Loan will be advanced to Borrower pursuant to the terms of that certain Loan Agreement dated as of [July 1], 2025 and that certain Financing Agreement dated as of the date hereof (as amended from time to time, collectively, the "Senior Loan Agreement"). The Senior Loan will be evidenced by a Multifamily Note dated [ ], 2025 payable by the Borrower to Senior Lender in the original principal amount of \$[ ] (the "Tax-Exempt Note") and a Multifamily Note dated [ ], 2025 payable by the Borrower to the Senior Lender in the original principal amount of \$[ ] (the "Taxable Note," and together with the Tax-Exempt Note, the "Senior Note"). The obligations of the Borrower under the Senior Loan Agreement and the Senior Note will be secured by, among other collateral, a first lien Leasehold Deed of Trust, Assignment of Rents and Leases, Security Agreement, and Fixture Filing (as amended from time to time, the "Senior Deed of Trust"), which Senior Deed of Trust shall encumber, during the construction of the Improvements, Borrower's interest in all the Community Units, and after completion of the Improvements and sale by Borrower of the Library Unit and the Commercial Unit, the Deed of Trust will only encumber the Mortgaged Property. The Senior Loan Agreement, the Senior Note, the Senior Deed of Trust and any and all other documents, writings and instruments which evidence and/or secure the Senior Loan, as the same may be extended, amended, restated, modified or supplemented from time to time, are collectively referred to herein as the "Senior Loan Documents."

D. On or about the date of this Agreement and also in connection with the construction of the Project and related Improvements, Subordinate Lender has loaned to the Borrower \$9,800,000 (the "Subordinate Loan") under that certain Loan Agreement of or about even date herewith between Borrower and Subordinate Lender (the "Subordinate Loan Agreement"). The Subordinate Loan is evidenced by that certain Promissory Note of or about even date herewith (the "Subordinate Note"), and is secured by a Deed of Trust of or about even date herewith for the benefit of Subordinate Lender encumbering the Mortgaged Property (the "Subordinate Deed of Trust"). The Subordinate Loan Agreement, the Subordinate Note, the Subordinate Deed of Trust and all other documents evidencing the Subordinate Loan are collectively referred to herein as the "Subordinate Loan Documents".

E. Senior Lender has agreed to make the Senior Loan only upon the execution of this Agreement by Subordinate Lender.

#### AGREEMENT:

For and in consideration of the foregoing recitals which are hereby incorporated into this Agreement, of the mutual benefits accruing to the parties hereto and the promises set forth herein, 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 Senior Deed of Trust. As used herein, the following terms shall have the meanings assigned to them:

"Senior Obligations" means each and every debt, liability and obligation of every type and description that the Borrower may now or at any time hereafter owe to Senior Lender under the 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, together with any and all security interests, liens or other encumbrances granted in connection with the Senior Loan by the Borrower and in favor of Senior Lender, up to the maximum amounts of \$100,000,000 for the Construction Loan and \$65,000,000 for the Permanent Loan (collectively, the "Maximum Subordinated Amount").

"Subordinate Obligations" means each and every debt, liability and obligation of every type and description that the Borrower may now or at any time hereafter owe to Subordinate Lender under the Subordinate 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, together with any and all security interests, liens or other encumbrances granted in connection with the Subordinate Loan by the Borrower and in favor of Subordinate Lender.

2. Subordination. All Subordinate Obligations are hereby expressly subordinated to the extent and in the manner hereinafter set forth to the payment of the Senior Obligations up to the Maximum Subordinated Amount. Subordinate Lender hereby agrees that any security interest under the Subordinate Loan Documents that Subordinate Lender might now hold in the Mortgaged Property is subordinate, up to the Maximum Subordinated Amount, to any security interest under the Senior Loan Documents that Senior Lender may now or hereafter hold in the Mortgaged Property.

3. Collateral and Security Interest. Except for the Subordinate Loan Documents in connection with the Subordinate Loan, until the Senior Obligations have been paid either in full or up to the Maximum Subordinated Amount, whichever is less, Subordinate Lender shall not demand, receive or accept (i) a pledge of any of the Mortgaged Property as security for the Subordinate Obligations, or (ii) a grant of any security interest or any other right or interest in any of the Mortgaged Property as security for the Subordinate Obligations.

