

**AGREEMENT**

**THIS AGREEMENT** is made and entered into by and between the **CITY AND COUNTY OF DENVER**, a home rule city organized and existing pursuant to Article XX of the Colorado Constitution (the “City”), and **SIXTEEN CAL LLC**, a Colorado limited liability company, whose address is 299 Milwaukee Street, Suite 500, Denver, CO 80206 (the “Contractor”) (together, the “Parties”).

**RECITALS**

**WHEREAS**, there is a public purpose for attracting companies and their associated economic activity within Denver, including stimulating economic development, retail spending, and the creating of jobs within the City;

**WHEREAS**, incentives are often necessary in order to attract and grow private enterprises to further this public purpose;

**WHEREAS**, Contractor is entering into an agreement to lease space to Target Corporation (the “Tenant”) who is willing to locate a retail facility to provide goods and services to the general public and other customers within the City partly due to the availability of certain incentives provided to the Contractor by the City, as further described in this Agreement;

**WHEREAS**, this Agreement, and the location and operation of the retail facility within the City will advance the valid and valuable public purpose set forth above by generating tax revenues and by the creation and maintenance of job opportunities for City residents, as a result of the incentives described herein; and

**WHEREAS**, for these reasons, in consideration of the mutual covenants herein contained, and other good and valuable consideration, the sufficiency of which is hereby acknowledged, the Parties agree as follows:

**TERMS AND CONDITIONS**

1. **CONDITIONS**. This Agreement and the City’s obligations hereunder are conditioned upon the following:

A. Contractor and/or the Tenant will make necessary improvements, as determined in an agreement between the Contractor and the Tenant, and the Contractor shall lease space located at 1600 California Street within the City (the “Property”), to the Tenant and permit the Tenant to operate a retail facility, specifically a Target store, focused on providing

goods and services to the general public and other customers (the “Facility”) for at least the term, subject to the terms of the Lease Agreement by and between the Tenant (or Alternative Tenant, as defined below, the “Lease”) and this Agreement. |

B. Contractor shall encourage the Tenant to take reasonable efforts to make entry-level and other non-managerial and non-supervisory positions at the Facility (and not including Tenant’s employees transferred from other locations) known to residents of the City, by encouraging the Tenant to submit to the City’s Office of Economic Development pertinent job availability information on each job opening at the Facility during the term of this Agreement.

2. **INCENTIVE PAYMENTS/MECHANISM.** Subject to the terms hereof, the City agrees to make incentive payments to Contractor payable as follows:

A. Tenant Sales Activity and Payment of Collected Denver Sales/Use Tax (\$4,000,000.00). The City shall pay to the Contractor an amount equal to fifty percent (50%) of the collected and paid Denver Sales/Use Tax (as specified in the Denver Revised Municipal Code, “Denver Sales/Use Tax”) for the term of this Agreement, not to exceed a maximum of Four Million Dollars and No Cents (\$4,000,000.00), for Tenant sales activity related to the Facility. Such payments shall be will be made as described below and pursuant to paragraph 2.B of this Agreement.

1. Store Opening Advanced Incentive Amount. The Contractor may petition to receive Two Million Dollars and No Cents (\$2,000,000.00) of the total incentive payments as an advance incentive payment (the “Advance Incentive Amount”), upon Tenant opening the Facility. The Advance Incentive Amount shall be secured by a Deed of Trust (the “Deed of Trust”), in form satisfactory to City and encumbering the Property, as further specified in Section 4 of this Agreement.

