

**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 **1275 SHERMAN LLC**, a Colorado limited liability company, whose address is 2000 South Colorado Boulevard, Annex Suite 315, Denver, Colorado 80222 (“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 One Million, Five Hundred Forty-Five Thousand and 00/100 Dollars (\$1,545,000.00) (the “Loan”), to be repaid over a term of approximately fifty (50) years with interest at the rate of one percent (1%) per annum, compounded annually. 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”). Borrower shall pay the annually calculated Cash Flow to the City on December 31, 2035, and every December 31 thereafter, with the entire unpaid balance of principal and accrued interest due and payable on or before December 31, 2070 (“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. Interest shall commence accruing immediately after loan closing.

It is the intent of the Parties that Section 8.1 and Exhibit A-5 of the Amended and Restated

Operating Agreement of 1275 Sherman LLC (the “Operating Agreement”), which describes the priority and distribution of Cash Flow (as that term is defined in the Operating Agreement), and Exhibit A, as attached hereto, shall under all circumstances materially match. In the event that the Operating Agreement is amended so that the provisions of the Operating Agreement regarding priority and calculation of payments to the City change the priority and calculation of payments to the City in Exhibit A of this Agreement, then: (i) Borrower shall promptly provide any such amendment or amended Operating Agreement to the City; and (ii) this Agreement shall be further amended to ensure that the definition of Cash Flow as described herein matches with the priority and calculation of Cash Flow described in Section 8.1 and Exhibit A-5 of the Operating Agreement, as amended.

2. **SECURITY**: Repayment of the Promissory Note shall be secured by a Leasehold Deed of Trust (the “Deed of Trust”), in form satisfactory to City, granted by Borrower and encumbering the real property known and numbered as 1295 Sherman Street, Denver, Colorado 80203 (the “Property”) subject to prior encumbrances not exceeding Twenty Five Million and no/100 Dollars (\$25,000,000) in principal amount under construction loans and Fifteen Million and No/100 Dollars (\$15,000,000.00) in principal amount under permanent loans.

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 forms attached hereto as **Exhibit B**, **Exhibit C**, and **Exhibit D**; (ii) encumbrances prior to the City’s Deed of Trust do not exceed \$25,000,000 under construction loans and \$15,000,000.00 under permanent loans; (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 E**, 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 F** attached hereto and incorporated herein. When 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 Ten Thousand and No/100 Dollars (\$10,000.00) of the total funds to be disbursed under this Loan Agreement, which retainage shall be released upon receipt from Borrower of all information necessary for the City's reporting requirements, 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 November 21, 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 Operating Agreement for the Project on or before October 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 Ten Thousand and No/100 Dollars (\$10,000.00) 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. Thirteen (13) of the units at the Property (the "80% Units") shall have rents not exceeding 30% of the adjusted income of a family whose annual

income equals 80% of the median income for the Denver area, as published by the Colorado Housing and Finance Authority ("CHFA"), with adjustments for number of bedrooms in the unit. Twenty (20) of the units at the Property (the "70% Units") shall have rents not exceeding 30% of the adjusted income of a family whose annual income equals 70% of the median income for the Denver area, as published by CHFA, with adjustments for number of bedrooms in the unit. Thirty-four (34) 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 CHFA, with adjustments for number of bedrooms in the unit. Twenty-two (22) of the units at the Property (the "50% Units") shall have rents not exceeding 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. Seven (7) of the units at the Property (the "40% Units") shall have rents not exceeding 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 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 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 80% Units, 70% Units, 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 80% Units shall be occupied by tenants whose incomes are at or below eighty percent (80%) of the median income for the Denver area as published by CHFA with adjustments for family size. The 70% Units shall be occupied by tenants whose incomes are at or below seventy percent (70%) of the median income for the Denver area

as published by CHFA with adjustments for family size. The 60% Units shall be occupied by tenants whose incomes are at or below sixty percent (60%) of the median income for the Denver area as published by CHFA with adjustments for family size. The 50% Units shall be occupied by tenants whose incomes are at or below fifty percent (50%) of the median income for the Denver area as published by CHFA with adjustments for family size. The 40% Units shall be occupied by tenants whose incomes are at or below forty 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 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.

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

BEDROOMS	80% Units	70% Units	60% Units	50% Units	40% Units	30% Units
1 Bedroom	9	13	23	16	6	6
2 Bedroom	4	7	11	6	1	1
TOTAL	13	20	34	22	7	7

D. Covenant Running with the Land. At closing, Borrower shall cause a covenant to be executed 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. The Covenant shall terminate upon any foreclosure of or deed in lieu of foreclosure of the Project.

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 families;

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

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

D. 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 G** 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 groundbreakings 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 leasehold 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 notice to Borrower (in accordance with section 32 below) that Borrower has thirty (30) calendar days to cure any violation or default 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 member 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. The City will send a copy of any notice sent to Borrower under this Section 23 to Borrower's investor member.

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. **APPROVED TRANSFERS:** Nothing in the Loan Documents shall limit or restrict the ability of Borrower's investor member, as defined in the Operating Agreement, USB Colorado State Investor I, LLC, its successor and assigns (the "Investor Member") to transfer, sell or assign its ownership interest in Borrower, from time to time, without the consent of the City. In particular, the City hereby consents to any transfers, sales or assignments of limited partnership/membership interests in Borrower to any affiliate of the Investor Member or any entity in which the Investor Member, or an affiliate, is the manager or managing general partner, and agrees that any such transfer shall not constitute a breach of or default under the Loan Documents. Any approved transfer allowed under this Section 29 will not relieve Borrower of its obligations under the Loan Documents.

30. **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.

31. **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 (with a copy to Borrower's investor limited partner/member at the addresses below), 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

To Investor Member of Borrower:

USB Colorado State Investor I, LLC
1307 Washington Avenue, Suite 300
Mail Code: SL MO RMCD
St. Louis, MO 63103
USB Project No.: 26487
Attn: Robert Espeland
Phone: (314) 335-2600
Fax: (314) 335-2601

And:

Kutak Rock LLP
1650 Farnam Street
Omaha, NE 68102
Phone: (402) 346-6000
Fax: (402) 346-1148
Attn: Jill Goldstein, Esq.

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.

32. 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.

