

**LOAN AGREEMENT  
(HOME PROGRAM / ARPA FUNDS)**

**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 **38<sup>TH</sup> & HOLLY LLLP**, a Colorado limited liability limited partnership, whose address is 155 S. Madison Street, Suite 326, Denver, Colorado 80209 (“Borrower”), each individually a “Party” and collectively the “Parties”.

**WITNESSETH:**

**WHEREAS**, the City is acting pursuant to federal grant conditions with respect to (i) rental housing assistance pursuant to the Home Investment Partnership Program (“HOME Program”); and (ii) funds awarded to the City pursuant to Section 603(b) of the Social Security Act, as added by Section 9901 of the American Rescue Plan Act, Public Law No. 117-2 (March 11, 2021) (along with all rules and regulations promulgated thereunder, “ARPA”);

**WHEREAS**, the Borrower is the owner of Property (as defined in Section 2) in the City and County of Denver;

**WHEREAS**, the purpose of this Loan Agreement is for the City to provide financing related to the development and construction of two hundred fifty-three (253) affordable multi-family dwelling units located on the Property (the “Project”);

**WHEREAS**, the City is making certain monies available to ensure the development the Project; and

**WHEREAS**, the Borrower is eligible to receive HOME Program funds pursuant to the National Affordable Housing Act of 1990, and implementing regulations under 24 C.F.R. Part 92, and is ready, willing and able to meet the conditions associated therewith.

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

**PART I**

**1. LOAN TO BORROWER:**

A. Loan to Borrower. Subject to the terms of this Loan Agreement, the City agrees to lend Borrower the sum of Eight Million Three Hundred Nineteen Thousand Dollars and No/100 (\$8,319,000.00) (the “Loan”). The total sum of the Loan will consist of the following

two (2) funding sources and amounts from the respective sources:

- i. HOME Investment Partnerships Program: \$2,500,000.00
- ii. American Rescue Plan Act State and Local Fiscal Recovery Funds:  
\$5,819,000.00

B. Promissory Note; Payment Terms. In addition to this Loan Agreement, the Borrower will execute a promissory note in a form satisfactory to the City evidencing the Loan (the “Promissory Note”). Simple interest at a rate of one percent (1%) per annum shall commence accruing on the outstanding principal balance of the Promissory Note on the date on which the first draw on the Loan is made. Principal and any interest accrued on the Loan shall be due and payable, at such place as may be designated by City, in annual installments in the amount calculated in accordance with the order of priority and other provisions set forth in **Exhibit F**, attached hereto and incorporated herein (“Cash Flow”). Such annual installments shall commence and be due on the first June 1<sup>st</sup> following the date that is twenty-four (24) calendar months after the effective date of the Promissory Note and each June 1<sup>st</sup> thereafter. The entire unpaid balance of principal and accrued interest, if not paid sooner, shall be due and payable on the date that is three hundred sixty (360) months following the date of execution of the Promissory Note (the “Maturity Date”). Each year after repayment of the Loan has commenced, Borrower shall provide to the City, no later than May 1, (i) an audited financial statement for the Project for the preceding calendar year; and (ii) a statement or letter from an auditor that details (a) the total amount of Cash Flow available for distribution, and (b) a calculation that details the amount(s) and the person(s) or entity (entities) to which the available Cash Flow will be distributed based on the order of priority and other provisions set forth in Exhibit F.

C. ARPA Funds: Borrower agrees and acknowledges that some or all of the funds encumbered by the City for the purposes of this Agreement have been provided in accordance with ARPA. The Parties acknowledge that all funding from ARPA (collectively, “ARPA Funds”) may only be used to cover those eligible costs incurred by the Borrower during the period that begins on March 3, 2021 and ends on December 31, 2024:

- i. To respond to the public health emergency with respect to the Coronavirus Disease 2019 (“COVID-19”) or its negative economic impacts, including assistance

to households, small businesses, and nonprofits, or to aid impacted industries such as tourism, travel and hospitality;

ii. To respond to workers performing essential work during the COVID-19 public health emergency by providing premium pay to eligible workers of the City that are performing such essential work, or by providing grants to eligible employers that have eligible workers who perform essential work;

iii. For the provision of government services to the extent of the reduction in revenue of the City due to the COVID-19 public health emergency relative to the revenues collected in the most recent full fiscal year of the City prior to the emergency; or

iv. To make necessary investments in water, sewer, or broadband infrastructure.

Borrower shall only utilize ARPA Funds for the purposes described in this Agreement. Borrower agrees and acknowledges that, as a condition to receiving the ARPA Funds, it shall strictly follow the Coronavirus Local Fiscal Recovery Fund Award Terms and Conditions attached hereto and incorporated herein as **Exhibit G**. All invoices submitted by Borrower to the City pursuant to this Agreement shall use “COVID-19” or “Coronavirus” as a descriptor for those costs that are paid by ARPA Funds to facilitate the tracking of Agreement-related spending related to COVID-19. Borrower shall segregate and specifically identify the time and expenditures billed to the City on each invoice to allow for future review and analysis of COVID-19 related expenses. To avoid an unlawful duplication of federal benefits, the Parties agree and acknowledge that the any funding provided to Borrower for which ARPA Funds are used shall not also be paid for or reimbursed by monies provided under any other federal program.

Borrower agrees and acknowledges that all disbursements by the City for eligible loan costs must be disbursed by the City no later than December 31, 2026. As such, Borrower shall invoice the City not later than the disbursement deadline in Section 5(B) for all eligible costs pursuant to this Agreement for which ARPA Funds will be used to enable sufficient time for the City to review, process, and pay such invoice no later than the performance deadline prescribed in ARPA (the “Invoice Deadline Date”). Any invoice submitted by Borrower after the Invoice Deadline Date for eligible loan costs may not be eligible to be paid by ARPA Funds, and, to the extent that ARPA Funds are not available to pay such invoice, partially or in total, such invoice

shall only be paid subject to funds appropriated annually by the Denver City Council, paid into the Treasury of the City, and encumbered for the purpose of this Agreement.

To the extent that Borrower's work or services hereunder contemplate the spending of ARPA Funds, Borrower shall provide to the City information responsive to mandatory performance measures, including programmatic data sufficient to conduct oversight as well as understand aggregate program and expenditure outcomes. Further, in providing the ARPA-required information to the City, to the extent possible, Borrower shall provide this programmatic data related to such services disaggregated by race, ethnicity, gender, income, and other relevant demographic factors as may be determined by the City. Borrower shall insert the foregoing requirement into all subcontracts related to this Agreement, thereby obligating all subcontractors to the same reporting requirement as Borrower.

**2. SECURITY:** Repayment of the Promissory Note shall be secured by a Deed of Trust (the "Deed of Trust"), in form satisfactory to City, granted by Borrower and encumbering the real property known and numbered as 5909 & 5755 E. 38<sup>th</sup> Ave. and 3800 N. Holly Street, Denver, CO 80205 and legally described as set forth in Exhibit D (the "Property").

**3. SUBORDINATION:**

A. The Executive Director, or the Executive Director's designee (the "Executive Director"), of the City's Department of Housing Stability ("HOST") is authorized to execute documents necessary to subordinate the lien of the City's Deed of Trust so long as (i) the subordination agreements are substantially in the form attached hereto as **Exhibit E** ("Subordination Agreements"); (ii) encumbrances prior to the City's Deed of Trust do not exceed Seventy Million Dollars and NO/100 (\$70,000,000.00), plus interest and fees provided for in the loan documents evidencing, governing and/or securing such construction loan; or Fifty Million Dollars and NO/100 (\$50,000,000.00) plus interest and fees provided for in the loan documents evidencing, governing and/or securing such permanent loan; (iii) Borrower is not then in default of its obligations pursuant to this Loan Agreement, the Promissory Note, the Deed of Trust or the Covenant; and (iv) all additional financing for the Project is committed.

B. The Executive Director is authorized to execute documents necessary to subordinate the City's Deed of Trust to land use restriction agreements ("LURAs"), such as the LURA required by the Colorado Housing and Finance Authority, so long as (i) the subordination

agreement is in the form acceptable to the City Attorney; (ii) encumbrances prior to the City's Deed of Trust do not exceed Seventy Million Dollars and NO/100 (\$70,000,000.00), plus interest and fees provided for in the loan documents evidencing, governing and/or securing such construction loan; or Fifty Million Dollars and NO/100 (\$50,000,000.00), plus interest and fees provided for in the loan documents evidencing, governing and/or securing such permanent loan; and (iii) Borrower is not in default of its obligations pursuant to this Loan Agreement, the Deed of Trust, or the Covenant.

C. The Executive Director is authorized to execute documents necessary to accomplish the Loan, as set forth herein, so long as (i) such documents are in a form satisfactory to the City Attorney; (ii) encumbrances prior to the City's Deed of Trust do not exceed Seventy Million Dollars and NO/100 (\$70,000,000.00), plus interest and fees provided for in the loan documents evidencing, governing and/or securing such construction loan; or Fifty Million Dollars and NO/100 (\$50,000,000.00) plus interest and fees provided for in the loan documents evidencing, governing and/or securing such permanent loan; and (iii) Borrower is not in default of its obligations pursuant to this Loan Agreement, the Deed of Trust, or the Covenant.

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

A. Loan proceeds will be used to finance costs associated with development of the Property for use as affordable housing, in accordance with **Exhibit A**, attached hereto and incorporated herein. No funds will be disbursed until Borrower has complied with all federal environmental and historic preservation clearances as certified by HOST in writing. The Borrower shall submit to the City requisitions with documentation of incurred costs on HOST approved forms, and otherwise comply with the financial administration requirements set forth in **Exhibit B** attached hereto and incorporated herein. Borrower may not request disbursement of funds until the funds are needed for payment of eligible costs.

B. Where the City's funds are disbursed for construction, (i) the City shall monitor the construction activities for the purpose of verifying eligible costs, and (ii) the City shall retain ten percent (10%) of each disbursement of funds, which retainage shall be released upon (a) final inspection and approval of the Project by the City; (b) receipt of proof of release of liens from all applicable contractors, subcontractors, and suppliers; and (c) the issuance of a certificate of occupancy.

C. In addition to the retainage specified in subsection B above, HOST shall retain Ten Thousand Dollars and No/100 Dollars (\$10,000.00) of the total funds to be disbursed under this Loan Agreement (the “Compliance Retainer”). This amount shall be released upon receipt from Borrower of all information necessary for the U.S. Department of Housing and Urban Development’s (“HUD”) HOME Program reporting.

D. The City’s disbursement of funds is subject to availability of funds from HUD through its cash management system.

E. Soft costs as defined in and allowed pursuant to 24 C.F.R. § 92.206 that were incurred after April 21, 2022 are eligible for reimbursement. Hard costs incurred after the effective date of this Loan Agreement are eligible for reimbursement.

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

A. Borrower must satisfy all conditions set forth in this Loan Agreement on or before January 23, 2024 (the “Closing Deadline”). Failure to meet this deadline may result in the termination of this Loan Agreement at the Executive Director’s sole discretion. No funds shall be disbursed under this Loan Agreement until such time as (i) all conditions of this Loan Agreement have been met and (ii) Borrower has closed on all financing necessary to complete the Project.

B. Borrower agrees that (a) documentation for all draw down requests will be submitted no later than twenty-four (24) months after the date of the Promissory Note, except that draw down requests for ARPA Funds shall meet the requirements of Section 1 of this Loan Agreement, and (b) Borrower shall complete the Project within a thirty (30) month period after the date of the Promissory Note. These deadlines may be extended with the written approval of HOST. All cost overruns and/or funding shortfalls shall be the sole responsibility of the Borrower.

C. The Executive Director is authorized to extend or modify any deadlines or schedules (other than repayment deadlines or schedules) set forth herein, provided that the Borrower also consents to any such change and that such changes are made in writing.

**6. RESTRICTIONS ON USE OF PROPERTY:**

A. Affordability Limitations.

i. Nine (9) of the units at the Property (the “80% Units”) shall have rents not exceeding the lesser of (i) fair market rent for comparable units in the area as established by HUD, under 24 C.F.R. 888.113, or (ii) a rent that does not exceed 30% of the adjusted income of a family whose annual income equals 80% of the median income for the Denver area, as determined by HUD, with adjustments for number of bedrooms in the unit.

ii. One hundred twenty-one (121) of the units at the Property (the “70% Units”) shall have rents not exceeding the lesser of (i) fair market rent for comparable units in the area as established by the HUD, under 24 C.F.R. 888.113, or (ii) a rent that does not exceed 30% of the adjusted income of a family whose annual income equals 70% of the median income for the Denver area, as determined by HUD, with adjustments for number of bedrooms in the unit.

iii. Sixty (60) of the units at the Property (the “60% Units”) shall have rents not exceeding the lesser of (i) fair market rent for comparable units in the area as established by the HUD, under 24 C.F.R. 888.113, or (ii) a rent that does not exceed 30% 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. Eight (8) of the 60% Units shall be considered “High HOME Units” for a period of twenty (20) years from the date of project completion as defined in 24 C.F.R. § 92.2 and be subject to the HOME Program requirements.

iv. Twenty-five (25) of the units at the Property (the “50% Units”) shall have rents not exceeding the lesser of (i) the 60% Unit rent as calculated above, or (ii) a rent that does not exceed 30% of the adjusted income of a family whose annual income equals 50% of the median income for the Denver area, as determined by HUD, with adjustments for smaller and larger families. Three (3) of the 50% Units shall be considered “Low HOME Units” for a period of twenty (20) years from the date of project completion as defined in 24 C.F.R. § 92.2 and be subject to the HOME Program requirements.

v. Thirty-eight (38) of the units at the Property (the “30% Units”) shall have rents not exceeding the lesser of (i) fair market rent for comparable units in the area as established by the HUD, under 24 C.F.R. 888.113, or (ii) a rent that does not exceed 30% of the adjusted income of a family whose annual income equals 30% of the median income for the

Denver area, as determined by HUD, with adjustments for number of bedrooms in the unit.

vi. The 80% Units, 70% Units, 60% Units, 50% Units, and 30% Units are referred to collectively herein as the "City Units." By executing this Loan Agreement, Borrower acknowledges receipt of HUD's current rent guidelines from HOST. It shall be Borrower's responsibility to obtain updated guidelines from HOST to confirm the annual calculation of the maximum rents for the Denver area.

vii. The City shall determine maximum monthly allowances for utilities and services annually in accordance with 24 C.F.R. 92.252(d)(1) or another method acceptable to the City. Rents shall not exceed the maximum rents as determined above minus the monthly allowance for utilities and services. The City shall review rents for compliance within ninety (90) days after HOST requests rent information from the Borrower.

B. Occupancy/Income Limitations.

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

ii. The 70% Units shall be occupied by tenants whose incomes are at or below seventy percent (70%) of the median income for the Denver area as determined by HUD, with adjustments for family size.

iii. The 60% Units shall be occupied by tenants whose incomes are at or below sixty percent (60%) of the median income for the Denver area as determined by HUD, with adjustments for family size.

iv. The 50% Units shall be occupied by tenants whose incomes are at or below fifty percent (50%) of the median income for the Denver area as determined by HUD, with adjustments for family size.

v. The 30% Units shall be occupied by tenants whose incomes are at or below thirty percent (30%) of the median income for the Denver area as determined by HUD, with adjustments for family size.

vi. By executing this Loan Agreement, Borrower acknowledges receipt of HUD's current income guidelines from HOST. It shall be Borrower's responsibility to obtain updated guidelines from HOST and comply with the current guidelines.



C. Designation of Units. The unit mix of the City Units are set forth in the table below. The High HOME Units and Low HOME Units may float among the 60% Units and 50% Units, respectively; however, the High HOME Units and Low HOME Units must be allocated as follows: three (3) 1-bedrooms, four (4) 2-bedrooms, two (2) 3-bedrooms, and two (2) 4-bedrooms.

<b>BEDROOMS</b>	<b>30% Units</b>	<b>50% Units</b>	<b>60% Units</b>	<b>70% Units</b>	<b>80% Units</b>
1 Bedroom	13	8	21	39	3
2 Bedroom	15	11	24	51	3
3 Bedroom	5	3	8	18	2
4 Bedroom	5	3	7	13	1
<b>TOTAL</b>	<b>38</b>	<b>25</b>	<b>60</b>	<b>121</b>	<b>9</b>

D. Accessibility Requirements. Borrower must design and construct five percent (5%) of the City Units, or at least one (1) unit, whichever is greater, to be accessible for persons with mobility disabilities. An additional two percent (2%) of the City Units, or at least one (1), whichever is greater, must be accessible for persons with hearing or visual disabilities. Collectively, these units are referred to as the “Accessible Units.” The Accessible Units must be designed and constructed in accordance with American National Standards Institute (“ANSI”) Standard A117.1. Public and common areas must be readily accessible for persons with mobility disabilities and be designed and constructed in accordance with ANSI Standard A117.1.

E. Covenant Running with the Land. At closing, Borrower shall execute a Rental and Occupancy Covenant in form satisfactory to the City (“Covenant”), setting forth the rental and occupancy limitations described in subsections A and B above, which shall be recorded in the real estate records of the City and County of Denver and which shall constitute a covenant running with the land. The Covenant shall encumber the Property for sixty (60) years from the date of project completion as defined in 24 C.F.R. § 92.2. After the first 20-year period of the Covenant has lapsed, Borrower will have satisfied the HUD and HOME Program requirements applicable to the High HOME Units and Low HOME Units. The High HOME Units and Low HOME Units shall continue to be considered 60% Units and 50% Units, respectively, and such units shall continue to be subject to the rental and occupancy restrictions applicable to such units for the remainder of the term of the Covenant. Violation of said Covenant shall be enforceable

as an event of default pursuant hereto.

7. **TENANT SELECTION**: The owner of the Project must adopt, and have approved by the City, written tenant selection polices. The tenant selection policies must be approved by the City prior the City making any disbursements under this Loan Agreement. The tenant selection policies must, at a minimum, contain criteria that:

A. Are consistent with the purpose of providing housing for very low-income and low-income families;

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

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

D. Do not exclude an applicant with a certificate or voucher under the Section 8 Tenant-Based Housing Choice Voucher Program or an applicant participating in a HOME tenant-based rental assistance program because of the status of the applicant as a holder of such certificate, voucher, or comparable HOME tenant-based assistance document;

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

F. Comply with the Violence Against Women Act requirements prescribed in 24 CFR § 92.359.

8. **AFFIRMATIVE MARKETING**: The owner of the Project shall comply with the procedures outlined in the affirmative marketing program, attached hereto as **Exhibit C** and incorporated herein (the "Affirmative Marketing Program"), to provide information and otherwise attract eligible tenants from all racial, ethnic, and gender groups in the Property's housing market area in accordance with 24 CFR 92.351. Except Borrower may limit eligibility or give preference to a particular segment of the population in accordance with 24 CFR 92.253(d). Prior to making any disbursement, Borrower must provide the plan required by the Affirmative Marketing Program (the "Affirmative Marketing Plan") to HOST. The Affirmative Marketing Plan must be approved by HOST prior to Borrower adopting it or engaging in any affirmative marketing of the Project.

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

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

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

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

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

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

E. **Waiver of Legal Proceedings**. Agreement by the tenant that the owner may evict the tenant or household members without instituting a civil court proceeding in which the tenant has the opportunity to present a defense, or before a court decision on the rights of the parties.

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

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

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

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

11. **PROHIBITION OF CERTAIN FEES**: A tenant may not be charged fees that

are not customarily charged in rental housing (e.g. laundry room access fees), except that a tenant may be charged the following: reasonable application fees to prospective tenants; parking fees to tenants only if such fees are customary for rental housing projects in the neighborhood; and fees for services such as bus transportation or meals, as long as the services are voluntary and fees are charged for services provided.

**12. TERMINATION OF TENANCY:** The owner of the Project may not terminate the tenancy or refuse to renew the lease of a tenant of any of the City Units except for serious or repeated violations of the terms and conditions of the lease; for violation of applicable Federal, State, or local laws; for completion of the tenancy period for transitional housing or failure to follow any required transitional supportive services plan; or for other good cause. Any termination or refusal to renew must be preceded by service of written notice upon the tenant specifying the grounds for the action at least thirty (30) days before the termination of tenancy.

**13. MANAGEMENT OF PROPERTY:** Borrower shall provide and maintain good and efficient management of the Property satisfactory to the City. Borrower must execute and maintain in effect a management agreement for the Project with a qualified manager that has experience with affordable housing. Borrower shall notify the City of any (i) changes to the manager of the Property and (ii) of any significant changes staffing changes to the manager.

