

**LOAN AGREEMENT
SKYLINE FUNDS
PART I**

THIS LOAN AGREEMENT (this “Loan Agreement”), in two parts, Part I and Part II, is made between the **CITY AND COUNTY OF DENVER**, a municipal corporation organized pursuant to the Constitution of the State of Colorado (“City”), and, **SABLE RIDGE APARTMENTS, LLC**, a Colorado limited liability company, whose address is 2800 Monaco Parkway LLC, Denver, Colorado 80207 (“Borrower”).

WITNESSETH:

WHEREAS, the City is acting pursuant to grant conditions with respect to Skyline funds, administered with the similar restrictions as those that apply to the federal CDBG program; and

WHEREAS, the City and Sable Ridge Development, LLC, a Colorado limited liability company (the “Assignor”) entered into that certain Loan Agreement dated March 8, 2000, as amended, relating to a loan of \$3,500,000.00 (the “Assignor Loan Agreement”); and

WHEREAS, the Assignor was eligible to receive Skyline funds pursuant to the City’s policies governing such funds; and

WHEREAS, the Assignor wishes to assign and the Borrower wishes to assume \$1,000,000.00 of the debt related to the Assignor Loan Agreement, related promissory note, and any other documents evidencing the City’s loan to Assignor in order to develop an affordable housing project known as Sable Ridge Apartments (the “Project”); and

WHEREAS, the Borrower is eligible to receive Skyline funds pursuant to the City’s policies governing such funds set forth in **Exhibit B** attached hereto and incorporated herein, and is ready, willing and able to meet the conditions associated therewith; and

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

1. LOAN TO BORROWER:

A. Pursuant to that certain Ninth Amendment and Modification Agreement by and between the Assignor and the City, Assignor shall assign \$1,000,000.00 of the debt related to the Assignor Loan Agreement, and Borrower hereby assumes such indebtedness in the manner and in all respects as provided herein.

B. Subject to the terms of this Loan Agreement, the City consents to the Borrower's assumption of a portion of the Assignor's loan in the sum of One Million and 00/100 Dollars (\$1,000,000.00) (the "Loan"), to be repaid by the Borrower over a term of approximately forty (40) years with interest at the rate of two percent (2%) per annum. Borrower shall execute a promissory note in a form satisfactory to City evidencing this loan (the "Promissory Note") and execute a covenant securing the Property, as defined below, for use as affordable housing as required by Section 6 hereof (the "Covenant"). Principal and interest on the Loan shall be due and payable at such place as may be designated by City, shall be calculated in an amount equal to 59% of Surplus Cash Flow of the Project on an annual basis. Principal and interest payments shall commence thirty (30) months following the date of the Promissory Note and shall continue annually on such date thereafter, with the entire unpaid balance of principal and accrued interest due and payable on or before forty years from the date of the Promissory Note. Interest shall commence accruing on the date of the Promissory Note. Assignor and Borrower have agreed that any original issue discount income generated from the modification and assignment of this Loan shall be deemed allocated to the Assignor.

The capitalized terms used herein shall have the following definitions:

"Asset Management Fee" means an annual fee of \$7,500, increasing by 3% each year, paid to the Investor Member.

"Assumed Investor Member Tax Liability" means for any given year the product of (i) the taxable income of the Investor Member for federal income tax purposes, if any, resulting from allocations made to the Investor Member pursuant to Article 11 of the Operating Agreement but not including any taxable income resulting from a refinancing or sale of the Project, times (ii) a percentage equal to the sum of (A) the highest federal corporate tax rate for such year, plus (B) the highest state corporate tax rate for such year for the State of Colorado.

"Cash Flow" means Borrower's Gross Revenues less Operating Expenses, less Reserve Requirements, less Scheduled Debt Service Payments.

"Default Cash Priority" means a payment at the direction of the Investor Member to cure a default under any loan to the Project or if the Borrower fails to perform any material obligation under the Operating Agreement, pursuant to Section 5.06(a) of the Operating Agreement.

"Deferred Development Fee" means the portion of the Development Fee of which payment to the Developer is deferred and later paid based upon available Cash Flow.

“Developer” means Sable Ridge Development, LLC.

“Development Fee” means the fee to be paid to the Developer for development services.

“General Partner” means Sable Ridge Development, LLC.

“Gross Revenue” means, for any specified period of time, the amount of gross revenues from all sources derived from the Project as the result of the normal operation of the Project including but not limited to apartment rents (including rental assistance payments), storage rents, license fees, laundry revenue, other equipment revenue, vending machine income, parking income, late fees, month to month premiums, utility reimbursements, rental interruption insurance, and all other forms of income derived from the ownership and operation of the Project.

“Investor Member” means Prestige Affordable Housing Fund XXVI, LLC, and its successors and assigns.

“Investor Member Advances” means funds loaned to the Project by the Investor Member to meet the needs of the Project, in the event the Investor Member determines in good faith that such funds are not otherwise available to the project when needed, pursuant to Section 5.02(c) of the Operating Agreement. Investor Member Advances shall bear interest at prime rate plus 5%, per annum.

“Operating Agreement” means the Amended and Restated Operating Agreement of Borrower, as the same may be amended from time to time.

“Operating Expenses” means all costs associated with the management, operation and maintenance of the Project.

“Reserve Requirements” means all funds required by the Colorado Housing and Finance Authority (“CHFA”) and any other investor or lender into the Project to be escrowed for purposes of future maintenance and operating expenses.

“Scheduled Debt Service Payments” means all payments required by the Borrower’s construction and permanent lenders to be paid on a monthly, quarterly, or annual basis at a specified interest rate and amortization term to which are senior to the City’s Loan.

“Special Additional Capital Contribution” means a capital contribution made by the Investor Member to the Project, in an amount reasonably required to avoid the reduction of the Investor Member’s capital account to or below zero, pursuant to Section 5.02(c) of the Operating Agreement.

“Surplus Cash Flow” means: Cash Flow less Assumed Investor Member Tax Liability less Asset Management Fees less Tax Credit Guaranty Payments less repayment of Investor Member Advances, less actual interest earned on Special Additional Capital Contributions, less Default Cash Priority, less Deferred Development Fees.

“Tax Credit Guaranty Payments” means those payments guaranteed to the Investor Member if the actual annual Low Income Housing Tax Credits (“Credits”) available to the Investor Member are lower than the Credits expected, estimated at \$489,314, and if the General Partner has no obligation to compensate the Investor Member for reduced or recaptured Credits under Section 8.09(c) of the Operating Agreement.

2. SECURITY: Repayment of the Promissory Note shall be secured by a Deed of Trust (the “Deed of Trust”), in a form satisfactory to the City, granted by Borrower and encumbering the real property known and numbered as 4203 Chambers Road, Denver, Colorado, aka 4210 Fraser Way Denver Colorado (the “Property”) subject to prior encumbrances not exceeding Twelve Millions Dollars (\$12,000,000.00) in principal amount.

