

**MASTER  
CREDIT AGREEMENT**

**Dated as of**

**October \_\_, 2014**

**between**

**THE LENDERS WHO ARE PARTIES HERETO,  
as Lenders**

**and**

**ENTERPRISE COMMUNITY LOAN FUND, INC.,  
as a Lender and as Administrative Agent**

## MASTER CREDIT AGREEMENT

THIS MASTER CREDIT AGREEMENT (this “Agreement”) dated as of September \_\_\_\_, 2014, between the LENDERS who are parties hereto, and ENTERPRISE COMMUNITY LOAN FUND, INC., as Administrative Agent.

The parties hereto agree as follows:

### PREAMBLE

Pursuant to that certain REVOLVING CREDIT AGREEMENT, dated as of February 2, 2010 (the “RCA”), among URBAN LAND CONSERVANCY, as borrower (“ULC”), those certain LENDERS who are parties thereto (collectively and including ECLF when acting as lender, the “RCA Lenders”), and ENTERPRISE COMMUNITY LOAN FUND, INC. (“ECLF”), as administrative agent, the parties thereto established a lending facility (the “Original TOD Facility”) to provide funding to ULC to permit ULC, either directly or through a Designee (as defined in the RCA) of ULC, to acquire properties, improved and unimproved, vacant and occupied (including mixed use properties), that are located in close proximity to public transportation, especially along the corridors of the recent expansion of public transit in the City and County of Denver, Colorado.

The RCA Lenders desire to build on the Original TOD Facility’s progress to date and to expand and otherwise revamp the Original TOD Facility in several respects with the goal to preserve or create 2,000 new units of affordable housing along with other supportive community assets with transit access in the Denver region. The respects to which the Original TOD Facility is being revamped include:

1. The geographic expansion beyond the City and County of Denver (“Geographic Denver”) to Adams, Arapahoe, Boulder, Broomfield, Douglas and Jefferson Counties and/or otherwise located within ½ mile of an existing or future fixed rail station or within ¼ mile of a high frequency High Volume Bus Corridor (collectively, the “Region”);
2. Extend the term of the facility from the Original TOD Facility’s expiration date of February 2, 2020 to the tenth anniversary of the Effective Date hereof;
3. Increase the amount of the facility to the initial amount of \$24,000,000.00; and
4. Make the facility available to interested parties who meet the minimum eligibility criteria, as hereinafter described, and evidence a strong commitment to affordable housing and community development and who have a qualifying site to acquire.

The implementation of the foregoing are more fully detailed and qualified by the terms and conditions set forth in this Agreement.

Pursuant to a separate agreement (the “ULC Agreement”), ULC has agreed that its right to borrow new loans under the RCA will terminate upon the execution and delivery of this

Agreement. By executing and delivering this Agreement, the RCA Lenders and ECLF, as Administrative Agent, agree that their respective rights and obligations under the RCA with respect to making new loans to ULC will likewise terminate. And ULC pursuant to the ULC Agreement and the RCA Lenders and ECLF, as Administrative Agent, pursuant to this Agreement, have confirmed that the RCA will remain in effect only with respect to those certain outstanding loans listed on Schedule A annexed hereto (the “Existing ULC Loans”). Notwithstanding the termination of the RCA with respect to new lending and borrowing, ULC is eligible to apply for loans pursuant to this Agreement.

As the outstanding principal balance of each of the Existing ULC Loans is repaid, the portion thereof originally advanced by each RCA Lender will become part of such RCA Lender’s respective Commitments hereunder. For the sake of clarity, the initial aggregate amount of the Lenders’ Commitments hereunder of \$24,000,000.00 includes and assumes the repayment in full of the Existing ULC Loans. Hence, to the extent that any of the Existing ULC Loans are not repaid in full, the Commitments hereunder (and the corresponding Commitments of each of the RCA Lenders who are Lenders hereunder—and the portion of each of the Existing ULC Loans funded by each of the RCA Lenders is also set forth on Schedule A) will be reduced by the amount that the Existing ULC Loans are not fully repaid.

The provisions of the foregoing Preamble are fully incorporated within and are integral to this Agreement.

## ARTICLE I

### DEFINITIONS

As used in this Agreement, the following terms have the meanings specified below:

“AMI” means area median income as determined from time to time by the United States Department of Housing and Urban Development for the Denver Metropolitan Statistical Area.

“Acquisition” means the acquisition by a Borrower of a Property.

“Acquisition Loan” means a loan made pursuant to an Acquisition Loan Agreement to a Borrower for the purpose of acquiring a Property.

“Acquisition Loan Advance” means any advance pursuant to this Agreement to fund an Acquisition Loan made pursuant to Section 2.01.

“Acquisition Loan Agreement” means the agreement governing making an Acquisition Loan to a Borrower and will be substantially in the form annexed hereto as Document C.

“Acquisition Loan Application” means an application by a Borrower to Administrative Agent for an Acquisition Loan in accordance with Section 2.03 hereof and will be substantially in the form annexed hereto as Exhibit 1.

“Acquisition Loan Commitment Letter” means a letter by Administrative Agent to a Borrower informing the Borrower that its Acquisition Loan Application has been approved and of the terms and conditions upon which such Acquisition Loan will be made, as well as the manner in which the Borrower must signify its acceptance of such commitment and will be substantially in the form annexed hereto as Document 1.