**14. EXAMINATION OF RECORDS/REPORTING REQUIREMENTS/ ANNUAL MONITORING; INSPECTIONS:**

A. Examination of Records: The Borrower agrees that the Comptroller of the United States, HUD, the City, or any of their duly authorized representatives shall, until the expiration of five (5) years after the expiration of the affordability period set forth in Section 6, 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. The records maintained by Borrower shall include, without limitation, (i) records evidencing the income of each family occupying a City Unit, and (ii) a copy of the lease pursuant to which each City Unit is occupied.

B. ARPA Record Requirements: Borrower shall maintain records of the documentation supporting the use of ARPA Funds in an auditable format, for the later of five (5)

years after final payment on this Loan Agreement or the expiration of the applicable statute of limitations. Any authorized agent of the City, including the City Auditor or his or her representative, and for ARPA Funds, any authorized agent of the Federal government, including the Special Inspector General for Pandemic Recovery (“Inspector General”) have the right to access, and the right to examine, copy and retain copies, at the official’s election in paper or electronic form, any pertinent books, documents, papers and records related to the Borrower’s use of ARPA Funds pursuant to this Agreement. Borrower shall cooperate with Federal and City representatives and such representatives shall be granted access to the foregoing documents and information during reasonable business hours and until the latter of five (5) years after the final payment under the Agreement or expiration of the applicable statute of limitations. When conducting an audit of the use of ARPA Funds, the City Auditor shall be subject to government auditing standards issued by the United States Government Accountability Office by the Comptroller General of the United States, including with respect to disclosure of information acquired during the course of an audit. No examination of records and audits pursuant to this section shall require Borrower to make disclosures in violation of state or federal privacy laws. Borrower shall at all times comply with D.R.M.C. 20-276.

C. Required Information and Reports. Borrower shall submit to the City the following information and reports on HOST approved forms or online system: (1) annual compliance statement; (2) report on rents and occupancy of City Units to verify compliance with affordability requirements in Section 6 and other requirements of this Loan Agreement; (3) data on evictions, terminations of tenancies, or tenancies not renewed for individuals residing in City Units; (4) reports (including financial reports) that enable the City to determine the financial condition and continued financial viability of the rental project; (5) for floating units, reports on unit substitution and filling vacancies to ensure that the Property maintains the required unit mix; and (6) template lease agreements for City Units. The report required by subsection (2) of this Section shall include, but not be limited to, information related to monthly rent amount, lease term, household size, total annual household income, race and other demographic information. The reports and information required by this Section shall be due within thirty (30) days of the City making a request for such reports and information. The failure to submit the reports and information requested by the City within thirty (30) days of the City’s request shall be considered

a default of this Loan Agreement.

D. Access and Inspections. For the purposes of assuring compliance with the Loan Agreement, the City shall have the reasonable right of access to the Property, without charges or fees, (i) during the period of construction and (ii) during the period of affordability set forth in Section 6. During the period of affordability, the City shall be entitled to conduct annual physical inspections of the Property. Borrower shall fully cooperate with the City in an annual monitoring of Borrower's performance and site inspection to verify compliance with the requirements of this Loan Agreement.

15. FINANCIAL STATEMENTS: Borrower must furnish to the City annually, within one hundred twenty (120) days following the end of each calendar year, financial statements of the Borrower audited by an independent certified public accountant, which must include an annual balance sheet and profit and loss statement of the Borrower, in a form reasonably required by the City.

16. TRANSFERS: Borrower acknowledges that the City has examined and relied on the experience of Borrower and its general partners, directors, and members in owning and operating affordable housing projects, such as the Project, in agreeing to make the Loan, and the City will continue to rely on Borrower's ownership and control of the Property and Project as a means of maintaining the affordability requirements and the value of the Property as security for repayment of the Loan. Without the prior written consent of the City, which may not be unreasonably withheld, the Borrower shall not: (i) sell, convey, assign, or otherwise transfer or dispose of the Property or any part thereof (other than leases to tenants), or (ii) sell, convey, assign, or otherwise transfer any interest in the Borrower; or (iii) change the control or management of the Borrower, except as provided in subsection (v) below. However, the Borrower, or Borrower's Investor Limited Partner may, without the prior written consent of the City: (i) refinance the permanent loan in a transaction that does not result in net cash proceeds after transaction expenses (provided that the foregoing will not be construed to prohibit or otherwise limit any reasonable increase in proceeds for rehabilitation in the context of a preservation transactions), (ii) transfer the Property to the Sponsors, (iii) transfer the Investor Limited Partner's interests in the Borrower in the manner provided by the terms of Borrower's limited partnership agreement, (iv) the remove the Class B limited partner or Class C limited

partner in the manner provided by the terms of Borrower's limited partnership agreement, or (v) the removal of the General Partner in the manner provided by the terms of Borrower's limited partnership agreement. For the purposes of this section, the Sponsors are EAD Holdings 38<sup>th</sup> and Holly LLC, and Denver Housing Development Partners, Inc.

**17. CAPITAL NEEDS ASSESSMENT:** During the term of the Covenant, the Borrower must provide the City with any capital needs assessment or physical needs assessment performed on or related to the Property or any improvements on the Property every ten (10) years or, if performed earlier, whenever such assessments are performed.

**18. MAINTENANCE; REPLACEMENT; AND PROPERTY STANDARDS:**  
The owner of the Project shall maintain the Property in compliance with all applicable housing quality standards and local code requirements. Newly constructed or substantially rehabilitated housing must meet applicable requirements referenced at 24 C.F.R. § 92.251. Borrower shall ensure that the property standards set forth in 24 C.F.R. § 92.251 are complied with.

**19. LEAD-BASED PAINT HAZARDS:** Housing funded, in part, by funds provided through this Loan Agreement shall be subject to the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821 *et seq.*), the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4852 *et seq.*), and is therefore subject to 24 C.F.R. Part 35; the owner of the Project shall comply with these provisions in the construction of the Project.

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

A. **Environmental Reports.** The Borrower must provide the City with a Phase I Environmental Site Assessment ("ESA") in form and substance acceptable to the City. If the ESA is not in the City's name, the City must be provided with a reliance letter in the name of the City from the environmental engineer, which must be satisfactory to the City.

B. **Title Insurance.** Borrower must obtain, on behalf of the City, a lenders title policy insuring the City in the principal amount of the Loan. Borrower must provide the City with a copy of the lenders title policy within thirty (30) days of closing.

C. **Appraisal.** Borrower must provide the City with an as-built appraisal of

the Property, which must be satisfactory in form and substance to the City.

D. **Organizational Documents.** Borrower must provide the City with (i) evidence that it is a Colorado limited liability limited partnership in good standing and authorized to transact business in the State of Colorado; (ii) evidence in a form satisfactory to the City that the person executing this Loan Agreement and any other documents related to the Loan has the full power and authority to bind Borrower; and (iii) all organizational documents related to Borrower, which must be acceptable to the City. Organization documents include, but are not limited to, certificate of limited partnership, a partnership agreement, and a certificate of good standing.

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

F. **Survey.** Borrower must provide the City with a current ALTA survey of the Property. The ALTA survey must be prepared by a licensed land surveyor, certified to the City, and satisfactory to the City.

G. **Promissory Note; Deed of Trust; Covenant.** Borrower must execute and deliver to the closing agent the Promissory Note. Borrower must execute and deliver to the closing agent for recordation the Deed of Trust and Covenant.

H. **Evidence of Financing.** Borrower must provide such information and documentation sufficient to satisfy the City, in the City's sole discretion, that the Borrower has secured all financing necessary to complete the Project. Documentation sufficient to satisfy the City may include, but not be limited to, commitment letters for all other financing or funding.

I. **Insurance.** Borrower must provide the City with certificates of insurance or copies of the policies of insurance required under this Loan Agreement.

**21. COSTS AND EXPENSES:** The Borrower agrees to pay all direct costs, expenses and attorney fees reasonably incurred by the City in connection with the Borrower's breach or default of this Loan Agreement or the Promissory Note, Deed of Trust, or Covenant. Borrower agrees to pay reasonable loan closing costs, including all recording charges, title insurance charges, costs of surveys, costs for certified copies of instruments, costs incurred for obtaining



any documents or reports required pursuant to this Loan Agreement, and all other costs incurred by the City in connection with the Loan.

**22. CONDITIONS:**

A. This Loan Agreement is subject to (i) the Home Investment Partnership Program Grant Agreement entered into between the City and HUD; the National Affordable Housing Act of 1990; and the federal regulations at 24 C.F.R. Part 92; and (ii) the Coronavirus Local Fiscal Recover Fund Grant Agreement entered into between the City and the U.S. Department of Treasury. The obligation of the City to lend the above sums is limited to funds appropriated for the purpose of this Loan Agreement by the U.S. Congress and City Council and paid into the City treasury.

B. This Loan Agreement is subject to the terms and conditions set forth in Part II.

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

**23. 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, \$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. Property insurance satisfactory to the City in the amount of the value of the property subject to the Deed of Trust and Covenant, with the City named as loss payee.

E. Borrower shall maintain Automobile Liability with minimum limits of

\$1,000,000 combined single limit applicable to all owned, hired and non-owned vehicles used in performing services under this Agreement.

F. Certificates of Insurance evidencing the above shall be submitted prior to the Closing Deadline. Policies shall include a waiver of subrogation and rights of recovery against the City. Insurance companies providing the above referenced coverage must be authorized and licensed to issue insurance in Colorado and be otherwise acceptable to the Risk Management Office.

**24. DEFENSE & INDEMNIFICATION:**

A. Borrower agrees to defend, indemnify, and hold harmless City, its appointed and elected officials, agents and employees against all liabilities, claims, judgments, suits or demands for damages to persons or property arising out of, resulting from, or relating to the work performed under this Loan Agreement (“Claims”), unless and until such Claims have been specifically determined by the trier of fact to be due to the sole negligence or willful misconduct of the City. This indemnity shall be interpreted in the broadest possible manner to indemnify City for any acts or omissions of Borrower or its subcontractors either passive or active, irrespective of fault, including City’s concurrent negligence whether active or passive, except for the sole negligence or willful misconduct of City.

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

C. Borrower will defend any and all Claims which may be brought or threatened against City and will pay on behalf of City any expenses incurred by reason of such Claims including, but not limited to, court costs and 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.

**25. DEFAULT AND ACCELERATION:**

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

i. Any breach of this Loan Agreement, the Promissory Note, the Deed of Trust, or the Covenant;

ii. The City determines that any warranty, representation, or statement made or furnished to the City by or on behalf of Borrower in connection with this Loan Agreement proves to have been false in any material respect when made or furnished;

iii. Borrower becomes delinquent to the City Loan or on any other contractual or tax obligations as due;

iv. Borrower fails to comply with any rule, regulation or provision referred to in the Loan Agreement;

v. Borrower fails to maintain a cash balance that is sufficient to cover sixty (60) days of Borrower's operating expenses; and

vi. Borrower is generally unable to pay its debts as they become due, or shall make an assignment for the benefit of creditors; or the Borrower applies for or consents to the appointment of any receiver, trustee or similar officer for it or for all or any substantial part of its property; or such a receiver, trustee or similar officer is appointed without the application or consent of the Borrower, and such appointment continues undischarged for a period of ninety (90) days; or the Borrower institutes (by petition, application, answer or otherwise) any bankruptcy, insolvency, reorganization, readjustment of debt, dissolution, liquidation or similar proceedings under the laws of any jurisdiction; or any such proceeding shall be instituted against the Borrower; or the Borrower terminates or dissolves.

B. Cure Period. Upon a default, the City shall give written notice of the default to Borrower, Borrower's Investor Limited Partner, and other persons entitled to notice of a default

pursuant to this Loan Agreement. After Borrower's receipt of the written notice, Borrower, Borrower's Investor Limited Partner, or a person on behalf of Borrower shall have ten (10) calendar days to cure any monetary default and thirty (30) calendar days to cure any nonmonetary default (collectively, the "Cure Period"). Borrower's Investor Limited Partner has the right, but not the obligation, to cure a default on behalf of Borrower. If a nonmonetary default is not a type which can be cured within the Cure Period, the City, at its reasonable discretion, may extend the cure period if the Borrower or Borrower's Investor Limited Partner provides the City with a reasonably detailed written plan of how the Borrower or Borrower's Investor Limited Partner will cure the nonmonetary default and the Borrower or Borrower's Investor Limited Partner, at all times within such additional time period, actively and diligently pursues such plan. For purposes of this Loan Agreement, the term "monetary default" means a failure by Borrower to make any payment required of it pursuant to the applicable Promissory Note or any other Loan document, and the term "nonmonetary default" means a failure by Borrower or any other person to perform any obligation contained in the Loan Agreement, Covenant, Deed of Trust, or Promissory Note, other than the obligation to make payments provided for in the Promissory note or Loan documents.

C. Acceleration; Interest Upon Default; and Withholding Disbursements.

Upon the existence of a default and the failure to cure within the Cure Period, and without necessity of further notice, presentment, demand, protest, or notice of protest of any kind, all of which are expressly waived by 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 and if the default remains after the Cure Period, the principal shall draw interest at the rate of fifteen percent (15%) per annum. If any of the Loan funds have not been disbursed to Borrower, the City may suspend or terminate the Loan Agreement, in whole or in part, and withhold one hundred percent (100%) of any undisbursed funds.

D. Effect of Default on Eligibility for Further Funding.

If Borrower is in default, the City may declare the Borrower ineligible for any further participation in City funding, in addition to other remedies as provided by law.

**26. 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:

38<sup>th</sup> & Holly LLLP  
Attn: Joe DelZotto  
155 S. Madison Street, Suite 326  
Denver, Colorado 80209

With a copy to:

Bryan Cave Leighton Paisner LLP  
Attn.: Paul Smith  
1801 13<sup>th</sup> Street, Ste. 300  
Boulder, CO 80302

If written notice of a default, with a copy to Borrower's Investor Limited Partner:

Wells Fargo Community Investment Holdings, LLC  
550 S. Tryon Street  
23<sup>rd</sup> Floor, D1086-239  
Charlotte, NC 28202-4200  
Attention: Director of Tax Credit Asset Management

and if to the City at:

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

With a copy to:

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

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.

**27. [Intentionally omitted.]**

**28. SECTION 3 COMPLIANCE:** This Loan Agreement is subject to the requirements of Section 3 of the Housing and Urban Development Act of 2968 and implementing

regulations thereunder, as more fully described in Part II.

**29. 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 subsection A of this Section in any and all subcontracts hereunder and shall require any subcontractors or sub-consultants 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 Borrower will immediately notify HOST 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 Contractor or any of its principals have subsequently been excluded by a federal agency.

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

**30. USE, POSSESSION, OR SALE OF ALCOHOL OR DRUGS:** The Borrower shall cooperate and comply with the provisions of Executive Order 94 concerning the use, possession or sale of alcohol or drugs. Violation of this provision can result in the City terminating the Agreement or barring the Borrower from City facilities or from participating in City operations.

**31. 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.

**32. 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.

**33. PUBLICATIONS/ANNOUNCEMENTS:** All publicizing activities must include the following statement: “The funding source for this activity is the City and County of Denver, Department of Housing Stability.” HOST shall be acknowledged in any events regarding the project being funded, including groundbreaking and openings.

**34. 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.

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

**36. 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.

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

**38. NO DISCRIMINATION IN EMPLOYMENT:** In connection with the performance of work under this Loan Agreement, the Borrower may not refuse to hire, discharge, promote, demote, or discriminate in matters of compensation against any person otherwise qualified, solely because of race, color, religion, national origin, ethnicity, citizenship, immigration status, gender, age, sexual orientation, gender identity, gender expression, marital status, source of income, military status, protective hairstyle, or disability. The Borrower shall insert the foregoing provision in all subcontracts.

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

40. **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.

List of Exhibits to Loan Agreement

Exhibit A – Project Timeline and Costs

Exhibit B – Disbursement Terms and Conditions

Exhibit C – Affirmative Marketing Program

Exhibit D – Legal Description of Property

Exhibit E – Form of Subordination Agreements

Exhibit F – Cash Flow Calculation

Exhibit G – Coronavirus Local Fiscal Recovery Fund Award Terms and Conditions

Part II

**[Exhibits and Signature Pages to Follow]**



**Contract Control Number:** HOST-202264272-00  
**Contractor Name:** 38TH & HOLLY LLLP

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

**SEAL**

**CITY AND COUNTY OF DENVER:**

**ATTEST:**

By:

\_\_\_\_\_

\_\_\_\_\_

**APPROVED AS TO FORM:**

**REGISTERED AND COUNTERSIGNED:**

Attorney for the City and County of Denver

By:

By:

\_\_\_\_\_

\_\_\_\_\_

By:

\_\_\_\_\_

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

HOST-202264272-00  
38TH & HOLLY LLLP

By: See attached signature page

Name: See attached signature page  
(please print)

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

ATTEST: [if required]

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

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

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

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

HOST-202264272-00  
38TH & HOLLY LLLP

By: 

Name: Joseph A. DelZotto  
(please print)

Title: Manager  
(please print)

ATTEST: [if required]

By: 

Name: Debra L. Farney  
(please print)

Title: Controller  
(please print)

## EXHIBIT A

### Project Timeline and Costs

<b>Sources of Financing</b>	
Perm Loan	35,700,000
Mercy Loan (Int Only)	2,000,000
	-
	-
HOST-City of Denver	8,319,000
CDOH - HOME	6,350,000
Delwest Funding	1,148,745
	-
	-
Standby Deposit Refund	714,000
	-
	-
	-
	-
Deferred Developer Fee	2,694,826
Other Owner Equity	-
Additional Amount to cover GAP	-
Federal Tax Credit Equity	36,403,283
State Tax Credit Equity	-
<b>Total Sources</b>	<b>93,329,854</b>

<b>Uses of Financing</b>	
Land and Buildings	8,201,366
Site Work	3,127,943
Construction (permits, contingency)	55,844,474
Professional Fees	2,223,722
Construction Interim Costs	12,320,361
Permanent Financing	1,836,775
Soft Costs	877,800
Syndication Costs	80,000
Developer and Consultant Fees	7,504,843
Project Reserves	1,312,568
<b>Total Uses</b>	<b>93,329,852</b>

<b>Project Timeline</b>	<b>Target Date:</b>
Close on Financing	2/15/2023
Begin construction	2/16/2023
Complete 100% construction and obtain temporary certificates of occupancy for all buildings	2/1/2025
Lease 100% of units	8/1/2025

## EXHIBIT B

### DISBURSEMENT TERMS AND CONDITIONS

#### I. **Disbursement Request Procedures**

- a. Disbursements shall be processed through the Department of Housing Stability (“HOST”) and the Department of Finance (“DOF”).
- b. HOST will disburse Loan funds to the Borrower for “hard” and “soft” expenses (“Disbursement”) upon the Borrower’s written request delivered to HOST (the “Disbursement Request”). The Disbursement Request shall be in the form approved or required by HOST and DOF and may be submitted no more frequently than once every month. Disbursement Requests must be submitted by Borrower electronically to the assigned HOST staff member who will review the submission for completeness and accuracy.
- c. Prior to the first Disbursement Request, Borrower must provide to the City for review and approval, if necessary, the following items:
  - i. A completed ACH form with a voided check or deposit slip.
  - ii. A partnership agreement, operating agreement, corporate resolution, or other corporate documentation to demonstrate who has authority for the Borrower to submit Disbursement Requests.
  - iii. The affirmative marketing plan.
  - iv. The tenant selection plan.
  - v. The form lease agreement for dwelling units at the Project, which contains no prohibited provisions as described in the Loan Agreement.
- d. All Disbursements will be via ACH, unless a physical check or other method of disbursement is requested.
- e. Disbursements involving federal funds must have satisfied all environmental review requirements under 24 C.F.R. Part 58.
- f. The Borrower may not make a Disbursement Request until such funds are needed to pay costs of the Project. The amount of each Disbursement Request must be limited to the amount needed to pay costs actually incurred by the Borrower at the time of the Disbursement Request. The Disbursement Request may not include items previously submitted to and reimbursed by other lenders, amounts for prospective or future needs, funds to be placed into escrow accounts, or advances in lump sums to the Borrower.
- g. Each Disbursement Request must be accompanied by documentation acceptable to HOST and DOF that evidence payments for which a disbursement request has been made. HOST and DOF will review documentation for incurred costs that match the Disbursement Request. Documentation to be submitted with a Disbursement Request shall include, but not be limited to:

## EXHIBIT B

- i. A completed HOST expense certification form.
  - ii. For hard cost draws, a completed standard AIA Form G702 and Form G703 certified by the architect and signed and notarized by the general contractor. If the Disbursement Request includes costs for minor construction not shown on the G702 and G703, the scope of work and contractor invoices must be submitted.
  - iii. Invoices and other evidence satisfactory to HOST and DOF for “hard” or direct costs provided to the Project with respect to the Disbursement Request. All invoices must show the Project name and address.
  - iv. Invoices and other evidence satisfactory to the City for “soft” or indirect costs provided to the Project with respect to the Disbursement Requests. All invoices must show the Project name and address.
  - v. Evidence satisfactory to HOST and DOF to demonstrate proof of payment of any cost or expense contained on a Disbursement Request. Evidence of proof of payment may include, but not be limited to: cancelled checks; copies of checks; documentation of cost or expense in a general ledger; credit or debit card statements; final signed settlement statements, wire transfer records, or bank statements.
  - vi. An updated itemized budget.
  - vii. Updated certificates of insurance at least 30 days prior to expiration.
  - viii. Project update summarizing construction progress, delays, timeframe to completion, and if remaining funding is sufficient to finish the project.
  - ix. Lien waivers from all applicable contractors, subcontractors, and suppliers.
  - x. Updated title policy with date down endorsement or copy of date down endorsement for senior lender dated within 15 days of draw request.
  - xi. Copy of construction inspection report (if available)
  - xii. For loan agreements receiving federal funding and to which the Davis-Bacon Act applies, Borrower must be current in submissions of all paperwork and documentation requested by the City to demonstrate compliance with the requirements of the Davis-Bacon Act.
  - xiii. For Disbursement Requests being funded at loan closing, the following items will be required: a) Preliminary closing statement; b) wire instructions on bank letterhead including date wire is required; and c) final settlement statement and recorded documents after closing.
- 
- h. The Borrower must cooperate with HOST in obtaining or providing any additional documentation that may be required by HOST, DOF, or any other agency of the City.
  - i. The City will retain the first \$10,000.00 of Disbursements for the purposes of the Compliance Retainer as set forth in the Loan Agreement. The \$10,000.00 that is retained pursuant to this provision will be released under the terms described in Section II.