3. SUBORDINATION AND ADDITIONAL DOCUMENTS: The Executive Director of OED or permitted designee, is authorized to execute documents necessary to subordinate the lien of the City’s Deed of Trust and Covenant so long as (i) the subordination agreement is substantially in the form attached hereto as **Exhibit D**; (ii) encumbrances prior to the City’s Deed of Trust do not exceed \$12,000,000.00; (iii) Borrower is not then in default of its obligations pursuant to this Loan Agreement, the Promissory Note, the Covenant or the Deed of Trust; and (iv) all additional financing for the Project is committed.

The Executive Director of OED, or permitted designee, is authorized to execute to execute documents necessary to accomplish the Loan, as set forth herein, so long as (i) such documents are in a form satisfactory to the City Attorney; (ii) encumbrances prior to the Deed of Trust do not exceed \$12,000,000.00; and (iii) Borrower is not then in default of its obligations pursuant to the Loan Agreement, the Promissory Note, the Covenant or the Deed of Trust.

4. USE AND DISBURSEMENT OF FUNDS: Loan proceeds were used to reimburse the Assignor for any costs stemming from the acquisition of the Property for use as affordable housing. The Borrower will acquire the Property from the Assignor prior to or simultaneously with the execution of the Promissory Note. Borrower shall comply with all federal environmental and historic preservation clearances required by OED and certify such

compliance to OED in writing. Borrower shall comply with the financial administration requirements set forth in **Exhibit B** attached hereto and incorporated herein.

5. CDBG NATIONAL OBJECTIVE: The loan funds shall be used to benefit low- and moderate-income persons by acquiring the Property to provide dwelling units to low- and moderate-income households at affordable rents, where at least 51 percent of the units will be occupied by low- and moderate-income households.

6. AFFORDABILITY LIMITATIONS OF THE PROPERTY:

A. Affordability limitations. Sixty (60) of the units at the Property (the “Skyline Units”) shall have rents not exceeding the lesser of (i) fair market rent for comparable units in the area as established by the U.S. Department of Housing and Urban Development (“HUD”), under 24 C.F.R. 888.11, or (ii) a rent that does not exceed 60% of the adjusted income of a family whose annual income equals 60% of the median income for the Denver area, as determined by HUD, with adjustments for number of bedrooms in the unit. By executing this Loan Agreement, Borrower acknowledges receipt of HUD's current rent guidelines from the OED. It shall be Borrower's responsibility to obtain updated guidelines from OED or HUD, and comply with same.

B. Occupancy/Income Limitations. The Skyline Units shall be occupied by elderly tenants aged 55+ whose incomes are at or below sixty percent (60%) of the median income for the Denver area as determined by HUD pursuant to section 24 C.F.R. 5.609 or any successor regulation. By executing this Loan Agreement, Borrower acknowledges receipt of HUD’s current income guidelines from OED. It shall be Borrower’s responsibility to obtain updated guidelines from OED or HUD, and comply with same.

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

BEDROOMS	Skyline Units
1 Bedroom	37
2 Bedroom	23
3 Bedroom	0
4 Bedroom	0
TOTAL	60

Borrower shall provide the address of Skyline Units to the City by the time of Project completion. In the event the Borrower violates the provisions of this subparagraph and

subparagraphs A and B above, Borrower shall immediately pay to the City the greater of (i) all sums due hereunder in accordance with the Article below entitled “Default and Acceleration”, and (ii) an amount equal to the current market value of the Property acquired or improved with funding hereunder less any portion of the value attributed to expenditures of non-Skyline funds for the acquisition of the Property.

D. Covenant Running with the Land. At closing, Borrower shall execute a covenant in form satisfactory to the City (“Covenant”), setting forth the rental and occupancy limitations described in subparagraphs A and B above, which shall be recorded in the real estate records of the City and County of Denver and which shall constitute a covenant running with the land. The Covenant shall encumber the Property until forty (40) years from the date of the Promissory Note. Violation of said Covenant shall be enforceable as an event of default pursuant hereto.

7. **EXPENSE:** 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.

8. **PUBLICATIONS/ANNOUNCEMENTS:** Borrowers using radio or television announcements, newspaper advertisements, press releases, pamphlets, mail campaigns, or any other marketing methods funded by OED, or publicizing activities or projects funded by OED shall first receive approval from OED. 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.” OED shall be acknowledged in any events regarding the project being funded, including groundbreaking and openings.

9. **EXAMINATION OF RECORDS/ANNUAL MONITORING:** The Borrower agrees that the Comptroller General of the United States, HUD, the City, or any of their duly authorized representatives shall, until the expiration of three (3) years after the final payment under this Loan Agreement, 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.

10. CONDITIONS: This Loan Agreement is subject to the policies of the City regarding Skyline funds and the Community Development Block Grant Agreements entered into between the City and HUD, as set forth in **Exhibit B** attached hereto and incorporated herein. This Loan Agreement is also subject to the City's Charter and Revised Municipal Code, as the same may be amended from time to time. The obligation of the City to lend the above sums shall only extend to payment of monies appropriated for this Loan Agreement by the City and County of Denver.

Borrower shall have acquired the Property prior to the date of the Promissory Note, which shall occur no later than December 31, 2016 (the "Loan Closing Deadline"). Failure to acquire the Property prior to the Loan Closing Deadline shall result in the termination of this Loan Agreement. Further, all cost overruns and/or funding shortfalls shall be the sole responsibility of the Borrower.

Borrower further agrees that (a) Borrower shall deliver a final executed copy of the Operating Agreement to OED prior to the date of the Promissory Note and (b) Borrower shall complete the Project within an eighteen (18) month period after the date of the Promissory Note. These deadlines may be extended with the written approval of OED.

This Loan Agreement is also subject to the terms and conditions set forth in **Part II**, attached hereto and incorporated herein by this reference.

11. NO DISCRIMINATION IN EMPLOYMENT: In connection with the performance of work under this Loan Agreement, 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.

12. 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, with the City named as loss payee.

E. Certificates of Insurance evidencing the above shall be submitted to OED 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 City's Director of Risk Management.

13. 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 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, except for the 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 reasonable 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.

14. DEFAULT AND ACCELERATION: Borrower expressly agrees that any breach of this Loan Agreement, the Promissory Note, or the Deed of Trust, after the passage of all applicable grace or cure periods, 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, after the passage of all applicable grace or cure periods, and without necessity of 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. An event of default under the Assignor Loan Agreement or any loan documents related thereto shall not constitute an event of default under this Loan Agreement, the Promissory Note, or the Deed of Trust. The Investor Member shall have the right to cure a default on behalf of Borrower within the same cure period as the Borrower.

15. 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.

16. AFFIRMATIVE MARKETING: Borrower shall comply with the affirmative marketing procedures outlined in the marketing plan, attached hereto as **Exhibit C** 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).

