

**LOAN AGREEMENT
(AFFORDABLE HOUSING PERMANENT FUNDS)**

THIS LOAN AGREEMENT is made between the **CITY AND COUNTY OF DENVER**, a municipal corporation organized pursuant to the Constitution of the State of Colorado (“City”), and **KAPPA TOWER II LLLP**, a Colorado limited liability limited partnership, whose address is 820 South Monaco Parkway, #336, Denver, CO 80224 (“Borrower”).

WITNESSETH:

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

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

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

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

1. **LOAN TO BORROWER**: Subject to the terms of this Loan Agreement, the City agrees to lend Borrower the sum of Seven Hundred Thousand and 00/100 Dollars (\$700,000.00) (the “Loan”), to be repaid over a term of approximately sixty (60) years with simple interest at the rate of one percent (1%) per annum. Borrower shall execute a promissory note in a form satisfactory to City evidencing this loan (the “Promissory Note”) and a Covenant securing the Property for use as affordable housing as required by Section 6 hereof. Principal and interest shall be due and payable, at such place as may be designated by City, in annual installments of the amount calculated in accordance with the order of priority and other provisions set forth in **Exhibit A**, attached hereto (“Cash Flow”). The first payment shall be due and payable, in the amount described above, within 60 days after December 31st, 2030 and annual installments shall be due within 60 days after December 31st of each year thereafter, with the entire unpaid balance of principal and accrued interest due and payable on or before the earlier of (a) 55 years after the property is placed in service or (b) December 31st, 2075 (“Maturity Date”), if not sooner paid. Each year after loan closing, Borrower shall send audited property financial statements to the City, which the City will use to verify Borrower’s Cash Flow calculation.

2. **SECURITY**: Repayment of the Promissory Note shall be secured by a Deed of

Trust (the “Deed of Trust”), in form satisfactory to City, granted by Borrower and encumbering the real property known and numbered as 9020 Northfield Boulevard, Denver, Colorado 80238 (the “Property”) subject to prior encumbrances not exceeding thirteen million and no/100 Dollars (\$13,000,000) in principle amount under the construction loan and Five Million and No/100 Dollars (\$5,000,000.00) in principal amount after conversion of the construction loan to permanent loan status.

3. SUBORDINATION: The Executive Director (the “Executive Director”) of the City’s Department of Housing Stability (“HOST”), or his or her permitted designee, is authorized to execute documents necessary to subordinate the lien of the City’s Deed of Trust to the Land Use Restriction Agreement required by the Colorado Housing and Finance Authority and to other financing for the Property, so long as (i) the subordination agreements are substantially in the form attached hereto as **Exhibit B, Exhibit C, Exhibit D, and Exhibit E**; (ii) encumbrances prior to the City’s Deed of Trust do not exceed \$13,000,000 under the construction loan and \$5,000,000.00 on conversion to the permanent loan; (iii) Borrower is not then in default of its obligations pursuant to this Loan Agreement, the Promissory Note, Deed of Trust, or Covenant; and (iv) all additional financing for the Project is committed.

4. USE AND DISBURSEMENT OF FUNDS: Loan proceeds will be used to finance costs associated with development of the Property for use as affordable housing, in accordance with **Exhibit F**, attached hereto and incorporated herein. Borrower will construct and operate the affordable housing, and shall construct and operate the Property in a manner that complies with the terms of this Agreement. No funds will be disbursed until Borrower has complied with all federal environmental and historic preservation clearances as certified by HOST in writing. The Borrower shall submit to the City requisitions with documentation of incurred costs on HOST approved forms, and otherwise comply with the financial administration requirements set forth in **Exhibit G** attached hereto and incorporated herein. Where the City’s funds are disbursed for construction, (i) the City shall monitor the construction activities for the purpose of verifying eligible costs, and (ii) the City shall retain ten percent (10%) of each disbursement of funds, which retainage shall be released upon final inspection and approval of the City and receipt of proof of release of liens from all applicable contractors, subcontractors, and suppliers. Acquisition funds, if any, shall be disbursed at a scheduled closing, and the City’s warrant shall be payable jointly to Borrower and the seller of the Property. In addition, HOST

shall retain Fifteen Thousand and No/100 Dollars (\$15,000.00) of the total funds to be disbursed under this Loan Agreement, which retainage shall be released upon receipt from Borrower of all information necessary for the City's reporting requirements in connection with initial lease-up of the Property, specified in Section 18, below. These budget items may be revised with the written approval of HOST, provided the revised budget does not exceed the amount of the loan. Expenses incurred prior to August 20, 2019 are not eligible for reimbursement.

5. DEADLINE FOR DISBURSEMENT OF FUNDS: Borrower must provide evidence of private funding commitments necessary to develop the affordable housing project on the Property and the final executed partnership agreement for the Project on or before May 31, 2020. Failure to meet this deadline shall result in the termination of this Loan Agreement. **No funds shall be disbursed under this Loan Agreement until such time as these conditions are met.** Further, all cost overruns and/or funding shortfalls shall be the sole responsibility of the Borrower.

Borrower further agrees that documentation for all draw down requests will be submitted no later than twenty-four (24) months after the date of the Promissory Note. This timeline includes requests for disbursement of the Fifteen Thousand and No/100 Dollars (\$15,000.00) retainage set forth in Section 4, above. These deadlines may be extended with the written approval of HOST.

6. RESTRICTIONS ON USE OF PROPERTY:

A. Affordability limitations. Eighteen (18) of the units at the Property (the "60% Units") shall have rents not exceeding 30% of the adjusted income of a family whose annual income equals 60% of the median income for the Denver area, as published by the Colorado Housing and Finance Authority ("CHFA"), with adjustments for number of bedrooms in the unit. Twenty-Seven (27) of the units at the Property (the "50% Units") shall have rents not exceeding the established Fair Market Rent and the portion of rent charged to a qualified tenant shall not exceed 30% of the adjusted income of a family whose annual income equals 50% of the median income for the Denver area, as published by CHFA, with adjustments for number of bedrooms in the unit. Eighteen (18) of the units at the Property (the "40% Units") shall have rents not exceeding the established Fair Market Rent and the portion of rent charged to a qualified tenant shall not exceed 30% of the adjusted income of a family whose annual income equals 40% of the median income for the Denver area, as published by CHFA, with adjustments for number of bedrooms in the unit. Seven (7) of the units at the Property (the "30% Units") shall have rents not exceeding the

established Fair Market Rent and the portion of rent charged to a qualified tenant shall not exceed 30% of the adjusted income of a family whose annual income equals 30% of the median income for the Denver area, as published by CHFA, with adjustments for number of bedrooms in the unit. By executing this Loan Agreement, Borrower acknowledges receipt of CHFA's current rent and income guidelines from the HOST. It shall be Borrower's responsibility to obtain updated guidelines from HOST or CHFA to confirm the annual calculation of the maximum rents for the Denver area. The 60% Units, 50% Units, 40% Units, and 30% Units shall be referred to collectively herein as the "City Units".

The City shall determine maximum monthly allowances for utilities and services annually using the CHFA model. Rents shall not exceed the maximum rents as determined above minus the monthly allowance for utilities and services not paid for by the Borrower.