## EXHIBIT B

- j. The City will disburse to the Borrower 90% of hard expenses for each Disbursement and all of the soft expenses. The retained 10% of hard expense (the “Retainage”) shall be disbursed as all or part of the final Disbursement under the terms described in Section II.
- k. At all times during the construction of the Project, the City shall have the right, but not the obligation, to enter and inspect all work done, and all materials, equipment, and other matters relating to the Project.
- l. HOST reserves the right, in its sole and absolute discretion, to revise or modify the processes, procedures, and requirements related to the disbursement procedures. HOST will notify Borrower of any such changes to the disbursement procedures.
- m. The City will not make any Disbursements of Loan proceeds to the Borrower for costs or expenses that:
  - i. Are prohibited by Federal or City regulations related to the funding source.
  - ii. Are not requested or otherwise not in accordance with Loan Agreement or the procedures for a Disbursement Request set forth herein.
  - iii. Were requested or incurred, or both, after the termination of the Loan Agreement or outside the time periods set forth in the Loan Agreement.
  - iv. Were requested during the occurrence and continuation of an event of default specified in the Loan Agreement.

### II. **Disbursement of Compliance Retainer and Retainage**

- a. *Compliance Retainer.* For the City to release the Compliance Retainer, a Disbursement Request must be submitted along with the following information:
  - i. A completed HOST expense certification form.
  - ii. For loans funded with federal funds, an Integrated Disbursement and Information System (“IDIS”) set up form. The City must review and approve any completed IDIS set up form for any federally funded loan agreement.
  - iii. All documents or items required to be submitted to the City pursuant to the Loan Agreement not previously provided.
  - iv. A certificate of occupancy or a temporary certificate of occupancy.
  - v. Updated certificates of insurance at least 30 days prior to expiration
  - vi. Updated title policy with date down endorsement or copy of date down endorsement for senior lender dated within 15 days of draw request.
  - vii. The Project must pass a Housing Quality Standards (“HQS”) inspection performed by the City. In the event the City cannot perform the inspection, the Borrower will provide a signed authorization providing the City with the right to inspect the Project and a sample of the fully constructed dwelling units in the future.

## EXHIBIT B

- viii. Lease-up information on the City Units or HOME Units, as applicable. The information must include number of bedrooms in the unit, household size, tenant household incomes, date of income certification, tenant paid portion of rent, total lease rent, voucher amounts, voucher type (project based or tenant based), utility allowance amount, lease start and end dates, and demographic data. HOST will review this information to confirm the Project's lease-up is in compliance with the affordability restrictions contained in the Loan Agreement and Rental & Occupancy Covenant.
  
- b. *Retainage*. For the City to release the Retainage, a Disbursement Request must be submitted along with the following information:
  - i. A completed HOST expense certification form.
  - ii. Final lien waivers or proof of release of liens in form and substance satisfactory to the City from all applicable contractors, subcontractors, and suppliers, as applicable.
  - iii. A copy of the completed AIA G704 Form for the senior lender, signed by the architect, general contractor, and Borrower that shows -\$0.00- as the cost estimate of work that is incomplete or defective.
  - iv. A copy of the completed AIA G706 Form for the senior lender, signed by the general contractor and notarized, verifying that all debts and claims have been settled.
  - v. A copy of the completed AIA G706A Form for the senior lender, signed by the general contractor and notarized, stating that all releases or waivers of liens have been received.
  - vi. All documents or items required to be submitted to the City pursuant to the Loan Agreement not previously provided.
  - vii. A certificate of occupancy or a temporary certificate of occupancy.
  - viii. Updated certificates of insurance at least 30 days prior to expiration
  - ix. Updated title policy with date down endorsement or copy of date down endorsement for senior lender dated within 15 days of draw request.
  - x. The Project must also pass a Housing Quality Standards ("HQS") inspection performed by the City. In the event the City cannot perform the inspection, the Borrower will provide a signed authorization providing the City with the right to inspect the Project and a sample of the fully constructed dwelling units in the future.
  - xi. Uniform Relocation Assistance and Real Property Acquisition Policies Act ("URA") Determination, as applicable.
  - xii. Final approved OPMR, as applicable.
  - xiii. Environmental mitigation memorandum of understanding, as applicable.
  - xiv. Any other documents required by HOST.

### III. **Conditions Precedent to All Disbursements**

- a. The making of each Disbursement shall be subject to the satisfaction of each of the following additional conditions precedent, and a waiver of any condition to any Disbursement shall not constitute a waiver as to any subsequent



## EXHIBIT B

Disbursement. The City may, in its sole discretion, withhold all or a portion of a Disbursement if any of the following conditions have not been satisfied or if the Borrower has not submitted the required documentation and information required by the Loan Agreement, including the documentation and information required by these terms and conditions.

- i. *No Default.* The Borrower must be in full compliance with, and must not be in default under the Promissory Note, the Deed of Trust, or the Covenant or any other document executed by the Borrower in connection with the Loan.
- ii. *Time to Complete the Project.* In the sole opinion of the City, there must be sufficient time remaining to complete the construction of the Project in accordance with Exhibit A, and in conformance with federal regulations and requirements for federally funded loans.
- iii. *Sufficient Funds Available to Complete the Project.* If requested by the City, the Borrower shall furnish evidence satisfactory to the City, in its sole discretion, that the amount of the Loan yet to be disbursed, together with any other sources of funds available to the Borrower and not yet disbursed, will be sufficient to complete the Project in compliance with the Loan Agreement and to pay all costs therefore, and all other direct or indirect costs relating to the Loan and the Project.
- iv. *Lien waivers.* If requested by the City, the Borrower shall furnish data in a form satisfactory to the City with respect to prior Disbursements and expenditures relating to the Project, and shall furnish lien waivers from the contractor and all subcontractors for work done and materials supplied to the Project to the date of the Disbursement Request.
- v. *Use of Funds.* Subject to the terms of the Loan Agreement, the Borrower shall use the proceeds of the Loan exclusively for the costs of the Project.
- vi. *Compliance with Federal Requirements.* As applicable, Borrower must be compliant with all federal requirements, including, but not limited to, compliance with the Davis-Bacon Act and Section 3 of the Housing and Urban Development Act of 1968, and all reporting obligations under any such federal requirements.
- vii. *Pass-Through Loans.* If the Loan Agreement is structured as a “pass-through” loan, Borrower must demonstrate that Borrower has the authority to submit disbursement requests on behalf of the Project owner, which may be done by providing HOST with an operating agreement or partnership agreement establishing such authority. A “pass-through” loan is defined as a loan made by the City to the Borrower where Loan proceeds will be granted or loaned by the Borrower to the developer or owner of the Project for construction and development costs.

#### IV. Financial Management Systems

**The Borrower must maintain financial systems that meet the following standards:**

## **EXHIBIT B**

- a. Financial reporting must be accurate, current, and provide a complete disclosure of the financial results of financially assisted activities and be made in accordance with federal financial reporting requirements.
- b. Accounting records must be maintained which adequately identify the source and application of the funds provided for financially assisted activities. The records must contain information pertaining to contracts and authorizations, obligations, unobligated balances, assets, liabilities, outlays or expenditures, and income. Accounting records shall provide accurate, separate, and complete disclosure of fund status.
- c. Effective internal controls and accountability must be maintained for all contract cash, real and personal property, and other assets. Adequate safeguards must be provided on all property and it must be assured that it is used solely for authorized purposes.
- d. Actual expenditures or outlays must be compared with budgeted amounts and financial information must be related to performance or productivity data, including the development of cost information whenever appropriate or specifically required.
- e. For contracts subject to Federal Agreements, applicable 2 C.F.R. Part 200 cost principles, agency program regulations, and the terms of the agreement will be followed in determining the reasonableness, allowability and allocability of costs.
- f. Source documents such as cancelled checks, paid bills, payrolls, time and attendance records, contract documents, etc., shall be provided for all disbursements. The Borrower will maintain auditable records, i.e., records must be current and traceable to the source documentation of transactions.
- g. For contracts subject to Federal Agreements, the Borrower shall maintain separate accountability for HOST funds as referenced in 2 C.F.R. Part 200.
- h. The Borrower must properly report to Federal, State, and local taxing authorities for the collection, payment, and depositing of taxes withheld. At a minimum, this includes Federal and State withholding, State Unemployment, Worker's Compensation (staff only), City Occupational Privilege Tax, and FICA.
- i. A proper filing of unemployment and worker's compensation (for staff only) insurance shall be made to appropriate organizational units.
- j. The Borrower shall participate, when applicable, in HOST provided staff training sessions in the following financial areas including, but not limited to (1) Budgeting and Cost Allocation Plans; (2) Vouchering Process.

### **V. Audit Requirements**

## **EXHIBIT B**

- a. For contracts subject to Federal Agreements, if the Borrower expends seven hundred and fifty thousand dollars (\$750,000) or more of federal awards in the Borrower's fiscal year, the Borrower shall ensure that it, and its sub recipients(s), if any, comply with all provisions of the 2 C.F.R. Part 200.
- b. A copy of the final audit report must be submitted to the HOST Financial Manager within the earliest of thirty (30) calendar days after receipt of the auditor's report; or nine (9) months after the end of the period audited.
- c. A management letter, if issued, shall be submitted to HOST along with the reporting package prepared in accordance with the Single Audit Act Amendments and the 2 C.F.R. Part 200. If the management letter is not received by the subrecipient at the same time as the Reporting Package, the Management Letter is also due to HOST within thirty (30) days after receipt of the Management Letter, or nine (9) months after the end of the audit period, whichever is earlier. If the Management Letter has matters related to HOST funding, the Contactor shall prepare and submit a Corrective Action Plan to HOST in accordance with the Single Audit Act Amendments and the 2 C.F.R. Part 200, as set forth in 2 C.F.R. 200.511(c) for each applicable management letter matter.
- d. All audit related material and information, including reports, packages, management letters, correspondence, etc., shall be submitted to **HOST Financial Services Team**.
- e. The Borrower will be responsible for all Questioned and Disallowed Costs.
- f. The Borrower may be required to engage an audit committee to determine the services to be performed, review the progress of the audit and the final audit findings, and intervene in any disputes between management and the independent auditors. The Borrower shall also institute policy and procedures for its sub recipients that comply with these audit provisions, if applicable.

### **VI. Procurement**

- a. The Borrower shall follow the City Procurement Policy to the extent that it requires that at least three (3) documented quotations be secured for all purchases or services (including insurance) supplies, or other property that costs more than ten thousand dollars (\$10,000) in the aggregate.
- b. The Borrower 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, Borrower selection or rejection, and the basis for the contract price.
- c. If there is a residual inventory of unused supplies exceeding five thousand dollars (\$5,000) in total aggregate upon termination or completion of award, and if the

## **EXHIBIT B**

supplies are not needed for any other federally sponsored programs or projects the Borrower will compensate the awarding agency for its share.

### **VII. Bonding**

- a. HOST may require adequate fidelity bond coverage, in accordance with 2 C.F.R. 200.304(b), where the subrecipient lacks sufficient coverage to protect the Federal Government's interest.
- b. The awarding agency and the Comptroller General of the United States, or any of their authorized representatives, shall have the right of access, upon reasonable notice, to any pertinent books, documents, papers, or other records which are pertinent to the contract, in order to make audits, examinations, excerpts, and transcripts.

### **VIII. Collection of amounts due**

- a. Any funds paid to a Borrower in excess of the amount to which the Borrower is finally determined to be entitled under the terms of the award constitute a debt to the Federal Government and/or the City. If not paid within a reasonable period after demand, HOST may: 1) Make an administrative offset against other requests for reimbursements, 2) Withhold advance payments otherwise due to the Borrower, or 3) Pursue 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 City's Housing Programs for dissemination and will inform the public, owners, and potential tenants about Federal fair housing laws. These materials will display the "equal housing opportunity" slogan and logo. The City will also publicize its Housing programs through press releases, solicitations to property owners and written communications to fair housing groups and local lenders. The City will display the "equal housing opportunity" slogan on all such communications.

All contracts, grant agreements and/or loan agreements between the City or its agents and property owners executed in connection with the Housing Programs will:

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

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

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

The City will work with the project owner to identify which racial/ethnic groups in the population are least likely to apply for housing in each project without special outreach. The City will assist the owner in developing a project specific Affirmative Marketing Plan which includes special outreach efforts and the City will approve the Plan. The property manager or rental agent will be required to maintain records enabling the City to assess the results of the owner's actions to affirmatively market units. These records will include rental applications, all vacancy notices, and rental receipts. The City or its agent will review the owner's records and these records must be made available to

the City. Additionally, the City will require the owner to submit annual tenant reports that will include tenant characteristics including race/ethnicity. The project's Plan will identify specific actions the owner must take when becoming aware of an impending vacancy. In some cases the owner will also be required to advertise the vacancy in a general circulation newspaper.

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

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

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

## EXHIBIT D

### Legal Description

#### Lot 1

A PARCEL OF LAND BEING A PORTION OF TRACT 8, MILE-HI INDUSTRIAL DISTRICT, LOCATED IN THE SOUTHWEST QUARTER OF SECTION 20, TOWNSHIP 3 SOUTH, RANGE 67 WEST OF THE SIXTH PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED NOVEMBER 15, 1954 IN BOOK 22 AT PAGE 21, CITY AND COUNTY OF DENVER, STATE OF COLORADO, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BASIS OF BEARINGS: THE 20 FOOT RANGE LINE LOCATED IN 38TH AVENUE BETWEEN HOLLY STREET AND KEARNEY STREET IS ASSUMED TO BEAR NORTH 89°42'44" EAST, BASED ON THE CITY AND COUNTY OF DENVER LOCAL PROJECTION COORDINATE SYSTEM, AS MONUMENTED ON THE WEST BY AN AXLE 1.1 FEET BELOW THE SURFACE IN A RANGE BOX AND ON THE EAST BY AN AXLE 1 FOOT BELOW THE SURFACE IN A RANGE BOX;

BEGINNING AT THE INTERSECTION OF A LINE 2.00 FEET NORTH OF AND PARALLEL WITH THE SOUTHERLY LINE OF SAID TRACT 8 WITH A LINE 2.00 FEET EAST OF AND PARALLEL WITH THE WESTERLY LINE OF SAID TRACT 8;

THENCE NORTH 00°01'27" WEST, ALONG SAID LINE PARALLEL WITH THE WESTERLY LINE OF TRACT 8, A DISTANCE OF 258.11 FEET TO A LINE 340 FEET SOUTH OF AND PARALLEL WITH THE NORTHERLY LINE OF SAID TRACT 8;

THENCE NORTH 89°42'49" EAST, ALONG LAST SAID PARALLEL LINE, A DISTANCE OF 310.14 FEET;

THENCE NORTH 00°01'27" WEST, PARALLEL WITH SAID WESTERLY LINE OF TRACT 8, A DISTANCE OF 80.00 FEET TO A LINE 260 FEET SOUTH OF AND PARALLEL WITH SAID NORTHERLY LINE OF TRACT 8;

THENCE NORTH 89°42'49" EAST, ALONG LAST SAID PARALLEL LINE, A DISTANCE OF 276.66 FEET;

THENCE SOUTH 00°01'27" EAST, PARALLEL WITH SAID WESTERLY LINE OF TRACT 8, A DISTANCE OF 338.09 FEET TO SAID LINE PARALLEL WITH THE SOUTHERLY LINE OF TRACT 8;

THENCE SOUTH 89°42'44" WEST, ALONG LAST SAID PARALLEL LINE, A DISTANCE OF 586.80 FEET TO THE POINT OF BEGINNING;

CONTAINING A CALCULATED AREA OF 173,583 SQUARE FEET OR 3.9849 ACRES, MORE OR LESS.

#### Lot 2

A PARCEL OF LAND BEING A PORTION OF TRACTS 8 AND D, MILE-HI INDUSTRIAL DISTRICT, LOCATED IN THE SOUTHWEST QUARTER OF SECTION 20, TOWNSHIP 3 SOUTH, RANGE 67 WEST OF THE SIXTH PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED NOVEMBER 15, 1954 IN BOOK 22 AT PAGE 21, CITY AND COUNTY OF DENVER, STATE OF COLORADO, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BASIS OF BEARINGS: THE 20 FOOT RANGE LINE LOCATED IN 38TH AVENUE BETWEEN HOLLY STREET AND KEARNEY STREET IS ASSUMED TO BEAR NORTH 89°42'44" EAST, BASED ON THE CITY AND COUNTY OF DENVER LOCAL PROJECTION COORDINATE SYSTEM, AS MONUMENTED ON THE WEST BY AN AXLE

1.1 FEET BELOW THE SURFACE IN A RANGE BOX AND ON THE EAST BY AN AXLE 1 FOOT BELOW THE SURFACE IN A RANGE BOX;

BEGINNING AT THE INTERSECTION OF A LINE 2.00 FEET NORTH OF AND PARALLEL WITH THE SOUTHERLY LINE OF SAID TRACT 8 WITH A LINE 390 FEET WEST OF AND PARALLEL WITH THE EASTERLY LINE OF SAID TRACTS 8 AND D;

THENCE SOUTH  $89^{\circ}42'44''$  WEST, ALONG SAID LINE PARALLEL WITH THE SOUTHERLY LINE OF TRACT 8, A DISTANCE OF 211.71 FEET;

THENCE NORTH  $00^{\circ}01'27''$  WEST, PARALLEL WITH THE WESTERLY LINE OF SAID TRACT 8, A DISTANCE OF 338.09 FEET TO A LINE 260 FEET SOUTH OF AND PARALLEL WITH THE NORTHERLY LINE OF TRACT 6, SAID MILE-HI INDUSTRIAL DISTRICT;

THENCE NORTH  $89^{\circ}42'49''$  EAST, ALONG LAST SAID PARALLEL LINE, A DISTANCE OF 80.08 FEET TO THE INTERSECTION WITH THE CENTERLINE OF SAID TRACT D, BEING A NON-TANGENT CURVE;

THENCE ALONG SAID CENTERLINE OF TRACT D FOR THE FOLLOWING TWO (2) COURSES:

- 1) ALONG THE ARC OF A NON-TANGENT CURVE TO THE LEFT HAVING A CENTRAL ANGLE OF  $13^{\circ}36'04''$ , A RADIUS OF 302.94 FEET, AN ARC LENGTH OF 71.91 FEET, THE CHORD OF WHICH BEARS SOUTH  $83^{\circ}29'09''$  EAST, A DISTANCE OF 71.75 FEET TO A POINT OF TANGENCY;
- 2) NORTH  $89^{\circ}42'49''$  EAST, A DISTANCE OF 60.81 FEET TO SAID LINE 390 FEET WEST OF AND PARALLEL WITH THE EASTERLY LINE OF TRACTS 8 AND D;

THENCE SOUTH  $00^{\circ}03'21''$  WEST, ALONG LAST SAID PARALLEL LINE, A DISTANCE OF 329.59 FEET TO THE POINT OF BEGINNING;

CONTAINING A CALCULATED AREA OF 70,735 SQUARE FEET OR 1.6239 ACRES, MORE OR LESS.