17. AUDIT REQUIREMENT: Non-profit organizations that expend \$750,000 or more in a year in federal awards shall have a single or program-specific audit conducted for that year in accordance with the provisions of OMB Circular A-133 and applicable federal regulations.

18. 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.

19. 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.

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

21. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION:

A. The Borrower represents and warrants that it and its principals are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency.

B. The Borrower will not enter into any lower tier transaction with a person who is debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in a covered transaction unless authorized by the federal agency from which the transaction originated.

C. The Borrower shall include the certification contained in subparagraph A of this Section in any and all subcontracts hereunder and shall require any subcontractors or subconsultants to comply with any and all applicable federal laws, rules and regulations, policies and procedures or guidance concerning the federal debarment, suspension, and exclusion program.

D. The Contractor will immediately notify OED in writing if at any time it learns that it failed to disclose that it or any of its principals were excluded at the time the parties executed this contract if due to changed circumstances the Borrower or any of its principals have subsequently been excluded by a federal agency.

E. The representation made in subparagraph A of this Section is a material representation of fact upon which reliance was placed when this transaction was entered into.

22. 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.

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

Executive Director of the Office of Economic Development or Designee
City and County of Denver
201 West Colfax Avenue, Dept. 204
Denver, Colorado 80202

With a copy of any such notice to:

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

Copies of any such notice to the Borrower to:

Law Office of Mark Berry
1 Wren
Littleton, CO 80127

and to:

Prestige Affordable Housing Fund XXVI, LLC
3 East Stow Road

P.O. Box 994
Marlton, NJ 08053-0994
Attn: Asset Management

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.

24. 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:

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-201629086-00

Contractor Name: SABLE RIDGE APARTMENTS LLC

By: *Kenneth A. Walker*

Name: *Kenneth A. Walker*
(please print)

Title: *Manager*
(please print)

ATTEST: [if required]

By: _____

Name: _____
(please print)

Title: _____
(please print)



EXHIBIT A
RESERVED

EXHIBIT B

FINANCIAL ADMINISTRATION:

1.1 Compensation and Methods of Payment

- 1.1.1 Disbursements shall be processed through the Office of Economic Development (OED) - Financial Management Unit (FMU) and the City and County of Denver's Department of Finance.
- 1.1.2 The method of payment to the Contractor by OED shall be in accordance with established FMU procedures for line-item reimbursements. The Contractor must submit expenses and accruals to OED 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 OED policies. Vouchers should be submitted within thirty (30) days of the actual service, expenditure or payment of expense, except for the final voucher for reimbursement.
- 1.1.3 The Contractor shall submit the final voucher for reimbursement no later than **forty-five (45) days after the end of the contract period.**
- 1.1.4 The Contractor shall be reimbursed for services provided under this Agreement according to the approved line-item reimbursement budget attached to and made a part of this Agreement (Exhibit A).

1.2 Vouchering Requirements

- 1.2.1 In order to meet Federal Government requirements for current, auditable books at all times, it is required that all vouchers be submitted monthly to OED in order to be paid.
 - a. The first exception will be that expenses cannot be reimbursed until the funds under this contract have been encumbered.
 - b. The second exception will be that costs cannot be reimbursed until they total a minimum of \$35 unless it is a final payment voucher, or the final voucher for the fiscal year (ending December 31).
- 1.2.2 No more than six (6) vouchers may be submitted per contract per month, without prior approval from OED.
- 1.2.3 All vouchers for all Agreements must be correctly submitted within forty-five (45) 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 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 OED prior to the draw request.
- 1.2.8 The standardized OED “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 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 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 Pager/Cell Phone: Written statement from executive director will be required certifying that cell phone is necessary and reasonable to run the program. And, if the monthly usage charge is exceeded in any month, a detailed phone log will be required for the amount of the overage.
- 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 OED.
- 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 OED within forty-five (45) days after the end of the service period stated in the contract.

2.1 Program Income

- 2.1.1 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 APPROVED IN WRITING BY OED, INCLUDING those needed for immediate cash needs, cash balances of a revolving loan fund, cash balances from a lump sum drawdown, or cash or investments held for section 108 security needs), unless otherwise directed in writing by OED.

3.1 Financial Management Systems

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

- 3.1.1 Financial reporting must be accurate, current, and provide a complete disclosure of the financial results of financially assisted activities and be made in accordance with federal financial reporting requirements.
- 3.1.2 Accounting records must be maintained which adequately identify the source and application of the funds provided for financially assisted activities. The records must contain information pertaining to contracts and authorizations, obligations, unobligated balances, assets, liabilities, outlays or expenditures, and income. Accounting records shall provide accurate, separate, and complete disclosure of fund status.
- 3.1.3 Effective internal controls and accountability must be maintained for all contract cash, real and personal property, and other assets. Adequate safeguards must be provided on all property and it must be assured that it is used solely for authorized purposes.

- 3.1.4 Actual expenditures or outlays must be compared with budgeted amounts and financial information must be related to performance or productivity data, including the development of cost information whenever appropriate or specifically required.
- 3.1.5 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 The Contractor shall maintain separate accountability for OED 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 OED 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 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 OED 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 OED 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 OED 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 OED

funding, the Contactor shall prepare and submit a Corrective Action Plan to OED 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 **OED Financial Management Unit**.
- 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 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 only notification to OED 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 OED. 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.
- 5.1.2 The Contractor understands that any budget modification requests under this Agreement must be submitted to OED prior to the last Quarter of the Contract Period, unless waived in writing by the OED 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 five thousand dollars (\$5,000) in the aggregate.
- 6.1.2 The Contractor will maintain records sufficient to detail the significant history of procurement. These records will include, but are not limited to the following: rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price.

- 6.1.3 If there is a residual inventory of unused supplies exceeding five thousand dollars (\$5,000) in total aggregate upon termination or completion of award, and if the supplies are not needed for any other federally sponsored programs or projects the Contractor will compensate the awarding agency for its share.

7.1 Bonding

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

8.1 Records Retention

- 8.1.1 The Contractor must retain for five (5) 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 OED contract close-out forms and submitting these forms to their appropriate OED Contract Specialist within sixty (60) days after the Agreement end date, or sooner if required by OED in writing.
- 9.1.2 Contract close out forms will be provided to the Contractor by OED within thirty (30) days prior to end of contract.
- 9.1.3 OED 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, OED 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, OED 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 C
(Affirmative Marketing)

City and County of Denver
Affirmative Marketing Program

The City and County of Denver is committed to the goal of adequate housing for all its citizens and to affirmatively furthering fair housing opportunities. The City has developed written material explaining the CDBG 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 CDBG 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 CDBG Programs will:

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

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

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

The City will work with the project owner to identify which racial/ethnic groups in the population are least likely to apply for housing in each project without special outreach. The City will assist the owner in developing a project specific Affirmative Marketing Plan which includes special outreach efforts and the City will approve the Plan. The property manager or rental agent will be required to maintain records enabling the City to assess the results of the owner’s actions to affirmatively market units. These

records will include rental applications, all vacancy notices, and rental receipts. The City or its agent will review the owner's records and these records must be made available to the City. Additionally, the City will require the owner to submit annual tenant reports that will include tenant characteristics including race/ethnicity.