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

34. **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: HOST-202054254-00
Contractor Name: 1275 SHERMAN LLC

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

SEAL

CITY AND COUNTY OF DENVER:

ATTEST:

By:

APPROVED AS TO FORM:

REGISTERED AND COUNTERSIGNED:

Attorney for the City and County of Denver

By:

By:

By:

Contract Control Number:
Contractor Name:

HOST-202054254-00
1275 SHERMAN LLC

1275 SHERMAN LLC,
a Colorado limited liability company

By: 1275 Sherman Manager LLC, a Colorado limited liability
company, its managing member

By: Brinshore TL, LLC, an Illinois limited liability company, its
manager

By: Brinshore Development, L.L.C., an Illinois
limited liability company, its manager

By: Brint Development, Inc. an Illinois
corporation, a member

By: _____
Name: David B. Brint
Title: President

By: Mile High Affordable Housing, LLC, a Colorado limited
liability company, its manager

By: Mile High Realty Advisors Corp., a Colorado
corporation, its sole member

By: _____
Name: George Thorn
Title: Director

Contract Control Number:
Contractor Name:

HOST-202054254-00
1275 SHERMAN LLC

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corporation, its sole member

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Name: George Thorn
Title: Director

Contract Control Number:
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HOST-202054254-00
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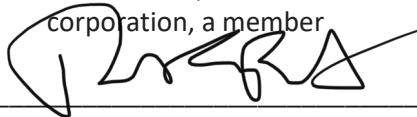
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a Colorado limited liability company

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company, its managing member

By: Brinshore TL, LLC, an Illinois limited liability company, its
manager

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By: Brint Development, Inc. an Illinois
corporation, a member

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liability company, its manager

By: Mile High Realty Advisors Corp., a Colorado
corporation, its sole member

By: _____
Name: George Thorn
Title: Director

EXHIBIT A

The provisions of this Exhibit A are found in the First Amended and Restated Agreement of Limited Liability Company of 1275 SHERMAN LLC (the “Operating Agreement”). A copy of the fully executed Operating Agreement will be provided to the City after execution.

Distribution of Cash Flow (Exhibit A-5 of the Operating Agreement)

Cash Flow Payment Priorities

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

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

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

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

Fourth, first to fund amounts payable to the Company Replacement Reserve pursuant to Exhibit A-7 and thereafter to replenish the Operating Reserve pursuant to Exhibit A-7 and thereafter to replenish the Land Lease Deferred Rent Reserve pursuant to Exhibit A-7, if applicable.

Fifth, to the Investor Member to repay any loans or other advances made by the Investor Member.

Sixth, from **[50]%** of Cash Flow, to pay rent pursuant to the terms of the Ground Lease.

Seventh, from **[50]%** of Cash Flow, to pay unpaid Development Fee (and interest thereon, if applicable).

Eighth, to pay **[50]%** of the DHDP Special Member Asset Management Fee pursuant to the terms of the DHDP Special Member Asset Management Agreement.

Ninth, from 100% of remaining Cash Flow as follows: **[59.54%]** to pay principal and interest on the City of Denver Loan until repaid in full, and (ii) **[40.46%]** to pay applicable principal and interest on the CDOH Loan until repaid in full.

Eleventh, to pay the annual payment required pursuant to the PILOT Agreement, as further described in the PILOT Agreement and the DHDP Special Member Addendum.

Twelfth, [25% of Cash Flow to fund Property Tax Escrow Account funding pursuant to the terms of the DHDP Special Member Addendum].

Thirteenth, to the Managing Member to repay any Development Advance (which shall bear interest at four percent (4%) per annum), Operating Deficit Advance, Credit Adjuster Advance or Development Fee Advance then payable or any other loans made by the Managing Member hereunder.

Fourteenth, to the Managing Member to pay the Company Management Fee, payable pursuant to the Company Management Agreement, attached hereto as Exhibit E, for services rendered to the Company as set forth therein, payable in the amount set forth in such Agreement solely from and to the extent of 90% of remaining Cash Flow, if any.

Fifteenth, the balance to the Managing Member, the DHDP Special Member and the Investor Member in accordance with their Percentage Interests.

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

Applicable Defined Terms

The following terms are used in Exhibit A-5 and are defined in Article II (Definitions) of the Operating Agreement or elsewhere in the Operating Agreement. Unless otherwise indicated, the definitions are in Article II of the Operating Agreement.

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

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

(1) All gross revenue collected directly or indirectly from the operations of the Project (excluding Loans, condemnation and casualty proceeds, Capital Proceeds, and tenant security deposits, and interest thereon, unless any such security deposit is forfeited to the Company) and of the Company (excluding Capital Contributions and interest earned on Reserves which is retained as part of the Reserve, until released from the Reserve) (“*Company Net Revenues*”), as reduced, dollar for dollar, by the following:

(2) Company Expenses.

Change in Law: An amendment to the Code or Treasury Regulations that is applicable to a Credit as set forth on Exhibit A-3 respecting the Project and that provides for the reduction or

elimination of such Credit or substantially changes the requirements for qualifying for such Credit in a manner which the Members reasonably agree cannot be satisfied by the Company.

Company: 1275 Sherman LLC, a Colorado limited liability company formed under and pursuant to the Act.

Company Management Agreement: The Company Management Agreement attached hereto as Exhibit E, as amended from time to time.

Company Management Fee: That certain Company management fee payable to the Managing Member, pursuant to Exhibit E.

Credit Adjuster Advance: A payment made by the Managing Member, pursuant to Section 3.3.

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

Development Advances: The advances to the Company to be made by the Managing Member in the amounts and under the circumstances provided in Section 5.9(b).

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

Development Fee Advance: An advance to the Company by the Managing Member pursuant to Section 5.11.

DHDP Special Member: Denver Housing Development Partners, Inc., a Colorado nonprofit corporation.

DHDP Special Member Addendum: The Addendum to Amended and Restated Operating Agreement of the Company dated of even date herewith and attached hereto as Exhibit Q (including the Exhibits thereto) dated of even date herewith pursuant to which the DHDP Special Member shall be admitted to the Company and setting forth the terms and conditions with respect thereto.

DHDP Special Member Asset Management Fee: That certain fee payable to the DHDP Special Member in the amount of \$[6,180] annually (escalating 3% annually) as described in the DHDP Special Member Asset Management Agreement.

DHDP Special Member Asset Management Agreement: The DHDP Special Member Asset Management Agreement dated of even date herewith, between the Company and the DHDP Special Member, pursuant to which the Company has agreed to pay the DHDP Special Member Asset Management Fee pursuant to the terms and conditions thereof.

Ground Lease: The lease by the Company of the existing Project land and all improvements thereon from the State of Colorado, acting by and through the Colorado State Board of Land Commissioners, dated [DATE], 2020.

Investor Member: The Federal Investor Member and the Colorado Investor Member, and each of them, and their respective successors and assigns, its successors and permitted assigns, and any Person who becomes a Substitute Investor Member as provided herein, in each such person's capacity as an investor member. If there is more than one investor member of the Company, the term "Investor Member" shall refer collectively to all such investor members.

Managing Member: 1275 Sherman Manager LLC, a Colorado limited liability company, its successors and permitted assigns, and any additional or substitute manager of the Company named in any duly adopted amendment to this Agreement, Brinshore TL, LLC, an Illinois limited liability company, and Mile High Affordable Housing, LLC, a Colorado limited liability company as members. If there is more than one managing member, the term "Managing Member" shall refer individually, collectively, jointly and severally, to all such members.

Operating Deficit Advance: A loan to the Company by the Managing Member, which shall be required under the circumstances described in Section 5.10.

Operating Reserve: The reserve to be funded in accordance with Exhibit A-7.