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

B. Occupancy/Income Limitations. The 60% Units shall be occupied by tenants whose incomes, at the time of the initial lease, are at or below sixty percent (60%) of the median income for the Denver area as published by CHFA with adjustments for family size. The 50% Units shall be occupied by tenants whose incomes, at the time of the initial lease, are at or below fifty percent (50%) of the median income for the Denver area as published by CHFA with adjustments for family size. The 40% Units shall be occupied by tenants whose incomes, at the time of the initial lease, are at or below fourth percent (40%) of the median income for the Denver area as published by CHFA with adjustments for family size. The 30% Units shall be occupied by tenants whose incomes, at the time of the initial lease, are at or below thirty percent (30%) of the median income for the Denver area as published by CHFA with adjustments for family size. By executing this Loan Agreement, Borrower acknowledges receipt of CHFA's current income guidelines from HOST. It shall be Borrower's responsibility to obtain updated guidelines from HOST or CHFA and comply with same. Nothing in this Agreement shall require Borrower to take actions not permitted under Section 42 of the Internal Revenue Code or by the CHFA Land Use Restriction Agreement or CHFA rules.

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

BEDROOMS	60% Units	50% Units	40% Units	30% Units
1 Bedroom	12	21	13	5
2 Bedroom	6	6	5	2
TOTAL	18	27	18	7

Borrower shall provide the addresses of the City Units in each of the designated categories shown in the above table to the City by the time of Project completion.

D. Covenant Running with the Land. At closing, Borrower shall execute a covenant in form satisfactory to the City (“Covenant”), setting forth the rental and occupancy limitations described in subparagraphs A and B above, which shall be recorded in the real estate records of the City and County of Denver and which shall constitute a covenant running with the land. The Covenant shall encumber the Property for a period not less than sixty (60) years from the date of the Covenant. Violation of said Covenant shall be enforceable as an event of default pursuant hereto.

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

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

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

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

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

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

E. Waiver of Legal Proceedings. Agreement by the tenant that the owner may evict the tenant or household members without instituting a civil court proceeding in which the

tenant has the opportunity to present a defense, or before a court decision on the rights of the parties.

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

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

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

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

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

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

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

12. MONITORING: For purposes of verifying compliance with the requirements of this Agreement, Borrower shall fully cooperate with the City's annual review of Borrower's performance (including by responding promptly and thoroughly to related document requests) and the City's on-site inspections of the Property and City Units every three years.

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

A. Are consistent with the purpose of providing housing for very low-income and low-income seniors (age 62 and over) and the requirements imposed under Section 42 of the Internal Revenue Code;

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

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

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

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

15. AFFIRMATIVE MARKETING: Borrower shall comply with the affirmative marketing procedures outlined in the marketing plan, attached hereto as **Exhibit H** and incorporated herein, to provide information and otherwise attract eligible tenants from all racial, ethnic, and gender groups in the Property's housing market area in accordance with 24 CFR 92.351. Except Borrower may limit eligibility or give preference to a particular segment of the population in accordance with 24 CFR 92.253(d).

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

17. PUBLICATIONS/ANNOUNCEMENTS: Borrowers using radio or television announcements, newspaper advertisements, press releases, pamphlets, mail campaigns, or any other marketing methods funded by HOST, or publicizing activities or projects funded by HOST shall first receive approval from HOST. In any event, all such publicizing activities must include the following statement: "The funding source for this activity is the City and County of Denver,

Office of Economic Development.” HOST shall be acknowledged in any events regarding the project being funded, including groundbreaking and openings.

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

Borrower shall submit to the City the following reports: (1) annual report on rents and occupancy of City Units to verify compliance with affordability requirements in Paragraph 6; (2) Reports (including financial reports) that enable the City to determine the financial condition and continued financial viability of the rental project; and (3) for floating units, information on unit substitution and filling vacancies to ensure that the Property maintains the required unit mix.

19. CONDITIONS:

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

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

C. Borrower represents that, no later than immediately prior to the time that funds are first disbursed under this Agreement, Borrower will be the fee owner of the Property as of the date of this Loan Agreement. The City shall have no obligation to lend the above sums to Borrower if it does not hold fee simple title to the Property and the right to construct the Project thereon.

20. NO DISCRIMINATION IN EMPLOYMENT: In connection with the performance of work under this Loan Agreement, the Borrower agrees not to refuse to hire, discharge, promote or demote, or to discriminate in matters of compensation against any person otherwise qualified, solely because of race, color, religion, national origin, gender, age, military

status, sexual orientation, marital status, or physical or mental disability; and further agrees to insert the foregoing provision in all subcontracts hereunder.

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

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

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

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

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

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

22. DEFENSE & INDEMNIFICATION:

A. Borrower agrees to defend, indemnify, and hold harmless City, its appointed and elected officials, agents and employees against all liabilities, claims, judgments, suits or demands for damages to persons or property arising out of, resulting from, or relating to the work performed under this Loan Agreement ("Claims"), unless and until such Claims have been specifically determined by the trier of fact to be due to the sole negligence or willful misconduct of the City. This indemnity shall be interpreted in the broadest possible manner to indemnify City

for any acts or omissions of Borrower or its subcontractors either passive or active, irrespective of fault, including City's concurrent negligence whether active or passive, except for the sole negligence or willful misconduct of City.

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

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

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

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

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

The City may also suspend or terminate this Loan Agreement in whole or in part, if Borrower materially fails to comply with any term of this Loan Agreement, including if Borrower becomes delinquent to the City on loan, contractual, or tax obligations as due, or with any rule, regulation or provision referred to herein; and the City may declare the Borrower ineligible for any further participation in City funding, in addition to other remedies as provided by law. In the event there is probable cause to believe the Borrower is non-compliant with any applicable rules, laws, regulations, or Loan Agreement terms, and only after the City provides a 30 day notice to cure that remains uncured by the Borrower, the City may withhold up to one hundred (100%) percent of said Loan Agreement funds until such time as the Borrower is found to be in compliance, or to exercise the City's rights under any security interest arising hereunder. Borrower's investor limited partner or senior lender may, but is not required to, take actions to cure any default or breach by Borrower, and the City shall accept any such cure as if made by Borrower.

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

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

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

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

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

29. COUNTERPARTS: This Loan Agreement may be executed in multiple counterparts, each of which, when executed and delivered, shall be deemed to be an original and,

taken together, shall constitute one and the same instrument.

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

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

With a copy of any such notice to:

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

Notice shall also be given to Borrower's Investor Limited Partner at the following address:

MHEG Fund 51, LP
c/o Midwest Housing Equity Group, Inc.
515 N. 162nd Avenue, Suite 200
Omaha, NE 68118

With a copy to:

Kutak Rock LLP
1650 Farnam Street
Omaha, NE 68102
Attn: Gregg S. Yeutter, Esq.

Borrower's Investor Limited Partner shall also have the same opportunity, but no obligation, to cure any default of the Borrower under this Loan Agreement, the Note, the Deed of Trust, the Covenant or any other document in relation to the Loan, which cure shall be accepted or rejected as if tendered by Borrower.

Notices hand delivered or sent by overnight courier are effective upon delivery. Notices sent by certified mail are effective upon receipt. Notices sent by mail are effective upon deposit with the U.S. Postal Service. The parties may designate substitute addresses where or persons to whom notices are to be mailed or delivered. However, these substitutions will not become effective until actual receipt of written notification.

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

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

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

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Contract Control Number: OEDEV-201952502-00
Contractor Name: KAPPA TOWER II 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:

OEDEV-201952502-00
KAPPA TOWER II LLLP

By: Kappa Tower II GP LLC, General Partner

By: Kappa Housing Incorporated, Manager

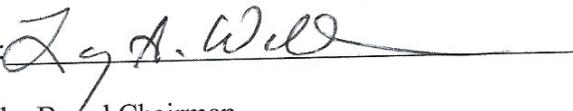
By: 
Title: Board Chairman

EXHIBIT A

EXHIBIT A

The provisions of this Exhibit A are found in the First Amended and Restated Agreement of Limited Liability Limited Partnership of Kappa Tower II LLLP (the “Partnership Agreement”). A copy of the fully executed Partnership Agreement will be provided to the City after execution.