Contractor shall be obligated to repay the Advance Incentive Amount, in the following manner: After the City has received a total Denver Sales/Use Tax of Four Million Dollars and No Cents (\$4,000,000.00) from the Tenant, the City shall apply the Contractor’s Quarterly Incentive Payments (defined below) as an account credit to reduce the balance of the Advance Incentive Amount. The account credit payments shall continue until the a total of Two Million Dollars and No Cents (\$2,000,000.00) is fully offset or the final Quarterly Incentive Payment for the last quarterly sales activity period

(January - March 2038) has been credited against the balance of the Advance Incentive Amount. After the last quarterly sales activity period (January - March 2038), the remaining uncredited balance of the Advance Incentive Amount, if any, shall then be become immediately due and payable by the Contractor and the Contractor shall deliver such payment to the City of Denver Department of Revenue no later than May 31, 2038. Upon either full reduction of the Advance Incentive Amount through the account credit payments or a combination of account credit payments and the required final payment, the City will release the Deed of Trust and the Advance Incentive Amount will be considered paid and full.

2. Quarterly Incentive Payment. The Contractor may receive up to a total of Four Million Dollars and No Cents (\$4,000,000.00) through the term of this Agreement, less the Advance Incentive Amount, through a quarterly incentive payment. The quarterly payment will be calculated based upon the total quarterly estimated Denver Sales/Use Tax payment remitted by the Tenant. The “Quarterly Incentive Payment” amount shall equal 50% of the adjusted total annual Denver Sales/Use Tax payment to the City. For the term of this Agreement, the total amount of the payments made pursuant to this Section 2 will not exceed \$4,000,000.00 or 50% of Tenant paid Denver Sale/Use Tax, whichever is lower.

B. Petition. To receive an incentive payment hereunder, Contractor shall petition jointly to the City’s Director of OED and the City Treasurer. |

1. The petition for the Advance Incentive Amount shall contain Contractor’s documentation of the Tenant occupying and operating in the Facility. The Contractor shall be entitled to petition for an amount up to Two Million Dollars and No Cents (\$2,000,000.00) for the Advance Incentive Amount once during the term of this Agreement. The petition will be processed and a payment closing shall be scheduled at time mutually convenient for the City and Contractor. The closing will include the signing of necessary documents for the Advance Incentive Amount, the Deed of Trust, and other associated closing documents.

The petition for Quarterly Incentive Payment shall contain Contractor’s documentation of retail store operation and an estimate of total sales activity originating from the Tenant at the Facility for the quarterly sales activity period for which Contractor

is petitioning for payment as described in paragraph 2.A above, based solely on upon either the Contractor's best estimate of Tenant's sales activity in, on or from the Facility and estimated payment of the appropriate Denver Sales/Use Tax for that quarter or the Contractor's requesting an amount of incentive equal to 1/80<sup>th</sup> of the City's maximum incentive amount of Four Million Dollars and No Cents (\$4,000,000.00) under this agreement (or Fifty Thousand Dollars and No Cents (\$50,000.00)), and Contractor's satisfaction of the requirements contained in Paragraph 1 above. Contractor shall be entitled to petition quarterly for its Quarterly Incentive Payments hereunder beginning on April 1, 2018 for Denver Sales/Use Tax paid or incurred in the prior quarter (January - March 2018), and each quarter thereafter until the earlier of (a) the date on which Contractor has been paid, through Quarterly Incentive Payments or credited accounting payments to reduce the Advance Incentive Amount, for a maximum total of \$4,000,000.00, or (b) June 30, 2038 (for the final quarterly sales activity period, ending March 31, 2038). Contractor shall submit its petition on or before 45 days after the last day of each quarterly sales activity period (ending March 31, June 30, September 30 and December 31<sup>st</sup> each year) in order to qualify for a Quarterly Incentive Payment for the prior sales activity quarter. If Contractor fails to submit its petition in any quarter, the contractor may submit a petition for the omitted quarter in the next quarterly invoice period. ]

2. Contractor shall supply additional information the City requests that is reasonably related to the purposes of this Agreement in order to substantiate Contractor's petition for a Quarterly Incentive Payment. The City may adjust Quarterly Incentive Payments for which it has been petitioned by Contractor if it reasonably determines that the petition for sales activity is not substantiated by the Denver Sales/Use Tax collection information and/or supporting documentation submitted by Contractor. Such determination shall be provided to Contractor in writing and shall not be appealable by the Contractor.