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

PILOT Agreement: The Agreement for Payments in Lieu of Taxes between the Company and DHA, attached as Exhibit F to the DHDP Special Member Addendum.

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

EXHIBIT B
Partial Subordination
Agreement to LURA

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 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 Department of Housing Stability, 201 W. Colfax Ave., Dept. 615, Denver, Colorado 80202 (the "Junior Lender") and U.S. Bank National Association, a national banking association, whose address is 1307 Washington Avenue, Suite 300, St. Louis, Missouri 63103 (the "Senior Lender").

PRELIMINARY STATEMENTS

A. The Junior Lender has made a loan to 1275 Sherman LLC, a Colorado limited liability corporation (the "Borrower") in the principal amount of \$25,000,000 evidenced by that certain Promissory Note, dated as of [INSERT DATE OF PROMISSORY NOTE], made by the Borrower and payable to the Junior Lender and secured by that certain Deed of Trust [the "Junior Deed of Trust"] made as of [INSERT DATE OF DEED OF TRUST] and recorded on [INSERT RECORDATION DATE] at Reception No. [INSERT RECEPTION NUMBER] of the real property records in the office of the Clerk and Recorder of [INSERT COUNTY] County, State of Colorado, encumbering the following described property (the "Property"):

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

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

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

AGREEMENT

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

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

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

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

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

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

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

5. Waiver and Consent. The Senior Lender shall have no obligation to the Junior Lender with respect to the Mortgaged Property or the Senior Obligations. The Senior Lender may in accordance with the Senior Deed of Trust (a) exercise collection rights, (b) take possession of, sell or dispose of, and otherwise deal with, the Mortgaged Property, (c) in the Senior Lender's name, the Junior Lender's name or in the Borrower's name, demand, sue for, collect or receive any money or property at any time payable or receivable on account of, the Mortgaged Property; (d) prosecute, settle and receive proceeds on any insurance claims relating to the Mortgaged Property, and (e) exercise and enforce any right or remedy available to the Senior Lender with respect to the Mortgaged Property, whether available before or after the occurrence of any default; all without notice to or consent by anyone except as specifically required by law. The Senior Lender may apply the proceeds of the Mortgaged Property in any order the Senior Lender deems appropriate in its sole discretion, except as required by law. Senior Lender may amend any of the loan documents executed in connection with the Senior Deed of Trust without the consent of Junior Lender provided such amendment does not: (i) shorten the term of the Senior Obligations, (ii) increase the principal balance of the Senior Obligations (except for protective advances, provided that Senior Lender shall not make a protective advance in excess of 10% of the amount of the Senior Obligations and that increase the principal balance of the Senior Obligations over \$25,000,000.00 without the prior consent of Junior Lender), or (iii) increase the interest rate spread due on the Senior Obligations (except for any default interest).

6. No Action. Except to the extent that Junior Lender obtains Senior Lender's permission pursuant to the following sentence, the Junior Lender will not commence or join in any

action or proceeding with respect to the Mortgaged Property or against the Borrower, 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 will not be unreasonably withheld or delayed. In addition, and without limiting the generality of the foregoing, if the Borrower is in default under the Senior Deed of Trust, any credit agreement or other agreement in favor of the Senior Lender (the "Senior Loan Documents") and the Senior Lender or Borrower intends to sell any part of the Mortgaged Property to an unrelated third party, the Junior Lender shall, upon the Senior Lender's request, promptly execute and deliver to such purchaser such instruments as may reasonably be necessary to terminate and release any security interest or lien the Junior Lender might have in the Mortgaged Property to be sold.

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

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

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

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

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

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

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

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

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

“JUNIOR LENDER”

CITY AND COUNTY OF DENVER, a Colorado Municipal Corporation

By: _____

Title: _____, Department of Housing Stability

State of Colorado)
) ss.
County of)

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

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

Notary Public

“SENIOR LENDER”

U.S. Bank National Association , a national banking association

By: _____

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:

1275 SHERMAN LLC, a Colorado limited liability corporation

By: _____

Title: _____

ATTACHMENT A

[INSERT LEGAL DESCRIPTION]

EXHIBIT D

RECORDING REQUESTED BY:
AND WHEN RECORDED MAIL TO:

Dameon Rivers, Esq.
Ballard Spahr LLP
1909 K Street, NW, 12th Floor
Washington, DC 20006-1157

Freddie Mac Loan Number: 503651737
Property Name: Capitol Square

SUBORDINATION AGREEMENT

GOVERNMENTAL ENTITY

(Direct Purchase of Tax-Exempt Loans)
(Revised 9/1/2014)

THIS SUBORDINATION AGREEMENT ("**Agreement**") is entered into this ___ day of ___, 2020, by and between **U.S. BANK NATIONAL ASSOCIATION**, a national banking association organized and existing under the laws of the United States of America ("**Senior Mortgagee**"), and the **CITY AND COUNTY OF DENVER**, a municipal corporation of the State of Colorado ("**Subordinate Mortgagee**").

RECITALS

- A. **1275 SHERMAN, LLC**, a limited liability company organized under the laws of the State of Colorado ("**Borrower**") is the owner of certain land located in the City and County of Denver, Colorado, described in Exhibit A ("**Land**"). The Land is to be improved with a multifamily rental housing project ("**Improvements**").
- B. **COLORADO HOUSING AND FINANCE AUTHORITY**, a body corporate and political subdivision of the State of Colorado ("**Governmental Lender**"), the original holder of the Senior Note, has made a loan to Borrower in the original principal amount of \$13,200,000 ("**Senior Loan**") upon the terms and conditions of a Project Loan Agreement dated as of ___, 2020 ("**Senior Loan Agreement**") by and among Governmental Lender, Senior Mortgagee (in its capacity as Fiscal Agent under the Funding Loan Agreement (defined below)) and Borrower in connection with the Mortgaged Property.
- C. Pursuant to a Loan Agreement dated ___, 2020, between Subordinate Mortgagee and Borrower ("**Subordinate Loan Agreement**"), Subordinate Mortgagee has

made or is making a loan to Borrower in the original principal amount of \$1,545,000.00 ("**Subordinate Loan**"). The Subordinate Loan is or will be secured by a Leasehold Deed of Trust dated ____, 2020 granted by Borrower for the benefit of Subordinate Mortgagee ("**Subordinate Mortgage**") encumbering all or a portion of the Mortgaged Property and recorded in the Official Records of the City and County of Denver Clerk and Recorder ("**Recording Office**").