Distribution of Cash Flow

(Section 4.02(a) of the Partnership Agreement)

(a) **Cash Flow.** Provided that all reserves have been funded (including the replenishment of the Replacement Reserve), maintained and replenished as required by Section 6.10 hereof and the Partnership has ample cash available to fund operations into the next year, Cash Flow, if available with respect to any Partnership Accounting Year, shall be applied or distributed annually, within 60 days after the end of the Partnership Accounting Year (but in no event earlier than the filing of a Partnership tax return for such year), as follows:

(i) First, to the repayment of any amounts loaned by the Investor Limited Partner or by Midwest Housing Equity Group, Inc., to the Partnership to cover any Operating Deficits;

(ii) Second, to the Investor Limited Partner to the extent of any unpaid amounts due it pursuant to Section 3.05 or any other provision of this Agreement (notwithstanding anything to the contrary in this Agreement, unpaid amounts owed due to a change in tax law shall be payable under this Section 4.02(a)(ii));

(iii) Third, to the funding of the Operating Deficit Reserve Account to the extent disbursements have been made therefrom;

(iv) Fourth, to the payment of any amount owed with respect to the GP Management Fee;

(v) Fifth, to the payment of any amount then owed with respect to the Deferred Developer Fee;

(vi) Sixth, to the payment of the amount of accrued interest on the Seller Carryback Loan for the current year without regard to previously accrued interest;

(vii) Seventh, beginning in 2030, from up to 75% of remaining Cash Flow to the payment of the RAHLF Loan until repaid;

(viii) Eighth, to the payment of any Operating Deficit Loans made by the General Partner;

(ix) Ninth, to the payment of the Seller Carryback Loan until repaid, then to the payment of the Sponsor DOH Loan until repaid, then to the payment of the Sponsor Capital Magnet Fund Loan until repaid; and

(x) Tenth, the balance 89.995% to the Managing General Partner, 0.005% to the Co-General Partner and 10% to the Investor Limited Partner.

Applicable Defined Terms

The following terms are used in Section 4.02(a) or relate to the Project financing, and are defined in Article II (Definitions) of the Partnership Agreement or elsewhere in the Partnership Agreement. Unless otherwise indicated, the definitions are in Article II of the Partnership Agreement.

“*Agency*” means the Colorado Housing and Finance Authority and any successor thereto in its capacity as the agency responsible for administering the Credit program of the State.

“*Agency Capital Magnet Fund Loan*” means the third mortgage loan from the Agency, funded by proceeds from the Capital Magnet Fund to the Partnership. The Agency Capital Magnet Fund Loan is in the approximate amount of \$600,000 bearing interest at 3% per annum, having an approximate 17-year term with 420-month amortization.

“*Agency Healthy Housing Fund Loan*” means the second mortgage loan from the Agency, funded by proceeds from the Health Housing Fund to the Partnership. The Agency Capital Magnet Fund Loan is in the approximate amount of \$500,000 bearing interest at 3% per annum, having an approximate 17-year term with 360-month amortization.

“*Agency Risk-Sharing Loan*” means the first mortgage loan from the Agency, which contains a risk-sharing guarantee from the U.S. Department of Housing and Urban Development. The Agency Risk-Sharing Loan is in the approximate amount of \$3,900,000 bearing interest at 5.13% per annum, having an approximate 17-year term with 480-month amortization.

“*Apartment Complex*” means the to-be-constructed one (1) building affordable housing project known as Kappa Tower II, consisting of seventy (70) apartment units, all of which are to be rented to persons and families who are elderly, and who are of low and moderate income, located at 9063 Northfield Boulevard, Denver (Denver County), Colorado 80238 (the legal description of which is set forth in Exhibit A), and ancillary and appurtenant facilities and all furnishings, equipment, real property and personal property used in connection with the operation thereof.

“*Capital Contribution*” means the cash plus the Gross Asset Value (net of liabilities) of other property contributed to the Partnership by each Partner. Any reference in this Agreement to the Capital Contribution of a then Partner shall include any Capital Contribution previously made by any prior Partner in respect of the Interest of such then Partner.

“*Capital Event*” means any transaction the proceeds of which are not includable in Cash Flow, including without limitation, the sale or other disposition of all or any substantial part of the assets of the Partnership or the refinancing of any mortgage loan, but

excluding (i) loans to the Partnership (other than a refinancing of any mortgage loan) and (ii) contributions to the capital of the Partnership by the Partners.

“*Cash Flow*” means, for any period of time, the total cash receipts of the Partnership from ordinary operations (excluding the proceeds of any Capital Event, the Capital Contributions of the Partners and the proceeds of any loans, other than Operating Deficit Loans), such as, but not limited to, Gross Rent Receipts (including any rent subsidies, to the extent available), and amounts released from reserves in accordance with this Agreement, *less* (i) the total cash disbursements of the Partnership (such as, but not limited to, operating expenses, costs of repair or restoration of the Apartment Complex, the Compliance Monitoring Fee, property management fees (excluding the GP Management Fee), financing fees or other requirements of any Lender and interest and principal repayments of any loans, other than loans from a General Partner or any Affiliate thereof (such as Operating Deficit Loans)) and *less* (ii) amounts paid in connection with the establishment or maintenance of reserves as required by Section 6.10 of this Agreement.

“*City Loan*” means the fourth mortgage loan in the amount of \$700,000 provided by the City of Denver to the Partnership under the City of Denver’s Affordable Housing Loan HOST Program. The City Loan is expected to accrue interest at 1% simple interest per annum over a term of approximately 17 years requiring soft payments from Cash Flow pursuant to Section 4.02 of this Agreement beginning in 2030.

“*Co-General Partner*” means Kappa Housing, Incorporated, a Colorado nonprofit corporation, and any Person or Persons who, at the time of reference thereto, have been admitted as additional or successor Co-General Partners, in each such Person’s capacity as a co-general partner of the Partnership. At any time when there is more than one Co-General Partner, the term “Co-General Partner” or “Co-General Partners” shall include, collectively, all such Persons, unless the context clearly implies that such term only refers to one of them.

“*Compliance Monitoring Fee*” means the fee payable to Midwest Housing Equity Group, Inc. pursuant to Section 7.03 hereof.

“*Construction Lender*” means Wells Fargo Bank, National Association, in its capacity as the maker of the Construction Loan, or its successor and assigns in such capacity.

“*Construction Loan*” means the construction loan in the principal amount of up to \$12,850,000 made to the Partnership by the Construction Lender, which is evidenced and secured by the Construction Loan Documents.

“*Deferred Developer Fee*” means the unpaid portion of the Developer Fee containing the terms and conditions specified in Section 7.02.

“*Developer*” means Kappa Housing, Incorporated, a Colorado nonprofit corporation.

“*Developer Fee*” means the fee payable to the Developer pursuant to Section 7.02 hereof for services under the Development Agreement.

“*Development Agreement*” means the Development Services Agreement between the Partnership and the Developer dated as of January 1, 2020 (as such agreement is amended by this Agreement).