3. Upon receipt of documentation satisfying the requirements in Paragraph 2.B.1 and 2.B.2 of this Agreement, the City shall verify Contractor's petition and issue proper incentive payment within the City's Prompt Payment Rules and Regulations as outlined in Denver Revised Municipal Code Sections 20-107 et seq. but in any event

within sixty (60) days after its receipt of the petition and all required information.

3. **THE TENANT.**

A. The initial Tenant (as defined above) shall be Target Corporation opening and operating a retail facility at the 1600 California Street, Denver pursuant to a lease agreement between the Contractor and Target Corporation (the “Lease”).

B. If the Tenant determines, in its own business judgement, to cease operation of a retail facility at the Facility, it may exercise any or all of its rights and remedies pursuant to the terms of the Lease. The requirements of Sections 1 and 2 of this Agreement shall continue to apply and shall not toll. Incentive Payments will not be made until a retail facility operated by an entity listed on the Approved Alternative Tenant list and generating Denver Sales/Use Tax reopens at the Facility. In the event the Facility does not generate Denver Sales/Use Tax due to closure of the retail facility, no additional Quarterly Incentive Payments will be made until a retail facility reopens at the Facility. The Advance Incentive Payment will remain at the original or reduced credited amount until either (i) a retail facility reopens at the Facility or (ii) March 31, 2038 (the end of the final quarterly sales activity period, ending March 31, 2038), at which time the Contractor shall repay the outstanding balance of the Advance Incentive Amount on or before April 30, 2038.

C. If the original Tenant decides to sublease the Facility under the Lease or the Tenant is released from the Lease and the Contractor obtains leasing control of the Facility, the Contractor may obtain a new tenant for the Facility (an “Alternative Tenant”).

If the Alternative Tenant is an entity listed on the Approved Alternative Tenant List, attached to this Agreement as **Exhibit A** and incorporated herein, the terms of this Agreement (including Quarterly Incentive Payments) shall continue until the termination date of this Agreement and any reference to “Tenant” herein shall include and apply to the Alternative Tenant. If the Alternative Tenant is not included on the Approved Alternative Tenant List, no additional Quarterly Incentive Payments may be earned or paid.

The Executive Director of the OED or the Executive Director’s designee

is authorized to update the Alternative Tenant List annually, at the his or her reasonable discretion. The Executive Director of OED may consult with the Contractor regarding updates to the Alternative Tenant List. The updated Alternative Tenant List shall be maintained in writing by OED, and a copy of any updated Alternative Tenant List shall be provided to the Contractor annually.

4. **SUBORDINATION AND ADDITIONAL DOCUMENTS.**

A. The Executive Director of the OED or the Executive Director's designee is authorized to execute documents necessary to subordinate the lien of the City's Deed of Trust, so long as (i) the total amount of independent, third party senior encumbrances shall not exceed eighty percent (80%) of the independently established current appraised value (defined as an appraisal dated no less than one year of the executed subordination document date), (ii) the total equity value for the property shall be no less than one hundred and fifty percent (150%) of the total current value of the Advance Incentive Payment amount, less any earned Quarterly Incentive Payment credits toward the value of the Advanced Incentive Amount, (iii) such subordination agreement is substantially in the form attached hereto as **Exhibit B**; and (iv) Contractor is not then in default of its obligations hereunder.

B. The Executive Director of OED, or permitted designee, is authorized to execute documents necessary to accomplish the closing described in Section 2.B.1 of this Agreement, as set forth herein, so long as (i) such documents are in a form satisfactory to the City Attorney; (ii) the total equity value for the property shall be no less than one hundred and fifty percent (150%) of the total current value of the Advance Incentive Payment amount, less any earned Quarterly Incentive Payment credits toward the value of the Advanced Incentive Amount, (iii) such subordination agreement is substantially in the form attached hereto as **Exhibit B**; and (iv) Contractor is not then in default of its obligations hereunder.