- D. The Senior Note was assigned by the Governmental Lender to Senior Mortgagee (in its capacity as Fiscal Agent under the Funding Loan Agreement (defined below)) as security for the loan made by the Initial Funding Lender to the Governmental Lender pursuant to the Funding Loan Agreement (the "**Funding Loan**").
- E. Subject to the terms and conditions of that certain Construction Phase Financing Agreement (the "**Construction Phase Financing Agreement**") dated as of _____, 2020, between Borrower, **U.S. BANK NATIONAL ASSOCIATION**, a national banking association (in such capacity, "**Initial Funding Lender**"), Federal Home Loan Mortgage Corporation and **NORTHMARQ CAPITAL, LLC**, a Minnesota limited liability company ("**Permanent Funding Lender**"), Initial Funding Lender shall subsequently assign (without recourse) and deliver the documents comprising the Funding Loan to the Permanent Funding Lender and, in connection therewith, the Senior Note (as defined herein) which such Senior Note will be secured by that certain Leasehold Deed of Trust, Fixture Filing, Assignment of Rents and Security Agreement (the "**Senior Mortgage**") encumbering the Land, the Improvements and related personal and other property described and defined in the Senior Mortgage as the "**Mortgaged Property**", which such Senior Mortgage will thereafter be assigned to the Fiscal Agent ("**Conversion**").
- F. Pursuant to the Senior Mortgage and the Funding Loan Agreement dated as of ____, 2020, among Initial Funding Lender, Governmental Lender and Senior Mortgagee (the "**Funding Loan Agreement**"), the Funding Lender has the right to direct all actions of the Senior Mortgagee with respect to the Senior Mortgage, the Mortgaged Property and the Senior Loan Agreement and upon Conversion, shall have the right to amend and restate the Senior Note and enter into the Senior Mortgage, as well as the right to amend, waive, postpone, extend, renew, replace, reduce or otherwise modify any provision of any of the Senior Loan Documents (as defined herein), without notice to or the consent or joinder of the Subordinate Mortgagee.
- G. The execution and delivery of this Agreement is a condition of Funding Lender's consenting to Subordinate Mortgagee's making of the Subordinate Loan and Borrower's granting of the Subordinate Mortgage.

NOW, THEREFORE, for valuable consideration, the receipt and sufficiency of which are acknowledged, the parties agree as follows:

1. **Definitions.** The following terms, when used in this Agreement (including, as appropriate, when used in the above recitals), will have the following meanings.
 - (a) The terms "**Condemnation**," "**Imposition Reserve Deposits**," "**Impositions**," "**Leases**," "**Rents**" and "**Restoration**," as well as any term used in this Agreement and not otherwise defined in this Agreement, will have the meanings given to those terms in the Continuing Covenant Agreement attached as Exhibit J to the Construction Phase Financing Agreement ("**Continuing Covenant Agreement**").
 - (b) "**Bankruptcy Proceeding**" means any bankruptcy, reorganization, insolvency, composition, restructuring, dissolution, liquidation, receivership, assignment for the benefit of creditors, or custodianship action or proceeding under any federal or state law with respect to Borrower, any guarantor of any of the Senior Indebtedness, any of their respective properties, or any of their respective partners, members, officers, directors, or shareholders.
 - (c) "**Borrower**" means all persons or entities identified as "Borrower" in the first Recital of this Agreement, together with their successors and assigns, and any other person or entity who acquires title to the Mortgaged Property after the date of this Agreement; provided that the term "Borrower" will not include Senior Mortgagee or Funding Lender if Senior Mortgagee or Funding Lender acquires title to the Mortgaged Property.
 - (d) "**Casualty**" means the occurrence of damage to or loss of all or any portion of the Mortgaged Property by fire or other casualty.
 - (e) "**Enforcement Action**" means any of the following actions taken by or at the direction of Subordinate Mortgagee solely pursuant to the Subordinate Mortgagee's rights under the Subordinate Loan Agreement: the acceleration of all or any part of the Subordinate Indebtedness, the advertising of or commencement of any foreclosure or trustee's sale proceedings, the exercise of any power of sale, the acceptance of a deed or assignment in lieu of foreclosure or sale, the collecting of Rents, the obtaining of or seeking of the appointment of a receiver, the seeking of default interest, the taking of possession or control of any of the Mortgaged Property, the commencement of any suit or other legal, administrative, or arbitration proceeding based upon the Subordinate Note or any other of the Subordinate Loan Documents, the exercising of any lien created under the Subordinate Loan Documents or rights of set-off or recoupment or the exercise of any other remedial action against Borrower, any other party liable for any of the Subordinate Indebtedness or obligated under any of the Subordinate Loan Documents, or the Mortgaged Property.

- (f) "**Enforcement Action Notice**" means a written Notice from Subordinate Mortgagee to Funding Lender, given following one or more Subordinate Mortgage Default(s) and the expiration of any Notice or cure periods provided for such Subordinate Mortgage Default(s) in the Subordinate Loan Documents, setting forth in reasonable detail the Subordinate Mortgage Default(s) and the Enforcement Actions proposed to be taken by Subordinate Mortgagee.
- (g) "**Funding Lender**" shall mean Initial Funding Lender prior to Conversion and Permanent Funding Lender from and after Conversion, together with their respective successors and assigns.
- (h) "**Governmental Note**" means the Governmental Notes (as defined in the Funding Loan Agreement), delivered by the Governmental Lender evidencing the Funding Loan.
- (i) "**Loss Proceeds**" means all monies received or to be received under any insurance policy, from any condemning authority, or from any other source, as a result of any Condemnation or Casualty.
- (j) "**Notice**" is defined in Section 6(d).
- (k) "**Rental and Occupancy Covenant**" means that certain Rental and Occupancy Covenant dated as of ____, 2020, made by Borrower for the benefit of the Subordinate Mortgagee, as the same may from time to time be extended, consolidated, substituted for, modified, amended or supplemented.
- (l) "**Senior Indebtedness**" means the "Indebtedness" of Borrower as evidenced by the Senior Loan Documents.
- (m) "**Senior Loan Documents**" means the "Project Loan Documents" as defined in the Funding Loan Agreement.
- (n) "**Senior Mortgage Default**" means any act, failure to act, event, condition, or occurrence which constitutes, or which with the giving of Notice or the passage of time, or both, would constitute, an "Event of Default" as defined in the Senior Loan Documents.
- (o) "**Senior Mortgagee**" means the person or entity named as such in the first paragraph of this Agreement. When any other person or entity becomes the legal holder of the Senior Note, such other person or entity automatically will become Senior Mortgagee.
- (p) "**Senior Note**" means the Project Note as defined in the Funding Loan Agreement.

- (q) "**Subordinate Indebtedness**" means all sums evidenced or secured or guaranteed by, or otherwise due and payable to Subordinate Mortgagee pursuant to, the Subordinate Loan Documents.
- (r) "**Subordinate Loan Documents**" means the Subordinate Mortgage, the Subordinate Note, the Subordinate Loan Agreement, the Rental and Occupancy Covenant and all other documents at any time evidencing, securing, guaranteeing, or otherwise delivered in connection with the Subordinate Indebtedness, as the same may be amended.
- (s) "**Subordinate Mortgage Default**" means any act, failure to act, event, condition, or occurrence which allows (but for any contrary provision of this Agreement), or which with the giving of Notice or the passage of time, or both, would allow (but for any contrary provision of this Agreement), Subordinate Mortgagee to take an Enforcement Action.
- (t) "**Subordinate Mortgagee**" means the entity named as such in the first paragraph of this Agreement and any other person or entity who becomes the legal holder of the Subordinate Note after the date of this Agreement.
- (u) "**Subordinate Note**" means the promissory note or other evidence of the Subordinate Indebtedness referred to in the Subordinate Mortgage and any replacement of the Subordinate Note.
- (v) "**Surplus Cash Flow**" shall have the meaning of "Cash Flow" as set forth in the Subordinate Loan Agreement.