“*General Partner*” means, collectively, Kappa Tower II GP LLC, a Colorado limited liability company (the Managing General Partner”) and Kappa Housing, Incorporated, a Colorado nonprofit corporation (the “Co-General Partner), and any Person or Persons who, at the time of reference thereto, have been admitted as additional or successor General Partners, in each such Person’s capacity as a general partner of the Partnership. At any time when there is more than one General Partner, the term “General Partner” or “General Partners” shall include, collectively, all such Persons, unless the context clearly implies that such term only refers to one of them.

“*GP Management Fee*” means the management fee payable to the Managing General Partner pursuant to the GP Management Fee Agreement and Section 7.05 hereof as compensation for its duties as Managing General Partner under this Agreement.

“*GP Management Fee Agreement*” means that certain GP Management Fee Agreement between the Partnership and the Managing General Partner dated as of the Closing Date.

“*Gross Rent Receipts*” means, for any period of time, all rental and other incidental income received (on a cash basis) by the Partnership, including, without limitation, any rent subsidies, to the extent available, late payments, forfeited deposits, rental loss insurance proceeds, master lease proceeds and proceeds from laundry facilities and vending machines.

“*Investor Limited Partner*” means MHEG Fund 51, LP, a Nebraska limited partnership, and any Person or Persons who, at the time of reference hereto, have been admitted as additional or successor Investor Limited Partners.

“*Limited Partner*” means the Investor Limited Partner and the Special Limited Partner and any person who becomes a Substituted Limited Partner in respect of any portion of the Limited Partner Interest as provided in Article IX hereof. At any time when there is more than one Limited Partner, the term “Limited Partner” or “Limited Partners” shall include, collectively, all such Persons.

“*Management Agent*” means Silva-Markham Partners and/or any successor or assign who is selected by the General Partner, with the Consent of the Investor Limited Partner, to provide management services with respect to the Apartment Complex from time to time in accordance with Article XI hereof.

“*Management Agreement*” means the Property Management Agreement between the Partnership and the Management Agent in connection with the management of the Apartment Complex.

“*Management Fee*” means the management fee payable to the Management Agent pursuant to the terms of the Management Agreement and this Agreement.

“*Managing General Partner*” means Kappa Tower II GP LLC, a Colorado limited liability company, and any Person or Persons who, at the time of reference thereto, have been admitted as additional or successor Managing General Partners, in each such Person’s capacity as a managing general partner of the Partnership. At any time when there is more than one Managing General Partner, the term “Managing General Partner” or “Managing General Partners” shall include, collectively, all such Persons, unless the context clearly implies that such term only refers to one of them

“*Operating Deficit*” shall mean at any time or period of time the amount by which (i) the amount of funds available to the Partnership from collected Gross Rent Receipts of the Apartment Complex, *together with* other available cash and funds on hand of the Partnership, if any, *but excluding*: (a) funds from Capital Contributions (except to the extent that Capital Contribution proceeds are used to fund initial working capital amounts), (b) the proceeds of any loans obtained by the Partnership (except for Operating Deficit Loans), (c) advance rent payments to the extent allocable to periods after the period of determination, (d) nonforfeited tenant deposits, and (e) any and all amounts held in the Operating Deficit Reserve Account and the Replacement Reserve Account, is less than (ii) the amount necessary to meet all of the costs and expenses of any type due and payable incidental to the operation and business activities of the Partnership, including, without limitation, debt service payments due under the Mortgage loans (other than debt service payments payable from Cash Flow), taxes, insurance, costs of operations, maintenance, repairs, interest, management expenses, the Compliance Monitoring Fee, prepaid expenses and reserve funding requirements, but excluding repayment of any loans from a General Partner (or Affiliates thereof) and distributions of Cash Flow to Partners. For purposes of the foregoing, to the extent provided in Section 7.01 hereof, all or a portion of the monthly Management Fee shall not be treated as an operating cost or expense of the Apartment Complex and shall instead be deferred without interest as necessary to reduce the amount, or avoid the occurrence of, an Operating Deficit.

“*Operating Deficit Loan*” means any loan or loans made to the Partnership pursuant to Section 6.11 hereof.

“*Operating Deficit Reserve Account*” means a segregated operating reserve account with an institution as required by the first mortgage Lender, or if there is no such requirement, as selected by the Managing General Partner, [Defined in Section 6.10(p) of the Partnership Agreement.]

“*Partnership Accounting Year*” means the accounting year of the Partnership, ending December 31 of each year.

“*Replacement Reserve*” means a replacement reserve, to be funded monthly throughout the term of this Agreement, in an amount equal to the annualized amount of \$250 per unit (to be increased by 3% each 12 month period thereafter), commencing the

month after issuance of a certificate of occupancy. [Defined in Section 6.10(o) of the Partnership Agreement.]

“*Seller Carryback Loan*” means the fifth mortgage loan (after Stabilization) in the amount of \$1,520,000 provided by Sponsor to the Partnership. The Seller Carryback Loan will accrue interest at 1.94% but will require soft payments from Cash Flow pursuant to Section 4.02 of this Agreement with a term of approximately 17 years.

“*Special Limited Partner*” means Midwest Housing Assistance Corporation, a Nebraska corporation, in its capacity as a special limited partner of the Partnership.

“*Sponsor*” shall mean Kappa Housing, Incorporated, a Colorado nonprofit corporation.

“*Sponsor Capital Magnet Fund Loan*” means the seventh mortgage loan in the amount of \$150,000 provided by Sponsor to the Partnership with proceeds received from the Agency under the Capital Magnet Fund program. The Sponsor Capital Magnet Fund Loan will accrue interest at 3.00% but will require soft payments from Cash Flow pursuant to Section 4.02 of this Agreement with a term of approximately 19 years.

“*Sponsor DOH Loan*” means the sixth mortgage loan in the amount of \$700,000 provided by Sponsor to the Partnership with proceeds received from the Colorado Division of Housing. The Sponsor DOH Loan will accrue interest at 3.00% but will require soft payments from Cash Flow pursuant to Section 4.02 of this Agreement with a term of approximately 19 years.

EXHIBIT B

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

SUBORDINATION AGREEMENT

THIS SUBORDINATION AGREEMENT (this “Agreement”) dated [INSERT DATE], 2020, is made between the **CITY AND COUNTY OF DENVER**, a municipal corporation of the State of Colorado, the present holder of a certain deed of trust, whose address is Office of Economic Development, 201 W. Colfax Ave., Dept. 204, Denver, Colorado 80202 (the “Junior Lender”) and **WELLS FARGO BANK, NATIONAL ASSOCIATION**, a national banking association, whose address is Wells Fargo Bank, National Association, 301 S. College Street, MAC D1053 170, Charlotte, NC 28288 (the “Senior Lender”).