“Acquisition Loan Deed of Trust” means a first-position deed of trust executed and delivered by a Borrower acquiring a Property with an Acquisition Loan. Each Acquisition Loan Deed of Trust will secure such party’s obligations under the corresponding Acquisition Loan Note and will be substantially in the form annexed hereto as Document 4.

“Acquisition Loan Guaranty” means the guaranty of payment that requires its Guarantor to guaranty the payment of the Recourse Amount. An Acquisition Loan Guaranty will be required whenever a party proposes to acquire a Property through a special or single purpose entity, in which case the special or single purpose entity will be the Borrower and such party and or its principal(s) will execute and deliver an Acquisition Loan Guaranty which will be substantially in the form annexed hereto as Document 5.

“Acquisition Loan Note” means the promissory note evidencing an Acquisition Loan made to fund an Acquisition, executed and delivered by a Borrower, acquiring the Property in question. Each Acquisition Loan Note will be secured by an Acquisition Loan Deed of Trust encumbering the Property acquired thereby and will be substantially in the form annexed hereto as Document 3.

“Additional Interest” means the additional interest due pursuant to Section 2.09(f).

“Administrative Agent” means Enterprise Community Loan Fund, Inc., in its capacity as administrative agent for the Lenders hereunder.

“Affiliate” means, with respect to a specified Person, another Person that directly or indirectly through one or more intermediaries, Controls or is Controlled by or is under common Control with the Person specified.

“Applicable Percentage” means, with respect to each Acquisition Loan, the percentage of the total Commitments represented by each Lender’s Commitment. The Applicable Percentages will be adjusted from time to time as required by the terms of this Agreement.

“Availability Period” means the five-year period from and including the Effective Date to the last day of the calendar month in which the fifth anniversary of the Effective Date falls. Except as provided in Section 2.02(i), no new Acquisition Loans will be closed once the Availability Period ends.

“Borrower” means a Person who applies for an Acquisition Loan for the purpose of acquiring a eligible Property, who meets the minimum underwriting criteria set forth in this Agreement, who also evidences a commitment to affordable housing and community development, to whom an Acquisition Loan Commitment Letter is issued and to whom an Acquisition Loan is made pursuant to this Agreement and the Loan Documents.

“Business Day” means any day that is not a Saturday, Sunday or other day on which commercial banks in the State of Maryland are authorized or required by law to remain closed.

“CDOH” means the Colorado Division of Housing.

“Change in Law” means (a) the adoption of any law, rule or regulation after the date of this Agreement, (b) any change in any law, rule or regulation or in the interpretation or application thereof by any Governmental Authority after the date of this Agreement or (c) compliance by any Lender with any request, guideline or directive (whether or not having the force of law) of any Governmental Authority made or issued after the date of this Agreement.

“CHFA” means the Colorado Housing and Finance Authority.

“Commitment” means, with respect to each Lender, the commitment of such Lender to make Acquisition Loan Advances. The initial amount of each Lender’s Commitment is set forth on Schedule 2. The initial aggregate amount of the Lenders’ Commitments is \$24,000,000, which includes the respective portions of each of the Existing ULC Loans funded by each of the RCA Lenders, as set forth on Schedule A, and which upon repayment will revolve to fund Acquisition Loans pursuant to this Agreement; and to the extent that the Existing ULC Loans are not repaid in full, the amount of the Commitments will be reduced accordingly, along with corresponding reductions of the respective Commitments of the Lenders hereunder who are also RCA Lenders.

“Control” means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a Person, whether through the ability to exercise voting power, by contract or otherwise. “Controlling” and “Controlled” have meanings correlative thereto.

“Credit Exposure” means, with respect to any Lender at any time, the sum of the outstanding principal amount of such Lender’s Acquisition Loan Advances at such time.

“Default” means any event or condition which constitutes an Event of Default or which upon notice, lapse of time or both would, unless cured or waived, become an Event of Default.

“Denver” means the Governmental Authority governing the City and County of Denver.

“Denver Foundation” means the Denver Foundation.

“Developer” means the party which will eventually develop any Property in accordance with the Development Criteria.

“Development Criteria” means the manner in which the Properties are ultimately to be developed and are set forth in Section 2.02(g).

“Dollars” or “\$” refers to lawful money of the United States of America.

“Effective Date” means the date on which the conditions specified in Section 3.01 are satisfied.

“Enterprise Community Loan Fund, Inc.” means the Administrative Agent which is also one of the lenders hereunder and when referred to as a Lender hereunder it will be referred to as “ECLF.” As a Lender hereunder, ECLF is a Senior Lender with an initial Commitment of \$9,250,000.00 and a Third Tier Lender with an initial Commitment of \$5,000,000.00.

“Enterprise Green Communities Criteria” means the criteria in effect at any particular time during the term of this Facility to promote healthy, sustainable and energy efficient housing, as proposed by Enterprise Community Partners, Inc., and as may be revised from time to time. A copy of the current version can be accessed at: <http://www.greencommunitiesonline.org/tools/criteria/GreenCriteria.pdf>

“Environmental Indemnity Agreement” means the agreement whereby each Borrower and its Guarantor, if any, will agree to indemnify, defend and hold harmless Administrative Agent and the Lenders from and against any Environmental Liability due to the Property acquired by such Borrower with an Acquisition Loan made pursuant to this Facility which will be substantially in the form annexed hereto as Document 6.

“Environmental Laws” means all laws, rules, regulations, codes, ordinances, orders, decrees, judgments, injunctions, notices or binding agreements issued, promulgated or entered into by any Governmental Authority, relating in any way to the environment, preservation or reclamation of natural resources, the management, release or threatened release of any Hazardous Material or to health and safety matters.