# EXHIBIT E

PREPARED BY AND WHEN  
RECORDED RETURN TO:  
Greenberg Traurig LLP  
1000 Louisiana, Suite 6700  
Houston, TX 77002  
Attention: Wayne A. Yaffee, Esq.

---

Reference Loan Number: 1021059  
Property Name: 38th and Holly Apartments

## **SUBORDINATION AGREEMENT GOVERNMENTAL ENTITY – TEL**

THIS SUBORDINATION AGREEMENT (“**Agreement**”) is entered into this \_\_\_ day of February, 2023, by and between **WELLS FARGO BANK, NATIONAL ASSOCIATION**, a national banking association (“**Senior Lender**”), and the **CITY AND COUNTY OF DENVER**, a municipal corporation organized pursuant to the Constitution and State of Colorado (“**Subordinate Lender**”).

### **RECITALS**

- A. 38th & Holly LLLP, a limited liability limited partnership 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 will be improved with a multifamily rental housing project (“**Improvements**”).
- B. Senior Lender has made a loan to Borrower in the original principal amount of \$[18,560,000] (“**Senior Loan**”) upon the terms and conditions of a Construction Funding Agreement dated as of [February 1, 2023] (“**Senior Loan Agreement**”) by and between Senior Lender and Borrower in connection with the Mortgaged Property. The Senior Loan is secured by a Construction Deed of Trust with Absolute Assignment of Leases and Rents, Security Agreement and Fixture Filing dated as of [February 1, 2023] (“**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 as of [February \_\_, 2023] between Subordinate Lender and Borrower (“**Subordinate Loan Agreement**”), Subordinate Lender has made or is making a loan to Borrower in the original principal amount of \$8,319,000 (“**Subordinate Loan**”). The Subordinate Loan is or will be secured by a Deed of Trust dated [February \_\_, 2023] (“**Subordinate Mortgage**”) encumbering all or a portion of the Mortgaged Property.
- D. The Senior Mortgage is or will be recorded in the official public records of the Clerk and Recorder of Denver County, Colorado (“**Recording Office**”). The Subordinate Mortgage

is or will be recorded in the Recording Office following the recording of the Senior Mortgage.

- E. The execution and delivery of this Agreement is a condition of Senior Lender's consenting to Subordinate Lender's making of the Subordinate Loan and Borrower's granting of the Subordinate Mortgage.

## **AGREEMENT**

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.

Any term used in this Agreement and not otherwise defined in this Agreement will have the meanings given to those terms in the Senior Loan Agreement.

**"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.

**"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 Lender if Senior Lender acquires title to the Mortgaged Property.

**"Casualty"** means the occurrence of damage to or loss of all or any portion of the Mortgaged Property by fire or other casualty.

**"Enforcement Action"** means any of the following actions taken by or at the direction of Subordinate Lender: 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 banker's lien or rights of set-off or recoupment, or the exercise of any other remedial action against Borrower, any other party liable for any of the Subordinate Indebtedness or obligated under any of the Subordinate Loan Documents, or the Mortgaged Property.

**“Enforcement Action Notice”** means a Notice given from Subordinate Lender to Senior Lender following one or more Subordinate Mortgage Default(s) and the expiration of any applicable notice or cure periods, setting forth in reasonable detail the Subordinate Mortgage Default(s) and the Enforcement Actions proposed to be taken by Subordinate Lender.

**“Lien”** means any lien, encumbrance, estate or other interest, recorded against or secured by the Mortgaged Property.

**“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 affecting the Land or casualty affecting the Improvements.

**“Notice”** means all notices, requests, demands, consents, approvals or other communication pursuant to this Agreement provided in accordance with the provisions of Section 10.

**“Regulatory Agreement”** means the Rental and Occupancy Covenant by Borrower for the benefit of Subordinate Lender dated [February \_\_, 2023] to be recorded in the Recording Office.

**“Senior Indebtedness”** means the “Indebtedness” of Borrower as evidenced by the Senior Loan Documents.

**“Senior Lender”** is defined above. When any other person or entity becomes the legal holder of the Senior Note, such other person or entity will automatically become Senior Lender.

**“Senior Loan Documents”** collectively means the “Taxable Loan Documents” as defined in the Senior Loan Agreement.

**“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.

**“Senior Note”** means the Taxable Loan Note as defined in the Senior Loan Agreement.

**“Subordinate Indebtedness”** means all sums evidenced or secured or guaranteed by, or otherwise due and payable to Subordinate Lender pursuant to, the Subordinate Loan Documents.

**“Subordinate Lender”** means the person or 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.

**“Subordinate Loan Documents”** means the Subordinate Mortgage, the Subordinate Note, the Subordinate Loan Agreement, the Regulatory Agreement and all other documents at any time evidencing, securing, guaranteeing, or otherwise delivered in connection with the Subordinate Indebtedness, as such documents may be amended.

**“Subordinate Mortgage Default”** means any act, failure to act, event, condition, or occurrence which allows (but for any contrary provision of this Agreement) Subordinate Lender to take an Enforcement Action.

**“Subordinate Note”** means the promissory note or other evidence of the Subordinate Indebtedness and any replacement of the Subordinate Note.

**“Surplus Cash”** means, with respect to any period, any revenues of Borrower remaining after paying, or setting aside funds for paying, all the following:

- (i) All sums due or currently required to be paid under the Senior Loan Documents, including any reserves and imposition reserve deposits.
- (ii) All reasonable operating expenses of the Mortgaged Property, including real estate taxes, insurance premiums, utilities, building maintenance, painting and repairs, management fees, payroll, administrative expenses, legal expenses and audit expenses (excluding any developer fees payable with respect to the Mortgaged Property).

## **2. Subordinate Lender’s Representations and Warranties.**

- (a) Subordinate Lender represents and warrants that each of the following is true as of the date of this Agreement:
  - (i) Subordinate Lender is now the owner and holder of the Subordinate Loan Documents.
  - (ii) No Subordinate Mortgage Default has occurred and is continuing.
  - (iii) The current unpaid principal balance of the Subordinate Indebtedness is \$[8,319,000].
  - (iv) No scheduled payments under the Subordinate Note have been prepaid.
- (b) Without the prior written consent of Senior Lender, Subordinate Lender will not do any of the following:
  - (i) Pledge, assign, transfer, convey, or sell any interest in the Subordinate Indebtedness or any of the Subordinate Loan Documents.

- (ii) Take any action which has the effect of increasing the Subordinate Indebtedness, except to cure a Senior Mortgage Default as contemplated under Section 5(a) of this Agreement.
- (iii) Accept any prepayment of the Subordinate Indebtedness.

### 3. Terms of Subordination.

- (a) Agreement to Subordinate. 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. 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) Subordination of Subrogation Rights. If Subordinate Lender, by indemnification, subrogation or otherwise, acquires any Lien on any of the Mortgaged Property, then that Lien will be fully subject and subordinate to the receipt by Senior 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.
- (c) Payments Before Senior Loan Default; Soft Subordinate Debt. Until the occurrence of a Senior Mortgage Default, Subordinate Lender will be entitled to retain for its own account all payments of the principal of and interest on the Subordinate Indebtedness pursuant to the Subordinate Loan Documents; provided that Subordinate Lender expressly agrees that it will not accept any such payment that is made more than 30 days in advance of its due date and provided further that Subordinate Lender will not accept any payment in an amount that exceeds 75% of then available Surplus Cash.
- (d) Payments After Senior Loan Default or Bankruptcy.
  - (i) Immediately upon Subordinate Lender's receipt of Notice or actual knowledge of a Senior Mortgage Default, Subordinate Lender will not accept any payments of the Subordinate Indebtedness, and the provisions of Section 3(d) of this Agreement will apply.
  - (ii) If Subordinate Lender receives any of the following, whether voluntarily or by action of law, after a Senior Mortgage Default of which Subordinate Lender has actual knowledge (or is deemed to have actual knowledge as provided in Section 4(c)) or has been given Notice, such will be received and held in trust for Senior Lender:
    - (A) Any payment, property, or asset of any kind or in any form in connection with the Subordinate Indebtedness.

- (B) Any proceeds from any Enforcement Action.
- (C) Any payment, property, or asset in or in connection with any Bankruptcy Proceeding.
- (iii) Subordinate Lender will promptly remit, in kind and properly endorsed as necessary, all such payments, properties, and assets described in Section 3(d)(ii) to Senior Lender. Senior Lender will apply any payment, asset, or property so received from Subordinate Lender to the Senior Indebtedness in such order, amount (with respect to any asset or property other than immediately available funds), and manner as Senior Lender determines in its sole and absolute discretion.
- (e) Bankruptcy. Without the prior written consent of Senior Lender, Subordinate Lender will not commence, or join with any other creditor in commencing, any Bankruptcy Proceeding. In the event of a Bankruptcy Proceeding, Subordinate Lender will not vote affirmatively in favor of any plan of reorganization or liquidation unless Senior Lender has also voted affirmatively in favor of such plan.

#### **4. Default Under Subordinate Loan Documents.**

- (a) Notice of Subordinate Loan Default and Cure Rights.
  - (i) Subordinate Lender will deliver to Senior Lender a copy of each Notice delivered by Subordinate Lender pursuant to the Subordinate Loan Documents within 5 Business Days of sending such Notice to Borrower. Neither giving nor failing to give a Notice to Senior Lender pursuant to this Section 4(a) will affect the validity of any Notice given by Subordinate Lender to Borrower.
  - (ii) For a period of 90 days following delivery to Senior Lender of an Enforcement Action Notice, Senior Lender will have the right, but not the obligation, to cure any Subordinate Mortgage Default. However, if such Subordinate Mortgage Default is a non-monetary default and is not capable of being cured within such 90-day period and Senior Lender has commenced and is diligently pursuing such cure to completion, Senior Lender will have such additional period of time as may be required to cure such Subordinate Mortgage Default or until such time, if ever, as Senior Lender takes either of the following actions:
    - (A) Discontinues its pursuit of any cure.
    - (B) Delivers to Subordinate Lender Senior Lender's written consent to the Enforcement Action described in the Enforcement Action Notice.

- (iii) Senior Lender will not be subrogated to the rights of Subordinate Lender under the Subordinate Loan Documents as a result of Senior Lender having cured any Subordinate Mortgage Default.
  - (iv) Subordinate Lender acknowledges that all amounts advanced or expended by Senior Lender in accordance with the Senior Loan Documents or to cure a Subordinate Mortgage Default will be added to and become a part of the Senior Indebtedness and will be secured by the lien of the Senior Mortgage.
- (b) Subordinate Lender's Exercise of Remedies After Notice to Senior Lender.
- (i) In the event of a Subordinate Mortgage Default, Subordinate Lender will not commence any Enforcement Action until 90 days after Subordinate Lender has delivered to Senior Lender an Enforcement Action Notice. During such 90-day period or such longer period as provided in Section 4(a), Subordinate Lender will be entitled to seek specific performance to enforce covenants and agreements of Borrower relating to income, rent, or affordability restrictions contained in the Regulatory Agreement, subject to Senior Lender's right to cure a Subordinate Mortgage Default set forth in Section 4(a).
  - (ii) Subordinate Lender may not commence any other Enforcement Action, including any foreclosure action under the Subordinate Loan Documents, until the earlier of:
    - (A) The expiration of such 90-day period or such longer period as provided in Section 4(a).
    - (B) The delivery by Senior Lender to Subordinate Lender of Senior Lender's written consent to such Enforcement Action by Subordinate Lender.
  - (iii) Subordinate Lender acknowledges that Senior Lender may grant or refuse consent to Subordinate Lender's Enforcement Action in Senior Lender's sole and absolute discretion. At the expiration of such 90-day period or such longer period as provided in Section 4(a) and, subject to Senior Lender's right to cure set forth in Section 4(a), Subordinate Lender may commence any Enforcement Action.
  - (iv) Senior 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 Lender. No action or failure to act on the part of Senior Lender in the event of a Subordinate Mortgage Default or commencement of an Enforcement Action will



constitute a waiver on the part of Senior Lender of any provision of the Senior Loan Documents or this Agreement.

- (c) Cross Default. Subordinate Lender acknowledges that a Subordinate Mortgage Default constitutes a Senior Mortgage Default. Accordingly, upon the occurrence of a Subordinate Mortgage Default, Subordinate Lender will be deemed to have actual knowledge of a Senior Mortgage Default. If Subordinate Lender notifies Senior Lender in writing that any Subordinate Loan Default of which Senior Lender has received Notice has been cured or waived, as determined by Subordinate Lender in its sole discretion, then provided that Senior Lender has not conducted a sale of the Mortgaged Property pursuant to its rights under the Senior Loan Documents, any Senior Loan Default under the Senior Loan Documents arising solely from such Subordinate Loan Default will be deemed cured, and the Senior Loan will be reinstated.

## **5. Default Under Senior Loan Documents.**

- (a) Notice of Senior Loan Default and Cure Rights.
  - (i) Senior Lender will deliver to Subordinate Lender a copy of any Notice sent by Senior Lender to Borrower of a Senior Mortgage Default within 5 Business Days of sending such Notice to Borrower. Failure of Senior Lender to send Notice to Subordinate Lender will not prevent the exercise of Senior Lender's rights and remedies under the Senior Loan Documents.
  - (ii) Subordinate Lender will have the right, but not the obligation, to cure any monetary Senior Mortgage Default within 30 days following the date of such Notice. During such 30-day period Senior Lender will be entitled to continue to pursue its remedies under the Senior Loan Documents.
  - (iii) Subordinate Lender may, within 90 days after the date of the Notice, cure a non-monetary Senior Mortgage Default if during such 90-day period, Subordinate Lender keeps current all payments required under 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 Lender's secured position relative to the Mortgaged Property, as determined by Senior Lender in its sole discretion, then during such 90-day period Senior 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.
  - (iv) All amounts paid by Subordinate Lender to Senior Lender to cure a Senior Mortgage Default will be deemed to have been advanced by Subordinate Lender pursuant to, and will be secured by the lien of, the Subordinate Mortgage. Notwithstanding anything in this Section 5(a) to the contrary,

Subordinate Lender's right to cure any Senior Mortgage Default will terminate immediately upon the occurrence of any Bankruptcy Proceeding.

(b) Release of Mortgaged Property.

(i) Subordinate Lender consents to and authorizes any future release by Senior Lender of all or any portion of the Mortgaged Property from the lien, operation, and effect of the Senior Loan Documents. Subordinate Lender waives to the fullest extent permitted by law, all equitable or other rights it may have in connection with the release of all or any portion of the Mortgaged Property, including any right to require Senior Lender to do any of the following:

- (A) To conduct a separate sale of any portion of the Mortgaged Property.
- (B) To exhaust its remedies against all or any portion of the Mortgaged Property or any combination of portions of the Mortgaged Property or any other collateral for the Senior Indebtedness.
- (C) To proceed against Borrower, any other party that may be liable for any of the Senior Indebtedness (including any general partner of Borrower if Borrower is a partnership), all or any portion of the Mortgaged Property or combination of portions of the Mortgaged Property or any other collateral, before proceeding against all or such portions or combination of portions of the Mortgaged Property as Senior Lender determines.

(ii) Subordinate Lender consents to and authorizes, at the option of Senior Lender, the sale, either separately or together, of all or any portion of the Mortgaged Property. Subordinate Lender acknowledges that without Notice to Subordinate Lender and without affecting any of the provisions of this Agreement, Senior Lender may do any of the following:

- (A) Extend the time for or waive any payment or performance under the Senior Loan Documents.
- (B) Modify or amend in any respect any provision of the Senior Loan Documents.
- (C) Modify, exchange, surrender, release, and otherwise deal with any additional collateral for the Senior Indebtedness.

(c) Termination Upon Foreclosure. The lien of the Subordinate Loan Documents will automatically terminate upon the acquisition by Senior 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.

**6. Conflicts.** 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. Borrower acknowledges that the terms and provisions of this Agreement will not, and will not be deemed to do any of the following:

- (a) Extend Borrower's time to cure any Senior Loan Default or Subordinate Loan Default.
- (b) Give Borrower the right to receive notice of any Senior Loan Default or Subordinate Loan Default, other than that, if any, provided, respectively under the Senior Loan Documents of the Subordinate Loan Documents.
- (c) Create any other right or benefit for Borrower as against Senior Lender or Subordinate Lender.

**7. Rights and Obligations of Subordinate Lender Under the Subordinate Loan Documents and of Senior Lender under the Senior Loan Documents.**

(a) Insurance.

- (i) All requirements pertaining to insurance under the Subordinate Loan Documents (including requirements relating to amounts and types of coverages, deductibles and special endorsements) will be deemed satisfied if Borrower complies with the insurance requirements under the Senior Loan Documents and of Senior Lender.
- (ii) All original policies of insurance required pursuant to the Senior Loan Documents will be held by Senior Lender.
- (iii) Nothing in this Section 7(a) will preclude Subordinate Lender from requiring that 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 that Subordinate Lender be named as an additional insured under all policies of liability insurance maintained by Borrower with respect to the Mortgaged Property.

(b) Condemnation or Casualty.

In the event of a condemnation affecting the Land or a casualty affecting the Improvements, the following provisions will apply:

- (i) The rights of Subordinate Lender (under the Subordinate Loan Documents or otherwise) to participate in any proceeding or action relating to a condemnation affecting the Land or a casualty affecting the Improvements, or to participate or join in any settlement of, or to adjust, any claims resulting from a condemnation affecting the Land or a casualty affecting the Improvements, will be and remain subordinate in all respects to Senior Lender's rights under the Senior Loan Documents, and Subordinate Lender will be bound by any settlement or adjustment of a claim resulting from a condemnation affecting the Land or a casualty affecting the Improvements made by Senior Lender.
  - (ii) All Loss Proceeds will be applied either to payment of the costs and expenses of restoration of the Improvements or to payment on account of the Senior Indebtedness, as and in the manner determined by Senior Lender in its sole discretion; provided however, Senior Lender agrees to consult with Subordinate Lender in determining the application of casualty proceeds. In the event of any disagreement between Senior Lender and Subordinate Lender over the application of casualty proceeds, the decision of Senior Lender, in its sole discretion, will prevail.
  - (iii) If Senior Lender holds Loss Proceeds, or monitors the disbursement of Loss Proceeds, Subordinate Lender will not do so. Nothing contained in this Agreement will be deemed to require Senior Lender to act for or on behalf of Subordinate Lender in connection with any restoration of the Improvements or to hold or monitor any Loss Proceeds in trust for or otherwise on behalf of Subordinate Lender, and all or any Loss Proceeds may be commingled with any funds of Senior Lender.
  - (iv) If Senior 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 Senior Lender will be paid to Subordinate Lender unless another party has asserted a claim to the remaining Loss Proceeds.
- (c) Modification of Subordinate Loan Documents. Subordinate Lender agrees that, until the principal of, interest on and all other amounts payable under the Senior Loan Documents have been paid in full, it will not, without the prior written consent of Senior Lender, increase the amount of the Subordinate Loan, increase the required payments due under the Subordinate Loan, decrease the term of the Subordinate Loan, increase the interest rate on the Subordinate Loan, or otherwise amend the Subordinate Loan terms in a manner that creates an adverse effect upon Senior Lender under the Senior Loan Documents. If Subordinate Lender either (i) amends the Subordinate Loan Documents in the manner set forth above or (ii) assigns the Subordinate Loan without Senior Lender's consent then such amendment or assignment will be void ab initio and of no effect whatsoever.