PRELIMINARY STATEMENTS

A. The Junior Lender has made or is making a loan to Kappa Tower II LLLP, a Colorado limited liability limited partnership (the “Borrower”) in the principal amount of \$700,000, evidenced by that certain Promissory Note, dated as of [INSERT DATE OF PROMISSORY NOTE], 2020, made by the Borrower and payable to the Junior Lender and secured by that certain Deed of Trust (the “Junior Deed of Trust”) made as of [INSERT DATE OF DEED OF TRUST], 2020 and recorded on [INSERT RECORDATION DATE], 2020 at Reception No. [INSERT RECEPTION NUMBER] of the real property records in the office of the Clerk and Recorder of the City and County of Denver, State of Colorado (the “Junior Deed of Trust” and together with the Promissory Note and all other documents evidencing, securing or executed in connection with the Junior Obligations (defined below), are collectively, the “Junior Loan Documents”), encumbering the following described property (the “Mortgaged Property”):

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

B. The Senior Lender has made a loan to Borrower in the principal amount of \$12,850,000, which loan is evidenced by that certain Promissory Note (“Senior Note”) in like amount and secured by that certain Construction Deed of Trust with Absolute Assignment of Leases and Rents, Security Agreement and Fixture Filing dated February 18, 2020, executed by Borrower in favor of Senior Lender, and recorded February 20, 2020 at Reception No. 2020025349 in the records of the office of the Clerk and Recorder of the City and County of Denver, State of Colorado (the “Senior Deed of Trust,” and together with the Senior Note and all other documents evidencing, securing or executed in connection with the Senior Obligations (defined below) are collectively, the “Senior Loan Documents”), which covers and encumbers all of the Mortgaged Property.

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

AGREEMENT

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

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

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

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

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

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

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

5. Waiver and Consent. The Senior Lender shall have no obligation to the Junior Lender with respect to the Mortgaged Property or the Senior Obligations. The Senior Lender may

in accordance with the Senior Deed of Trust (a) exercise collection rights, (b) take possession of, sell or dispose of, and otherwise deal with, the Mortgaged Property, (c) in the Senior Lender's name, the Junior Lender's name or in the Borrower's name, demand, sue for, collect or receive any money or property at any time payable or receivable on account of, the Mortgaged Property; (d) prosecute, settle and receive proceeds on any insurance claims relating to the Mortgaged Property, and (e) exercise and enforce any right or remedy available to the Senior Lender with respect to the Mortgaged Property, whether available before or after the occurrence of any default; all without notice to or consent by anyone except as specifically required by law. The Senior Lender may apply the proceeds of the Mortgaged Property in any order the Senior Lender deems appropriate in its sole discretion, except as required by law.

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

7. Notice of Default to Senior Lender. Any notice provided to Borrower by the Junior Lender of any default under the Junior Deed of Trust shall also be sent to Senior Lender within ten business days. Junior Lender shall afford Senior Lender the right but not the obligation to cure any default or Event of Default within sixty (60) days after Senior Lender receives such notice, and Junior Lender agrees to accept such performance as if it were undertaken by Borrower. All amounts paid by the Senior Lender to Junior Lender to cure a default under the Junior Loan Documents shall be deemed to have been advanced by the Senior Lender pursuant to, and shall be secured by the lien of, the Senior Deed of Trust, so long as the amount of the advance would not increase the total principal amount of the Senior Note to more than \$13,000,000.00.

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

9. Default under Senior Loan Documents. Junior Lender agrees that a default under the Senior Loan Documents shall not constitute a default under the Junior Loan Documents if no

other default has occurred and is continuing under the Junior Loan Documents until either (i) Senior Lender has accelerated the maturity of the Senior Note or Senior Deed of Trust, or (ii) Senior Lender has taken affirmative action to exercise its rights under the Senior Loan Documents to collect rent, to appoint (or seek the appointment of) a receiver or to foreclose on (or to exercise a power of sale contained in) the Senior Deed of Trust. If at any time Borrower cures any default under the Senior Loan Documents to the satisfaction of Senior Lender, as evidenced by written notice from Senior Lender to Junior Lender, any default under the Junior Loan Documents arising therefrom shall be deemed cured and the Junior Obligations shall be retroactively reinstated as if such default had never occurred.

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

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

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

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

14. Term. This Agreement shall continue until the earliest to occur of the following events: (i) the payment of all principal, interest, and other amounts payable under the Senior

Loan Documents and the Senior Obligations; (ii) the payment of all principal, interest and other amounts payable under the Junior Obligations; (iii) the acquisition by Senior Lender of title to the Mortgaged Property pursuant to a foreclosure, or deed in lieu of foreclosure, or the exercise of a power of sale contained in the Senior Deed of Trust; or (iv) the acquisition by Junior Lender of title to the Mortgaged Property pursuant to a foreclosure, or a deed in lieu of foreclosure, or the exercise of a power of sale contained in the Junior Deed of Trust, but only if such acquisition of title does not violate any of the terms of this Agreement.

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

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

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

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

“JUNIOR LENDER”

CITY AND COUNTY OF DENVER, a Colorado
Municipal Corporation

By: _____

Title: _____, Office of Economic
Development

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

The foregoing instrument was subscribed to and acknowledged before me this ____ day of ____, 2020, by _____ as _____ of Office of Economic Development for the City and County of Denver, a municipal corporation of the State of Colorado, for and on behalf of the City.

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

Notary Public

“SENIOR LENDER”

WELLS FARGO BANK, NATIONAL ASSOCIATION,
a national banking association

By: _____
Scott Horton, Senior Vice President

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

The foregoing instrument was subscribed to and acknowledged before me this _____ day of _____, 2020, by Scott Horton in his capacity as Senior Vice President of Wells Fargo Bank, National Association, a national banking association.

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

Notary Public

Acknowledged by BORROWER:

KAPPA TOWER II LLLP, a Colorado limited liability limited partnership

By: Kappa Tower II GP LLC, General Partner

By: Kappa Housing Incorporated, Manager

By: _____

Title: Board Chairman

ATTACHMENT A

[INSERT LEGAL DESCRIPTION]

EXHIBIT C

SUBORDINATION AGREEMENT

THIS SUBORDINATION AGREEMENT (this “Agreement”) dated [INSERT DATE], is made between the **CITY AND COUNTY OF DENVER**, a municipal corporation of the State of Colorado, the present holder of a certain deed of trust, whose address is Office of Economic Development, 201 W. Colfax Ave., Dept. 204, Denver, Colorado 80202 (the “Junior Lender”) and COLORADO HOUSING AND FINANCE AUTHORITY, a body corporate and political subdivision of the State of Colorado whose address is 1981 Blake Street, Denver, Colorado 80202 (the “Senior Lender”).

PRELIMINARY STATEMENTS

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

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

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

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

AGREEMENT

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

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

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

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

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

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

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

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

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

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

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

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

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

insure, take possession of, collect, dispose of or otherwise realize upon any of the Mortgaged Property.

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

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

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

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

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

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

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

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

“JUNIOR LENDER”

CITY AND COUNTY OF DENVER, a Colorado Municipal Corporation

By: _____

Title: _____, Office of Economic Development

State of Colorado)
) ss.
County of)

The foregoing instrument was subscribed to and acknowledged before me this ____ day of ____, 20 ____, by _____ as _____ of Office of Economic Development for the City and County of Denver, a municipal corporation of the State of Colorado, for and on behalf of the City.

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

Notary Public

“SENIOR LENDER”

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

By: _____

Title: _____

\

State of Colorado)
) ss.
County of)

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

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

Notary Public

Acknowledged by BORROWER:

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

By: _____

Title: _____

ATTACHMENT A

[INSERT LEGAL DESCRIPTION]

EXHIBIT D

After Recording Return To:
Colorado Housing and Finance Authority
Attn: Legal Operations
1981 Blake Street
Denver, Colorado 80202-1272

**SUBORDINATION OF BENEFICIARY AND RENT USE COVENANT
([NAME OF AGENCY])**

THIS SUBORDINATION OF BENEFICIARY AND RENT USE COVENANT (this "**Agreement**"), is dated as of _____, 20__ , by and among _____, a _____ ("**Owner**"), _____ (the "**Grantor**") and COLORADO HOUSING AND FINANCE AUTHORITY, a body corporate and political subdivision of the State of Colorado (the "**Senior Lender**").