“Environmental Liability” means any liability, contingent or otherwise (including any liability for damages, costs of environmental remediation, reduction in value, fines, penalties or indemnities), of a Borrower directly or indirectly resulting from or based upon (a) violation of any Environmental Law, (b) the generation, use, handling, transportation, storage, treatment or disposal of any Hazardous Materials, (c) exposure to any Hazardous Materials, (d) the release or threatened release of any Hazardous Materials into the environment or (e) any contract, agreement or other consensual arrangement pursuant to which liability is assumed or imposed with respect to any of the foregoing.

“Event of Default” has the meaning assigned to such term in the Loan Documents.

“Existing ULC Loans” will have the meaning ascribed thereto in the Preamble above.

“Facility” means the credit facility in the aggregate amount of the Commitments hereunder created pursuant to the terms and conditions of this Agreement.

“Ford” means The Ford Foundation.

“Ford/MacArthur Third Tier Debt” means the portion of the Third Tier Debt funded to ECLF by Ford and by MacArthur and relent by ECLF as Third Tier Lender as part of the Facility.

“Gates” means Gates Family Foundation.

“Geographic Denver” will have the meaning ascribed thereto in the Preamble above.

“Governmental Authority” means the government of the United States of America, any other nation or any political subdivision thereof, whether state or local, and any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government.

“Guarantor” means with respect to certain Acquisition Loans the party or parties required to execute and deliver an Acquisition Loan Guaranty, which party will also be an indemnitee under the Environmental Indemnity Agreement.

“Hazardous Materials” means all explosive or radioactive substances or wastes and all hazardous or toxic substances, wastes or other pollutants, including petroleum or petroleum distillates, asbestos or asbestos containing materials, polychlorinated biphenyls, radon gas, infectious or medical wastes and all other substances or wastes of any nature regulated pursuant to any Environmental Law, and any growth or existence of surface or airborne microbial constituents, regardless of genus, species, or whether commonly referred to as mildew, mold, mold spores, fungi, bacteria or similar description, in such condition, location or quantity as would, individually or in the aggregate, have any material adverse effect on (a) human health or the environment; (b) the value or condition of the Property in question; or (c) the business or financial condition as a whole of any Borrower or the Property in question.

“High Volume Bus Corridor” means those bus routes that provide regular service throughout the day and at least every 15 minutes during peak hours.

“Interest Payment Date” means the first day of each calendar quarter, consisting of January 1, April 1, July 1 and October 1 during the term of the Facility.

“LIHTC” means low income housing tax credits as defined in Section 42 of the Internal Revenue Code.

“Lenders” mean those Parties who collectively are identified herein as the Senior Lenders, the Third Tier Lenders, the Second Tier Lender and the Top Loss Lenders.

“Loan Documents” means for each of the Acquisition Loans to be made pursuant to this Agreement, the Acquisition Loan Commitment Letters, the Acquisition Loan Agreements, the Acquisition Loan Notes, the Acquisition Loan Deeds of Trust, any Acquisition Loan Guaranty, the Environmental Indemnity Agreement and the other documents evidencing or securing the Borrowers’ and any Guarantors’ obligations to Lenders hereunder.

“Loan” or “Loans” means, as applicable, each Acquisition Loan made by the Lenders through the Administrative Agent to a Borrower pursuant to this Agreement and the Loan Documents.

“MacArthur” means John D. and Catherine T. MacArthur Foundation.

“Material Adverse Effect” means a material adverse effect on (a) the business, assets, operations, prospects or condition, financial or otherwise, of a Borrower or any Guarantor, (b) the ability of a Borrower to perform any of its obligations under any of the Loan Documents or

any Guarantor under the Acquisition Loan Guaranty or (c) the rights of or benefits available to the Lenders under any of the Loan Documents.

“Maturity Date” means the date which is the tenth (10th) anniversary of the Effective Date, by which date all Acquisition Loans will have matured.

“Mercy” means Mercy Loan Fund.

“MHCLF” means Mile High Community Loan Fund, Inc.

“Original TOD Facility” will have the meaning ascribed thereto in the Preamble above.

“Outstanding Balance” means, as of any date of determination, the combined principal balance of all Acquisition Loan Advances then outstanding, which would include the outstanding balance of each of the Existing ULC Loans until repaid.

“Person” means any natural person, corporation, limited liability company, trust, joint venture, association, company, partnership, Governmental Authority or other entity.

“Property” means an improved (vacant or occupied) or unimproved parcel of real estate, including mixed-use properties, located within one-half mile of an existing or future fixed rail station or one-quarter mile of a high frequency, high volume bus stop within the Regional Transportation District's service area within Geographic Denver or within the Region, acquired or to be acquired by a Borrower with the proceeds from an Acquisition Loan. Collectively, all such properties are referred to as the “Properties.”

“RCA” will have the meaning ascribed thereto in the Preamble above.

“RCA Lenders” will have the meaning ascribed thereto in the Preamble above.

“Recourse Amount” means the amount of each Acquisition Loan equal to the principal and interest due with respect to the Senior Debt and the Ford/MacArthur Third Tier Debt, as well as any Additional Interest due pursuant to Section 2.09(f) hereof, which represents the full recourse obligation for each Borrower to repay and the amount which is guaranteed to be repaid by such Borrower's respective Guarantor, if any.

“Region” will have the meaning ascribed thereto in the Preamble above.