- (d) Modification of Senior Loan Documents. Senior Lender may amend, waive, postpone, extend, renew, replace, reduce or otherwise modify any provisions of the Senior Loan Documents without the necessity of obtaining the consent of or providing Notice to Subordinate Lender, and without affecting any of the provisions of this Agreement. Notwithstanding the foregoing, Senior Lender may not 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 Lender to protect the security or lien priority of Senior Lender under the Senior Loan Documents or to cure defaults under the Subordinate Loan Documents.
- (e) Commercial or Retail Leases. If requested, Subordinate Lender will enter into attornment and non-disturbance agreements with all tenants under commercial or retail leases, if any, to whom Senior Lender has granted attornment and non-disturbance, on the same or substantially similar terms and conditions given by Senior Lender; provided, however, that any such attornment and non-disturbance agreements must be approved by the City Attorney. The Executive Director of the City's Department of Housing Stability is authorized to execute such attornment and non-disturbance agreements.
- (f) Consent Rights. Whenever the Subordinate Loan Documents give Subordinate Lender approval or consent rights with respect to any matter, and a right of approval or consent for the same or substantially the same matter is also granted to Senior Lender pursuant to the Senior Loan Documents or otherwise, Senior Lender's approval or consent or failure to approve or consent will be binding on Subordinate Lender. None of the other provisions of Section 7 are intended to be in any way in limitation of the provisions of this Section 7(f).
- (g) Escrows. Except as provided in this Section 7(g), and regardless of any contrary provision in the Subordinate Loan Documents, Subordinate Lender will not collect any escrows for any cost or expense related to the Mortgaged Property or for any portion of the Subordinate Indebtedness. However, if Senior Lender is not collecting escrow payments for one or more impositions, Subordinate Lender may collect escrow payments for such impositions; provided that all payments so collected by Subordinate Lender will be held in trust by Subordinate Lender to be applied only to the payment of such impositions.
- (h) Certification. Within 30 days after request by Senior Lender, Subordinate Lender will furnish Senior Lender with a statement 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 providing such other information with respect to the Subordinate Indebtedness as Senior Lender may request.

8. **Refinancing.** Subordinate Lender agrees that its agreement to subordinate under this Agreement will extend to any new mortgage debt which is for the purpose of refinancing all or any part of the Senior Indebtedness (including reasonable and necessary costs associated with the closing and/or the refinancing, and any reasonable increase in proceeds for rehabilitation in the context of a preservation transaction). All terms and covenants of this Agreement will inure to the benefit of any holder of any such refinanced debt, and all references to the Senior Loan Documents and Senior Lender will mean, respectively, the refinance loan documents and the holder of such refinanced debt.
9. **Governmental Powers.** Nothing in this Agreement is intended, nor will it be construed, to in any way limit the exercise by Subordinate Lender 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.
10. **Notices.**
- (a) Any Notice 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:

Notices intended for Senior Lender will be addressed to:

Wells Fargo Bank, National Association  
550 S. Tryon Street  
23rd Floor, D1086-239  
Charlotte, North Carolina 28202-4200  
Attn: Manager, Deal Management  
Loan # 1021059

with a copy to:

Wells Fargo Bank, National Association  
Community Lending & Investment  
1700 Lincoln Street, 11th Floor  
Mail Code: C7300-11H  
Denver, Colorado 80203  
Attention: Scott Horton

(Reference Loan No. 1021059)

and to:

Greenberg Traurig LLP  
1000 Louisiana, Suite 6700  
Houston, Texas 77002  
Attention: Wayne A. Yaffee, Esq.  
(Reference Loan No 1021059)  
Email: Wayne.Yaffee@gtlaw.com  
Telephone: (713) 374-3655

Notices intended for Subordinate Lender will be addressed to:

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

with a copy to:

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

- (b) Any party, by Notice given pursuant to this Section 10, 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 10.

## 11. Miscellaneous Provisions.

- (a) Assignments/Successors. This Agreement will be binding upon and will inure to the benefit of the respective legal successors and permitted assigns of the parties to this Agreement. No other party will be entitled to any benefits under this Agreement, whether as a third-party beneficiary or otherwise. This Agreement may be assigned at any time by Senior Lender to any subsequent holder of the Senior Note.
- (b) No Partnership or Joint Venture. Nothing in this Agreement or in any of the Senior Loan Documents or Subordinate Loan Documents will be deemed to constitute Senior Lender as a joint venturer or partner of Subordinate Lender.
- (c) Further Assurances. Upon Notice from Senior Lender, Subordinate Lender will execute and deliver such additional instruments and documents, and will take such

actions, as are required by Senior Lender to further evidence or implement the provisions and intent of this Agreement; provided, however, that any such documents or instruments must be approved by the City Attorney and not be in conflict with any requirements of the Charter for the City and County of Denver or any other law applicable to Subordinate Lender. The Executive Director of the City's Department of Housing Stability is authorized to execute such documents or instruments.

- (d) Amendment. This Agreement may be amended, changed, modified, altered or terminated only by a written instrument signed by the parties to this Agreement or their successors or assigns.
- (e) Governing Law. This Agreement will be governed by the laws of the State in which the Land is located.
- (f) Severable Provisions. 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.
- (g) Term. 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 the Senior Indebtedness; provided that this Agreement will be reinstated in the event any payment on account of the Senior Indebtedness (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. In such event, any or all of the Senior Indebtedness originally intended to be satisfied will be deemed to be reinstated and outstanding to the extent of any repayment, return, or other action, as if such payment on account of the Senior Indebtedness had not been made.
  - (ii) The payment of all the Subordinate Indebtedness other than by reason of payments which Subordinate Lender is obligated to remit to Senior Lender pursuant to this Agreement.
  - (iii) The acquisition by Senior 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.



- (iv) With the prior written consent of Senior Lender, without limiting the provisions of Section 4(b)(iv), the acquisition by Subordinate Lender of title to the Mortgaged Property subject to the Senior Mortgage pursuant to a foreclosure, or a deed in lieu of foreclosure, of (or the exercise of a power of sale under) the Subordinate Mortgage.
- (h) Counterparts. 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.
- (i) Entire Agreement. This Agreement represents the entire understanding and agreement between the parties regarding the matters addressed in this Agreement, and will supersede and cancel any prior agreements regarding such matters.
- (j) Authority. Each person executing this Agreement on behalf of a party to this Agreement represents and warrants that such person is duly and validly authorized to do so on behalf of such party with full right and authority to execute this Agreement and to bind such party with respect to all of its obligations under this Agreement.
- (k) No Waiver. 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.
- (l) Remedies. Each party to this Agreement acknowledges that if any party fails to comply with its obligations under this Agreement, the other parties will have all rights available at law and in equity, including the right to obtain specific performance of the obligations of such defaulting party and injunctive relief.

**[SIGNATURE AND ACKNOWLEDGMENT PAGES FOLLOW]**

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

**SENIOR LENDER:**

**WELLS FARGO BANK, NATIONAL ASSOCIATION**, a national banking association

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

**ACKNOWLEDGMENT**

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of \_\_\_\_\_ )  
County/City of \_\_\_\_\_ )

On \_\_\_\_\_ before me, \_\_\_\_\_ (insert name and title of the officer), personally appeared \_\_\_\_\_, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of \_\_\_\_\_ that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

\_\_\_\_\_  
(Signature)

**SUBORDINATE LENDER:**

**CITY AND COUNTY OF DENVER**, a  
Colorado municipal corporation

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

**ACKNOWLEDGMENT**

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of \_\_\_\_\_ )  
County/City of \_\_\_\_\_ )

On \_\_\_\_\_ before me, \_\_\_\_\_ (insert name and title of the officer), personally appeared \_\_\_\_\_, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of \_\_\_\_\_ that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

\_\_\_\_\_  
(Signature)

**CONSENT OF BORROWER**

Borrower acknowledges receipt of a copy of this Subordination Agreement, dated \_\_\_\_\_, 2023, by and between Computershare Trust Company, National Association and the City and County of Denver and consents to the agreement of the parties set forth in this Agreement.

**38TH & HOLLY LLLP**, a Colorado limited liability limited partnership

By: 38th & Holly GP Delaware LLC,  
a Delaware limited liability company,  
General Partner

By: \_\_\_\_\_  
Name: Joseph A. DelZotto  
Title: Manager

**ACKNOWLEDGMENT**

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of \_\_\_\_\_ )  
County/City of \_\_\_\_\_ )

On \_\_\_\_\_ before me, \_\_\_\_\_ (insert name and title of the officer), personally appeared \_\_\_\_\_, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of \_\_\_\_\_ that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

\_\_\_\_\_  
(Signature)



**EXHIBIT A**  
**LEGAL DESCRIPTION**

[To be inserted]

PREPARED BY AND WHEN  
RECORDED RETURN TO:  
Katten Muchin Rosenman LLP  
2900 K Street NW, Suite 200  
Washington, DC 20007  
Attention: Michael P. Murphy, Esq.

---

Freddie Mac Loan Number: 507790286  
Property Name: 38th and Holly Apartments

**SUBORDINATION AGREEMENT  
GOVERNMENTAL ENTITY – TEL (Forward)**

**(Revised 3-15-2022)**

THIS SUBORDINATION AGREEMENT (“**Agreement**”) is entered into this [\_\_] day of February, 2023], by and between **COMPUTERSHARE TRUST COMPANY, NATIONAL ASSOCIATION**, a national banking association (“**Senior Lender**”), and the **CITY AND COUNTY OF DENVER**, a municipal corporation organized pursuant to the Constitution and State of Colorado (“**Subordinate Lender**”).

**RECITALS**

- A. 38th & Holly LLLP, a limited liability limited partnership 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 will be improved with a multifamily rental housing project (“**Improvements**”).
- B. The 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 \$[46,440,000] (“**Senior Loan**”) upon the terms and conditions of a Project Loan Agreement dated as of [February 1, 2023] (“**Project Loan Agreement**”) among Governmental Lender, Senior Lender (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 with Absolute Assignment of Leases and Rents, Security Agreement and Fixture Filing dated as of [February 1, 2023] (“**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 as of [February \_\_, 2023] between Subordinate Lender and Borrower (“**Subordinate Loan Agreement**”), Subordinate Lender has made or is making a loan to Borrower in the original principal amount of \$8,319,000 (“**Subordinate Loan**”). The Subordinate Loan is or will be secured by a Deed of Trust

dated [February \_\_, 2023] (“**Subordinate Mortgage**”) encumbering all or a portion of the Mortgaged Property.

- D. The Senior Mortgage is or will be recorded in the official public records of the Clerk and Recorder of Denver County, Colorado (“**Recording Office**”). The Subordinate Mortgage is or 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 Lender 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 granted by the Borrower for the benefit of the Initial Funding Lender (as defined below) as security for the Funding Loan.
- F. Subject to the terms and conditions of that certain Construction Phase Financing Agreement (the “**Construction Phase Financing Agreement**”) dated as of [February 31, 2023] among Borrower, Wells Fargo Bank, National Association, a national banking association, in its capacity as Initial Funding Lender thereunder (“**Initial Funding Lender**”), Federal Home Loan Mortgage Corporation and Wells Fargo Bank, National Association, a national banking association, in its capacity as Freddie Mac Seller/Servicer thereunder (“**Permanent Funding Lender**”), Initial Funding Lender shall subsequently retain the documents comprising the Funding Loan in its capacity as Permanent Funding Lender and, in connection therewith, (i) the Senior Mortgage will be assigned by Initial Funding Lender to Senior Lender and (ii) the Senior Note (as defined herein) and the Senior Mortgage will be amended and restated (“**Conversion**”).
- G. Upon Conversion, the Funding Lender shall have the right to amend and restate the Senior Note and the Senior Mortgage, and 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 Lender.
- H. The execution and delivery of this Agreement is a condition of Senior Lender’s and Funding Lender’s consenting to Subordinate Lender’s making of the Subordinate Loan and Borrower’s granting of the Subordinate Mortgage.

## **AGREEMENT**

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.

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 Senior Loan Agreement.

**“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.

**“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 Lender or Funding Lender if Senior Lender or Funding Lender acquires title to the Mortgaged Property.

**“Casualty”** means the occurrence of damage to or loss of all or any portion of the Mortgaged Property by fire or other casualty.

**“Construction Funding Agreement”** means the Construction Funding Agreement dated as of [February \_\_, 2023] between Borrower and Initial Funding Lender.

**“Continuing Covenant Agreement”** means the Continuing Covenant Agreement to be executed by Borrower and Permanent Funding Lender at Conversion.

**“Enforcement Action”** means any of the following actions taken by or at the direction of Subordinate Lender: 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 banker’s lien or rights of set-off or recoupment, or the exercise of any other remedial action against Borrower, any other party liable for any of the Subordinate Indebtedness or obligated under any of the Subordinate Loan Documents, or the Mortgaged Property.

**“Enforcement Action Notice”** means a Notice given from Subordinate Lender to Senior Lender and Funding Lender, following one or more Subordinate Mortgage Default(s) and the expiration of any applicable notice or cure periods, setting forth in reasonable detail the Subordinate Mortgage Default(s) and the Enforcement Actions proposed to be taken by Subordinate Lender.

**“Funding Lender”** shall mean Initial Funding Lender prior to Conversion and Permanent Funding Lender from and after Conversion, and any successor holder of the Governmental Note.

**“Funding Loan Agreement”** means the Funding Loan Agreement dated as of [February 31, 2023] among Funding Lender, Governmental Lender and Senior Lender.

**“Governmental Note”** means the Multifamily Note (38th & Holly Apartments Project), Series 2023 delivered by the Governmental Lender evidencing the Funding Loan.

**“Lien”** means any lien, encumbrance, estate or other interest, recorded against or secured by the Mortgaged Property.

**“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.

**“Notice”** means all notices, requests, demands, consents, approvals or other communication pursuant to this Agreement provided in accordance with the provisions of Section 10.

**“Regulatory Agreement”** means the Rental and Occupancy Covenant by Borrower for the benefit of Subordinate Lender dated [February \_\_, 2023] to be recorded in the Recording Office.

**“Senior Indebtedness”** means the “Indebtedness” of Borrower as evidenced by the Senior Loan Documents.

**“Senior Lender”** is defined above. When any other person or entity becomes the legal holder of the Senior Note, such other person or entity will automatically become Senior Lender.

**“Senior Loan Agreement”** collectively means, prior to Conversion, the Project Loan Agreement and the Construction Funding Agreement. From and after Conversion, “Senior Loan Agreement” means the Project Loan Agreement and/or the Continuing Covenant Agreement.

**“Senior Loan Documents”** collectively means prior to Conversion, the “Project Loan Documents” as defined in the Construction Phase Financing Agreement together with the “Loan Documents” as defined in the Construction Funding Agreement. From and after Conversion, “Senior Loan Documents” shall mean the “Financing Documents” as defined in the Continuing Covenant Agreement, as such documents may be amended.

**“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.

“**Senior Note**” means, prior to Conversion, the Project Note as defined in the Funding Loan Agreement. From and after Conversion, “Senior Note” means the Project Note as defined in the Continuing Covenant Agreement.

“**Subordinate Indebtedness**” means all sums evidenced or secured or guaranteed by, or otherwise due and payable to Subordinate Lender pursuant to, the Subordinate Loan Documents.

“**Subordinate Lender**” means the person or 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.

“**Subordinate Loan Documents**” means the Subordinate Mortgage, the Subordinate Note, the Subordinate Loan Agreement, the Regulatory Agreement and all other documents at any time evidencing, securing, guaranteeing, or otherwise delivered in connection with the Subordinate Indebtedness, as such documents may be amended.

“**Subordinate Mortgage Default**” means any act, failure to act, event, condition, or occurrence which allows (but for any contrary provision of this Agreement) Subordinate Lender to take an Enforcement Action.

“**Subordinate Note**” means the promissory note or other evidence of the Subordinate Indebtedness and any replacement of the Subordinate Note.

“**Surplus Cash**” means, with respect to any period, any revenues of Borrower remaining after paying, or setting aside funds for paying, all the following:

- (i) All sums due or currently required to be paid under the Senior Loan Documents, including any reserves and Imposition Reserve Deposits.
- (ii) All reasonable operating expenses of the Mortgaged Property, including real estate taxes, insurance premiums, utilities, building maintenance, painting and repairs, management fees, payroll, administrative expenses, legal expenses and audit expenses (excluding any developer fees payable with respect to the Mortgaged Property).

## **2. Subordinate Lender’s Representations and Warranties.**

- (a) Subordinate Lender represents and warrants that each of the following is true as of the date of this Agreement:
  - (i) Subordinate Lender is now the owner and holder of the Subordinate Loan Documents.
  - (ii) No Subordinate Mortgage Default has occurred and is continuing.

- (iii) The current unpaid principal balance of the Subordinate Indebtedness is \$[8,319,000].
- (iv) No scheduled payments under the Subordinate Note have been prepaid.
- (b) Without the prior written consent of Senior Lender, Subordinate Lender will not do any of the following:
  - (i) Pledge, assign, transfer, convey, or sell any interest in the Subordinate Indebtedness or any of the Subordinate Loan Documents.
  - (ii) Take any action which has the effect of increasing the Subordinate Indebtedness, except to cure a Senior Mortgage Default as contemplated under Section 5(a) of this Agreement.
  - (iii) Accept any prepayment of the Subordinate Indebtedness.

### **3. Terms of Subordination.**

- (a) Agreement to Subordinate. 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. 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) Subordination of Subrogation Rights. If Subordinate Lender, by indemnification, subrogation or otherwise, acquires any Lien on any of the Mortgaged Property, then that Lien will be fully subject and subordinate to the receipt by Senior 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.
- (c) Payments Before Senior Loan Default; Soft Subordinate Debt. Until the occurrence of a Senior Mortgage Default, Subordinate Lender will be entitled to retain for its own account all payments of the principal of and interest on the Subordinate Indebtedness pursuant to the Subordinate Loan Documents; provided that Subordinate Lender expressly agrees that it will not accept any such payment that is made more than 30 days in advance of its due date and provided further that Subordinate Lender will not accept any payment in an amount that exceeds 75% of then available Surplus Cash.
- (d) Payments After Senior Loan Default or Bankruptcy.

- (i) Immediately upon Subordinate Lender's receipt of Notice or actual knowledge of a Senior Mortgage Default, Subordinate Lender will not accept any payments of the Subordinate Indebtedness, and the provisions of Section 3(d) of this Agreement will apply.
- (ii) If Subordinate Lender receives any of the following, whether voluntarily or by action of law, after a Senior Mortgage Default of which Subordinate Lender has actual knowledge (or is deemed to have actual knowledge as provided in Section 4(c)) or has been given Notice, such will be received and held in trust for Senior Lender:
  - (A) Any payment, property, or asset of any kind or in any form in connection with the Subordinate Indebtedness.
  - (B) Any proceeds from any Enforcement Action.
  - (C) Any payment, property, or asset in or in connection with any Bankruptcy Proceeding.
- (iii) Subordinate Lender will promptly remit, in kind and properly endorsed as necessary, all such payments, properties, and assets described in Section 3(d)(ii) to Senior Lender. Senior Lender will apply any payment, asset, or property so received from Subordinate Lender to the Senior Indebtedness in such order, amount (with respect to any asset or property other than immediately available funds), and manner as Senior Lender determines in its sole and absolute discretion.
- (e) Bankruptcy. Without the prior written consent of Senior Lender, Subordinate Lender will not commence, or join with any other creditor in commencing, any Bankruptcy Proceeding. In the event of a Bankruptcy Proceeding, Subordinate Lender will not vote affirmatively in favor of any plan of reorganization or liquidation unless Senior Lender has also voted affirmatively in favor of such plan.

#### **4. Default Under Subordinate Loan Documents.**

- (a) Notice of Subordinate Loan Default and Cure Rights.
  - (i) Subordinate Lender will deliver to Senior Lender and Funding Lender a copy of each Notice delivered by Subordinate Lender pursuant to the Subordinate Loan Documents within 5 Business Days of sending such Notice to Borrower. Neither giving nor failing to give a Notice to Senior Lender or Funding Lender pursuant to this Section 4(a) will affect the validity of any Notice given by Subordinate Lender to Borrower.
  - (ii) For a period of 90 days following delivery to Senior Lender of an Enforcement Action Notice, Senior Lender will have the right, but not the

obligation, to cure any Subordinate Mortgage Default. However, if such Subordinate Mortgage Default is a non-monetary default and is not capable of being cured within such 90-day period and Senior Lender has commenced and is diligently pursuing such cure to completion, Senior Lender will have such additional period of time as may be required to cure such Subordinate Mortgage Default or until such time, if ever, as Senior Lender takes either of the following actions:

- (A) Discontinues its pursuit of any cure.
  - (B) Delivers to Subordinate Lender Senior Lender's written consent to the Enforcement Action described in the Enforcement Action Notice.
- (iii) Senior Lender will not be subrogated to the rights of Subordinate Lender under the Subordinate Loan Documents as a result of Senior Lender having cured any Subordinate Mortgage Default.
  - (iv) Subordinate Lender acknowledges that all amounts advanced or expended by Senior Lender in accordance with the Senior Loan Documents or to cure a Subordinate Mortgage Default will be added to and become a part of the Senior Indebtedness and will be secured by the lien of the Senior Mortgage.
- (b) Subordinate Lender's Exercise of Remedies After Notice to Senior Lender.
- (i) In the event of a Subordinate Mortgage Default, Subordinate Lender will not commence any Enforcement Action until 90 days after Subordinate Lender has delivered to Senior Lender and Funding Lender an Enforcement Action Notice. During such 90-day period or such longer period as provided in Section 4(a), Subordinate Lender will be entitled to seek specific performance to enforce covenants and agreements of Borrower relating to income, rent, or affordability restrictions contained in the Regulatory Agreement, subject to Senior Lender's right to cure a Subordinate Mortgage Default set forth in Section 4(a).
  - (ii) Subordinate Lender may not commence any other Enforcement Action, including any foreclosure action under the Subordinate Loan Documents, until the earlier of:
    - (A) The expiration of such 90-day period or such longer period as provided in Section 4(a).
    - (B) The delivery by Senior Lender to Subordinate Lender of Senior Lender's written consent to such Enforcement Action by Subordinate Lender.