RECITALS:

A. Owner received certain [funds through Contract # _____] [grant monies] (the "**Funds**") from Grantor to be used for [the acquisition of] a project known as _____ located at _____ more specifically described as set forth on Exhibit A attached hereto and made a part hereof by this reference (the "**Property**"); and

B. In connection with Owner's receipt of the Funds, Owner executed a Beneficiary and Rent Use Covenant dated _____ (the "**Covenant**"), which was recorded on _____, at Reception No. _____ in the records of the Clerk and Recorder of the County of _____, Colorado (the "**Records**"), which contains certain rental and occupancy limitations and other restrictions; and

C. Owner has executed, or is about to execute, a Promissory Note payable to the Senior Lender in the original principal amount of \$ _____ with interest and upon the terms and conditions described therein (the "**Senior Note**") evidencing a loan from the Senior Lender to the Owner (the "**Senior Loan**"), which is to be secured by a Deed of Trust, Security Agreement, Financing Statement and Assignment of Rents and Leases, executed by Owner and recorded in the Records on _____, 201__ at Reception No. _____, and encumbering the Owner's interest in the Property (the "**Senior Deed of Trust**"), which together with a Regulatory Agreement (the "**Regulatory Agreement**"), and other documents and agreements evidencing and securing the Loan are collectively referred to herein as the "**Senior Loan Documents**");

D. The Senior Deed of Trust and Senior Regulatory Agreement will be recorded in the Records;

E. [Upon endorsement of the Senior Note by the U.S. Department of Housing and Urban Development (“**HUD**”), the Senior Note will be insured under Section 542(c) of the Housing and Community Development Act of 1992 and subject to those regulations set forth in 24 C.F.R. Part 266 and additional applicable provisions and the requirements set out in HUD Handbook 4590.01, all as such may be modified from time to time (collectively, the “**Risk Share Requirements**”);]

F. It is [a Risk Share Requirement and] a condition precedent to obtaining the Senior Loan, that the Senior Deed of Trust and Regulatory Agreement shall unconditionally be and remain at all times a lien or charge upon Owner’s property prior and superior to the lien or charge of any other lien or encumbrance;

G. It is to the mutual benefit of all parties to this Agreement that the Senior Lender make the Senior Loan to Owner; and

H. Grantor desires to subordinate the Covenant and its rights thereunder to the Senior Loan Documents, on the terms and conditions of this Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual benefits accruing to the parties hereto and other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and in order to induce the Senior Lender to make the Senior Loan to Owner, it is hereby declared, understood and agreed as follows:

1. **Subordination**. Grantor hereby agrees that the lien or charge of the Covenant and all of Grantor’s rights thereunder, and all other documents executed in connection with the Funds issued to the Owner, shall be in all respects subordinate, secondary, inferior and junior to the liens, terms, covenants, conditions, operations, and effects of the Senior Deed of Trust, the Regulatory Agreement, and the other Senior Loan Documents and all extensions, renewals or modifications thereof.

2. **Grantor Representation and Acknowledgment**. Grantor hereby represents to Senior Lender that it is the current beneficiary of the Covenant and Owner is not in default under any provisions of the Covenant. For purposes of this Agreement, Grantor acknowledges and agrees that all disbursements of loan proceeds and other advances made by the Senior Lender, pursuant to the Senior Loan Documents, shall be conclusively presumed to have been disbursed in accordance therewith and for the purposes therein provided.

3. **Senior Loan Documents Superior**. No amendment of the documents evidencing or relating to the Covenant shall directly or indirectly modify the provisions of this Agreement in any manner which might terminate or impair the subordination of the Covenant to the liens,

terms, covenants, conditions, operations, and effects of the Senior Loan Documents. At any time and from time to time, without notice to Grantor, Senior Lender may take such actions with respect to the Senior Debt as Senior Lender, in its sole discretion, may deem appropriate, including, without limitation, terminating advances to Owner, increasing the principal amount, extending the time of payment, increasing applicable interest rates, renewing, compromising or otherwise amending the terms of any documents affecting the Senior Debt and any Property securing the Senior Debt, and enforcing or failing to enforce any rights against Owner or any other person. No such action or inaction shall impair or otherwise affect Senior Lender's rights hereunder.

4. **Covenant Default.** Grantor hereby agrees that upon the occurrence of a default by the Owner under the terms of the Covenant, or any other document executed in connection with the Funds issued to the Owner, Grantor shall provide written notice of default to Senior Lender no less than sixty (60) days prior to commencing the exercise of any remedies against the Owner and/or the Property.

5. **Grantor Representations.** All necessary action on the part of the Grantor, its officers, directors, partners, members and shareholders, as applicable, necessary for the authorization of this Agreement and the performance of all obligations of the Grantor hereunder has been taken. This Agreement constitutes the legal, valid and binding obligation of Grantor, enforceable against Grantor in accordance with its terms.

6. **Indemnification.** Owner hereby agrees to indemnify and hold the Authority harmless from all loss, cost, damage and expense arising from any claim or proceeding instituted against Authority relating to the Agreement, other than any loss, cost, damage or expense arising out of the gross negligence or willful misconduct of the Authority.

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

8. **Entire Agreement; Amendment.** This Agreement contains the entire agreement among the parties hereto. Grantor is not relying on any representations by Senior Lender or Owner in entering into this Agreement, and Grantor has kept and will continue to keep itself fully apprised of the financial and other condition of Owner. This Agreement may be amended only by written instrument signed by Grantor and Senior Lender.

9. **Further Assurances.** Grantor hereby agrees to execute such documents and/or take such further action as Senior Lender may at any time or times reasonably request in order to carry out the provisions and intent of this Agreement, including, without limitation, ratifications and confirmations of this Agreement from time to time hereafter, as and when requested by Senior Lender.

10. **Termination**. This Agreement shall remain effective until payment in full of the principal, interest and all other indebtedness evidenced by the Senior Loan Documents and the release of the Senior Deed of Trust or until otherwise terminated in writing by Senior Lender.

11. **Inurement; No Third-Party Beneficiaries**. This Agreement shall be binding upon the parties hereto and their respective successors and assigns. This Agreement is solely for the benefit of Grantor and Senior Lender and not for the benefit of Owner or any other party.

12. **Governing Law**. This Agreement is made and executed under, and in all respects will be governed and construed by, the laws of the State of Colorado.

13. **Remedies**. Each party to this Agreement acknowledges that if any party fails to comply with its obligations under this Agreement, the other parties will have all rights available at law and in equity, including the right to obtain specific performance of the obligations of such defaulting party and injunctive relief.

14. **Counterparts**. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original and all of which, when taken together, shall be deemed one and the same instrument.

- SIGNATURE PAGES TO FOLLOW -

OWNER:

[INSERT SIGNATURE BLOCK]

STATE OF _____)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me on _____,
201__, by _____ as _____ of _____,
a _____, [Member/Manager/Sole Member] of
_____, a _____ [Member/Manager/Sole Member] of
_____, a _____, as General Partner of
_____, a _____.

Witness my hand and official seal.

My Commission expires: _____

[SEAL]

Notary Public

SENIOR LENDER:

COLORADO HOUSING AND FINANCE
AUTHORITY, a body corporate and political
subdivision of the State of Colorado

By: _____
Jaime G. Gomez, Chief Operating Officer

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

The foregoing instrument was acknowledged before me this _____ day of _____, 2018, by Jaime G. Gomez, as Chief Operating Officer of Colorado Housing and Finance Authority, a body corporate and political subdivision of the State of Colorado.