4. Payments Before Default Under Senior Loan Documents. Until Subordinate Lender receives written notice from Senior Lender that a default has occurred in connection with the Senior Loan Documents as set forth in Section 8 herein, Subordinate Lender shall be entitled to retain for its own account all payments made in connection with the Subordinate Obligations.

5. Waiver and Consent. Senior Lender shall have no obligation to Subordinate Lender with respect to the Senior Obligations, nor shall Senior Lender have any obligation to Subordinate Lender with respect to the Mortgaged Property unless Senior Lender becomes the "Tenant" or "Lessee" under the Land Lease, in which event Senior Lender shall have the rights and obligations

of the "Tenant" and "Lessee" under the Land Lease. Subject to any contrary provisions in the Land Lease, 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 Senior Lender's name or in the Borrower's name, demand, sue for, collect or receive any money or property at any time payable or receivable on account of, the Mortgaged Property; (d) prosecute, settle and receive proceeds on any insurance claims relating to the Mortgaged Property; and (e) exercise and enforce any right or remedy available to 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 the Land Lease or by law. Senior Lender may apply the proceeds of the Mortgaged Property in any order Senior Lender deems appropriate in its sole discretion, except as otherwise required by the Land Lease or by law. Senior Lender may amend any of the Senior Loan Documents executed in connection with the Senior Deed of Trust without the consent of Subordinate 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 Subordinate Lender), or (iii) increase the interest rate spread due on the Senior Obligations (except for any default interest).

6. No Action. Subordinate Lender will not, without the prior written consent of Senior Lender, commence or join in any action or proceeding with respect to the Mortgaged Property or against the Borrower in connection with the Subordinate Obligations, 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 Subordinate Lender against the Borrower or with respect to the Mortgaged Property or any other property of the Borrower upon Borrower's default with respect to the Subordinate Obligations. If the Borrower is in default under the Senior Loan Documents and Senior Lender forecloses on the Mortgaged Property, Subordinate Lender shall, upon the request of Senior Lender, promptly execute and deliver such instruments as may reasonably be necessary to terminate and release any security interest or lien Subordinate Lender acquired in connection with the Subordinate Loan.

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

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

9. Default under the Senior Loan Documents. Subordinate Lender agrees that a default under the Senior Loan Documents shall not constitute a default under the Subordinate Loan Documents if no other default has occurred and is continuing under the Subordinate Loan Documents until either (i) Senior Lender has accelerated the maturity of the Senior Note or Senior Deed of Trust, or (ii) Senior Lender has taken affirmative action to exercise its rights under the Senior Loan Documents to collect rent, to appoint (or seek the appointment of) a receiver or to foreclose on (or to exercise a power of sale contained in) the Senior Deed of Trust. If the Borrower is at any time in default under the Subordinate Loan Documents solely as a result of the existence of a default by the Borrower under any of the Senior Loan Documents, and if the Borrower thereafter cures such default under the Senior Loan Documents to the satisfaction of the Senior Lender, as evidenced by written notice from Senior Lender to Subordinate Lender, then the Borrower's default under the Subordinate Loan Documents as a result of the Borrower's default under the Senior Loan Documents shall be deemed cured and the Subordinate Obligations shall be retroactively reinstated as if such default had never occurred. The foregoing provisions are subject to the provisions of the Lease and are without waiver or limitation of Subordinate Lender's rights and remedies under the Lease and as the municipal corporation in which the Project is located.

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

11. Binding Effect; Miscellaneous. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective participants, successors and assigns, but neither the Borrower nor any other secured party shall be entitled to rely on or enforce this Agreement. This Agreement cannot be waived or changed or ended, except by a writing signed by the party to be bound thereby, and except as provided in Section 13 below. 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 in the City and County of Denver, Colorado. 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.