“Related Parties” means, with respect to any specified Person, such Person's Affiliates and the respective directors, officers, employees, agents and advisors of such Person and such Person's Affiliates.

“Required Lenders” means (i) with respect to matters with a Facility-wide impact, Lenders having Commitments of at least 60% of the sum of the total Commitments at such time, but the decision to be made must include the concurrence of all Top Loss Lenders or (ii) with respect to matters involving a particular Acquisition Loan only, Lenders funding at least 60% of the principal amount of the proposed or closed Acquisition Loan in question, but the decision to



be made must include the concurrence of the Top Loss Lender(s) funding the Top Loss Debt portion of such Acquisition Loan.

“Rose” means Rose Foundation TOD LLC.

“Second Tier Debt” means the Commitment from the Second Tier Lender, with the prior right of repayment with respect to the Top Loss Debt, but the subordinate right of repayment with respect to the Third Tier Debt and the Senior Debt.

“Second Tier Lender” means Enterprise Community Partners, Inc.

“Senior Debt” means the Commitments from Senior Lenders with the prior right of repayment to the repayment of the Third Tier Debt, the Second Tier Debt and the Top Loss Debt. The obligation to repay the portion of each Acquisition Loan funded by Senior Debt is a full recourse obligation of each Borrower and is guaranteed by each Guarantor.

“Senior Lenders” means ECLF (to the extent of ECLF’s Senior Debt Commitment only), Mercy and MHCLF.

“Strategic Oversight Committee” will have the meaning ascribed thereto in Article VI hereof.

“Third Tier Debt” means those Commitments from the Third Tier Lenders, with the prior right of repayment with respect to the Second Tier Debt and the Top Loss Debt, but the subordinate right of repayment with respect to the Senior Debt. The obligation to repay the portion of each Acquisition Loan funded by the Ford/MacArthur Third Tier Debt is a full recourse obligation of each Borrower and is guaranteed by each Guarantor, but is subject and subordinate to the priority of payment in favor of the Senior Lenders.

“Third Tier Lenders” means Rose, Denver Foundation, Gates and ECLF (to the extent of the Ford/MacArthur Third Tier Debt only).

“Top Loss Debt” means the collective Commitments of Denver with respect to Acquisition Loans to acquire Properties in Geographic Denver and of CDOH and CHFA with respect to Acquisition Loans to acquire Properties in the Region, which will have a subordinate right of repayment, after the Senior Debt, Third Tier Debt and Second Tier Debt are first repaid on an Acquisition Loan by Acquisition Loan basis. As herein provided, in the event the unadvanced portion of the Denver Commitment is insufficient to fund the Top Loss Debt required to fund any Acquisition Loan to acquire Property within Geographic Denver, unadvanced and uncommitted portions of the CDOH and CHFA Commitments will be available to fund any such insufficiency.

“Top Loss Lender” means collectively Denver with respect to Acquisition Loans made to acquire Properties in Geographic Denver and CDOH and CHFA with respect to Acquisition Loans made to acquire Properties in the Region, except that in the event the unadvanced portion of the Denver Commitment is insufficient for Denver to be the Top Loss Lender for any Acquisition Loan for Property within Geographic Denver, CDOH and CHFA will be available to serve as Top Loss Lender for such Acquisition Loan provided the unadvanced and uncommitted

portions of their respective Commitments are sufficient to fund the portion of such Acquisition Loan necessitating Top Loss Debt.

“Transactions” means the execution, delivery and performance by a Borrower of the Loan Documents (and the execution and delivery of a Guaranty by its Guarantor, if any), pertaining to the borrowing of Acquisition Loans, and the use of the proceeds thereof to acquire a Property.

“ULC” will have the meaning ascribed thereto in the Preamble above.

“ULC Agreement” will have the meaning ascribed thereto in the Preamble above.

“Underwriting Guidelines” means the underwriting guidelines set forth in Schedule C annexed hereto and hereby made a part hereof.

## ARTICLE II

### THE FACILITY

#### **Section 2.01.** Commitments.

Subject to the terms and conditions set forth herein, each Lender agrees to make advances to each Borrower on account of such Borrower’s approved Acquisition Loan (each a “Acquisition Loan Advance”) from time to time during the Availability Period in an aggregate principal amount that will not result in (a) such Lender’s Credit Exposure exceeding such Lender’s Commitment or (b) the sum of the total Credit Exposures exceeding the total Commitments. Amounts borrowed and repaid in respect to the Acquisition Loan Advances during the Availability Period are available to fund new Acquisition Loans.

#### **Section 2.02.** Acquisition Loan Applications.

(a) Any party wishing to apply for an Acquisition Loan will submit an Acquisition Loan Application to the Administrative Agent.