The project's Plan will identify specific actions the owner must take when becoming aware of an impending vacancy. In some cases the owner will also be required to advertise the vacancy in a general circulation newspaper.

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

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

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

EXHIBIT D
FORM OF SUBORDINATION AGREEMENT

Freddie Mac Loan Number: _____
Property Name: _____

SUBORDINATION AGREEMENT

GOVERNMENTAL ENTITY

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

THIS SUBORDINATION AGREEMENT (“**Agreement**”) is entered into this 1st day of July, 2016, by and between WILMINGTON TRUST, NATIONAL ASSOCIATION, a national banking association (“**Senior Mortgagee**”), and the CITY AND COUNTY OF DENVER, a municipal corporation of the State of Colorado (“**Subordinate Mortgagee**”).

RECITALS

- A. SABLE RIDGE APARTMENTS, 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 [\$ _____] (“**Senior Loan**”) upon the terms and conditions of a Project Loan Agreement dated as of _____ 1, 2016 (“**Senior Loan Agreement**”) 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. The Senior Loan is secured by a Construction Deed of Trust, Assignment of Leases and Rents, Security Agreement and Fixture Filing dated as of _____ 1, 2016 (“**Senior Mortgage**”) encumbering the Land, the Improvements and related personal and other property described and defined in the Senior Mortgage as the “**Mortgaged Property**.”
- C. Pursuant to a Loan Agreement dated _____, 2016, 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 \$1,000,000 (“**Subordinate Loan**”). The Subordinate Loan is or will be secured by a Deed of Trust dated _____, 2016 (“**Subordinate Deed of Trust**”) encumbering all or a portion of the Mortgaged Property.

- D. The Senior Mortgage will be recorded in the Official Records of the City and County of Denver Clerk and Recorder (“**Recording Office**”) prior to recordation of this Agreement. The Subordinate Deed of Trust will be recorded in the Recording Office following the recording of the Senior Mortgage.
- E. The Senior Note was assigned by the Governmental Lender to Senior Mortgagee as security for the loan made by the Initial Funding Lender (as defined below) to the Governmental Lender pursuant to the Funding Loan Agreement (the “**Funding Loan**”). The Senior Mortgage was assigned by the Governmental Lender to Senior Mortgagee as security for the Funding Loan pursuant to an Assignment of Deed of Trust and Related Documents dated of even date herewith to be recorded contemporaneously herewith.
- F. Subject to the terms and conditions of that certain Construction Phase Financing Agreement (the “**Construction Phase Financing Agreement**”) dated as of ____ 1, 2016, between Borrower, Bank of the West, a California banking corporation (“**Initial Funding Lender**”), Federal Home Loan Mortgage Corporation and Greystone Servicing Corporation, a Delaware corporation (“**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) and the Senior Mortgage will be amended and restated, and thereafter assigned to the Fiscal Agent (“**Conversion**”).
- G. Pursuant to Section 8.17 of the Senior Mortgage and Section 6.03 of the Funding Loan Agreement dated as of _____ 1, 2016, 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 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.

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 rights of set-off or recoupment or the exercise of any other remedial action against Borrower.
- (f) “**Enforcement Action Notice**” means a written Notice from Subordinate Mortgagee to Funding Lender, given following one or more Subordinate Deed of Trust Default(s) and the expiration of any Notice or cure periods provided for such Subordinate Deed of Trust Default(s) in the Subordinate Loan Documents, setting forth in reasonable detail the Subordinate Deed of Trust 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 Multifamily Note 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 _____, 2016, 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 name 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 indebtedness of any kind at any time evidenced or secured by, or arising under, the Subordinate Loan Documents, whether incurred, arising or accruing before or after the filing of any Bankruptcy Proceeding.
- (r) “**Subordinate Loan Documents**” means the Subordinate Deed of Trust, 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 Deed of Trust 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 Deed of Trust and any replacement of the Subordinate Note.

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; until the Senior Indebtedness is paid in full, the Subordinate Lender 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 Deed of Trust Default constitutes a Senior Mortgage Default. Accordingly, upon the occurrence of a Subordinate Deed of Trust 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 \$12,000,000.
- (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, by indemnification, subrogation or otherwise exercising its rights arising solely under the Subordinate Loan Documents, 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 Deed of Trust Default has occurred.
- v. The current unpaid principal balance of the Subordinate Indebtedness is \$1,000,000.
- 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 affect 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 for the purpose of escrowing for any cost or expense related to the Mortgaged Property or for any portion of the Subordinate Indebtedness solely as may be secured by, 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 \$12,000,000.

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 Deed of Trust Default, provided that if such Subordinate Deed of Trust 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 requested in writing and consented to by the Subordinate Mortgagee. 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 Deed of Trust 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 Deed of Trust 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 \$12,000,000.
- (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 5 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 Deed of Trust. 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 Deed of Trust 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 Deed of Trust 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.

- (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 Deed of Trust 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 \$12,000,000, 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:

Colorado Housing and Finance Authority
1981 Blake Street
Denver, Colorado 80202
Attention: Director of Community Development
Email: nomar@chfainfo.com
Telephone: (303) 297-7363

With a copy to:

Colorado Housing and Finance Authority
1981 Blake Street
Denver, Colorado 80202
Attention: General Counsel
Email: cknight@chfainfo.com
Telephone: (303) 297-7314

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

Executive Director of the Office of Economic Development or Designee
City and County of Denver
201 West Colfax Avenue, Dept. 204
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 Funding Lender will be addressed to:

(Prior to Conversion)

Bank of the West
NC-B07-3E-I
2527 Camino Ramon 3D-D
San Ramon, California 94583
Attention: Maria Fernandez
Email: maria.fernandez@bankofthewest.com
Telephone: (925) 843-4676

(From Conversion)

Federal Home Loan Mortgage Corporation
8100 Jones Branch Drive, MS B4P
McLean, Virginia 22102
Attention: Multifamily Operations - Loan Accounting
Email: mfla@freddiemac.com
Telephone: (703) 714-4177

With a copy to:

Federal Home Loan Mortgage Corporation
8200 Jones Branch Drive, MS 210
McLean, Virginia 22102
Attention: Managing Associate General Counsel –
Multifamily Legal Division
Email: joshua_schonfeld@freddiemac.com
Telephone: (703) 903-2000

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 Deed of Trust.
- (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 Section 17(c) of the Senior Mortgage and Section 6.03 of 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.

[Signature and acknowledgment pages follow]

CONSENT OF BORROWER

Borrower acknowledges receipt of a copy of this Subordination Agreement, dated _____, 2016, by and between Wilmington Trust, National Association and City and County of Denver and consents to the agreement of the parties set forth in this Agreement.