- (iii) Subordinate Lender acknowledges that Senior Lender may grant or refuse consent to Subordinate Lender's Enforcement Action in Senior Lender's sole and absolute discretion. At the expiration of such 90-day period or such longer period as provided in Section 4(a) and, subject to Senior Lender's right to cure set forth in Section 4(a), Subordinate Lender may commence any Enforcement Action.
  - (iv) Senior 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 Lender. No action or failure to act on the part of Senior Lender in the event of a Subordinate Mortgage Default or commencement of an Enforcement Action will constitute a waiver on the part of Senior Lender of any provision of the Senior Loan Documents or this Agreement.
- (c) Cross Default. Subordinate Lender acknowledges that a Subordinate Mortgage Default constitutes a Senior Mortgage Default. Accordingly, upon the occurrence of a Subordinate Mortgage Default, Subordinate Lender will be deemed to have actual knowledge of a Senior Mortgage Default. If Subordinate Lender notifies Senior Lender and Funding Lender in writing that any Subordinate Loan Default of which Senior Lender has received Notice has been cured or waived, as determined by Subordinate Lender in its sole discretion, then provided that Senior Lender (and/or Initial Funding Lender if prior to Conversion, as the case may be) has not conducted a sale of the Mortgaged Property pursuant to its rights under the Senior Loan Documents, any Senior Loan Default under the Senior Loan Documents arising solely from such Subordinate Loan Default will be deemed cured, and the Senior Loan will be reinstated.

## **5. Default Under Senior Loan Documents.**

- (a) Notice of Senior Loan Default and Cure Rights.
  - (i) Senior Lender or Funding Lender will deliver to Subordinate Lender a copy of any Notice sent by Senior Lender or Funding Lender to Borrower of a Senior Mortgage Default within 5 Business Days of sending such Notice to Borrower. Failure of Senior Lender or Funding Lender to send Notice to Subordinate Lender will not prevent the exercise of Senior Lender's (and/or Initial Funding Lender's if prior to Conversion, as the case may be) rights and remedies under the Senior Loan Documents.
  - (ii) Subordinate Lender will have the right, but not the obligation, to cure any monetary Senior Mortgage Default within 30 days following the date of such Notice. During such 30-day period Senior Lender (and/or Initial Funding Lender if prior to Conversion, as the case may be) will be entitled to continue to pursue its remedies under the Senior Loan Documents.

- (iii) Subordinate Lender may, within 90 days after the date of the Notice, cure a non-monetary Senior Mortgage Default if during such 90-day period, Subordinate Lender keeps current all payments required under 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 Lender's (or Initial Funding Lender's if prior to Conversion, as the case may be) secured position relative to the Mortgaged Property, as determined by Senior Lender in its sole discretion, then during such 90-day period Senior Lender (and/or Initial Funding Lender if prior to Conversion, as the case may be) 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.
- (iv) All amounts paid by Subordinate Lender to Senior Lender to cure a Senior Mortgage Default will be deemed to have been advanced by Subordinate Lender pursuant to, and will be secured by the lien of, the Subordinate Mortgage. Notwithstanding anything in this Section 5(a) to the contrary, Subordinate Lender's right to cure any Senior Mortgage Default will terminate immediately upon the occurrence of any Bankruptcy Proceeding.

(b) Release of Mortgaged Property.

- (i) Subordinate Lender consents to and authorizes any future release by Senior Lender (and/or Initial Funding Lender if prior to Conversion, as the case may be) of all or any portion of the Mortgaged Property from the lien, operation, and effect of the Senior Loan Documents. Subordinate Lender waives to the fullest extent permitted by law, all equitable or other rights it may have in connection with the release of all or any portion of the Mortgaged Property, including any right to require Senior Lender (and/or Initial Funding Lender if prior to Conversion, as the case may be) to do any of the following:
  - (A) To conduct a separate sale of any portion of the Mortgaged Property.
  - (B) To exhaust its remedies against all or any portion of the Mortgaged Property or any combination of portions of the Mortgaged Property or any other collateral for the Senior Indebtedness.
  - (C) To proceed against Borrower, any other party that may be liable for any of the Senior Indebtedness (including any general partner of Borrower if Borrower is a partnership), all or any portion of the Mortgaged Property or combination of portions of the Mortgaged Property or any other collateral, before proceeding against all or such portions or combination of portions of the Mortgaged Property as Senior Lender (or Initial Funding Lender if prior to Conversion, as the case may be) determines.



- (ii) Subordinate Lender consents to and authorizes, at the option of Senior Lender (or Initial Funding Lender if prior to Conversion, as the case may be), the sale, either separately or together, of all or any portion of the Mortgaged Property. Subordinate Lender acknowledges that without Notice to Subordinate Lender and without affecting any of the provisions of this Agreement, Senior Lender (and/or Initial Funding Lender if prior to Conversion, as the case may be) may do any of the following:
    - (A) Extend the time for or waive any payment or performance under the Senior Loan Documents.
    - (B) Modify or amend in any respect any provision of the Senior Loan Documents.
    - (C) Modify, exchange, surrender, release, and otherwise deal with any additional collateral for the Senior Indebtedness.
  - (c) Termination Upon Foreclosure. The lien of the Subordinate Loan Documents will automatically terminate upon the acquisition by Senior Lender (or Initial Funding Lender if prior to Conversion, as the case may be) 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.
- 6. **Conflicts.** 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. Borrower acknowledges that the terms and provisions of this Agreement will not, and will not be deemed to do any of the following:
  - (a) Extend Borrower's time to cure any Senior Loan Default or Subordinate Loan Default.
  - (b) Give Borrower the right to receive notice of any Senior Loan Default or Subordinate Loan Default, other than that, if any, provided, respectively under the Senior Loan Documents of the Subordinate Loan Documents.
  - (c) Create any other right or benefit for Borrower as against Senior Lender or Subordinate Lender.
- 7. **Rights and Obligations of Subordinate Lender Under the Subordinate Loan Documents and of Senior Lender under the Senior Loan Documents.**
  - (a) Insurance.

- (i) All requirements pertaining to insurance under the Subordinate Loan Documents (including requirements relating to amounts and types of coverages, deductibles and special endorsements) will be deemed satisfied if Borrower complies with the insurance requirements under the Senior Loan Documents and of Senior Lender and Funding Lender.
  - (ii) All original policies of insurance required pursuant to the Senior Loan Documents will be held by Senior Lender or Funding Lender.
  - (iii) Nothing in this Section 7(a) will preclude Subordinate Lender from requiring that 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 that Subordinate Lender be named as an additional insured under all policies of liability insurance maintained by Borrower with respect to the Mortgaged Property.
- (b) Condemnation or Casualty.

In the event of a Condemnation or a Casualty, the following provisions will apply:

- (i) The rights of Subordinate Lender (under the Subordinate Loan Documents or otherwise) 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 Lender's (and/or Initial Funding Lender's if prior to Conversion, as the case may be) rights under the Senior Loan Documents, and Subordinate Lender will be bound by any settlement or adjustment of a claim resulting from a Condemnation or a Casualty made by Senior Lender (or Initial Funding Lender if prior to Conversion, as the case may be).
- (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 Senior Lender in its sole discretion; provided however, Senior Lender agrees to consult with Subordinate Lender in determining the application of Casualty proceeds. In the event of any disagreement between Senior Lender and Subordinate Lender over the application of Casualty proceeds, the decision of Senior Lender, in its sole discretion, will prevail.
- (iii) If Senior Lender or Funding Lender holds Loss Proceeds, or monitors the disbursement of Loss Proceeds, Subordinate Lender will not do so. Nothing contained in this Agreement will be deemed to require Senior Lender to act for or on behalf of Subordinate Lender in connection with any Restoration or to hold or monitor any Loss Proceeds in trust for or otherwise on behalf

of Subordinate Lender, and all or any Loss Proceeds may be commingled with any funds of Senior Lender.

- (iv) If Senior 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 Senior Lender will be paid to Subordinate Lender unless another party has asserted a claim to the remaining Loss Proceeds.
- (c) Modification of Subordinate Loan Documents. Subordinate Lender agrees that, until the principal of, interest on and all other amounts payable under the Senior Loan Documents have been paid in full, it will not, without the prior written consent of Senior Lender, increase the amount of the Subordinate Loan, increase the required payments due under the Subordinate Loan, decrease the term of the Subordinate Loan, increase the interest rate on the Subordinate Loan, or otherwise amend the Subordinate Loan terms in a manner that creates an adverse effect upon Senior Lender or Funding Lender under the Senior Loan Documents. If Subordinate Lender either (i) amends the Subordinate Loan Documents in the manner set forth above or (ii) assigns the Subordinate Loan without Senior Lender's consent then such amendment or assignment will be void ab initio and of no effect whatsoever.
- (d) Modification of Senior Loan Documents. Senior Lender (or Initial Funding Lender if prior to Conversion, as the case may be) may amend, waive, postpone, extend, renew, replace, reduce or otherwise modify any provisions of the Senior Loan Documents without the necessity of obtaining the consent of or providing Notice to Subordinate Lender, and without affecting any of the provisions of this Agreement. Notwithstanding the foregoing, Senior Lender (or Initial Funding Lender if prior to Conversion, as the case may be) may not 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 Lender to protect the security or lien priority of Senior Lender (or Initial Funding Lender if prior to Conversion, as the case may be) under the Senior Loan Documents or to cure defaults under the Subordinate Loan Documents.
- (e) Commercial or Retail Leases. If requested, Subordinate Lender will enter into attornment and non-disturbance agreements with all tenants under commercial or retail Leases, if any, to whom Senior Lender has granted attornment and non-disturbance, on the same or substantially similar terms and conditions given by Senior Lender; provided, however, that any such attornment and non-disturbance agreements must be approved by the City Attorney. The Executive Director of the City's Department of Housing Stability is authorized to execute such attornment and non-disturbance agreements.
- (f) Consent Rights. Whenever the Subordinate Loan Documents give Subordinate Lender approval or consent rights with respect to any matter, and a right of approval

or consent for the same or substantially the same matter is also granted to Senior Lender or Funding Lender pursuant to the Senior Loan Documents or otherwise, Senior Lender's or Funding Lender's approval or consent or failure to approve or consent will be binding on Subordinate Lender. None of the other provisions of Section 7 are intended to be in any way in limitation of the provisions of this Section 7(f).

- (g) Escrows. Except as provided in this Section 7(g), and regardless of any contrary provision in the Subordinate Loan Documents, Subordinate Lender will not collect any escrows for any cost or expense related to the Mortgaged Property or for any portion of the Subordinate Indebtedness. However, if Senior Lender or Funding Lender is not collecting escrow payments for one or more Impositions, Subordinate Lender may collect escrow payments for such Impositions; provided that all payments so collected by Subordinate Lender will be held in trust by Subordinate Lender to be applied only to the payment of such Impositions.
- (h) Certification. Within 30 days after request by Senior Lender or Funding Lender, Subordinate Lender will furnish Senior Lender and Funding Lender with a statement 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 providing such other information with respect to the Subordinate Indebtedness as Senior Lender may request.

**8. Refinancing.** Subordinate Lender agrees that its agreement to subordinate under this Agreement will extend to any new mortgage debt which is for the purpose of refinancing all or any part of the Senior Indebtedness (including reasonable and necessary costs associated with the closing and/or the refinancing, and any reasonable increase in proceeds for rehabilitation in the context of a preservation transaction). All terms and covenants of this Agreement will inure to the benefit of any holder of any such refinanced debt, and all references to the Senior Loan Documents and Senior Lender will mean, respectively, the refinance loan documents and the holder of such refinanced debt.

**9. Governmental Powers.** Nothing in this Agreement is intended, nor will it be construed, to in any way limit the exercise by Subordinate Lender 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.

**10. Notices.**

- (a) Any Notice 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:

Notices intended for Senior Lender will be addressed to:

Computershare Trust Company, National Association  
CTSO Mail Operations  
MAC: N9300-070  
600 South 4th Street, 7th Floor  
Minneapolis, MN 55415  
Attention: RM for Colorado Housing and Finance  
Email: Scott.Williams3@computershare.com  
Telephone: (667) 786-1362

Notices intended for Subordinate Lender will be addressed to:

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

with a copy to:

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

Prior to Conversion, Notices intended for Funding Lender will be addressed to:

Wells Fargo Bank, National Association  
550 S. Tryon Street  
23rd Floor, D1086-239  
Charlotte, North Carolina 28202-4200  
Attn: Manager, Deal Management  
Loan # 1021059

with a copy to:

Wells Fargo Bank, National Association  
Community Lending & Investment  
1700 Lincoln Street, 11th Floor  
Mail Code: C7300-11H

Denver, Colorado 80203  
Attention: Scott Horton  
(Reference Loan No. 1021059)

and to:

Greenberg Traurig LLP  
1000 Louisiana, Suite 6700  
Houston, Texas 77002  
Attention: Wayne A. Yaffee, Esq.  
(Reference Loan No 1021059)  
Email: Wayne.Yaffee@gtlaw.com  
Telephone: (713) 374-3655

Upon and following Conversion, Notices intended for Funding Lender will be addressed to:

Wells Fargo Bank, National Association  
1751 Pinnacle Drive, 8th Floor  
McLean, Virginia 22102  
Email: WFMCServicing@wellsfargo.com  
Attention: Servicing Department

with a copy to:

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

and to:

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

- (b) Any party, by Notice given pursuant to this Section 10, 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 10.

## 11. Miscellaneous Provisions.

- (a) Assignments/Successors. This Agreement will be binding upon and will inure to the benefit of the respective legal successors and permitted assigns of the parties to this Agreement. Except for Funding Lender, no other party will be entitled to any benefits under this Agreement, whether as a third-party beneficiary or otherwise. This Agreement may be assigned at any time by Senior Lender to any subsequent holder of the Senior Note.
- (b) No Partnership or Joint Venture. Nothing in this Agreement or in any of the Senior Loan Documents or Subordinate Loan Documents will be deemed to constitute Senior Lender or Funding Lender as a joint venturer or partner of Subordinate Lender.
- (c) Further Assurances. Upon Notice from Senior Lender or Funding Lender, Subordinate Lender will execute and deliver such additional instruments and documents, and will take such actions, as are required by Senior Lender or Funding Lender to further evidence or implement the provisions and intent of this Agreement; provided, however, that any such documents or instruments must be approved by the City Attorney and not be in conflict with any requirements of the Charter for the City and County of Denver or any other law applicable to Subordinate Lender. The Executive Director of the City's Department of Housing Stability is authorized to execute such documents or instruments.
- (d) Amendment. This Agreement may be amended, changed, modified, altered or terminated only by a written instrument signed by the parties to this Agreement or their successors or assigns.
- (e) Governing Law. This Agreement will be governed by the laws of the State in which the Land is located.
- (f) Severable Provisions. 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.
- (g) Term. 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 the Senior Indebtedness; provided that this Agreement will be reinstated in the event any payment on account of the Senior Indebtedness (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. In such event, any or all of the Senior Indebtedness originally intended to be satisfied will be deemed to be reinstated and outstanding to the extent of any repayment, return, or other action, as if such payment on account of the Senior Indebtedness had not been made.

- (ii) The payment of all the Subordinate Indebtedness other than by reason of payments which Subordinate Lender is obligated to remit to Senior Lender pursuant to this Agreement.
- (iii) The acquisition by Senior Lender (or Initial Funding Lender if prior to Conversion, as the case may be) 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.
- (iv) With the prior written consent of Senior Lender, without limiting the provisions of Section 4(b)(iv), the acquisition by Subordinate Lender of title to the Mortgaged Property subject to the Senior Mortgage pursuant to a foreclosure, or a deed in lieu of foreclosure, of (or the exercise of a power of sale under) the Subordinate Mortgage.
- (h) Counterparts. 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.
- (i) Entire Agreement. This Agreement represents the entire understanding and agreement between the parties regarding the matters addressed in this Agreement, and will supersede and cancel any prior agreements regarding such matters.
- (j) Authority. Each person executing this Agreement on behalf of a party to this Agreement represents and warrants that such person is duly and validly authorized to do so on behalf of such party with full right and authority to execute this Agreement and to bind such party with respect to all of its obligations under this Agreement.
- (k) No Waiver. 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.



- (l) Remedies. Each party to this Agreement acknowledges that if any party fails to comply with its obligations under this Agreement, the other parties will have all rights available at law and in equity, including the right to obtain specific performance of the obligations of such defaulting party and injunctive relief.
  
- (m) Funding Lender's Rights to Control. Notwithstanding anything herein to the contrary, pursuant to the Senior Mortgage and Section 6.03 of the Funding Loan Agreement, all acts, consents, approvals and undertakings of Senior Lender hereunder shall be solely at the written direction of the Funding Lender. The parties hereto acknowledge and agree that Funding Lender is a third party beneficiary of this Agreement, with full rights as such.

**[SIGNATURE AND ACKNOWLEDGMENT PAGES FOLLOW]**

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

**SENIOR LENDER:**

**COMPUTERSHARE TRUST  
COMPANY, NATIONAL  
ASSOCIATION**, a national banking  
association

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

**ACKNOWLEDGMENT**

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of \_\_\_\_\_ )  
County/City of \_\_\_\_\_ )

On \_\_\_\_\_ before me, \_\_\_\_\_ (insert name and title of the officer), personally appeared \_\_\_\_\_, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of \_\_\_\_\_ that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

\_\_\_\_\_  
(Signature)

**SUBORDINATE LENDER:**

**CITY AND COUNTY OF DENVER**, a  
Colorado municipal corporation

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

**ACKNOWLEDGMENT**

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of \_\_\_\_\_ )  
County/City of \_\_\_\_\_ )

On \_\_\_\_\_ before me, \_\_\_\_\_ (insert name and title of the officer), personally appeared \_\_\_\_\_, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of \_\_\_\_\_ that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

\_\_\_\_\_  
(Signature)

**CONSENT OF BORROWER**

Borrower acknowledges receipt of a copy of this Subordination Agreement, dated \_\_\_\_\_, 2023, by and between Computershare Trust Company, National Association and the City and County of Denver and consents to the agreement of the parties set forth in this Agreement.