12. 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 following addresses of Subordinate Lender or Senior Lender, as the case may be:

If to Subordinate Lender:	Executive Director of the Department of Housing Stability City and County of Denver 201 West Colfax Avenue, Dept. 615 Denver, Colorado 80202
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With a copy to: Denver City Attorney's Office  
1437 Bannock St., Room 353  
Denver, Colorado 80202

If to Senior Lender: Housing Authority of the City and County  
of Denver, Colorado  
1035 Osage St.  
Denver, Colorado 80204  
Attention: Chief Executive Officer

With a copy to: Kutak Rock LLP  
2001 16<sup>th</sup> Street  
Suite 1800  
Denver, Colorado 80202  
Attention: John A. Henry, Jr.

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

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

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

16. Bankruptcy Provisions. To the extent any payment under the Senior Deed of Trust (whether by or on behalf of Borrower, 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.

17. Condemnation Awards and Insurance Proceeds. Until repayment in full of the Senior Loan, Subordinate Lender covenants and agrees that any and all rights of Subordinate Lender, including without limitation any and all rights to condemnation awards or insurance proceeds, shall be, and are hereby expressly made, subject and subordinate to the lien of the Senior Deed of Trust and to the rights, interests and remedies of Senior Lender and its successors and assigns (including the purchaser at any foreclosure sale or the transferee of any transfer in lieu of foreclosure) under the Senior Deed of Trust, and for so long as amounts remain payable under the Senior Obligations, the Subordinate Lender hereby assigns and releases to the Senior Lender all of its right, title and interest or claim, if any, in and to the proceeds of all of the policies of insurance and condemnation awards relating to the Mortgaged Property.

18. Land Lease. The parties hereto acknowledge that as of the date of this Agreement, the Subordinate Lender is the lessor under the Land Lease, and nothing in this Agreement is intended to alter or modify any of the lessor's rights and obligations under the Land Lease.

**[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]**



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

**BORROWER:**

**4965 WASHINGTON STREET LLLP**, a  
Colorado limited liability limited partnership

By: 4965 Washington Street GP LLC, a Colorado  
limited liability company, its General Partner

By: \_\_\_\_\_  
Name: David Block  
Title: Manager

STATE OF \_\_\_\_\_ )  
 ) ss.  
COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me on the \_\_\_\_ day of \_\_\_\_\_, 2025, by David Block as Manager of 4965 Washington Street GP LLC, a Colorado limited liability company, as General Partner of 4965 WASHINGTON STREET LLLP, a Colorado limited liability limited partnership.

WITNESS MY HAND AND OFFICIAL SEAL.

My commission expires: \_\_\_\_\_

[SEAL]

\_\_\_\_\_  
Notary Public

[Signature Page to Subordination Agreement — DHA]

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

**SENIOR LENDER:**

**HOUSING AUTHORITY OF THE CITY AND  
COUNTY OF DENVER, COLORADO**, a body  
corporate and politic, authorized by the laws of  
State of Colorado

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

STATE OF COLORADO                    )  
  ) ss.  
COUNTY OF \_\_\_\_\_)

The foregoing instrument was acknowledged before me this [\_\_\_\_], 2025, by  
[\_\_\_\_], as [\_\_\_\_] of Housing of Authority of the City and County of  
Denver, Colorado, a body corporate and politic, authorized by the laws of State of Colorado.

WITNESS MY HAND AND OFFICIAL SEAL.

My commission expires: \_\_\_\_\_

[SEAL]

\_\_\_\_\_  
Notary Public

[Signature Page to Subordination Agreement — DHA]

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

**SUBORDINATE LENDER:**

**CITY AND COUNTY OF DENVER**, a Colorado  
Municipal Corporation

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_, Department of Housing Stability

STATE OF COLORADO                    )  
  ) ss.  
COUNTY OF DENVER                    )

The foregoing instrument was acknowledged before me this [\_\_\_\_], 2025, 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: \_\_\_\_\_

[SEAL]

\_\_\_\_\_  
Notary Public

[Signature Page to Subordination Agreement — DHA]