Witness my hand and official seal.

Notary Public

My commission expires: _____

EXHIBIT A
LEGAL DESCRIPTION

EXHIBIT E

Record and Return to:
Colorado Housing and Finance Authority
PO Box 60
Denver, CO 80201
Attention: Paula Harrison

PARTIAL SUBORDINATION TO LAND USE RESTRICTION AGREEMENT

_____ (the "Lender") provides to the Colorado Housing and Finance Authority (the "Authority") this partial subordination to Land Use Restriction Agreement with respect to the real property described in Exhibit A attached hereto (the "Land").

RECITALS

1. _____ is the owner ("Owner") of the multifamily rental housing project located on the Land (the "Project") and has applied to the Authority for an allocation of low-income housing credits ("Credits") with respect to the Project pursuant to Section 42 of the Internal Revenue Code of 1986, as amended (the "Code").

2. The Lender is the beneficiary of a deed of trust covering the Land and the Project.

3. Section 42(h)(6) provides that Credits are not allowed unless an "extended low-income housing commitment" is in effect with respect to the Project in the form of an agreement between the Authority and the Owner (the "Land Use Restriction Agreement") which is recorded as a restrictive covenant against and running with the Land.

4. Although the Land Use Restriction Agreement terminates in the event of foreclosure, Section 42(h)(6)(E)(ii) of the Code requires that certain limitations as to termination of tenancies and rent increases survive such foreclosure for a period of three years.

5. To assure the survival of the limitations described in said Section 42(h)(6)(E)(ii), the Authority requires, as a condition to its execution of the Land Use Restriction Agreement, that the holders of all security interests in the Land recorded prior to the recording of the Land Use Restriction Agreement acknowledge and agree to the priority of the provisions of Section 42(h)(6)(E)(ii) of the Code.

SUBORDINATION AGREEMENT

Lender hereby consents to the recording of the Land Use Restriction Agreement as a restrictive covenant encumbering and running with the Land, and acknowledges and agrees that those provisions of the Land Use Restriction Agreement which set forth the requirements of Section 42(h)(6)(E)(ii) of the Code are superior to Lender's security interest and shall continue in full force and effect for a period of three (3) years following the date of acquisition of the Project by foreclosure (or instrument in lieu of foreclosure).

IN WITNESS WHEREOF, Lender has caused this Agreement to be executed by its duly authorized officers this _____ day of _____, 20__.

(Lender)
By: _____

STATE OF COLORADO)
COUNTY OF _____) ss.

The foregoing instrument was acknowledged before me this ____ day of _____, 2012, by _____ as _____ of _____.

My commission expires: _____.

(S E A L)

Notary Public

Exhibit A
Legal Description

EXHIBIT F

Project Timeline – Kappa Tower II (Kappa Housing, Inc.)
9020 Northfield Boulevard, Denver, CO 80238

Construction financing closes	January 15, 2020
General Contractor notice to proceed	January 15, 2020
Construction completion	August 1, 2021
Lease-up completion date of restricted units	December 1, 2021

PERMANENT SOURCES		USES	
Denver OED	\$700,000	Site Improvements	\$345,114
CDOH	\$700,000	Construction	\$12,885,022
CHFA Healthy Housing Funds	\$500,000	Professional Fees	\$747,409
Perm loan	\$4,417,961	Reserves	\$240,000
LIHTC	\$11,041,372	Finance/Syndication	\$1,462,304
Deferred Dev Fee	<u>\$450,000</u>	Soft Costs	\$279,484
		Developer Fee	<u>\$1,850,000</u>
TOTAL	\$17,809,333	TOTAL	\$17,809,333

PROJECT ACTIVITIES			
ACTIVITY	TOTAL COST	CITY FUNDS	OTHER FUNDS
Site Improvements	\$345,114		\$345,114
Construction	\$12,885,022	\$700,000	\$12,185,033
Professional Fees	\$747,409	Either Category	\$747,409
Reserves	\$240,000		\$240,000
Finance/Syndication	\$1,462,304		\$1,462,304
Soft Costs	\$279,484		\$279,484
Developer Fee	<u>\$1,850,000</u>		<u>\$1,850,000</u>
TOTAL	\$17,809,333	\$700,000	\$17,109,333

EXHIBIT G

FINANCIAL ADMINISTRATION:

1.1 Compensation and Methods of Payment

- 1.1.1 Disbursements shall be processed through the Department of Housing Stability (HOST) and the City and County of Denver's Department of Finance.
- 1.1.2 The method of payment to the Contractor by HOST shall be in accordance with established HOST procedures for line-item reimbursements. The Contractor must submit expenses to HOST on or before the last day of each month for the previous month's activity. Voucher requests for reimbursement of costs should be submitted on a regular and timely basis in accordance with HOST policies. Vouchers should be submitted within thirty (30) days of the actual service, expenditure or payment of expense.
- 1.1.3 The Contractor shall be reimbursed for services provided under this Agreement according to the approved line-item reimbursement budget attached to and made a part of this Agreement (Exhibit A).

1.2 Vouchering Requirements

- 1.2.1 In order to meet Federal Government requirements for current, auditable books at all times, it is required that all vouchers be submitted monthly to HOST in order to be paid. Expenses cannot be reimbursed until the funds under this contract have been encumbered.
- 1.2.2 No more than four (4) vouchers may be submitted per contract per month, without prior approval from HOST.
- 1.2.3 All vouchers for all Agreements must be correctly submitted within thirty (30) days of the Agreement end date to allow for correct and prompt closeout.
- 1.2.4 City and County of Denver Forms shall be used in back-up documents whenever required in the Voucher Processing Policy.
- 1.2.5 For contracts subject to Federal Agreements, only allowable costs determined in accordance with 2 CFR Chapter I, Chapter II, Parts 200, 215, 220, 225 and 230, "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards" (the "OMB Omni Circular") applicable to the organization incurring the cost will be reimbursed.
- 1.2.6 The reimbursement request, or draw request, for personnel and non-personnel expenses should be submitted to the City on a monthly basis, no later than the last day of the following month for expenses incurred in the prior month. The request for reimbursement should include:

- a. Amount of the request in total and by line item;
 - b. Period of services for current reimbursement;
 - c. Budget balance in total and by line item;
 - d. Authorization for reimbursement by the contract signatory (i.e., executive director or assistant director).
- 1.2.7 If another person has been authorized by the Contractor to request reimbursement for services provided by this contract, then the authorization should be forwarded in writing to HOST prior to the draw request.
- 1.2.8 The standardized HOST “Expense Certification Form” should be included with each payment request to provide the summary and authorization required for reimbursement.

1.3 Payroll

- 1.3.1 A summary sheet should be included to detail the gross salary of the employee, amount of the salary to be reimbursed, the name of the employee, and the position of the employee. If the employee is reimbursed only partially by this contract, the amount of salary billed under other contracts with the City or other organizations should be shown on the timesheet as described below. Two items are needed for verification of payroll: (1) the amount of time worked by the employee for this pay period; and (2) the amount of salary paid to the employee, including information on payroll deductions.
- 1.3.2 The amount of time worked will be verified with timesheets. The timesheets must include the actual hours worked under the terms of this contract, and the actual amount of time worked under other programs. The total hours worked during the period must reflect all actual hours worked under all programs including leave time. The employee’s name, position, and signature, as well as a signature by an appropriate supervisor, or executive director, must be included on the timesheets. If an electronic time system is used, signatures are not required. If the timesheet submitted indicates that the employee provided services payable under this contract for a portion of the total time worked, then the amount of reimbursement requested must be calculated and documented in the monthly reimbursement request.
- 1.3.3 A payroll register or payroll ledger from the accounting system will verify the amount of salary. Copies of paychecks are acceptable if they include the gross pay and deductions.