2. **Subordination of Subordinate Indebtedness.**

- (a) The Subordinate Indebtedness is and will at all times continue to be subject and subordinate in right of payment to the prior payment in full of the Senior Indebtedness.
- (b) Until the occurrence of a Senior Mortgage Default, Subordinate Mortgagee will be entitled to retain for its own account all payments made on account of the principal of and interest on the Subordinate Indebtedness in accordance with the requirements of the Subordinate Loan Documents, provided no such payment exceeds 75% of available Surplus Cash Flow; until the Senior Indebtedness is paid in full, the Subordinate Mortgagee shall not increase required payments of the Subordinate Indebtedness in such a manner that would cause bankruptcy of the Borrower or default on the Subordinate Indebtedness. Subordinate Mortgagee acknowledges that a Subordinate Mortgage Default constitutes a Senior Mortgage Default. Accordingly, upon the occurrence of a Subordinate Mortgage Default, Subordinate Mortgagee will be deemed to have actual knowledge of a Senior Mortgage Default.

- (c) Reserved.
- (d) Reserved.
- (e) The subordination of the Subordinate Indebtedness will continue if any payment under the Senior Loan Documents (whether by or on behalf of Borrower, as proceeds of security or enforcement of any right of set-off or otherwise) is for any reason repaid or returned to Borrower or its insolvent estate, or avoided, set aside or required to be paid to Borrower, a trustee, receiver or other similar party under any bankruptcy, insolvency, receivership or similar law.
- (f) Reserved.

3. Subordination of Subordinate Loan Documents.

- (a) Each of the Subordinate Loan Documents is, and will at all times remain, subject and subordinate in all respects to the liens, terms, covenants, conditions, operations, and effects of each of the Senior Loan Documents.
- (b) The subordination of the Subordinate Loan Documents and of the Subordinate Indebtedness will apply and continue notwithstanding (i) the actual date and time of execution, delivery, recording, filing or perfection of each of the Senior Loan Documents and of each of the Subordinate Loan Documents, (ii) the availability of any collateral to Senior Mortgagee or Funding Lender, including the availability of any collateral other than the Mortgaged Property and (iii) the amendment and restatement of the Senior Note and the Senior Mortgage at Conversion, so long as such amounts do not exceed \$15,000,000.00.
- (c) By reason of, and without in any way limiting, the full subordination of the Subordinate Indebtedness and the Subordinate Loan Documents provided for in this Agreement, all rights and claims of Subordinate Mortgagee arising under the Subordinate Loan Documents in or to all or any portion of the Mortgaged Property are expressly subject and subordinate in all respects to the rights and claims of Senior Mortgagee or Funding Lender under the Senior Loan Documents in or to the Mortgaged Property.
- (d) If Subordinate Mortgagee exercising its rights arising solely under the Subordinate Loan Documents, by indemnification, subrogation or otherwise acquires any lien, estate, right or other interest in any of the Mortgaged Property, then that lien, estate, right or other interest will be fully subject and subordinate to the receipt by Senior Mortgagee or Funding Lender of payment in full of the Senior Indebtedness, and to the Senior Loan Documents, to the same extent as the Subordinate Indebtedness and the Subordinate Loan Documents are subordinate pursuant to this Agreement.

- (e) Nothing in this Agreement is intended, nor will it be construed, to in any way limit the exercise by Subordinate Mortgagee of its governmental powers (including police, regulatory and taxing powers) with respect to Borrower or the Mortgaged Property to the same extent as if it were not a party to this Agreement or the transactions contemplated by this Agreement.

4. Additional Representations and Covenants.

- (a) Subordinate Mortgagee represents and warrants that each of the following is true:
- i. Subordinate Mortgagee is now the owner and holder of the Subordinate Loan Documents.
 - ii. The Subordinate Loan Documents are now in full force and effect.
 - iii. The Subordinate Loan Documents have not been modified or amended.
 - iv. No Subordinate Mortgage Default has occurred.
 - v. The current unpaid principal balance of the Subordinate Indebtedness is \$1,545,000.00.
 - vi. No scheduled annual payments under the Subordinate Note have been prepaid.
 - vii. None of the rights of Subordinate Mortgagee under any of the Subordinate Loan Documents are subject to the rights of any third parties, by way of subrogation, indemnification or otherwise.
- (b) Without the prior written consent of Funding Lender in each instance, Borrower will not do any of the following:
- i. Amend, modify, waive, extend, renew, or replace any provision of any of the Subordinate Loan Documents to the extent such modification would have a material adverse effect on Senior Lender or the Senior Indebtedness.
 - ii. Request that the Subordinate Mortgagee take any action which has the effect of increasing the Subordinate Indebtedness.
 - iii. Take any action concerning environmental matters affecting the Mortgaged Property.

- (c) Subordinate Mortgagee will deliver to Funding Lender a copy of each Notice received or delivered by Subordinate Mortgagee pursuant to the Subordinate Loan Documents or in connection with the Subordinate Indebtedness, simultaneously with Subordinate Mortgagee's delivery or receipt of such Notice. Funding Lender will deliver to Subordinate Mortgagee in the manner required in Section 5(b) a copy of each Notice of a Senior Mortgage Default delivered to Borrower by Funding Lender. Neither giving nor failing to give a Notice to Funding Lender or Subordinate Mortgagee pursuant to this Section 4(c) will affect the validity of any Notice given by Funding Lender or Subordinate Mortgagee to Borrower, as between Borrower and such of Funding Lender or Subordinate Mortgagee as provided the Notice to Borrower.
- (d) Without the prior written consent of Funding Lender in each instance, Subordinate Mortgagee will not commence, or join with any other creditor in commencing, any Bankruptcy Proceeding.
- (e) Reserved.
- (f) All original policies of insurance required pursuant to the Senior Loan Documents will be held by Funding Lender. Nothing in this Section 4(f) will preclude Subordinate Mortgagee from requiring that (a) it be named as a mortgagee and loss payee, as its interest may appear, under all policies of property damage insurance maintained by Borrower with respect to the Mortgaged Property, provided such action does not affect the priority of payment of Loss Proceeds, or (b) that Subordinate Mortgagee be named as an additional insured under all policies of liability insurance maintained by Borrower with respect to the Mortgaged Property.
- (g) In the event of a Condemnation or a Casualty, all of the following provisions will apply:
 - i. The rights of Subordinate Mortgagee (solely under the Subordinate Loan Documents) to participate in any proceeding or action relating to a Condemnation or a Casualty, or to participate or join in any settlement of, or to adjust any claims resulting from a Condemnation or a Casualty, will be and remain subordinate in all respects to Senior Mortgagee's and Funding Lender's rights under the Senior Loan Documents with respect thereto.
 - ii. All Loss Proceeds will be applied either to payment of the costs and expenses of Restoration or to payment on account of the Senior Indebtedness, as and in the manner determined by Funding Lender in its sole discretion, up to the amount of the outstanding Senior Indebtedness. Subordinate Mortgagee may apply remaining Loss

Proceeds in the manner determined by Subordinate Mortgagee, in its sole discretion.