(b) Every Acquisition Loan Application will be accompanied by:

(i) a statement of the applicant’s track record in support of the requirement that the applicant evidence a strong commitment to affordable housing and community development and/or other projects that meet a community need;

(ii) copies of the applicant’s organizational documents, and if it intends to use a special or single purpose entity to own the Property, a copy of such entity’s organizational documents (if already formed), as well as a listing of the principals of the applicant (and its proposed special or single purpose entity), including the partners of any partnership, members of any limited liability

company, and board of directors of any corporation, along with the resumes of key personnel;

(iii) an “as is” appraisal of the Property by an accredited MAI appraiser, which appraisal will have been ordered by and addressed to Administrative Agent as agent for the Lenders, at the applicant’s expense and dated no less than six (6) months prior to the date of the closing of the Acquisition Loan for the Property appraised;

(iv) a Phase 1 environmental assessment that meets the then current ASTM standards ordered by the applicant and addressed to the entity that is the proposed Borrower and Administrative Agent as agent for the Lenders, dated no less than six (6) months prior to the date of closing of the Acquisition Loan for the Property assessed and any additional reports recommended by the environmental investigation firm for such Property; provided, however, in the event that there has been any material change in the condition of the Property since the date of the Phase 1 environmental assessment (or such additional reports), a new Phase 1 environmental assessment will be performed after the date of such material change in the condition of the Property; additionally, if federal funding is the proposed source of take-out financing for the proposed Acquisition Loan, any environmental due diligence required by such funding source would have to also be complied with as part of the Acquisition Loan Application for the proposed Acquisition Loan;

(v) a geotechnical survey of the Property;

(vi) a zoning analysis for the Property

(vii) a property condition report for vacant improved Properties and a capital needs assessment for any Property that is occupied, which assessment would be accompanied by evidence that the applicant has sufficient funds in hand to complete the required repairs during the term of the proposed Acquisition Loan;

(viii) operating pro forma for the Property, if occupied, covering the term of the proposed Acquisition Loan;

(ix) a statement of the sources and uses of any funding for any capital improvements to be performed during the term of the proposed Acquisition Loan;

(x) interim financial statements for the party which is the proposed Borrower, as well as for any required party to be a Guarantor, current as of not more than two (2) months prior to the date of submission, which indicate that the financial covenants set forth in the Underwriting Guidelines are met;

(xi) a resume for any proposed property management company for any Property that is or will be occupied during the term of the proposed Acquisition Loan;

(xii) a resume for the proposed Developer for the Property, if any identified at such time;

(xiii) a description with suitable evidence (to the extent then available) of the proposed take-out financing; in the event the proposed take-out involves competitive 9% or non-competitive 4% LIHTC, the applicant must also present an alternative financing plan, and for any proposed take-out involving 4% LIHTC, the applicant must indicate how any gaps in financing will be filled; in all cases, applicant must demonstrate how the proposed transaction will comply with the requirements specific to the proposed take-out financing source; and

(xiv) anything else determined to be necessary by the Administrative Agent to complete the particular applicant's Acquisition Loan Application submission.

(c) Administrative Agent's Chief Credit Officer will have the authority to approve or disapprove any Acquisition Loan Application provided it complies with the applicable terms and conditions of this Agreement including the Underwriting Guidelines. Any Acquisition Loan Application which does not fully comply with the applicable terms and conditions of this Agreement will be referred by Administrative Agent's Chief Credit Officer to Administrative Agent's Loan Committee for consideration. Notwithstanding the foregoing, Administrative Agent's Loan Committee's approval is required should any of the following situations be the case at the time the Acquisition Loan Application for any proposed Acquisition Loan is pending:

- (i) 9% LIHTC is the proposed take-out for more than one outstanding Acquisition Loan with the same Developer;
- (ii) more than 50% of the outstanding balance of the Facility is secured by vacant (improved and unimproved), non-cash producing Property;
- (iii) more than 25% of the outstanding balance of the Facility involve transactions without an identified Developer;
- (iv) more than three outstanding Acquisition Loans maturing in the same year have 9% LIHTC proposed as the take-out source; and
- (v) the Properties securing more than one Acquisition Loan with 9% LIHTC proposed as the take-out source are located in the same neighborhood/sub-market.

(d) Without the approval of the Required Lenders and Administrative Agent's Chief Credit Officer:

- (i) no Acquisition Loan will be for more than ninety (90%) percent of the lesser of its Property's as-is appraised value or purchase price; and

(ii) the maximum loan amount for any Acquisition Loan cannot be greater than \$5,000,000.00.

(e) Notwithstanding anything to the contrary set forth in this Agreement, the approval of all Lenders is required in the event any of the following situations should arise at the time the Acquisition Loan Application for any Acquisition Loan is pending:

- (i) the targeted affordability or community benefit set forth in Sections 2.02 (g)(iv) and 2.02(h) below would not be met;
- (ii) a proposed property does not fall within the definition of Property herein and/or transit infrastructure will not be under construction as of anticipated closing date of the proposed Acquisition Loan;
- (iii) more than 75% of the outstanding balance of the Facility is secured by vacant (improved and unimproved), non-cash producing Properties;
- (iv) more than 50% of the outstanding balance of the Facility involve transactions without an identified Developer; and
- (v) there are unanticipated circumstances which the Administrative Agent's Chief Credit Officer and/or Loan Committee determine all Lenders need to be apprised of in order for an appropriate course of action to be taken by the Required Lenders.