**EXHIBIT A**  
**LEGAL DESCRIPTION OF THE PROPERTY**

## EXHIBIT F

### CASH FLOW CALCULATION

The provisions of this Exhibit F are found in the Amended and Restated Limited Liability Partnership Agreement of 4965 Washington Street LLLP dated \_\_\_\_\_, 2025 (collectively with any addenda, amendments, or other modifications thereto, the “**Partnership Agreement**”). Unless otherwise defined herein or in the Loan Agreement to which this exhibit is attached, all capitalized terms used in this Exhibit F have the meanings assigned to them in the Partnership Agreement. A copy of the fully executed Partnership Agreement shall be provided to the City promptly after execution, and Borrower shall thereafter provide the City with prior written notice of any proposed addenda, amendment, or other modification to the Partnership Agreement. Any proposed addenda, amendment, or other modification to the distribution of Cash Flow that would result in a material change, as determined by the Director of HOST or any equivalent person and/or agency of the City, shall require prior written approval by the Director, or if required by law, by the Denver City Council; provided, however, that changes which do not affect the distribution of Cash Flow or which solely affect distributions of Cash Flow to be paid after distributions to the City for the City HOST Loan as provided below shall not require the City’s approval.

#### Section 5.1 **Distribution of Cash Flow.**

**5.1.1.** Cash Flow shall be paid, prior to the making of any distributions pursuant to Section 5.1.2 hereof, in the following order and priority:

- (i) First, to the Limited Partner to the extent of any amount which the Limited Partner is entitled to receive in order to satisfy any and all amounts owed to it pursuant to this Partnership Agreement, including, without limitation, under Section 6.8 and Section 6.9 hereof (other than Section 3.7 hereof);
- (ii) Second, to pay any accrued and unpaid principal and interest on loans made by the Limited Partner pursuant to Section 3.7;
- (iii) Third, to the Asset Manager to pay any accrued and payable Asset Management Fees;
- (iv) Fourth, to the Operating Reserve Account until such time as such account is replenished up to the Operating Reserve Target Amount;
- (v) Fifth, to make Cash Flow Debt Service Payments to the CHFA Conduit Loan;
- (vi) Sixth, to the Developer to pay any unpaid balance on the Deferred Development Fee;
- (vii) Seventh, 75% to make Cash Flow Debt Service Payments, the amount of which payment shall be split 79% to the City HOST Loan and 21% to the GES Loan, until both loans are fully repaid;

(viii) Eighth, to DHA to pay the PILOT in accordance with the Addendum;

(ix) Ninth, to repay any accrued and unpaid principal and interest on loans made by the General Partner pursuant to Section 3.7;

(x) Tenth, to the General Partner (in the order of loans made, with earlier loans repaid in full before subsequent loans are repaid) to repay any amounts treated as loans to the Partnership (without interest) by the General Partner pursuant to Section 6.4.6(ii) and not yet repaid;

(xi) Eleventh, 25% to DHA to fund a property tax escrow account for the benefit of the Project in accordance with the Addendum;

(xii) Twelfth, until the end of the Compliance Period, ninety percent (90%) of the balance, if any, to the General Partner, of which not more than 5% of Gross Cash Receipts for the subject Fiscal Year shall be paid to the General Partner as an Incentive Partnership Management Fee, on a non-cumulative basis, with any remaining portion of such 90% amount to be paid to the General Partner as a distribution of Cash Flow.

**5.1.2** After making the payments described in Section 5.1.1 hereof, the remaining Cash Flow, if any, shall be distributed to the Partners in accordance with the following percentages:

General Partner	0.01%
Special Limited Partner	0.01%
Limited Partner	<u>99.98%</u>
Total	100.00%

Notwithstanding any other provision of this Section 5.1 to the contrary, for each Fiscal Year a sufficient amount of Cash Flow shall be distributed to the Limited Partner 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 5.1.1(vii) with respect to such Fiscal Year; and for so long as the Project is subject to any loan insured or held by HUD and any applicable Regulatory Agreement with HUD, Cash Flow for purposes of this Section 5.1.1 shall be an amount not to exceed "surplus cash" of the Project as such term is defined in, and as such amount is available for distribution in accordance with, the HUD Regulatory Agreement.