Sable Ridge Apartments, LLC,
a Colorado limited liability company

By: Sable Ridge Development, LLC,
a Colorado limited liability company,
Its: Member and Manager

By: _____
Kenneth A. Walker
Its: Sole Member and Manager

NOTARY ACKNOWLEDGMENT

State of Colorado

County of _____

This ___ day of _____, 2016, by Kenneth A. Walker, Sole Member and Manager of Sable Ridge Development, LLC, which is the managing member of Sable Ridge Apartments, LLC.

(Notary's official signature)

(Commission Expiration)

EXHIBIT A

LEGAL DESCRIPTION

The land situated in the County of Denver, State of Colorado and described as follows:

Lot 6, Sable Ridge Development, Filing No. 1, City and County of Denver, State of Colorado.

PART II
SUPPLEMENTARY GENERAL CONDITIONS (CDBG)

ARTICLE I
FEDERAL REQUIREMENTS

Except as specifically set forth herein, the following conditions take precedence over any conflicting conditions in the Agreement.

Sec. 100. Definitions. As used in this Part II:

A. “City” means City and County of Denver or a person authorized to act on its behalf.

B. “Contractor” means a person or entity that has entered into an Agreement with the City under which the person or entity will receive federal funds under the Community Development Block Grant Program. “Subcontractor” means any person or entity that enters into an agreement or contract with a Contractor.

C. “OED” means the City’s Office of Economic Development or a person authorized to act on its behalf.

D. “HUD” means the United States Department of Housing and Urban Development or a person authorized to act on its behalf.

E. “Construction contract or agreement” means a contract for construction, rehabilitation, alteration and/or repair, including painting and decorating.

Sec. 101. Housing and Community Development Act of 1974. This Agreement is subject to Title I of the Housing and Community Development Act of 1974, as amended (42 U.S.C. 5301 et seq.), pertaining to Community Development Block Grants, and HUD regulations at 24 C.F.R. 570 et seq., and 24 C.F.R. 85 et seq.

Sec. 102. Uniform Administrative Requirements. This Agreement is subject to the requirements of 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”), and applicable sections of 24 C.F.R. Parts 84 and 85 as they relate to the acceptance and use of Federal funds.

Sec. 103. Nondiscrimination Under Title VI of the Civil Rights Act of 1964.

A. This Agreement is subject to the requirements of Title VI of the Civil Rights Act of 1964 (P.L. 88-352) and implementing regulations at 24 C.F.R. Part 1, prohibiting discrimination on the basis of race, color, or national origin in any program or activity receiving federal financial assistance.

B. In the sale, lease or other transfer of land acquired, cleared or improved with assistance provided under this Agreement, the Contractor shall cause or require a covenant running with the land to be inserted in the deed or lease for such transfer, prohibiting discrimination upon the basis of race, color, religion, sex or national origin, in the sale, lease or rental, or in the use or occupancy of such land or any improvements erected or to be erected thereon, and providing that the Contractor and the United States are beneficiaries of and entitled to enforce such covenant. The Contractor agrees to take such measures as are necessary to enforce such covenant and will not itself so discriminate.

Sec. 104. Nondiscrimination in Housing Under Title VIII of the Civil Rights Act of 1968. This Agreement is subject to the requirements of Title VIII of the Civil Rights Act of 1968 (P.L. 90-284), and implementing regulations, prohibiting housing discrimination on the basis of race, color, religion, sex, disability/handicap, familial status, or national origin. The Contractor agrees to carry out the services under this Agreement in a manner so as to affirmatively further fair housing.

Sec. 105. Nondiscrimination Under Age Discrimination Act of 1975. This Agreement is subject to the requirements of the Age Discrimination Act of 1975 (P.L. 94-135) and implementing regulations of the U.S. Department of Health and Human Services. Except as provided in the Act, no person shall, on the basis of age, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving funds under this Agreement. The Contractor will include the provisions of the above clause in every subcontract which is paid for in whole or in part with assistance provided under this Agreement.

Sec. 106. Compliance with Section 109 of the Housing and Community Development Act of 1974. This Agreement is subject to Section 109 of the Housing and Community Development Act of 1974, as amended, and implementing regulations (24 C.F.R. Part 6 and Section 570.602), providing that no person shall be excluded from participation (including employment), denied program benefits or subjected to discrimination on the basis of race, color, national origin, religion or sex under any program or activity funded in whole or in part under Title I of the Act.

Sec. 107. Nondiscrimination and Equal Opportunity in Housing Under Executive Order 11063. This Agreement is subject to Executive Order 11063, issued November 20, 1962, as amended by Executive Order 12259, issued December 31, 1980, and implementing regulations at 24 C.F.R. Part 107, requiring equal opportunity in housing by prohibiting discrimination on the basis of race, color, religion, sex or national origin in the sale or rental of housing built with federal assistance.

Sec. 108. Nondiscrimination on the Basis of Handicap Under Rehabilitation Act of 1973. This Agreement is subject to Section 504 of the Rehabilitation Act of 1973 (P.L. 93-112), as amended, and regulations at 24 C.F.R. Part 8, providing that no otherwise qualified individual shall, solely by reason of a handicap, be excluded from participation (including

employment), denied program benefits or subjected to discrimination under any program or activity receiving federal funds.

Sec. 109. "Section 3" Compliance in the Provision of Training, Employment and Business Opportunities.

A. The work to be performed under this contract is subject to the requirements of section 3 of Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (Section 3). The purpose of Section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by section 3 shall, to the greatest extent feasible, be directed to low and very low-income persons, particularly persons who are recipients of HUD assistance for housing.

B. The parties to this contract agree to comply with HUD's regulations in 24 C.F.R. Part 135, which implement Section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the Part 135 regulations.

C. The Contractor agrees to send to each labor organization or representative of workers with which the Contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the Contractor's commitments under this section 3 clause, and will post copies of this notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.

D. The Contractor agrees to include this section 3 clause in every subcontract subject to compliance with regulations in 24 C.F.R. Part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 C.F.R. Part 135. The Contractor will not subcontract with any subcontractor where the Contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 C.F.R. Part 135.

E. The Contractor will certify that any vacant employment positions, including training positions, that are filled (1) after the Contractor is selected but before the Agreement is executed, and (2) with persons other than those to whom the regulations of 24 C.F.R. Part 135 require employment opportunities to be directed, were not filled to circumvent the Contractor's obligations under 24 C.F.R. Part 135.

F. Noncompliance with HUD's regulations in 24 C.F.R. Part 135 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD-assisted contracts.

Sec. 110. Relocation Assistance and Property Acquisition Requirements. This Agreement is subject to the relocation and acquisition requirements of the Uniform Relocation Assistance and Real Property Acquisition Policy Act of 1970, as amended, and implementing regulations at 49 C.F.R. Part 24; Section 104(d) of the Housing & Community Development Act, as amended, and implementing regulations at 24 C.F.R. Part 42; and 24 C.F.R. 570.606. The Contractor must comply with the City's Anti Displacement and Relocation Assistance Plan on file.