(f) Any approved Acquisition Loan Application will result in the issuance of an Acquisition Loan Commitment Letter which, among other things, will provide that the Acquisition Loan will close upon the receipt and satisfactory review and approval of the following, as well as the satisfaction of such other conditions set forth in the Acquisition Loan Commitment Letter as may be imposed by the Administrative Agent and/or its Chief Credit Officer and/or any imposed as a condition of, and at the discretion of, the Administrative Agent's Loan Committee's approving a non-compliant Acquisition Loan Application:

(i) ALTA Survey for the Property being acquired, duly certified to Administrative Agent and as Administrative Agent may otherwise require, which survey must be reasonably acceptable to Administrative Agent's attorneys;

(ii) a commitment from a title insurance company, licensed to provide title insurance in the State of Colorado, to provide a mortgagee title insurance policy insuring the Acquisition Loan Deed of Trust for the Property, subject to a lien for taxes and assessments for the year of closing, standard title company exceptions and those exceptions which are reasonably acceptable to Administrative Agent's attorneys; such title insurance company or its agent will provide a closing protection letter;

(iii) an incumbency certificate from the Borrower, attached to which are true, complete and current copies of its organizational documents, along with a good standing certificate from the State of Colorado, dated no less than thirty days prior to the date for the closing of the Acquisition Loan, and attached to which are resolutions authorizing the Acquisition, the Acquisition Loan and the execution and delivery of all Loan Documents, including the encumbering of the Property by the Acquisition Loan Deed of Trust;

(iv) an incumbency certificate from any Guarantor, attached to which are true, complete and current copies of its organizational documents, along with a good standing certificate from the State of Colorado, dated no less than thirty days prior to the date for the closing of the Acquisition Loan, and attached to which are resolutions authorizing the Acquisition Loan Guaranty;

(v) insurance certificates evidencing the insurance conforming to the requirements set forth in the Loan Documents;

(vi) duly executed, acknowledged and delivered Loan Documents and any other documents required to consummate the Acquisition and the Acquisition Loan; and

(vii) if applicable, duly executed, acknowledged and delivered Acquisition Loan Guaranty.

(g) With respect to each Acquisition Loan and during the term of each such Acquisition Loan, each Borrower will covenant within the Loan Documents, among other things, to comply with the following Development Criteria:

(i) if, by the second anniversary of any Acquisition Loan that pertains to a Property that needs to be rezoned, such Property had not been rezoned by the applicable Governmental Authority, then the Borrower will initiate the rezoning of such Property;

(ii) if the proposed take-out financing is 9% LIHTC or private activity bonds, the Borrower or Developer must apply for the credits to CHFA and for the bonds to CHFA or another party, as applicable, no later than 15 months prior to the maturity date of the Acquisition Loan in question;

(iii) if the ultimate development of any Acquisition Loan's Property involves new construction, the plans for any such Property must meet or exceed requirements for accessibility as mandated by the Americans with Disabilities Act and general Fair Housing Act standards and meet the "Universal Design" measures listed in Enterprise Green Communities Criteria, as well as meet or exceed the accessibility requirements of any other applicable state or federal law or regulation (including, without limitation, to the extent applicable, Section 504 of the Rehabilitation Act and the Uniform Federal Accessibility Standards) in effect at the time in question and other applicable standards, evidence of which compliance shall be certified to by the Borrower's architect;

(iv) with respect to the affordability of each Property funded by Acquisition Loans hereunder once ultimately developed: the goal for rental housing is 60% of AMI and below and the goal for for-sale housing is 95% of AMI and below; and

(v) each Property is to be developed in accordance with either Enterprise Green Communities Criteria or any comparable higher standard (as approved by Administrative Agent) in effect at the time of development.

Borrower will submit to Administrative Agent evidence of compliance with the above Development Criteria, which evidence shall be submitted prior to the any specified deadline date where applicable.

(h) Notwithstanding the affordability requirements set forth in (g)(iv) above, Administrative Agent will underwrite the Properties as part of its underwriting of each Acquisition Loan Application so that when one views all of the Properties funded by this Facility, Administrative Agent will achieve an affordability result such that 70% of the dwelling units in the Properties funded by the Facility are affordable to households earning no more than 60% AMI and approximately 15% of all units affordable to households earning from 0 to 30% of AMI.

(i) With respect to Properties in Geographic Denver funded by Acquisition Loans hereunder, the goal for the Facility is for 40% of the amount of Geographic Denver Acquisition Loans to fund the acquisition of Properties that are or are slated to be developed as mixed-use with some community-focused commercial space.

(j) Any approved Acquisition Loan will consist of Acquisition Loan Advances made by the Lenders in accordance with their Applicable Percentages, provided however that on a portfolio basis (i) no less than 50% of the Facility's Commitments shall fund Acquisition Loans for Properties located within Geographic Denver, the Top Loss Debt for which shall be funded by Denver, (ii) no less than 30% of the Facility's Commitments will fund Acquisition Loans for Properties located within the Region, the Top Loss Debt for which shall be funded by CHFA and CDOH only. In the event the unadvanced portion of the Denver Commitment is insufficient to fund the Top Loss Debt required to fund any Acquisition Loan to acquire Property within Geographic Denver, unadvanced and uncommitted portions of the CDOH and CHFA Commitments will be available to fund any such insufficiency.

(k) No Acquisition Loans will be closed after the end of the Availability Period, except that Administrative Agent's Credit Officer shall have the authority to extend the closing date for any approved Acquisition Loan for which an Acquisition Loan Commitment Letter has been issued, accepted by Borrower and for which substantially all of the required conditions for closing have been satisfied, but the closing is delayed due to no substantial fault of the Borrower, such as the Borrower's seller requiring additional time to clear the state of title or the like. In no event, however, may any such extension be for more than sixty (60) days or extend beyond the Maturity Date.

**Section 2.03. Requests for Acquisition Loan Advances.**

(a) To request an Acquisition Loan Advance for an approved Acquisition Loan, the Administrative Agent will notify each of the Lenders of such request in writing not later than 12:00 noon, Maryland time, five (5) Business Days before the date of the proposed Acquisition Loan Advance, except such notice will be given to CDOH ten (10) Business Days before the date of the proposed Acquisition Loan Advance. Such request will specify the following information:

- (i) the Property;
- (ii) copies of the draft Loan Documents;
- (iii) the amount of the requested Acquisition Loan Advance, which will not be in excess of the corresponding approved Acquisition Loan;
- (iv) the proposed date of such Acquisition Loan Advance, which will be a Business Day.