5. **PRIOR APPROPRIATION.** The obligation of the City for payment(s) hereunder is limited to funds appropriated related to this Agreement by the City Council and paid into a special revenue fund restricted to making incentive payments to private, taxpaying entities selected for such payments according to this agreement by the City. This Agreement shall not be construed to constitute a multiple year fiscal obligation of the City under Section 20, Article X of

the Colorado Constitution. Further, the City's maximum obligation hereunder for the entire term of the Agreement shall not exceed Four Million Dollars (\$4,000,000.00).

6. **EXAMINATION OF RECORDS.**

A. Contractor agrees that any duly authorized representative of the City shall, until the expiration of three (3) years after the termination of this Agreement, have access to and the right to examine, during normal business hours and following reasonable notice by the City, books, documents, papers and records of Contractor that are pertinent to Contractor's qualification for incentive payments hereunder.

B. Contractor agrees that the OED and the City's Department of Finance (or successor agencies) shall have access to and the right to examine Contractor's City and County of Denver tax records (the "Tax Records") with respect to the Facility filed for the period beginning five (5) years prior to the execution of this Agreement and ending five (5) years after the termination of this Agreement. Tax Records shall include sales/use tax, property (real and business personal property), occupational privilege tax, and other City tax information with respect to the Facility necessary to provide data to be used by the City to develop aggregated reports of performance outcomes and assess the effectiveness of the City's Business Incentive Program (or its successor program). No identifying data and analysis shall be publicly available.

7. **TERM.** The term of this Agreement shall be from April 1, 2017, to June 30, 2038; provided, however, that this Agreement shall automatically terminate when the City's payment(s) hereunder equal the amounts set forth in Sections 2.A and 2.B above.

8. **ASSIGNMENT AND SUBCONTRACTING.** The City is not obligated or liable under this Agreement to any party other than Contractor. Contractor shall not assign or subcontract with respect to any of its rights, benefits, obligations or duties under this Agreement except upon prior written consent and approval of the City, which shall not be unreasonably withheld provided that Contractor shall have the right to collaterally assign the right to receive payments under this Agreement to a third party, to assign the Agreement to a third party acquiring the property and assuming the obligations and rights under this Agreement, or to sell, transfer or assign the Property and retain the obligations and rights, including the right to receive Quarterly Incentive Payments, under this Agreement, provided Contractor provides a letter of credit or other collateral reasonably acceptable to the City. The City shall release the Deed of Trust upon being provided a letter of credit or other collateral reasonably acceptable to the City.

9. **WHEN RIGHTS AND REMEDIES NOT WAIVED.** In no event shall any action by the City or Contractor hereunder constitute or be construed to be a waiver by the City or Contractor of any breach of covenant or default which may then exist, and the non-breaching party's action or inaction when any such breach or default shall exist shall not impair or prejudice any right or remedy available with respect to such breach or default; and no assent, expressed or implied, to any breach of any one or more covenants, provisions or conditions of the Agreement shall be deemed or taken to be a waiver of any other breach.

10. **NO DISCRIMINATION IN EMPLOYMENT.** In connection with the performance of work under this Agreement, Contractor agrees not to refuse to hire, to discharge, to 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.

11. **AGREEMENT AS COMPLETE INTEGRATION-AMENDMENTS.** This Agreement is intended as the complete integration of all understandings between the parties. No prior, contemporaneous or subsequent addition, deletion, or other amendment hereto shall have any force or effect, unless embodied herein in writing, and executed in the same manner as this Agreement.

12. **CONFLICT OF INTEREST.** The parties agree that no employee of the City shall have any personal or beneficial interest whatsoever in the services or property described herein and Contractor further agrees not to hire or contract for services any employee or officer of the City which would be in violation of the Denver Revised Municipal Code Chapter 2, Article IV, Code of Ethics, or Denver City Charter provisions 1.2.9 or 1.2.12.