Sec. 111. Conflict of Interest.

A. Conflicts Prohibited.

1) Except for the use of CDBG funds to pay salaries or other related administrative or personnel costs, no employees, agents, consultants, officers, or elected or appointed officials of the City or of a sub-recipient, if applicable, who exercise or have exercised any functions or responsibilities in connection with activities funded under this Agreement or who are in a position to participate in a decision-making process or gain inside information with regard to such activities may obtain any personal or financial interest or benefit from the proceeds of this Agreement for themselves, their families or business associates during their tenure and for one year thereafter. Such prohibited interests include the acquisition and disposition of real property; all subcontracts or agreements for goods or services; and any grants, loans or other forms of assistance provided to individuals, businesses and other private entities out of proceeds of this Agreement.

2) The Contractor's officers, employees or agents shall not solicit or accept gratuities, favors or anything of monetary value from subcontractors, or potential subcontractors.

3) No employee, officer or agent of the Contractor shall perform or provide part-time services for compensation, monetary or otherwise, to a consultant or other subcontractor that has been retained by the Contractor under this Agreement.

4) In the event of a real or apparent conflict of interest, the person involved shall submit to the Contractor and the City a full disclosure statement setting forth the details of the conflict of interest in accordance with 24 C.F.R. 570.611(d), relating to exceptions by HUD. In cases of extreme and unacceptable conflicts of interest, as determined by the City and/or HUD, the City reserves the right to terminate the Agreement for cause, as provided in Article V below. Failure to file a disclosure statement shall constitute grounds for termination of this Agreement for cause by the City.

B. Interest of Certain Federal Officials. No member of the Congress of the United States shall be admitted to any share or part of this Agreement or to any benefit to arise from the same.

Sec. 112. Political Activity Prohibited. None of the funds provided under this Agreement shall be used directly or indirectly for any partisan political activity, or to further the election or defeat of any candidate for public office.

Sec. 113. Lobbying Prohibited. None of the funds provided under this Agreement shall be used for publicity or propaganda purposes designed to support or defeat legislation pending before the U.S. Congress.

Sec. 113(a). Prohibition on Use of Federal Funds for Lobbying; Requirements for Disclosure Statements, and CERTIFICATION. Section 319, P.L. 101-121. Any contractor, subcontractor and/or grantee receiving federal appropriated funds certifies by signing this Agreement, in two parts Part I, and Part II and signing and/or entering into any other agreement in connection with this Agreement, to the best of his or her knowledge and belief, that:

A. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a member of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

B. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

C. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31 U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Sec. 114. Copyrights. If this Agreement results in a book or other copyright material, the author is free to copyright the work but HUD and the City reserve a royalty-free, nonexclusive and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, all copyrighted material and all material which can be copyrighted.

Sec. 115. Patents. Any discovery or invention arising out of or developed in the course of work under this Agreement shall be promptly and fully reported to HUD for determination as to whether patent protection on such invention or discovery should be sought, and how the rights under any patent shall be allocated and administered in order to protect the public interest.

Sec. 116. Theft or embezzlement from OED funds; Improper Inducement, Obstruction of Investigations and other Criminal provisions. Under 24 C.F.R. 24, the Contractor and/or any member of its staff may be debarred, suspended, and/or criminally liable if s/he:

A. Embezzles, willfully misapplies, steals or obtains by fraud any of the monies, funds, assets or property which are the subject of the contract;

B. By threat of procuring dismissal of any person from employment, induces any persons to give up money or things of value;

C. Willfully obstructs or impedes an investigation or inquiry under HUD;

D. Directly or indirectly provides any employment, position, compensation, contract, appointment or other benefit, provided for or made possible in whole or in part by OED funds to any person as consideration, or reward for any political action by or for the support or opposition to any candidate of any political party;

E. Directly or indirectly knowingly causes or attempts to cause any person to make a contribution of a thing of value (including services) for the benefit of any candidate or any political party, by means of the denial or threat of denial of any employment or benefit funded under the Act.

ARTICLE II **DISBURSEMENTS AND ACCOUNTING**

Sec. 201. Eligible and Ineligible Costs. Costs under this Agreement are governed by the OMB Omni Circular as applicable. All costs incurred by the Contractor using monies under this Agreement must be reasonable and relate clearly to the specific purposes and end product of the Agreement. To be eligible for reimbursement, expenditures must: (1) Be necessary and reasonable for proper and efficient performance of the contractual requirements and in accordance with the approved budget; (2) Be no more liberal than policies, procedures and practices applied uniformly to activities of the City, both Federally assisted and non-Federally assisted; (3) Not be allocable to or included as a cost of any other Federally financed program; (4) Be net of all applicable credits, such as purchase discounts, rebates or allowances, sales of publications or materials, or other income or refunds; and (5) Be fully documented.

The following costs or expenditures by the Contractor are specifically ineligible for CDBG Part II rev.8/19/2016

reimbursement: bad debts, contingency reserves, contributions and donations, entertainment and fines and penalties.

Sec. 202. Documentation of Costs. All costs must be supported by properly executed payrolls, time records, invoices, contracts or vouchers, or other documentation evidencing in proper detail the nature and propriety of the charges. All checks, payrolls, invoices, contracts, vouchers, orders or other accounting documents pertaining in whole or in part to this Agreement shall be clearly identified and readily accessible.

Sec. 203. Charges Against Project Account.

A. Payments under the Agreement shall be made on an actual basis for services that are performed and fully documented as having been performed. The City shall not reimburse or pay any expenditures, costs or payments that are inconsistent with the last approved budget. The budget for this Agreement may be revised upon written request of the Contractor, and written approval from OED.

B. At any time prior to final payment, the City may have the invoices and statements of costs audited. Each payment shall be subject to reduction for amounts which are found by the City not to constitute allowable costs. Any payment may be reduced for overpayments, or increased for underpayments, on preceding invoices or vouchers.

C. In the absence of error or manifest mistake, all payments when approved shall be evidence of the services performed, except that all payments made by the City to the Contractor are subject to correction in accordance with the audit findings of the City or HUD. The Contractor shall promptly repay the City the amounts determined to be due on the basis of such audit.

D. Prior to final payment, the Contractor shall first furnish the City evidence in affidavit form that all claims, liens, or other obligations incurred by it and all of its subcontractors or agents in connection with the performance of their services have been properly paid and settled.

E. Contract funds remaining unspent by the Contractor at the termination of the Agreement for any cause shall be returned to the City within the time specified by the City. Interest shall accrue in the favor of the City at the rate of eight percent (8%) per annum on such funds thereafter.

F. Unless otherwise specified in this Contract or the exhibits hereto, the effective indirect cost rate shall be at a rate of zero percent (0.00%) per annum.