**Section 2.04. Funding of Acquisition Loan Advances.**

(a) Except for the funds of any Lender which has or will deposit the amount of its Commitment with Administrative Agent on or before the Effective Date, each Lender will forward its share of each Acquisition Loan Advance to be made by it hereunder on the proposed date thereof by wire transfer of immediately available funds by 12:00 noon, Maryland time, to the account of the Administrative Agent most recently designated by Administrative Agent for such purpose by notice to those Lenders. The Administrative Agent will make such Acquisition Loan Advances available to the Borrower of such Acquisition Loan by promptly wiring the amounts so received pursuant to the wiring instructions provided to an appropriate escrow agent for disbursement in accordance with instructions provided by Administrative Agent or its closing attorneys.

(b) If a Lender has not timely made its share of any Acquisition Loan Advance available to the Administrative Agent, then Administrative Agent will inquire whether any of the other Lenders is willing to advance such shortfall. If another Lender does advance such shortfall, then the non-advancing Lender will thereupon be automatically indebted to the advancing Lender for the amount advanced including interest thereon at a rate which is four hundred (400) basis points in excess of the amount of the interest payable by the Borrower of the Acquisition Loan in question, for each day from and including the date such amount is advanced to but excluding the date of payment to the Administrative Agent by the non-advancing Lender and be otherwise obligated to repay such amounts within ninety (90) days of the date of such advance. Also, until such time as such non-advancing Lender cures such default, that Lender's Applicable Percentage in the Facility, including, without limitation, its right to share in payments of principal and interest, will be proportionately reduced based on the outstanding principal balance of the Facility and the advances actually made by that Lender. At any time when there exists a default by a Lender in payment of money due under this Agreement, the Administrative Agent will apply all moneys otherwise payable



to such Lender under this Agreement to the cure of such default, such Acquisition Loan Application to be made to defaulted amounts in such order as the Administrative Agent may determine in its sole discretion. In no event will the failure of a Lender to fund its share of an Acquisition Loan Advance change, amend or modify the terms of the Acquisition Loan, including, without limitation, the interest rate applicable to such Acquisition Loan.

**Section 2.05. Termination and Reduction of Commitments.**

(a) If not previously terminated in accordance with the terms and provisions of this Agreement, the undeployed amounts of each of the Commitments will terminate at the end of the Availability Period.

(b) Any repayment of Acquisition Loan Advance after the Availability Period will reduce each Lender's Commitment, on a dollar for dollar basis, in accordance with such Lender's Applicable Percentage.

**Section 2.06. Repayment of Loans; Evidence of Debt.**

(a) The term of each Acquisition Loan will be the earlier of either (i) the date of sale of the particular Acquisition Loan's Property, or (ii) up to as many as five (5) years, based on the determination of Administrative Agent or (iii) the Maturity Date.

(b) Each Lender will track in accordance with its usual practice the indebtedness of each Borrower to such Lender resulting from each Acquisition Loan made by such Lender, including the amounts of principal and interest payable and paid to such Lender from time to time hereunder.

(c) The Administrative Agent will maintain accounts in which it will record (i) the amount of each Acquisition Loan made hereunder, (ii) the amount of any principal or interest due and payable or to become due and payable from each Borrower to each Lender hereunder and (iii) the amount of any sum received by the Administrative Agent hereunder for the account of the Lenders and each Lender's share thereof.

**Section 2.07. Prepayment of Acquisition Loans; Mandatory Repayment on Sale.**

(a) Each Borrower will have the right at any time and from time to time to prepay its respective Acquisition Loan in whole or in part, subject to prior notice in accordance with subsection (b) of this Section.

(b) Additionally, in connection and concurrently with the sale of a Property, each Borrower will be required to deliver to Administrative Agent all sums due and owing on account of the corresponding Acquisition Loan. For any Acquisition Loan that finances the acquisition of more than one Property that may be developed in phases and it is contemplated that the different Properties may be conveyed at different times and would thereupon need to be released from its corresponding Acquisition Loan Deed of Trust, the Administrative Agent will establish a suitable release price for each Property to be reflected in the Loan Documents for such Acquisition Loan (the aggregate amount of

which being no less than the original principal amount of such Acquisition Loan) which release price will be due and owing at the time any Property is released from the corresponding Acquisition Deed of Trust prior to such Acquisition Loan being repaid in full.

(c) All prepayments will be accompanied by outstanding accrued interest, and all other monetary items due and payable from the prepaying Borrower pursuant to the Loan Documents.

**Section 2.08. Fees.**

(a) Each applicant for an Acquisition Loan will pay, simultaneously with the submission of its Acquisition Loan Application, a non-refundable application fee of \$2,500.00 to Administrative Agent, which shall be the sole property of Administrative Agent in consideration for the services provided in underwriting and evaluating each Acquisition Loan Application. Such application fee shall be credited to the origination fee due pursuant to Section 2.08(b) below, in the event the Acquisition Loan Application is approved.