**38TH & HOLLY LLLP**, a Colorado limited liability limited partnership

By: 38th & Holly GP Delaware LLC, a Delaware limited liability company, General Partner

By: \_\_\_\_\_  
Name: Joseph A. DelZotto  
Title: Manager

**ACKNOWLEDGMENT**

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of \_\_\_\_\_ )  
County/City of \_\_\_\_\_ )

On \_\_\_\_\_ before me, \_\_\_\_\_ (insert name and title of the officer), personally appeared \_\_\_\_\_, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of \_\_\_\_\_ that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

\_\_\_\_\_  
(Signature)

**EXHIBIT A**  
**LEGAL DESCRIPTION**

[To be inserted]

**EXHIBIT F**  
**(To HOST Loan Agreement for 38<sup>th</sup> & Holly)**

**CASH FLOW PRIORITIES**

(a) **Cash Flow.** Subject to any restrictions in the Mortgage Loan Documents, including the Surplus Cash Limitation, and subject to the terms of the Addendum, and provided further that all reserves have been funded and maintained as required in this Agreement (excluding any required replenishment from Cash Flow or Net Proceeds), Cash Flow, if available with respect to any Partnership Accounting Year, shall be applied or distributed annually, within ninety (90) days after the end of the Partnership Accounting Year (but in no event earlier than the filing of a Partnership Tax Return for such year), in the following priority:

(i) To the Class B Limited Partner, the Class B Limited Partner Asset Management Fee payable pursuant to the Class B Limited Partner Asset Management Fee Agreement;

(ii) To the Investor Limited Partner until the total amount received pursuant to this clause and Section 4.02(b)(ii) equals the amount of any unpaid Downward Adjuster owed under Section 3.05 (including any interest on such amount described therein and any amount that is solely attributable to a Change in Law);

(iii) To repay any loans made by the Investor Limited Partner to the Partnership, with any such payments to be applied first to accrued but unpaid interest and then to principal;

(iv) To pay amounts then owed Investor Limited Partner for all accrued but unpaid Asset Management Fees;

(v) To replenish the Operating Reserve to the Operating Reserve Amount;

(vi) After Permanent Loan Conversion, to pay accrued and unpaid interest on the MCC Loan;

(vii) To make payments then due under the PILOT Agreement, including past due payments and accrued, unpaid interest;

(viii) Up to \$50,000, to pay the \$25,000 priority distribution under the City Loan and the \$25,000 priority distribution under the CDOH Loan;

(ix) To repay interest and then principal on the Developer Fee Loan;

(x) Of the balance, 56.71% to make payments on the City Loan, and 43.29% to make payments on the CDOH Loan, until all amounts due and owing on the City Loan and the CDOH Loan, respectively, have been paid in full; provided, that the aggregate payments under this clause (x) and clauses (vi) and (viii) shall not exceed 75% of Cash Flow;

- (xi) To repay any Operating Deficit Loans owed to the General Partner, with any such payments to be applied first to accrued but unpaid interest and then to principal;
- (xii) To pay any Deferred Management Fees to the Management Agent;
- (xiii) To pay amounts then owed to the General Partner for all accrued but unpaid General Partner Asset Management Fee;
- (xiv) To make payments on the Sponsor IDF Loan;
- (xv) Then, 25% of remaining Cash Flow, if any, to be deposited into the Property Tax Escrow Account pursuant to the terms of the Addendum; and
- (xvi) The balance shall be distributed 0.005% to the General Partner, 0.005% to the Class B Limited Partner, 89.990% to the Class C Limited Partner and 10% to the Investor Limited Partner.

(b) ***Distributions of Net Proceeds.*** Prior to dissolution of the Partnership, if the General Partner shall determine from time to time that Net Proceeds are available for distribution from a Capital Event, such Net Proceeds shall be applied or distributed as follows, subject to any restrictions in the Mortgage Loan Documents:

- (i) To fund reserves for contingent liabilities to the extent deemed reasonable by the General Partner with the Consent of the Investor Limited Partner;
- (ii) To the Class B Limited Partner, to pay any accrued and unpaid Class B Limited Partner Asset Management Fee payable pursuant to the Class B Limited Partner Asset Management Fee Agreement;
- (iii) To the Investor Limited Partner until the total amount received pursuant to this clause and Section 1.01(a)(i) equals the amount of any unpaid Downward Adjuster owed under Section 3.05 (including any interest on such amount described therein and any amount that is solely attributable to a Change in Law);
- (iv) To repay the Investor Limited Partner any other loans made by the Investor Limited Partner to the Partnership, with any such payments to be applied first to accrued but unpaid interest and then to principal;
- (v) To pay amounts then owed to the Investor Limited Partner for accrued but unpaid Asset Management Fees;
- (vi) To the Investor Limited Partner in an amount equal to the amount of Profits allocated to it pursuant to Section 4.01(b)(iii);
- (vii) During the Compliance Period, to replenish the Operating Reserve to the Operating Reserve Amount;

- (viii) After Permanent Loan Conversion, to pay accrued and unpaid interest on the MCC Loan;
- (ix) To make payments then due under the PILOT Agreement, including past due payments and accrued, unpaid interest;
- (x) Up to \$50,000, to pay the \$25,000 priority distribution under the City Loan and the \$25,000 priority distribution under the CDOH Loan;
- (xi) To repay interest and then principal on the Developer Fee Loan;
- (xii) Of the remainder, 56.71% to make payments on the City Loan and 43.29% to make payments on the CDOH Loan, until all amounts due and owing on the City Loan and the CDOH Loan, respectively, have been paid in full; provided, that the aggregate payments under this clause (xii) and clauses (viii) and (x) shall not exceed 75% of Cash Flow;
- (xiii) To repay any Operating Deficit Loans owed to the General Partner, with any such payments to be applied first to accrued but unpaid interest and then to principal;
- (xiv) To pay any Deferred Management Fees to the Management Agent;
- (xv) To pay any amounts then owed to the General Partner for General Partner Asset Management Fees;
- (xvi) To make payments on the Sponsor IDF Loan;
- (xvii) During the Compliance Period, 25% of remaining Cash Flow, if any, to be deposited into the Property Tax Escrow Account pursuant to the terms of the Addendum; and
- (xviii) The balance, if any, shall be distributed 0.005% to the General Partner, 0.005% to the Class B Limited Partner, 89.990% to the Class C Limited Partner and 10% to the Investor Limited Partner.



## Defined Terms

“*Addendum*” shall have the meaning set forth in the Recitals to this Agreement. The Addendum is attached to and is a part of this Agreement.

“*Agreement*” means this Amended and Restated Agreement of Limited Partnership, including the Addendum and all Exhibits and Schedules hereto, as amended from time to time in accordance with the terms of Section 15.03.

“*Asset Management Fee*” means the fee payable by the Partnership to the Investor Limited Partner pursuant to the Asset Management Fee Agreement from available Cash Flow and Net Proceeds as described in Article VI hereof, in the annual, cumulative amount of \$7,500 commencing on January 1, 2024, and increasing by 3% per annum beginning on January 1, 2025.

“*Asset Management Fee Agreement*” means the Asset Management Fee Agreement dated as of the Closing Date between the Partnership and the Investor Limited Partner providing for the payment of the Asset Management Fee.

“*Capital Event*” means any transaction that is not in the ordinary course of business of the Partnership, including without limitation, the sale or other disposition of all or any substantial part of the assets of the Partnership or the refinancing of any Mortgage Loan, but excluding (i) unsecured loans to the Partnership and (ii) Capital Contributions.

“*Cash Flow*” means, for any period of time, the total cash receipts of the Partnership from ordinary operations (*i.e.*, excluding the proceeds of (A) Capital Events, (B) the Capital Contributions of the Partners (except that Limited Partner Additional Benefit Contributions pursuant to Section 3.05(a) or Section 3.05(c) shall be deemed to be Cash Flow, and (C) the proceeds of any Mortgage Loans), such as, but not limited to, Effective Gross Income plus any other funds (such as any reserves in excess of the amounts required to be established and maintained pursuant to this Agreement and, if applicable, the Mortgage Loan Documents, when and to the extent the General Partner no longer regards such excess reserves as reasonably necessary in the efficient conduct of the business of the Partnership) deemed available for distribution and designated as Cash Flow by the General Partner, *less* (i) the total cash disbursements of the Partnership (such as, but not limited to, operating expenses, costs of repair or restoration of the Apartment Complex, Management Fees (excluding the any Deferred Management Fee, the Asset Management Fee, and the General Partner Asset Management Fee), financing fees or other requirements of any Lender and interest and principal repayments of any Partnership loans, other than loans which are payable solely from Cash Flow and loans from the General Partner or any Affiliate thereof (such as the Developer Fee Loan and Operating Deficit Loans)), less (ii) repayment of loans made by the Investor Limited Partner under Section 3.03(d), and less (iii) amounts paid in connection with the establishment or maintenance of reserves as required by Section 6.10.

“*CDOH*” means the Colorado Division of Housing, Department of Local Affairs.

“*CDOH Loan*” means that certain construction-to-permanent loan from CDOH in the principal amount of \$6,350,000, which bears interest at the rate of one percent (1%), has an

eighteen (18) year term, and requires payments from Cash Flow in accordance with Section 4.02(a) below.

“*CHFA*” means the Colorado Housing and Finance Authority.

“*City*” means the City of Denver.

“*City Loan*” means that certain construction-to-permanent loan from the City to the Partnership in the principal amount of \$8,319,000, which bears simple interest at the rate of one percent (1%), has a term of thirty (30) years, and requires payments from Cash Flow in accordance with Section 4.02(a) below.

“*Change in Law*” means an amendment or addition to the Code or Regulations that is applicable to the Apartment Complex or the Partnership and that has the result of reducing or eliminating the Credit for qualified low-income housing projects (as defined in Code Section 42(g)(1)) or substantially changes the requirements for qualifying for the Credit in a manner which the Partners reasonably agree cannot be satisfied by commercially reasonable efforts of the Partnership. Change in Law shall specifically exclude any changes, clarifications, guidance or rules by the Agency, the IRS or any other applicable governing body related to Income Averaging.

“*Class B Limited Partner*” means Denver Housing Development Partners, Inc., a Colorado nonprofit corporation.

“*Class B Special Limited Partner Asset Management Agreement*” shall have the meaning set forth in the Addendum.

“*Class B Special Limited Partner Asset Management Fee*” shall have the meaning set forth in the Addendum.

“*Class C Limited Partner*” means EAD 38<sup>th</sup> & Holly LLC, a Colorado limited liability company.

“*Compliance Period*” means the period described in Code Section 42(i)(1) and applicable to any residential building in the Apartment Complex. For purposes of this Agreement, the Compliance Period for the Apartment Complex shall begin on the first day of the Compliance Period for the Apartment Complex building first placed in service and end on the last day of the Compliance Period for the Apartment Complex building last placed in service.

“*Consent*” means, and will be deemed to have been obtained, if the Investor Limited Partner (or the Special Limited Partner, as the case may be) shall have been notified in writing consistent with Section 15.02 by the General Partner of any action either proposed to be taken or for which ratification is desired and if the Limited Partner (or Special Limited Partner) shall have expressly consented in writing to such action. In the event that there is more than one Limited Partner, Consent of the Limited Partner shall be deemed to have been obtained if a majority in Interest of the Limited Partners so consents in accordance with the preceding sentence; *provided, however*, that if pursuant to the Uniform Act, the consent of all Limited Partners is required in a given context, then the term Consent of the Limited Partner shall be deemed to require the consent

of all Limited Partners. The Investor Limited Partner (or Special Limited Partner, as applicable) agrees to use reasonable efforts to respond in writing within fifteen (15) Business Days of receipt of a notice from the General Partner; *provided, however*, that the Investor Limited Partner (or Special Limited Partner, as applicable) shall not under any circumstances be deemed to have given its consent if it fails to respond within the foregoing fifteen (15) Business Day period. In any action with respect to which the Consent of the Investor Limited Partner (or Special Limited Partner) is requested, the Partnership shall reimburse the Investor Limited Partner (or Special Limited Partner) for all attorneys' fees, accountants' fees and other expenses incurred by the Investor Limited Partner (or Special Limited Partner) in connection with the proposed matter, whether or not Consent is given. For purposes of clarity, the consent of the Class B Limited Partner shall only be required if required in the Addendum.

*"Deferred Management Fee"* has the meaning set forth in Section 7.01.

*"Developer Fee Loan"* means the loan of the unpaid portion of the Developer Fee containing the terms and conditions specified in Section 7.02.

*"Downward Adjuster"* means, collectively, a Credit Shortfall Adjuster, a Credit Timing Adjuster, a Subsequent Credit Shortfall Adjuster, and a Credit Recapture Adjuster.

*"General Partner"* means 38<sup>th</sup> & Holly GP Delaware LLC, a Delaware limited liability company, and any Person or Persons who, at the time of reference thereto, have been admitted as additional or successor General Partners, in each such Person's capacity as a general partner of the Partnership. At any time when there is more than one General Partner, the term "General Partner" or "General Partners" shall include, collectively, all such Persons, unless the context clearly implies that such term only refers to one of them.

*"General Partner Asset Management Fee"* means the asset management fee payable by the Partnership to the General Partner pursuant to the General Partner Asset Management Fee Agreement from Cash Flow and Net Proceeds as described in Article IV, in the annual, cumulative amount of \$14,500, commencing on January 1, 2024, and increasing by 3% per annum beginning on January 1, 2025.

*"General Partner Asset Management Fee Agreement"* means the General Partner Asset Management Fee agreement dated as of the Closing Date by and between the Partnership and the General Partner relating to the payment of the General Partner Asset Management Fee.

*"Investor Limited Partner"* means Wells Fargo Community Investment Holdings, LLC, a Delaware limited liability company, and any Person or Persons who, at the time of reference thereto, have been admitted as additional or successor Investor Limited Partners.

*"Management Agent"* means Delwest Management Corp. and/or any successor or assign that is selected by the General Partner, with the Consent of the Investor Limited Partner, to provide management services with respect to the Apartment Complex from time to time in accordance with Article XI.

*"MCC Loan"* means that certain construction-to-permanent loan from Developer in the principal amount of \$2,000,000, which bears interest at the rate of three percent (3%), has a term

of twenty (20) years, requires payments from Cash Flow and Net Proceeds in accordance with Sections 4.02(a) and 4.02(b), and is funded by a loan to Developer from Mercy Community Capital.

“*Mortgage Loan Documents*” means any commitment, loan agreement, promissory note, Mortgage, regulatory agreement, security agreement, assignment, assumption agreement, or other instrument executed or to be executed by the Partnership in connection with any Mortgage Loan.

“*Net Proceeds*” means the difference between (A) the sum of (i) the gross proceeds from a Capital Event other than a refinancing; (ii) the excess proceeds from the refinancing of any Mortgage Loan (that is, any refinancing proceeds not needed for the repayment of the loan refinanced); and (iii) any proceeds received from insurance settlements or other claims attributable to fire or other casualty, or from condemnation, sales or grants of easements, rights-of-way or the like in excess of those needed for repair, restoration or replacement of the damaged, destroyed or condemned property and (B) the payment of or due provision for (i) all liabilities to creditors of the Partnership (excluding, except in the event of the dissolution and liquidation of the Partnership, fees owed to the General Partner and loans to the Partnership from the General Partner or Affiliates thereof for any purpose, including, without limitation, Operating Deficit Loans) and (ii) necessary and customary expenses of such Capital Event or refinancing (other than, except in the event of the dissolution and liquidation of the Partnership, expenses payable to the General Partner or an Affiliate thereof).

“*Operating Deficit*” shall mean the amount by which (i) the amount of funds available to the Partnership from Effective Gross Income of the Apartment Complex, *together with* other available cash and funds on hand of the Partnership, if any (including, after Period 1, amounts released from the Operating Reserve), for the relevant time period *but excluding*: (a) funds from Capital Contributions (except to the extent that Capital Contribution proceeds are specified in the Budget as available to fund initial working capital amounts), (b) the proceeds of any loans obtained by the Partnership (except for Operating Deficit Loans), (c) advance rent payments and (d) nonforfeited tenant deposits, is less than (ii) the amount necessary to meet all of the operating costs and expenses of any type due and payable for such time period incidental to the operation and business activities of the Partnership, including, without limitation, debt service payments due under the Mortgage Loans (other than Soft Debt Payments), taxes, insurance, costs of operations, maintenance, repairs, interest, Management Fees and expenses, prepaid expenses, any expenses and payments for relocation of tenants, and reserve funding and maintenance requirements set forth in Section 6.10, but excluding repayment of any loans from the General Partner or Affiliates thereof, distributions of Cash Flow to Partners or payments of fees or other items solely from available Cash Flow, replenishment of the Operating Reserve from Cash Flow, amounts expended for capital improvements and similar items, and expenses, fees and reserves which are permitted to be funded from proceeds of Capital Contributions or Mortgage Loans. For purposes of the foregoing, to the extent provided in Section 7.01 hereof, up to 50% of the monthly Management Fee shall not be treated as an operating cost or expense of the Apartment Complex and shall instead be deferred without interest as necessary to reduce the amount, or avoid the occurrence of, an Operating Deficit.

“*Operating Deficit Loan*” means any loan or loans made to the Partnership pursuant to Section 6.12.

“*Operating Reserve*” means that certain operating reserve of the Partnership funded from the Performance Installment and established and maintained pursuant to Section 6.10(o).

“*Operating Reserve Amount*” means \$1,312,596, which is the initial amount to be deposited into the Operating Reserve from the Performance Installment and the target amount to be replenished from Cash Flow and Net Proceeds.

“*Partnership*” means 38th & Holly LLLP, a limited liability limited partnership formed under and pursuant to the Uniform Act.

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

“*Partnership Tax Return*” means the United States Partnership Income Tax Return (Form 1065) for the Partnership, together with all Schedules K-1 included therein, and all state and local tax returns and other similar schedules required to be filed with respect to the operations of the Partnership.

“*Permanent Loan Conversion*” means the date on which the Taxable Construction Loan has been repaid in full, the Tax-Exempt Note shall have been purchased by Wells Fargo, as servicer for Freddie Mac, and the Mortgage Loan Documents for the First Mortgage Loan have been executed in forms approved by the Investor Limited Partner pursuant to Section 5.04.

“*PILOT Agreement*” means that certain Agreement for Payments In Lieu of Taxes dated as of the date hereof by and between DHA and the Partnership.

“*Property Tax Escrow Account*” means that certain escrow account described in Section 6.10(p)(iii) and established and maintained pursuant to the Addendum.

“*Sponsor IDF Loan*” means that certain construction-to-permanent loan from Developer in the principal amount of \$1,000,000, which bears interest at the rate of one percent (1%), has a term of twenty (20) years, requires payments from Cash Flow and Net Proceeds in accordance with Sections 4.02(a) and 4.02(b), and is funded by a loan to Developer from Impact Development Fund.

“*Surplus Cash Limitation*” means the limitation set forth in the Subordination Agreements restricting payments on the City Loan and CDOH Loan to not more than 75% of then available Surplus Cash (as such term is defined in the Subordination Agreements) in the aggregate.

## Exhibit G

OMB Approved No.:1505-0271

Expiration Date: 11/30/2021

### U.S. DEPARTMENT OF THE TREASURY CORONAVIRUS LOCAL FISCAL RECOVERY FUND

Recipient name and address: City and County of Denver 201 West Colfax Avenue, Dept. 1010 Denver, Colorado 80202	DUNS Number: 080483932 Taxpayer Identification Number: 846000580 Assistance Listing Number and Title: 21.019
--	--

Sections 602(b) and 603(b) of the Social Security Act (the Act) as added by section 9901 of the American Rescue Plan Act, Pub. L. No. 117-2 (March 11, 2021) authorize the Department of the Treasury (Treasury) to make payments to certain recipients from the Coronavirus State Fiscal Recovery Fund and the Coronavirus Local Fiscal Recovery Fund.

Recipient hereby agrees, as a condition to receiving such payment from Treasury, to the terms attached hereto.

Recipient:

\_\_\_\_\_  
Authorized Representative:

Title:

Date signed:

U.S. Department of the Treasury:

\_\_\_\_\_  
Authorized Representative:

Title:

Date signed:

#### PAPERWORK REDUCTION ACT NOTICE

The information collected will be used for the U.S. Government to process requests for support. The estimated burden associated with this collection of information is 15 minutes per response. Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be directed to the Office of Privacy, Transparency and Records, Department of the Treasury, 1500 Pennsylvania Ave., N.W., Washington, D.C. 20220. DO NOT send the form to this address. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB.