Sec. 204. Method of Payment and Disbursements. The Contractor must submit

properly executed invoices and requests for payment to OED. The City agrees to establish a payment procedure that will provide funds in a timely and regular manner, and which will include, among other things, the requirement for a ten percent (10%) retainage by the City where funds are disbursed for construction. The Contractor agrees to disburse funds within seventy-two (72) hours of receiving payment from the City.

Sec. 205. Travel Expenses. Reimbursement for travel and related subsistence, local mileage and parking, is limited to those costs and amounts for which the City reimburses City employees for official travel. First class air-fare is not allowable. Any travel outside of the Denver metropolitan area must be specifically authorized in advance by the City.

Sec. 206. Designation of Depository. The Contractor shall designate a commercial bank which is a member of the Federal Deposit Insurance Corporation for deposit of funds under this Agreement. Any balance deposited in excess of FDIC insurance coverage must be collaterally secured. The Contractor is encouraged to use minority or female-owned banks.

Sec. 207. Refunds. The Contractor agrees to refund to the City any payment or portions of payments which HUD and/or the City determine were not properly due to the Contractor.

ARTICLE III

CONSTRUCTION CONTRACTS AND LABOR STANDARDS

Sec. 301. Lead-Based Paint Hazards. The construction or rehabilitation of residential structures with assistance provided under this Agreement is subject to the HUD Lead-Based Paint Regulations, 24 C.F.R. Part 570.608. The Contractor is responsible for the inspections and certifications required.

Sec. 302. Davis-Bacon Act. Except for the rehabilitation of residential property that contains not less than eight (8) units, the Contractor and all subcontractors hired under contracts for more than \$2,000.00 for the construction or repair of any building or work financed in whole or in part with assistance provided under this Agreement, shall comply with the Davis-Bacon Act, 40 U.S.C. 276a to 276a-7, and applicable regulations of the Department of Labor under 29 C.F.R. Part 5, requiring the payment of wages at rates not less than those prevailing on similar construction in the locality as determined by the Secretary of Labor. The current Davis-Bacon wage rate schedule must be included in all bid and contract documents, as well as the "Federal Labor Standards Provisions", Form HUD-4010, by one of the following methods contained in the Labor Relations Letter No. LR 2006-03 at <http://www.hud.gov/offices/olr/library.cfm>.

Sec. 303. Contract Work Hours and Safety Standards Act. All federally assisted construction contracts of more than \$2,000.00 must comply with Department of Labor regulations (29 C.F.R. Part 5), and all federally assisted construction contracts of more than \$100,000.00 must comply with the Contract Work Hours and Safety Standards Act of 1962 (40 CDBG Part II rev.8/19/2016

U.S.C. 327 et seq.).

Sec. 304. Anti-Kickback Act. If this Agreement involves construction or repair, then it is subject to the Copeland “Anti-Kickback” Act of 1934 (40 U.S.C. 276c) and Department of Labor regulations (29 C.F.R. Part 3), prohibiting and prescribing penalties for “kickbacks” of wages. Wages must be paid in accordance with the requirements of 29 C.F.R. Part 3 and 29 C.F.R. 5.5.

Sec. 305. Equal Employment Opportunity Under Executive Order No. 11246, as Amended. If this Agreement involves a federally assisted construction project in excess of \$10,000.00 then it is subject to Executive Order No. 11246, as amended by Executive Orders 11375 and 12086, HUD regulations at 24 C.F.R. Part 130, and the Department of Labor Regulations at 41 C.F.R. Chapter 60.

The Contractor agrees that it will be bound by the equal opportunity clause set forth below and other provisions of 41 C.F.R. Chapter 60, with respect to its own employment practices when it participates in federally assisted construction work, provided that if the Contractor so participating is a State or local government, the equal opportunity clause set forth below is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the Agreement.

The Contractor agrees that it will incorporate into any contract for construction work, or modification thereof, as defined in the regulations of the Secretary of Labor at 41 C.F.R. Chapter 60, which is paid for in whole or in part with funds obtained pursuant to this Agreement, the following equal opportunity clause:

“During the performance of this Agreement, the Contractor agrees as follows:

(1) The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex or national origin. Such action shall include, but not be limited to, the following: Employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

(2) The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all employment is without regard to race, color, religion, sex or national origin.

(3) The Contractor will send to each labor union or representative of workers

with which he has a collective bargaining agreement, or other contract or understanding, a notice to be provided by the Contract Compliance Officer advising the said labor union or workers' representatives of the Contractor's commitment under this section and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(4) The Contractor will comply with all provisions of Executive Order No. 11246 of September 24, 1965, and the rules, regulations and relevant orders of the Secretary of Labor.

(5) The Contractor will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, and by the rules, regulations and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records and accounts by the Department and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations and orders.

(6) In the event of the Contractor's noncompliance with the nondiscrimination clauses of this Agreement or with any of such rules, regulations or orders, this Agreement may be cancelled, terminated or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts or federally assisted construction contract procedures authorized in Executive Order No. 11246 of September 24, 1965, or by rule, regulation or order of the Secretary of Labor, or as otherwise provided by law.

(7) The Contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions or paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The subcontract or purchase orders shall include such terms and conditions as the Department may direct as a means of enforcing such provisions including sanctions for non-compliance; provided, however, that in the event a Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the Department, the Contractor may request the United States to enter into such litigation to protect the interest of the United States.

The Contractor further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work; provided, that if the Contractor so participating is a State or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government, which does not participate in work on or under the Agreement.

The Contractor agrees that it will assist and cooperate actively with the Department and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations and relevant orders of the Secretary of Labor; that it will furnish the Department and the Secretary of Labor such information as they may require for the supervision of such compliance; and that it will otherwise assist the Department in and the discharge of its primary responsibility for securing compliance.

The Contractor further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order No. 11246 of September 24, 1965, with a contractor debarred from or who has not demonstrated eligibility for Government contracts and federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontracts by the Department or the Secretary of Labor pursuant to Part II, Subpart D, of the Executive Order. In addition, the Contractor agrees that if it fails or refuses to comply with the requirements hereof, the City may take any or all of the following actions: Cancel, terminate or suspend, in whole or in part this grant, contract, agreement or loan; refrain from extending any further assistance to the Contractor under the program with respect to which the failure or refusal occurred until satisfactory assurance of future compliance has been received from such Contractor; and refer the case to the Department of Justice for appropriate legal proceedings.”

ARTICLE IV **ENVIRONMENTAL AND HISTORIC CONDITIONS**

Sec. 401. Environmental Clearance. Pursuant to 24 CFR 58.22, no funds under this Agreement may be obligated or spent for acquisition, demolition or construction, or disposition, refinancing and other real property-affecting activities, such as granting easements and covenants, until Contractor has received written environmental clearance from OED. Any special environmental and historic conditions imposed by the City must be incorporated into the design and construction of the project.