13. **CONSTRUCTION.** This Agreement shall be construed and enforced in accordance with the laws of the State of Colorado, and the Charter and Revised Municipal Code of the City and County of Denver, and the ordinances, regulations and Executive Orders enacted and/or promulgated pursuant thereto. The Charter and Revised Municipal Code of the City and County of Denver, as the same may be amended from time to time, are hereby expressly incorporated into this Agreement as if fully set out herein by this reference. Venue for any legal action relating to this Agreement shall lie in the District Court in and for the City and County of Denver, Colorado.

14. **LEGAL AUTHORITY.**



A. Contractor represents and warrants that it possesses the legal authority, pursuant to any proper, appropriate and official motion, resolution or action passed or taken, to enter into this Agreement.

B. The person or persons signing and executing this Agreement on behalf of Contractor do hereby represent and warrant that he/she or they have been fully authorized by Contractor to execute this Agreement on behalf of Contractor and to validly and legally bind Contractor to all the terms, performances and provisions herein set forth.

C. The City shall have the right, at its option, to temporarily suspend or permanently terminate this Agreement, if there is a dispute as to the legal authority of either Contractor or the person signing the Agreement on Contractor's behalf is not sufficient to enter into this Agreement. The City shall not be obligated to Contractor for any performance of the provisions of this Agreement during the period the Agreement is temporarily suspended or if this Agreement is terminated as provided in this Section.

15. **NO THIRD PARTY BENEFICIARY.** It is expressly understood and agreed that enforcement of the terms and conditions of this Agreement, and all rights of action relating to such enforcement, shall be strictly reserved to the City and Contractor, and nothing contained in this Agreement shall give or allow any such claim or right of action by any other or third person on such Agreements. It is the express intention of the City and Contractor that any person other than the City or Contractor receiving services or benefits under this Agreement shall be deemed to be an incidental beneficiary only.

16. **ELECTRONIC SIGNATURES AND ELECTRONIC RECORDS.** Contractor consents to the use of electronic signatures by the City. The 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 the 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 the 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.

17. **COMPLIANCE WITH ALL LAWS.** Contractor shall perform or cause to be performed all services in full compliance with all applicable laws, rules, regulations and codes of

the United States, the State of Colorado; and with the Charter, ordinances, rules, regulations and Executive Orders of the City and County of Denver.

18. **NOTICES**. All notices required by the terms of this 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 Contractor at the address first above written, and if to the City at:

Executive Director of the Office of Economic Development or Designee  
201 West Colfax Avenue, Dept. 208  
Denver, Colorado 80202

With a copy of any such notice to:

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

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

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

**Contract Control Number:**

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:

By \_\_\_\_\_

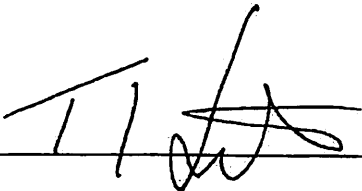
By \_\_\_\_\_

By \_\_\_\_\_



**Contract Control Number:** OEDEV-201733017-00

**Contractor Name:** SIXTEEN CAL LLC

By: 

Name: Thomas Gart  
(please print)

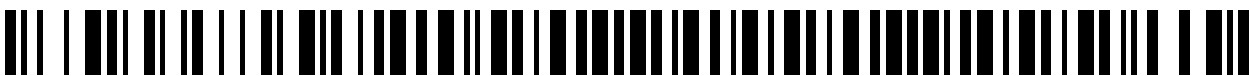
Title: Manager  
(please print)

**ATTEST: [if required]**

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

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

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



## **Exhibit A: OED Approved Alternative Tenant List**

(Sixteen California LLC)

*Effective March 1, 2017*

Apple

Arcadia Group (Topshop)