U.S. DEPARTMENT OF THE TREASURY  
CORONAVIRUS LOCAL FISCAL RECOVERY FUND  
AWARD TERMS AND CONDITIONS

1. Use of Funds.
  - a. Recipient understands and agrees that the funds disbursed under this award may only be used in compliance with section 603(c) of the Social Security Act (the Act), Treasury's regulations implementing that section, and guidance issued by Treasury regarding the foregoing.
  - b. Recipient will determine prior to engaging in any project using this assistance that it has the institutional, managerial, and financial capability to ensure proper planning, management, and completion of such project.
2. Period of Performance. The period of performance for this award begins on the date hereof and ends on December 31, 2026. As set forth in Treasury's implementing regulations, Recipient may use award funds to cover eligible costs incurred during the period that begins on March 3, 2021, and ends on December 31, 2024.
3. Reporting. Recipient agrees to comply with any reporting obligations established by Treasury as they relate to this award.
4. Maintenance of and Access to Records
  - a. Recipient shall maintain records and financial documents sufficient to evidence compliance with section 603(c) of the Act, Treasury's regulations implementing that section, and guidance issued by Treasury regarding the foregoing.
  - b. The Treasury Office of Inspector General and the Government Accountability Office, or their authorized representatives, shall have the right of access to records (electronic and otherwise) of Recipient in order to conduct audits or other investigations.
  - c. Records shall be maintained by Recipient for a period of five (5) years after all funds have been expended or returned to Treasury, whichever is later.
5. Pre-award Costs. Pre-award costs, as defined in 2 C.F.R. § 200.458, may not be paid with funding from this award.
6. Administrative Costs. Recipient may use funds provided under this award to cover both direct and indirect costs.
7. Cost Sharing. Cost sharing or matching funds are not required to be provided by Recipient.
8. Conflicts of Interest. Recipient understands and agrees it must maintain a conflict of interest policy consistent with 2 C.F.R. § 200.318(c) and that such conflict of interest policy is applicable to each activity funded under this award. Recipient and subrecipients must disclose in writing to Treasury or the pass-through entity, as appropriate, any potential conflict of interest affecting the awarded funds in accordance with 2 C.F.R. § 200.112.
9. Compliance with Applicable Law and Regulations.
  - a. Recipient agrees to comply with the requirements of section 602 of the Act, regulations adopted by Treasury pursuant to section 602(f) of the Act, and guidance issued by Treasury regarding the foregoing. Recipient also agrees to comply with all other applicable federal statutes, regulations, and executive orders, and Recipient shall provide for such compliance by other parties in any agreements it enters into with other parties relating to this award.
  - b. Federal regulations applicable to this award include, without limitation, the following:
    - i. Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, 2 C.F.R. Part 200, other than such provisions as Treasury may determine are inapplicable to this Award and subject to such exceptions as may be otherwise provided by Treasury. Subpart F – Audit Requirements of the Uniform Guidance, implementing the Single Audit Act, shall apply to this award.
    - ii. Universal Identifier and System for Award Management (SAM), 2 C.F.R. Part 25, pursuant to which the award term set forth in Appendix A to 2 C.F.R. Part 25 is hereby incorporated by reference.
    - iii. Reporting Subaward and Executive Compensation Information, 2 C.F.R. Part 170, pursuant to which the award term set forth in Appendix A to 2 C.F.R. Part 170 is hereby incorporated by reference.
    - iv. OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement), 2 C.F.R. Part 180, including the requirement to include a term or condition in all lower tier covered transactions (contracts and subcontracts described in 2 C.F.R. Part 180, subpart B) that the award is subject to 2 C.F.R. Part 180 and Treasury's implementing regulation at 31 C.F.R. Part 19.

- v. Recipient Integrity and Performance Matters, pursuant to which the award term set forth in 2 C.F.R. Part 200, Appendix XII to Part 200 is hereby incorporated by reference.
  - vi. Governmentwide Requirements for Drug-Free Workplace, 31 C.F.R. Part 20.
  - vii. New Restrictions on Lobbying, 31 C.F.R. Part 21.
  - viii. Uniform Relocation Assistance and Real Property Acquisitions Act of 1970 (42 U.S.C. §§ 4601-4655) and implementing regulations.
  - ix. Generally applicable federal environmental laws and regulations.
- c. Statutes and regulations prohibiting discrimination applicable to this award include, without limitation, the following:
- i. Title VI of the Civil Rights Act of 1964 (42 U.S.C. §§ 2000d et seq.) and Treasury’s implementing regulations at 31 C.F.R. Part 22, which prohibit discrimination on the basis of race, color, or national origin under programs or activities receiving federal financial assistance;
  - ii. The Fair Housing Act, Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§ 3601 et seq.), which prohibits discrimination in housing on the basis of race, color, religion, national origin, sex, familial status, or disability;
  - iii. Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of disability under any program or activity receiving federal financial assistance;
  - iv. The Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101 et seq.), and Treasury’s implementing regulations at 31 C.F.R. Part 23, which prohibit discrimination on the basis of age in programs or activities receiving federal financial assistance; and
  - v. Title II of the Americans with Disabilities Act of 1990, as amended (42 U.S.C. §§ 12101 et seq.), which prohibits discrimination on the basis of disability under programs, activities, and services provided or made available by state and local governments or instrumentalities or agencies thereto.
10. Remedial Actions. In the event of Recipient’s noncompliance with section 602 of the Act, other applicable laws, Treasury’s implementing regulations, guidance, or any reporting or other program requirements, Treasury may impose additional conditions on the receipt of a subsequent tranche of future award funds, if any, or take other available remedies as set forth in 2 C.F.R. § 200.339. In the case of a violation of section 602(c) of the Act regarding the use of funds, previous payments shall be subject to recoupment as provided in section 602(e) of the Act and any additional payments may be subject to withholding as provided in sections 602(b)(6)(A)(ii)(III) of the Act, as applicable.
11. Hatch Act. Recipient agrees to comply, as applicable, with requirements of the Hatch Act (5 U.S.C. §§ 1501-1508 and 7324-7328), which limit certain political activities of State or local government employees whose principal employment is in connection with an activity financed in whole or in part by this federal assistance.
12. False Statements. Recipient understands that making false statements or claims in connection with this award is a violation of federal law and may result in criminal, civil, or administrative sanctions, including fines, imprisonment, civil damages and penalties, debarment from participating in federal awards or contracts, and/or any other remedy available by law.
13. Publications. Any publications produced with funds from this award must display the following language: “This project [is being] [was] supported, in whole or in part, by federal award number [enter project FAIN] awarded to [name of Recipient] by the U.S. Department of the Treasury.”
14. Debts Owed the Federal Government.
- a. Any funds paid to Recipient (1) in excess of the amount to which Recipient is finally determined to be authorized to retain under the terms of this award; (2) that are determined by the Treasury Office of Inspector General to have been misused; or (3) that are determined by Treasury to be subject to a repayment obligation pursuant to sections 602(e) and 603(b)(2)(D) of the Act and have not been repaid by Recipient shall constitute a debt to the federal government.
  - b. Any debts determined to be owed the federal government must be paid promptly by Recipient. A debt is delinquent if it has not been paid by the date specified in Treasury’s initial written demand for payment, unless other satisfactory arrangements have been made or if the Recipient knowingly or improperly retains funds that are a debt as defined in paragraph 14(a). Treasury will take any actions available to it to collect such a debt.
15. Disclaimer.



- a. The United States expressly disclaims any and all responsibility or liability to Recipient or third persons for the actions of Recipient or third persons resulting in death, bodily injury, property damages, or any other losses resulting in any way from the performance of this award or any other losses resulting in any way from the performance of this award or any contract, or subcontract under this award.
- b. The acceptance of this award by Recipient does not in any way establish an agency relationship between the United States and Recipient.

16. Protections for Whistleblowers.

- a. In accordance with 41 U.S.C. § 4712, Recipient may not discharge, demote, or otherwise discriminate against an employee in reprisal for disclosing to any of the list of persons or entities provided below, information that the employee reasonably believes is evidence of gross mismanagement of a federal contract or grant, a gross waste of federal funds, an abuse of authority relating to a federal contract or grant, a substantial and specific danger to public health or safety, or a violation of law, rule, or regulation related to a federal contract (including the competition for or negotiation of a contract) or grant.
- b. The list of persons and entities referenced in the paragraph above includes the following:
  - i. A member of Congress or a representative of a committee of Congress;
  - ii. An Inspector General;
  - iii. The Government Accountability Office;
  - iv. A Treasury employee responsible for contract or grant oversight or management;
  - v. An authorized official of the Department of Justice or other law enforcement agency;
  - vi. A court or grand jury; or
  - vii. A management official or other employee of Recipient, contractor, or subcontractor who has the responsibility to investigate, discover, or address misconduct.
- c. Recipient shall inform its employees in writing of the rights and remedies provided under this section, in the predominant native language of the workforce.

17. Increasing Seat Belt Use in the United States. Pursuant to Executive Order 13043, 62 FR 19217 (Apr. 18, 1997), Recipient should encourage its contractors to adopt and enforce on-the-job seat belt policies and programs for their employees when operating company-owned, rented or personally owned vehicles.

18. Reducing Text Messaging While Driving. Pursuant to Executive Order 13513, 74 FR 51225 (Oct. 6, 2009), Recipient should encourage its employees, subrecipients, and contractors to adopt and enforce policies that ban text messaging while driving, and Recipient should establish workplace safety policies to decrease accidents caused by distracted drivers.

**ASSURANCES OF COMPLIANCE WITH CIVIL RIGHTS REQUIREMENTS**  
**ASSURANCES OF COMPLIANCE WITH TITLE VI OF THE CIVIL RIGHTS ACT OF 1964**

As a condition of receipt of federal financial assistance from the Department of the Treasury, the recipient named below (hereinafter referred to as the "Recipient") provides the assurances stated herein. The federal financial assistance may include federal grants, loans and contracts to provide assistance to the Recipient's beneficiaries, the use or rent of Federal land or property at below market value, Federal training, a loan of Federal personnel, subsidies, and other arrangements with the intention of providing assistance. Federal financial assistance does not encompass contracts of guarantee or insurance, regulated programs, licenses, procurement contracts by the Federal government at market value, or programs that provide direct benefits.

The assurances apply to all federal financial assistance from or funds made available through the Department of the Treasury, including any assistance that the Recipient may request in the future.

The Civil Rights Restoration Act of 1987 provides that the provisions of the assurances apply to all of the operations of the Recipient's program(s) and activity(ies), so long as any portion of the Recipient's program(s) or activity(ies) is federally assisted in the manner prescribed above.

1. Recipient ensures its current and future compliance with Title VI of the Civil Rights Act of 1964, as amended, which prohibits exclusion from participation, denial of the benefits of, or subjection to discrimination under programs and activities receiving federal financial assistance, of any person in the United States on the ground of race, color, or national origin (42 U.S.C. § 2000d et seq.), as implemented by the Department of the Treasury Title VI regulations at 31 CFR Part 22 and other pertinent executive orders such as Executive Order 13166, directives, circulars, policies, memoranda, and/or guidance documents.
2. Recipient acknowledges that Executive Order 13166, "Improving Access to Services for Persons with Limited English Proficiency," seeks to improve access to federally assisted programs and activities for individuals who, because of national origin, have Limited English proficiency (LEP). Recipient understands that denying a person access to its programs, services, and activities because of LEP is a form of national origin discrimination prohibited under Title VI of the Civil Rights Act of 1964 and the Department of the Treasury's implementing regulations. Accordingly, Recipient shall initiate reasonable steps, or comply with the Department of the Treasury's directives, to ensure that LEP persons have meaningful access to its programs, services, and activities. Recipient understands and agrees that meaningful access may entail providing language assistance services, including oral interpretation and written translation where necessary, to ensure effective communication in the Recipient's programs, services, and activities.
3. Recipient agrees to consider the need for language services for LEP persons when Recipient develops applicable budgets and conducts programs, services, and activities. As a resource, the Department of the Treasury has published its LEP guidance at 70 FR 6067. For more information on taking reasonable steps to provide meaningful access for LEP persons, please visit <http://www.lep.gov>.
4. Recipient acknowledges and agrees that compliance with the assurances constitutes a condition of continued receipt of federal financial assistance and is binding upon Recipient and Recipient's successors, transferees, and assignees for the period in which such assistance is provided.
5. Recipient acknowledges and agrees that it must require any sub-grantees, contractors, subcontractors, successors, transferees, and assignees to comply with assurances 1-4 above, and agrees to incorporate the following language in every contract or agreement subject to Title VI and its regulations between the Recipient and the Recipient's sub-grantees, contractors, subcontractors, successors, transferees, and assignees:

*The sub-grantee, contractor, subcontractor, successor, transferee, and assignee shall comply with Title VI of the Civil Rights Act of 1964, which prohibits recipients of federal financial assistance from excluding from a program or activity, denying benefits of, or otherwise discriminating against a person on the basis of race, color, or national origin (42 U.S.C. § 2000d et seq.), as implemented by the Department of the Treasury's Title VI regulations, 31 CFR Part 22, which are herein incorporated by reference and made a part of this contract (or agreement). Title VI also includes protection to persons with "Limited English Proficiency" in any program or activity receiving federal financial assistance, 42 U.S.C. § 2000d et seq., as implemented by the Department of the Treasury's Title VI regulations, 31 CFR Part 22, and herein incorporated by reference and made a part of this contract or agreement.*

6. Recipient understands and agrees that if any real property or structure is provided or improved with the aid of federal financial assistance by the Department of the Treasury, this assurance obligates the Recipient, or in the case of a subsequent transfer, the transferee, for the period during which the real property or structure is used for a purpose for which the federal

financial assistance is extended or for another purpose involving the provision of similar services or benefits. If any personal property is provided, this assurance obligates the Recipient for the period during which it retains ownership or possession of the property.

7. Recipient shall cooperate in any enforcement or compliance review activities by the Department of the Treasury of the aforementioned obligations. Enforcement may include investigation, arbitration, mediation, litigation, and monitoring of any settlement agreements that may result from these actions. The Recipient shall comply with information requests, on-site compliance reviews and reporting requirements.
8. Recipient shall maintain a complaint log and inform the Department of the Treasury of any complaints of discrimination on the grounds of race, color, or national origin, and limited English proficiency covered by Title VI of the Civil Rights Act of 1964 and implementing regulations and provide, upon request, a list of all such reviews or proceedings based on the complaint, pending or completed, including outcome. Recipient also must inform the Department of the Treasury if Recipient has received no complaints under Title VI.
9. Recipient must provide documentation of an administrative agency's or court's findings of non-compliance of Title VI and efforts to address the non-compliance, including any voluntary compliance or other agreements between the Recipient and the administrative agency that made the finding. If the Recipient settles a case or matter alleging such discrimination, the Recipient must provide documentation of the settlement. If Recipient has not been the subject of any court or administrative agency finding of discrimination, please so state.
10. If the Recipient makes sub-awards to other agencies or other entities, the Recipient is responsible for ensuring that sub-recipients also comply with Title VI and other applicable authorities covered in this document. State agencies that make sub-awards must have in place standard grant assurances and review procedures to demonstrate that they are effectively monitoring the civil rights compliance of subrecipients.

The United States of America has the right to seek judicial enforcement of the terms of this assurances document and nothing in this document alters or limits the federal enforcement measures that the United States may take in order to address violations of this document or applicable federal law.

Under penalty of perjury, the undersigned official(s) certifies that official(s) has read and understood the Recipient's obligations as herein described, that any information submitted in conjunction with this assurances document is accurate and complete, and that the Recipient is in compliance with the aforementioned nondiscrimination requirements.

City and County of Denver  
Recipient

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature of Authorized Official

**PAPERWORK REDUCTION ACT NOTICE**

The information collected will be used for the U.S. Government to process requests for support. The estimated burden associated with this collection of information is 30 minutes per response. Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be directed to the Office of Privacy, Transparency and Records, Department of the Treasury, 1500 Pennsylvania Ave., N.W., Washington, D.C. 20220. DO NOT send the form to this address. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB.

**PART II**  
**SUPPLEMENTARY GENERAL CONDITIONS (HOME)**

**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 Home Investment Partnership Program (“HOME”). “Subcontractor” means any person or entity that enters into an agreement or contract with a Contractor.

C. “HOST” means the City’s Department of Housing Stability 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. Cranston-Gonzales National Affordable Housing Act.** This Agreement is subject to Title II of the Cranston-Gonzales National Affordable Housing Act of 1990 (42 U.S.C. 12701-12839), and HUD regulations at 24 C.F.R. Part 92.

**Sec. 102. Uniform Administrative Requirements.** This Agreement is subject to the requirements of 2 CFR Part 200, “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 at 24 C.F.R. 100, 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 (42 U.S.C. 6101 *et seq.*) and implementing regulations at 24 C.F.R. 146. 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 in the United States 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 provided, rehabilitated, or operated with federal assistance or are owned or operated by the Federal Government.

**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 (29 U.S.C. 794), as amended, and regulations at 24 C.F.R. Part 8, providing that no otherwise qualified individual with handicaps in the United States 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. Violence Against Women Reauthorization Act of 2013.** This Agreement is subject to the Violence Against Women Reauthorization Act of 2013, which provides protections to victims of domestic violence in public housing, as well as in housing funded by the HOME program.

**Sec. 110. “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 the 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 75, 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 75 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 75, 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 75. 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 75.

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 contract is executed, and (2) with persons other than those to whom the regulations of 24 C.F.R. Part 75

require employment opportunities to be directed, were not filled to circumvent the Contractor's obligations under 24 C.F.R. Part 75.

F. Noncompliance with HUD's regulations in 24 C.F.R. Part 75 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD-assisted contracts.

**Sec. 111. 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. Parts 42 and 92. The Contractor must comply with the City's Anti-Displacement and Relocation Assistance Plan on file.

**Sec. 112. Conflict of Interest.** The provisions of 24 C.F.R. 92.356 regarding "Conflict of Interest" are expressly incorporated herein by this reference.

**Sec. 113. 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. 114. 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. 114(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. 115. 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, as stated in 24 C.F.R. 84.36.

**Sec. 116. 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. 117. Program Income.** Unless otherwise specified in Part I of this Agreement, all program income as defined by HUD at 24 CFR 92.2. shall be returned to the City. Any program income on hand when this Agreement expires, or received after this Agreement expires shall be paid to the City.

## **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: (A) Be necessary and reasonable for proper and efficient performance of the contractual requirements and in accordance with the approved budget; (B) Be allocable to Federal awards under the provisions of the OMB Omni Circular; (C) Be authorized or not prohibited under State or local laws or regulations; (D) Conform to any limitations or exclusions set forth in these principles, Federal laws, terms and conditions of the Federal award, or other governing regulations as to types of amounts of cost items; (E) Be consistent with policies, procedures and practices applied uniformly to activities of the City, both Federally assisted and non-Federally assisted; (F) Be accorded consistent treatment—a cost may not be assigned to a Federal award as a direct cost if any other cost incurred for the same purpose



in like circumstances has been allocated to the Federal award as an indirect cost; (G) Be determined in accordance with generally accepted accounting principles; (H) Not be allocable to or included as a cost of any other Federally financed program; (I) Be net of all applicable credits, such as purchase discounts, rebates or allowances, sales of publications or materials, or other income or refunds; and (J) Be fully documented.

The following costs or expenditures by the Contractor are specifically ineligible for 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 the Community Development Administration.

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 HOST. The City agrees to establish a payment procedure that will provide funds in a timely and regular manner. When disbursing funds for construction, the City may withhold the final ten percent (10%) of the money made available under the Agreement pending final payment. 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 (“FDIC”) 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. 92.355. The Contractor is responsible for the inspections and certifications required.

**Sec. 302. Davis-Bacon Act.** Except for the construction or rehabilitation of residential property that contains less than twelve (12) HOME 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-5, 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.

**Sec. 303. Contract Work Hours and Safety Standards Act.** All federally assisted construction contracts of more than \$2,000.00 and all other contracts employing mechanics or laborers of more than \$2,500.00 must comply with the Contract Work Hours and Safety Standards Act of 1962 (40 U.S.C. 327, *et seq.*) and Department of Labor regulations (29 C.F.R. 5), requiring that wages be paid at not less than one and one-half times the basic wage rates for all hours worked

in excess of forty in a work week. No mechanic or laborer shall be required to work under conditions which are unsanitary, hazardous or dangerous to health and safety.

**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 5), prohibiting and prescribing penalties for “kickbacks” of wages. Wages must be paid at least once a week in accordance with the requirements of 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 contained herein, 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 HOST. 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 U.S.C. 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 U.S.C. 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 U.S.C. 469, *et seq.*) as amended by the Archaeological and Historical Data Preservation Act of 1974, (16 U.S.C. 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 U.S.C. 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 U.S.C. 300h-3), 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 U.S.C. 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 U.S.C. 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 U.S.C. 7401 – 7671q, implementing regulations at 40 C.F.R. Part 51), 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 U.S.C. 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.

N. Environmental Justice in Minority Populations and Low-Income Populations, (Executive Order 12898) providing for the achievement of environmental justice as part of each Federal agencies mission.

## **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. Return of HOME funds.** Upon termination of this Agreement for any reason, or upon expiration of this Agreement, any HOME funds on hand and any accounts receivable attributable to the use of HOME funds must be immediately returned to the City. If HOME funds are spent on a project that is terminated before completion, the funds must be repaid to the City's HOME Investment Trust Fund.

**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 separately addressed to the Mayor and the Director of HOST. Either of the parties may designate in writing substitute addresses or persons to receive notices.



**Sec. 609. Published Information and Announcements.** The contractor agrees to coordinate with HOST to assure that the activity financed in whole or in part by this agreement is properly referenced by the contractor in press releases, brochures, annual reports, speeches and other published information and announcements.

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