1.4 Fringe Benefits

- 1.4.1 Fringe benefits paid by the employer can be requested by applying the FICA match of 7.65 percent to the gross salary -less pre-tax deductions, if applicable,

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

1.5 General Reimbursement Requirements

- 1.5.1 **Invoices**: All non-personnel expenses need dated and readable invoices. The invoices must be from a vendor separate from the Contractor, and must state what goods or services were provided and the delivery address. Verification that the goods or services were received should also be submitted, this may take the form of a receiving document or packing slips, signed and dated by the individual receiving the good or service. Copies of checks written by the Contractor, or documentation of payment such as an accounts payable ledger which includes the check number shall be submitted to verify that the goods or services are on a reimbursement basis.
- 1.5.2 **Mileage**: A detailed mileage log with destinations and starting and ending mileage must accompany mileage reimbursement. The total miles reimbursed and per mile rate must be stated. Documentation of mileage reimbursement to the respective employee must be included with the voucher request.
- 1.5.3 **Cell Phone**: If the monthly usage charge is exceeded in any month, an approval from the Executive Director or designee will be required.
- 1.5.4 **Administration and Overhead Cost**: Other non-personnel line items, such as administration, or overhead need invoices, and an allocation to this program documented in the draw request. An indirect cost rate can be applied if the Contractor has an approved indirect cost allocation plan. The approved indirect cost rate must be submitted to and approved by HOST.
- 1.5.5 **Service Period and Closeout**: All reimbursed expenses must be incurred during the time period within the contract. The final payment request must be received by HOST within thirty (30) days after the end of the service period stated in the contract.

2.1 Program Income

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

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

3.1 Financial Management Systems

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

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

- 3.1.7 For contracts subject to Federal Agreements, the Contractor shall maintain separate accountability for HOST funds as referenced in 24 C.F.R. 85.20 and the OMB Omni Circular.
- 3.1.8 The Contractor must properly report to Federal, State, and local taxing authorities for the collection, payment, and depositing of taxes withheld. At a minimum, this includes Federal and State withholding, State Unemployment, Worker's Compensation (staff only), City Occupational Privilege Tax, and FICA.
- 3.1.9 A proper filing of unemployment and worker's compensation (for staff only) insurance shall be made to appropriate organizational units.
- 3.1.10 The Contractor shall participate, when applicable, in HOST provided staff training sessions in the following financial areas including, but not limited to (1) Budgeting and Cost Allocation Plans; (2) Vouchering Process.

4.1 Audit Requirements

- 4.1.1 For contracts subject to Federal Agreements, if the Contractor expends seven hundred and fifty thousand dollars (\$750,000) or more of federal awards in the Contractor's fiscal year, the Contractor shall ensure that it, and its sub recipients(s), if any, comply with all provisions of the OMB Omni Circular.
- 4.1.2 A copy of the final audit report must be submitted to the HOST Financial Manager within the earliest of thirty (30) calendar days after receipt of the auditor's report; or nine (9) months after the end of the period audited.
- 4.1.3 A management letter, if issued, shall be submitted to HOST along with the reporting package prepared in accordance with the Single Audit Act Amendments and the OMB Omni Circular. If the management letter is not received by the subrecipient at the same time as the Reporting Package, the Management Letter is also due to HOST within thirty (30) days after receipt of the Management Letter, or nine (9) months after the end of the audit period, whichever is earlier. If the Management Letter has matters related to HOST funding, the Contractor shall prepare and submit a Corrective Action Plan to HOST in accordance with the Single Audit Act Amendments and the OMB Omni Circular, as set forth in 24 C.F.R. Part 45 for each applicable management letter matter.
- 4.1.4 All audit related material and information, including reports, packages, management letters, correspondence, etc., shall be submitted to **HOST Financial Services Team**.
- 4.1.5 The Contractor will be responsible for all Questioned and Disallowed Costs.
- 4.1.6 The Contractor may be required to engage an audit committee to determine the services to be performed, review the progress of the audit and the final audit

findings, and intervene in any disputes between management and the independent auditors. The Contractor shall also institute policy and procedures for its sub recipients that comply with these audit provisions, if applicable.

5.1 Budget Modification Requests

- 5.1.1 HOST may, at its option, restrict the transfer of funds among cost categories, programs, functions or activities at its discretion as deemed appropriate by program staff, HOST executive management or its designee.
- 5.1.2 Minor modifications to the services provided by the Contractor or changes to each line item budget equal to or less than a ten percent (10%) threshold, which do not increase the total funding to the Contractor, will require notification to HOST program staff and upon approval may be submitted with the next monthly draw. Minor modifications to the services provided by Contractor, or changes to each line item budget in excess of the ten percent (10%) threshold, which do not increase the total funding to Contractor, may be made only with prior written approval by HOST program staff. Such budget and service modifications will require submittal by Contractor of written justification and new budget documents. All other contract modifications will require an amendment to this Agreement executed in the same manner as the original Agreement.
- 5.1.3 The Contractor understands that any budget modification requests under this Agreement must be submitted to HOST prior to the last Quarter of the Contract Period, unless waived in writing by the HOST Director.

6.1 Procurement

- 6.1.1 The Contractor shall follow the City Procurement Policy to the extent that it requires that at least three (3) documented quotations be secured for all purchases or services (including insurance) supplies, or other property that costs more than ten thousand dollars (\$10,000) in the aggregate.
- 6.1.2 The Contractor will maintain records sufficient to detail the significant history of procurement. These records will include, but are not limited to the following: rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price.
- 6.1.3 If there is a residual inventory of unused supplies exceeding five thousand dollars (\$5,000) in total aggregate upon termination or completion of award, and if the supplies are not needed for any other federally sponsored programs or projects the Contractor will compensate the awarding agency for its share.

7.1 Bonding

- 7.1.1 HOST may require adequate fidelity bond coverage, in accordance with 24 C.F.R. 84.21, where the subrecipient lacks sufficient coverage to protect the Federal Government's interest.

8.1 Records Retention

- 8.1.1 The Contractor must retain for seven (7) years financial records pertaining to the contract award. The retention period for the records of each fund will start on
- 8.1.2 the day the single or last expenditure report for the period, except as otherwise noted, was submitted to the awarding agency.
- 8.1.3 The awarding agency and the Comptroller General of the United States, or any of their authorized representatives, shall have the right of access, upon reasonable notice, to any pertinent books, documents, papers, or other records which are pertinent to the contract, in order to make audits, examinations, excerpts, and transcripts.

9.1 Contract Close-Out

- 9.1.1 All Contractors are responsible for completing required HOST contract close-out forms and submitting these forms to their appropriate HOST Contract Specialist within sixty (60) days after the Agreement end date, or sooner if required by HOST in writing.
- 9.1.2 Contract close out forms will be provided to the Contractor by HOST within thirty (30) days prior to end of contract.
- 9.1.3 HOST will close out the award when it determines that all applicable administrative actions and all required work of the contract have been completed. If Contractor fails to perform in accordance with this Agreement, HOST reserves the right to unilaterally close out a contract, “unilaterally close” means that no additional money may be expended against the contract.

10.1 Collection of amounts due

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

EXHIBIT H
(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.