Aritzia

Bloomingdales

Brooks Brothers

Burberry

Dillard's

Free People

Tommy Hilfiger

Hudson's Bay Company

Inditex (Zara)

Lord & Taylor

Michael Kors

Macy's

May Department Stores

Moncler

Neiman Marcus & Neiman Marcus Last Call

Nordstrom & Nordstrom Rack

Ralph Lauren

Saks & Saks Off 5th

TARGET

**EXHIBIT B**  
**FORM OF SUBORDINATION AGREEMENT**

THIS SUBORDINATION AGREEMENT (this "Agreement") dated [INSERT DATE], is made between the **CITY AND COUNTY OF DENVER**, a municipal corporation of the State of Colorado, the present holder of a certain deed of trust, whose address is Office of Economic Development, 201 W. Colfax Ave., Dept. 204, Denver, Colorado 80202 (the "Junior Lender") and [INSERT LENDER NAME], a [INSERT STATE][INSERT ENTITY TYPE], whose address is [INSERT LENDER'S ADDRESS] (the "Senior Lender").

**PRELIMINARY STATEMENTS**

A. The Junior Lender has advanced funds to Sixteen Cal LLC, a Colorado limited liability company (the "Borrower") in the principal amount of \$2,000,000, evidenced by that certain Agreement dated \_\_\_\_\_, 2017 by and between the Borrower and the Junior Lender and secured by that certain Deed of Trust [the "Junior Deed of Trust"] made as of [INSERT DATE OF DEED OF TRUST] and recorded on [INSERT RECORDATION DATE] at Reception No. [INSERT RECEPTION NUMBER] of the real property records in the office of the Clerk and Recorder of [INSERT COUNTY] County, State of Colorado, encumbering the following described property (the "Property"):

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

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

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

**AGREEMENT**

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

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

"Senior Obligations" means each and every debt, liability and obligation of every type and description that the Borrower may now or at any time hereafter owe to the Senior Lender in connection with the Senior Deed of Trust, whether such debt, liability or

obligation now exists or is hereafter assumed, created or incurred and whether it is or may be direct or indirect, due or to become due, or absolute or contingent.

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

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

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

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

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

6. No Action. Except to the extent that Junior Lender obtains Senior Lender's permission pursuant to the following sentence, the Junior Lender will not commence any action or proceeding with respect to the Mortgaged Property or against the Borrower, will not take possession of, sell or dispose of, or otherwise deal with, the Mortgaged Property, and will not exercise or enforce any other right or remedy that may be available to the Junior Lender against the Borrower or with respect to the Mortgaged Property upon Borrower's default with respect to the Junior Obligations, without the Senior Lender's prior written consent, which shall not be

unreasonably withheld or delayed. In addition, and without limiting the generality of the foregoing, if the Borrower is in default under the Senior Deed of Trust, any credit agreement or other agreement in favor of the Senior Lender (the "Senior Loan Documents") and the Senior Lender or Borrower intends to sell any part of the Mortgaged Property to an unrelated third party, the Junior Lender shall, upon the Senior Lender's request, promptly execute and deliver to such purchaser such instruments as may reasonably be necessary to terminate and release any security interest or lien the Junior Lender might have in the Mortgaged Property to be sold.

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

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

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

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

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

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

“JUNIOR LENDER”

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

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

Title: \_\_\_\_\_, Office of Economic Development

State of Colorado        )  
  ) ss.  
County of                    )

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

Witness my hand and official seal.  
My commission expires: \_\_\_\_\_.

\_\_\_\_\_

Notary Public

“SENIOR LENDER”

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

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

Title: \_\_\_\_\_

\

State of Colorado            )  
  ) ss.  
County of                    )

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

Witness my hand and official seal.  
My commission expires: \_\_\_\_\_.

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

Acknowledged by BORROWER:

SIXTEEN CAL LLC, a Colorado limited liability company

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

Title: \_\_\_\_\_

ATTACHMENT A

[INSERT LEGAL DESCRIPTION]