- iii. If Funding Lender applies or releases Loss Proceeds for the purposes of Restoration of the Mortgaged Property, then Subordinate Mortgagee will release for such purpose all of its right, title and interest, if any, in and to such Loss Proceeds. If Funding Lender holds Loss Proceeds, or monitors the disbursement thereof, Subordinate Mortgagee will not do so. Nothing contained in this Agreement will be deemed to require Funding Lender to act for or on behalf of Subordinate Mortgagee in connection with any Restoration or to hold or monitor any Loss Proceeds in trust for or otherwise on behalf of Subordinate Mortgagee, and all or any Loss Proceeds up to the total amount of the outstanding Senior Indebtedness may be commingled with any funds of Funding Lender.
- iv. If Funding Lender elects to apply Loss Proceeds to payment on account of the Senior Indebtedness, and if the application of such Loss Proceeds results in the payment in full of the entire Senior Indebtedness, any remaining Loss Proceeds held by Funding Lender will be paid to Subordinate Mortgagee unless another party has asserted a claim to the remaining Loss Proceeds.

(h) Reserved.

- (i) Except as provided in this Section 4(i), and regardless of any contrary provision in the Subordinate Loan Documents, Subordinate Mortgagee will not collect payments made under the Subordinate Loan Documents for the purpose of escrowing for any cost or expense related to the Mortgaged Property or for any portion of the Subordinate Indebtedness or arising under the Subordinate Loan Documents. However, if Funding Lender is not collecting escrow payments for one or more Impositions, Subordinate Mortgagee may collect escrow payments for such Impositions; provided that all payments so collected by Subordinate Mortgagee will be held in trust by Subordinate Mortgagee to be applied only to the payment of such Impositions.
- (j) Within 10 days after request by Funding Lender, Subordinate Mortgagee will furnish Funding Lender with a statement, duly acknowledged and certified setting forth the then-current amount and terms of the Subordinate Indebtedness, confirming that there exists no default under the Subordinate Loan Documents (or describing any default that does exist), and certifying to such other information with respect to the Subordinate Indebtedness as Funding Lender may request.

- (k) Senior Mortgagee or Funding Lender may amend, waive, postpone, extend, renew, replace, reduce or otherwise modify any provision of any of the Senior Loan Documents without the necessity of obtaining the consent of or providing Notice to Subordinate Mortgagee, and without affecting any of the provisions of this Agreement. Notwithstanding the foregoing, neither Senior Mortgagee nor Funding Lender may modify any provision of the Senior Loan Documents that increases the Senior Indebtedness, except for increases in the Senior Indebtedness that result from advances made by Senior Mortgagee or Funding Lender to protect the security or lien priority of Senior Mortgagee or Funding Lender under the Senior Loan Documents or to cure defaults under the Subordinate Loan Documents so long as such amounts do not exceed \$15,000,000.00.

5. Default Under Loan Documents.

- (a) For a period of 90 days following delivery to Funding Lender of an Enforcement Action Notice, Funding Lender will have the right, but not the obligation, to cure any Subordinate Mortgage Default, provided that if such Subordinate Mortgage Default is a non-monetary default and is not capable of being cured within such 90-day period and Funding Lender has commenced and is diligently pursuing such cure to completion, Funding Lender will have such additional period of time as may be required to cure such Subordinate Mortgage Default or until such time, if ever, as Funding Lender (i) discontinues its pursuit of any cure and/or (ii) delivers to Subordinate Mortgagee Funding Lender's written consent to the Enforcement Action described in the Enforcement Action Notice. Neither Senior Mortgagee nor Funding Lender will be subrogated to the rights of Subordinate Mortgagee under the Subordinate Loan Documents by reason of Funding Lender having cured any Subordinate Mortgage Default. However, Subordinate Mortgagee acknowledges that all amounts advanced or expended by Funding Lender in accordance with the Senior Loan Documents or to cure a Subordinate Mortgage Default will be added to and become a part of the Senior Indebtedness and will be secured by the lien of the Senior Mortgage, so long as such amounts do not exceed \$15,000,000.00.
- (b) Funding Lender will deliver to Subordinate Mortgagee a copy of any Notice sent by Funding Lender to Borrower of a Senior Mortgage Default within 15 Business Days of sending such Notice to Borrower. Failure of Funding Lender to send Notice to Subordinate Mortgagee will not prevent the exercise of Funding Lender's rights and remedies under the Senior Loan Documents. Subordinate Mortgagee will have the right, but not the obligation, to cure any monetary Senior Mortgage Default within 30 days following the date of such Notice; provided, however, that Funding Lender will be entitled during such 30-day period to continue to pursue its remedies under the Senior Loan Documents.

Subordinate Mortgagee may, within 90 days after the date of the Notice, cure a non-monetary Senior Mortgage Default if during such 90-day period,

Subordinate Mortgagee keeps current all payments required by the Senior Loan Documents. If such a non-monetary Senior Mortgage Default creates an unacceptable level of risk relative to the Mortgaged Property, or Senior Mortgagee's or Funding Lender's secured position relative to the Mortgaged Property, as determined by Funding Lender in its sole discretion, then during such 90-day period Funding Lender may exercise all available rights and remedies to protect and preserve the Mortgaged Property and the Rents, revenues and other proceeds from the Mortgaged Property. Subordinate Mortgagee will not be subrogated to the rights of Senior Mortgagee or Funding Lender under the Senior Loan Documents by reason of Subordinate Mortgagee having cured any Senior Mortgage Default. However, Senior Mortgagee and Funding Lender acknowledge that all amounts paid by Subordinate Mortgagee to Senior Mortgagee or Funding Lender to cure a Senior Mortgage Default will be deemed to have been advanced by Subordinate Mortgagee pursuant to, and will be secured by the lien of, the Subordinate Mortgage. Notwithstanding anything in this Section 5(b) to the contrary, Subordinate Mortgagee's right to cure any Senior Mortgage Default will terminate immediately upon the occurrence of any Bankruptcy Proceeding.