Sec. 402. Compliance with Clean Air and Water Acts. Contractor and all subcontractors must comply with all applicable standards, orders, or requirements issued under Section 306 of the Clean Air Act (42 USC 1857(h)), Section 508 of the Clean Water Act, (33 USC 1368), the Federal Water Pollution Control Act, (33 USC 1251 et seq.), Executive Order 11738, and Environmental Protection Agency (“EPA”) regulations (40 C.F.R. Part 15), which prohibit the use of facilities included on the EPA List of Violating Facilities.

Sec. 403. Additional Environmental and Historic Conditions. This Agreement is also subject to the following statutes, executive orders and regulations, when the Contractor is so instructed by the City or the United States of America.

A. National Environmental Policy Act of 1969 (42 USC 4321 et seq.), HUD regulations (24 C.F.R. Part 58) and the Council on Environmental Quality regulations (40 C.F.R. Parts 1500-1508) providing for establishment of national policy and procedures for environmental quality;

B. National Historic Preservation Act of 1966 (16 USC 470 et seq.), requiring consideration of the effect of a project on any site or structure that is included in or eligible for inclusion in the National Register of Historic Places;

C. Executive Order 11593, Protection and Enhancement of the Cultural Environment, May 13, 1971 (36 FR 8921 et seq.), requiring that federally-funded projects contribute to the preservation and enhancement of sites, structures and objects of historical, architectural or archaeological significance;

D. Reservoir Salvage Act of 1960 (16 USC 469 et seq.) as amended by the Archaeological and Historical Data Preservation Act of 1974, (16 USC 469 et seq.), providing for the preservation of historic and archaeological data that would be lost due to federally-funded development and construction activities;

E. Flood Disaster Protection Act of 1973, (42 USC 4001 et seq.), relating to mandatory purchase of flood insurance in areas having special flood hazards;

F. Executive Order 11988, Flood Plain Management, May 24, 1977 (42 FR 26951 et seq.) prohibiting certain activities in flood plains unless there is no practical alternative, in which case the action must be designed to minimize potential damage;

G. Executive Order 11990, Protection of Wetlands, May 24, 1977 (42 FR 26961 et seq.), requiring review of all actions affecting a wetland;

H. Safe Drinking Water Act of 1974, (42 USC 201, 300f et seq.), prohibiting federal financial assistance for any project which the Environmental Protection Agency determines may contaminate an aquifer which is the sole or principal drinking water source for an area;

I. Endangered Species Act of 1973, (16 USC 1531 et seq.), requiring that actions funded by the federal government do not jeopardize endangered and threatened species;

J. Wild and Scenic Rivers Act of 1968, (16 USC 1271 et seq.), prohibiting federal assistance in the construction of any water resources project that would have a direct and adverse effect on the National Wild and Scenic Rivers System;

K. Clean Air Act, (42 USC 7401 et seq.), prohibiting federal assistance for any activity which does not conform to the State implementation plan for national primary and secondary ambient air quality standards;

L. Farmland Protection Policy Act of 1981 (7 USC 4201 et seq.) relating to the effects of federally assisted programs on the conversion of farmland to non-agricultural uses;

M. HUD Environmental Criteria and Standards, (24 C.F.R. Part 51) providing national standards for noise abatement and control, acceptable separation distances from explosive or fire prone substances and suitable land uses for airport runway clear zones.

ARTICLE V **TERMINATION**

Sec. 501. Termination Due to Loss of Funding. This Agreement is funded with monies provided by the U.S. Department of Housing and Urban Development. If such funds or any part thereof are not appropriated by City Council or paid into the City Treasury, the City may immediately terminate this Agreement.

Sec. 502. Termination for Cause.

A. The City may terminate this Agreement whenever the Contractor materially fails to perform any of its obligations under this Agreement in a timely and proper manner, or is otherwise in default, and shall fail to cure such default within a period of ten (10) days (or such longer period as the City may allow) after receipt from the City of a notice specifying the default.

B. If the City has sustained damages due to the Contractor's breach of this Agreement, the City may withhold payment as a set off until the amount of damages due to the City is determined.

Sec. 503. Termination for Convenience. The City may terminate this Agreement at any time the City desires. The City shall effect such termination by giving written notice of termination to the Contractor and specifying the effective date thereof, at least twenty (20) days before the effective date of such termination.

Sec. 504. Payment After Termination. The Contractor shall be reimbursed only for that portion of work satisfactorily completed at the effective date of the termination.

Sec. 505. Reversion of Assets. Upon termination of this Agreement for any reason, or upon expiration of this Agreement, any CDBG funds on hand and any accounts receivable attributable to the use of CDBG funds must be immediately returned to the City. Any real property under the Contractor's control that was acquired or improved with more than \$25,000 in CDBG funds must either: (1) be used to meet one of the national objectives of the Housing and Community Development Act of 1974, listed in 24 C.F.R. 570.901 for five years after termination or expiration of this Agreement; or (2) disposed of so that the City is reimbursed for the fair market value of the property, minus any portion of the value attributable to expenditures of non-CDBG funds.

ARTICLE VI
MISCELLANEOUS

Sec. 601. Personnel. The Contractor represents that it has or will secure all personnel required in performing its services under this Agreement. All services required of the Contractor will be performed by the Contractor or under its supervision, and all personnel engaged in the work shall be fully qualified and authorized or permitted under State and local laws to perform such services.

Sec. 602. Subject to Local Laws. This Agreement shall be construed and enforced in accordance with Colorado law, and the Charter and Revised Municipal Code of the City and County of Denver. 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.

Sec. 603. Contractual Relationship. The Contractor shall not be considered for any purpose whatsoever to be an agent or an employee of the City. It is understood and agreed that the status of the Contractor shall be that of an independent contractor.

Sec. 604. When Rights and Remedies Not Waived. Payment by the City shall not be construed to be a waiver of any breach which may then exist on the part of the Contractor, and no assent, expressed or implied, to any breach shall be deemed a waiver of any other breach.

Sec. 605. Sales and Use Taxes. The Contractor or any subcontractor is not exempt from payment of the City Sales Tax or Use Tax. In accordance with applicable State and local law, the Contractor will pay, and/or require subcontractors to pay, all sales and use taxes on tangible personal property, including that built into a project or structure, acquired under this Agreement.

Sec. 606. Patented Devices, Materials, and Processes. If the Contractor employs any design, device, material or process covered by letter of patent or copyright, it shall provide for such use by suitable legal agreement with the patentee or owner. The Contractor shall defend, indemnify and save harmless the City from any and all claims for infringement by reason of the use of any such patented design, device, material or process, or any trademark or copyright, and shall indemnify the City for any costs, expenses, and damages which the City may be obliged to pay by reason of any infringement.

Sec. 607. Titles and Subheadings. The titles and subheadings used in this Agreement are for the convenience of reference only and shall not be taken as having any bearing on the interpretation of this Agreement.

Sec. 608. Notices. All notices shall be given by certified mail. Notices to the City shall be addressed to the Director of the Office of Economic Development. Either of the parties may designate in writing substitute addresses or persons to receive notices.

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