- (c) In the event of a Subordinate Mortgage Default, Subordinate Mortgagee will not commence any Enforcement Action until 90 days after Subordinate Mortgagee has delivered to Funding Lender an Enforcement Action Notice with respect to such Enforcement Action, provided that during such 90-day period or such longer period as provided in Section 5(a), Subordinate Mortgagee will be entitled to seek specific performance to enforce covenants and agreements of Borrower relating to income, rent, or affordability restrictions contained in the Rental and Occupancy Covenant, subject to Funding Lender's right to cure a Subordinate Mortgage Default set forth in Section 5(a). Subordinate Mortgagee may not commence any other Enforcement Action, including any foreclosure action under the Subordinate Loan Documents, until the earlier of (i) the expiration of such 90-day period or such longer period as provided in Section 5(a), or (ii) the delivery by Funding Lender to Subordinate Mortgagee of Funding Lender's written consent to such Enforcement Action by Subordinate Mortgagee. Subordinate Mortgagee acknowledges that Funding Lender may grant or refuse consent to Subordinate Mortgagee's Enforcement Action in Funding Lender's sole and absolute discretion. At the expiration of such 90-day period or such longer period as provided in Section 5(a) and, subject to Funding Lender's right to cure set forth in Section 5(a), Subordinate Mortgagee may commence any Enforcement Action. Any Enforcement Action on the part of Subordinate Mortgagee will be subject to the provisions of this Agreement. Subordinate Mortgagee acknowledges that the provisions of this Section 5(c) are fair and reasonable under the circumstances, that Subordinate Mortgagee has received a substantial benefit from Funding Lender having granted its consent to the Subordinate Mortgage, and that Funding Lender would not have granted such consent without the inclusion of these provisions in this Agreement.

- (d) Senior Mortgagee or Funding Lender may pursue all rights and remedies available to it under the Senior Loan Documents, at law, or in equity, regardless of any Enforcement Action Notice or Enforcement Action by Subordinate Mortgagee. No action or failure to act on the part of Senior Mortgagee or Funding Lender in the event of a Subordinate Mortgage Default or commencement of an Enforcement Action will constitute a waiver on the part of Senior Mortgagee or Funding Lender of any provision of the Senior Loan Documents or this Agreement.
- (e) If the Enforcement Action taken by Subordinate Mortgagee is the appointment of a receiver for any of the Mortgaged Property, all of the Rents, issues, profits and proceeds collected by the receiver will be paid and applied by the receiver solely to and for the benefit of Senior Mortgagee or Funding Lender until the Senior Indebtedness will have been paid in full.
- (f) Subordinate Mortgagee consents to and authorizes the release by Senior Mortgagee or Funding Lender of all or any portion of the Mortgaged Property from the lien, operation, and effect of the Senior Loan Documents. Subordinate Mortgagee acknowledges that without Notice to Subordinate Mortgagee and without affecting any of the provisions of this Agreement, and so long as the prior encumbrances on the Mortgaged Property do not exceed \$15,000,000.00, Senior Mortgagee or Funding Lender may (i) extend the time for or waive any payment or performance under the Senior Loan Documents; (ii) modify or amend in any respect any provision of the Senior Loan Documents; and (iii) modify, exchange, surrender, release, and otherwise deal with any additional collateral for the Senior Indebtedness.
- (g) Reserved.

6. **Miscellaneous Provisions.**

- (a) If there is any conflict or inconsistency between the terms of the Subordinate Loan Documents and the terms of this Agreement, then the terms of this Agreement will control.
- (b) This Agreement will be binding upon and will inure to the benefit of the respective legal successors and permitted assigns of the parties hereto. No other party will be entitled to any benefits hereunder, whether as a third-party beneficiary or otherwise.
- (c) This Agreement does not constitute an approval by Senior Mortgagee or Funding Lender of the terms of the Subordinate Loan Documents.
- (d) Each Notice, request, demand, consent, approval or other communication (collectively, "Notices," and singly, a "Notice") which is required or permitted to be given pursuant to this Agreement will be in writing and will be deemed to have been duly and sufficiently given if (i) personally delivered with proof of delivery

(any Notice so delivered will be deemed to have been received at the time so delivered), or (ii) sent by a national overnight courier service (such as FedEx) designating earliest available delivery (any Notice so delivered will be deemed to have been received on the next Business Day following receipt by the courier), or (iii) sent by United States registered or certified mail, return receipt requested, postage prepaid, at a post office regularly maintained by the United States Postal Service (any Notice so sent will be deemed to have been received on the date of delivery as confirmed by the return receipt), addressed to the respective parties as follows:

- i. Notices intended for Senior Mortgagee will be addressed to:

U.S. Bank National Association

Attention: _____

- ii. Notices intended for Subordinate Mortgagee will be addressed to:

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

With a copy of any such notice to:

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

- iii. Notices intended for Initial Funding Lender will be addressed to:

U.S. Bank National Association
1307 Washington Avenue, Suite 300
St. Louis, Missouri 63103
Attention: Director of CLD Asset Management

With copy to:

- iv. Notices intended for Permanent Funding Lender will be addressed to:

Northmarq Capital, LLC
3500 American Boulevard W., Suite 500
Minneapolis, MN 55431
Attention: Servicing Department
Telephone: (952) 356-0100

Any party, by Notice given pursuant to this Section, may change the person or persons and/or address or addresses, or designate an additional person or persons or an additional address or addresses, for its Notices, but Notice of a change of address will only be effective upon receipt. Neither party will refuse or reject delivery of any Notice given in accordance with this Section.

- (e) Nothing in this Agreement or in any of the Senior Loan Documents or Subordinate Loan Documents will be deemed to constitute Senior Mortgagee or Funding Lender as a joint venturer or partner of Subordinate Mortgagee.
- (f) This Agreement will be governed by the laws of the State in which the Land is located.
- (g) If any one or more of the provisions contained in this Agreement, or any application of any such provisions, is invalid, illegal, or unenforceable in any respect, the validity, legality, enforceability, and application of the remaining provisions contained in this Agreement will not in any way be affected or impaired.
- (h) The term of this Agreement will commence on the date of this Agreement and will continue until the earliest to occur of the following events: (i) the payment of all of the Senior Indebtedness; provided that this Agreement will be reinstated in the event any payment on account of the Senior Indebtedness is avoided, set aside, rescinded or repaid by Senior Mortgagee or Funding Lender as described in Section 2(e) of this Agreement, (ii) the payment of all of the Subordinate Indebtedness, (iii) the acquisition by Senior Mortgagee or Funding Lender or by a third party purchaser of title to the Mortgaged Property pursuant to a foreclosure of, deed in lieu of foreclosure, or trustee's sale or other exercise of a power of sale or similar disposition under the Senior Mortgage; or (iv) without limiting the provisions of Section 5(d), the acquisition by Subordinate Mortgagee of title to the Mortgaged Property subject to the Senior Mortgage pursuant to a foreclosure, or a deed in lieu of foreclosure, of (or the exercise of a power of sale under) the Subordinate Mortgage. Upon the final acquisition by Senior Mortgagee or Funding Lender or by a third party of title vesting to the Mortgaged Property pursuant to subclause (iii) by a deed in lieu of foreclosure, wherein the Subordinate Mortgagee has not gained title through the foreclosure or redemption processes under Title 38 of the Colorado

Revised Statutes, the Subordinate Loan Documents will terminate as provided in Title 38 of the Colorado Revised Statutes without any act on the part of the Subordinate Mortgagee, however, upon request, Subordinate Mortgagee will record terminations in the records in a form sufficient to cause the title company insuring the grantee pursuant to such deed in lieu of foreclosure to remove all Subordinate Loan Documents from the exceptions on the title policy of the grantee.

- (i) No failure or delay on the part of any party to this Agreement in exercising any right, power, or remedy under this Agreement will operate as a waiver of such right, power, or remedy, nor will any single or partial exercise of any such right, power or remedy preclude any other or further exercise of such right, power, or remedy or the exercise of any other right, power or remedy under this Agreement.
- (j) 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.
- (k) This Agreement shall inure to the benefit of any subsequent holder of the Senior Indebtedness.
- (l) This Agreement may be amended, changed, modified, altered or terminated only by a written instrument or written instruments signed by the parties to this Agreement.
- (m) This Agreement may be executed in two or more counterparts, each of which will be deemed an original but all of which together will constitute one and the same instrument.
- (n) Notwithstanding anything herein to the contrary, pursuant to the Senior Mortgage and the Funding Loan Agreement, all acts, consents, approvals and undertakings of Senior Mortgagee hereunder shall be solely at the written direction of the Funding Lender. The parties acknowledge and agree that Funding Lender is a third party beneficiary of this Agreement, with full rights as such.
- (o) The Parties have executed this Agreement on the date first written above for convenience and with the express acknowledgement and agreement that this Agreement shall become effective on the date the Senior Mortgage is recorded in the land records of Denver County, Colorado, whereupon this Agreement shall automatically be in full force and effect without the need for further action by the Parties.

[Signature and acknowledgment pages follow]

IN WITNESS WHEREOF, the parties have duly executed this Agreement as of the day and year first above written.

SENIOR MORTGAGEE:

U.S. BANK NATIONAL ASSOCIATION

By: _____

Name:

Title:

ACKNOWLEDGMENT

STATE OF _____

COUNTY OF _____

The foregoing Agreement was acknowledged before me this _____ day of _____, 20__ by _____ the _____ of U.S. BANK NATIONAL ASSOCIATION on behalf of said party.

Notary Public

Print Name: _____

SUBORDINATE MORTGAGEE:

THE CITY AND COUNTY OF DENVER

By: _____
Name:
Title:

ACKNOWLEDGMENT

STATE OF _____

COUNTY OF _____

The foregoing Agreement was acknowledged before me this _____ day of _____, 20__ by _____ the _____ of THE CITY AND COUNTY OF DENVER on behalf of said party.

Notary Public

Print Name: _____

CONSENT OF BORROWER

Borrower acknowledges receipt of a copy of this Subordination Agreement, dated _____, 2019, by and between **U.S. BANK NATIONAL ASSOCIATION** and **CITY AND COUNTY OF DENVER** and consents to the agreement of the parties set forth in this Agreement.

[SIGNATURE PAGE FOLLOWS]

BORROWER:

1275 SHERMAN LLC,
a Colorado limited liability company

By: 1275 Sherman Manager LLC, a Colorado limited liability company, its managing member

By: Brinshore TL, LLC, an Illinois limited liability company, its manager

By: Brinshore Development, L.L.C., an Illinois limited liability company, its manager

By: Brint Development, Inc. an Illinois corporation, a member

By: _____
Name: David B. Brint
Title: President

By: Mile High Affordable Housing, LLC, a Colorado limited liability company, its manager

By: Mile High Realty Advisors Corp., a Colorado corporation, its sole member

By: _____
Name: George Thorn
Title: Director

[ACKNOWLEDGEMENTS FOLLOW]

STATE OF _____)
) SS:
COUNTY OF _____)

This ____ day of _____, 2020, personally came before me, personally came before me David B. Brint, who by me duly sworn, did say that he is the President of Brint Development, Inc. an Illinois corporation, a Member of Brinshore Development, L.L.C., an Illinois limited liability company, the Manager of Brinshore TL, LLC, an Illinois limited liability company, a Manager of 1275 Sherman Manager LLC, a Colorado limited liability company, the Managing Member of 1275 Sherman LLC, a Colorado limited liability company, and that the Subordination Agreement was signed by him in such capacity by authority duly given.

Notary Public

My Commission expires: _____

[NOTARIAL SEAL]

STATE OF COLORADO)
) SS:
COUNTY OF _____)

This ____ day of _____, 2020, personally came before me, personally came before me George Thorn who by me duly sworn, did say that he is the Director of Mile High Realty Advisors Corp., a Colorado corporation, the Sole Member of Mile High Affordable Housing, LLC, a Colorado limited liability company, a Manager of 1275 Sherman Manager LLC, a Colorado limited liability company, the Managing Member of 1275 Sherman LLC, a Colorado limited liability company, and that the Subordination Agreement was signed by him in such capacity by authority duly given.

Notary Public

My Commission expires: _____

[NOTARIAL SEAL]

EXHIBIT A
LEGAL DESCRIPTION

EXHIBIT E

Project Timeline – Capitol Square Apartments
1275 Sherman Street

Construction financing closes	August 17 2020
General Contractor notice to proceed	August 18 2020
Construction completion	October 1 2021
Full lease-up	April 1 2022

PERM SOURCES	
CHFA First Mortgage	\$11,500,000
Federal Tax Credit Equity	\$11,969,319
State Tax Credit Equity	\$4,740,000
City of Denver	\$1,545,000
State of Colorado	\$1,050,000
Deferred Developer Fee	\$1,248,028
TOTAL	\$32,052,347

PERM USES	
Site Work	\$1,449,165
Hard Costs	\$21,782,350
Soft Costs	\$4,985,884
Developer Fee	\$3,359,088
Reserves	\$475,860
TOTAL	\$32,052,347

PROJECT ACTIVITIES			
ACTIVITY	TOTAL COST	CITY FUNDS	OTHER FUNDS
Site Work	\$1,449,165		\$1,449,165
Hard Costs	\$21,782,350	\$1,545,000	
Soft Costs	\$4,985,884		\$25,223,234
Developer Fee	\$3,359,088		\$3,359,088
Reserves	\$475,860		\$475,860
TOTAL	\$32,052,347	\$1,545,000	\$30,507,347

EXHIBIT F

FINANCIAL ADMINISTRATION:

1.1 Compensation and Methods of Payment

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

1.2 Vouchering Requirements

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

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

1.3 Payroll

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

1.4 Fringe Benefits

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

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

1.5 General Reimbursement Requirements

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

2.1 Program Income

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

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

3.1 Financial Management Systems

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

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

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

4.1 Audit Requirements

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

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

5.1 Budget Modification Requests

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

6.1 Procurement

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

7.1 Bonding

- 7.1.1 For contracts subject to federal agreements, HOST may require adequate fidelity bond coverage, in accordance with 24 C.F.R. 84.21 (d), where the subrecipient lacks sufficient coverage to protect the Federal Government's interest.

8.1 Records Retention

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

9.1 Contract Close-Out

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

10.1 Collection of amounts due

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

EXHIBIT G
(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.