(b) In consideration for making an Acquisition Loan to each approved applicant, such applicant will be obligated to pay to Administrative Agent an origination fee equal to one and one-half (1.5%) percent of the amount of the Acquisition Loan, which shall be the sole property of Administrative Agent for its services in originating the Acquisition Loans hereunder, of which half of which fee is due and payable at the time such approved applicant accepts the Acquisition Loan Commitment Letter and the balance is due and payable (less a \$2,500.00 credit for the application fee paid) at the time of closing of such Acquisition Loan. In the event the actual amount of any Acquisition Loan is lower or higher than the amount indicated in its Acquisition Loan Commitment Letter, an appropriate adjustment will be made at closing so that Administrative Agent will have been paid no less than one and one-half (1.5%) percent of funded amount as its fee to originate such Acquisition Loan.

(c) Upon the full execution and delivery of this Agreement, Administrative Agent will pay \$2,500.00 to CDOH as the origination fee due CDOH.

(d) Each Lender acknowledges and agrees that Administrative Agent will be entitled to also retain, in addition to the application fee and origination fee referred to in subparagraphs (a) and (b) above, as additional remuneration for its servicing services hereunder, a portion of the interest paid by each Borrower with respect to each Acquisition Loan equal to fifty basis points (0.50%) per annum. The forgoing 50-basis points are in addition to the interest due and payable to each Lender in accordance with Schedule B.

**Section 2.09. Interest.**

(a) The Acquisition Loans will bear interest at rates to be based on the blending of the rates due and payable to each Lender in accordance with Schedule B. Lenders are hereby notified that (i) \$1,000,000.00 of ECLF's Senior Debt for which

interest of 2% will be charged is due to be repaid by ECLF on January 15, 2019, (ii) another \$1,000,000.00 of ECLF's Senior Debt for which interest of 2% will be charged is due to be repaid by ECLF on April 27, 2020 and (iii) \$2,000,000.00 of ECLF's Third Tier Debt for which interest of 2% will be charged is due to be repaid by ECLF on April 1, 2020. The interest rate chargeable to any Acquisition Loans that remain outstanding at the time those funds must be repaid by ECLF will be adjusted to reflect the ECLF's cost with respect to the funds that replace such repaid funds and the Acquisition Loan Notes for any Acquisition Loans scheduled to mature on or after the due dates of the foregoing funds will duly permit such adjustment in interest rate. Additionally, to the extent that ECLF is not able to replace in whole or in part the aforementioned repaid Third Tier Debt with a lender willing to accept the rights and obligations of a Third Tier Lender (a "New Lender") by April 1, 2016, then each Lender's Commitment will be reduced as of April 1, 2016 such that each Lender's Applicable Percentage would remain unchanged from that set forth in Schedule B hereof. Acquisition Loans which close prior to April 1, 2016, would include the Third Tier Debt scheduled to mature April 1, 2020, but none of those Acquisition Loans would mature after April 1, 2020. If ECLF is able to identify a lender willing to be a New Lender, such party must first be approved by the Strategic Oversight Committee, and if so approved, then such New Lender shall become a Third Tier Lender hereto by signing an amendment to this Agreement agreeing to being admitted as a Third Tier Lender hereunder, which amendment Administrative Agent would countersign on its and the other Lenders behalf. If a New Lender is admitted as aforesaid, then Acquisition Loans made after April 1, 2016 would include capital from each Lender in accordance with the same Applicable Percentage as set forth in Schedule B hereto plus capital from any New Lender(s).

(b) Administrative Agent will provide each Borrower with a monthly statement of interest due and owing with respect to each Borrower's respective Acquisition Loan at least five (5) Business Days prior to each Interest Payment Date.

(c) The Loan Documents will provide that if any principal of or interest on any Acquisition Loan or any fee or other amount payable by any Borrower is not paid when due, whether at stated maturity, upon acceleration or otherwise, such overdue amount will bear interest at the election of Administrative Agent, after as well as before judgment, at a rate per annum equal to four percent (4%) plus the stated interest rate set forth in the applicable Acquisition Loan Note.

(d) Accrued interest on each Acquisition Loan will be payable in arrears by each Borrower to Administrative Agent on each Interest Payment Date for such Acquisition Loan; provided that (i) default interest accrued pursuant to paragraph (c) of this Section will be payable on demand, and (ii) in the event of any repayment or prepayment of any Acquisition Loan, accrued interest on the principal amount repaid or prepaid will be payable on the date of such repayment or prepayment.

(e) All interest hereunder will be computed on the basis of a year of 360 days, and in each case will be payable for the actual number of days elapsed (including the first day but excluding the last day).

(f) The Administrative Agent will refer to the Strategic Oversight Committee any Borrower who appears to have failed to comply with its covenant to maintain or develop the Property which the Borrower acquired with an Acquisition Loan as affordable housing and/or for some community benefit, Administrative Agent will refer the matter to the Strategic Oversight Committee. If, after providing any such Borrower the opportunity to be heard and provide evidence that any such failure was notwithstanding such Borrower's good faith efforts to otherwise comply and/or was due to reasons beyond such Borrower's control, the Strategic Oversight Committee determines that such failure was due to the Borrower's failure to comply, then Administrative Agent will enforce the provision in the Loan Documents which adjusts the interest rate due from such non-compliant Borrower to 400 basis points above the stated interest rate (the "Additional Interest"), retroactive to the date of the first Advance of the applicable Acquisition Loan. The proceeds of such additional interest shall be shared among the Lenders who funded such non-compliant Borrower's Acquisition Loan in accordance with each Lender's respective Applicable Percentage relative to such Loan. The Recourse Amount shall include the Additional Interest and with respect to any Acquisition Loan for which Additional Interest is determined to be due and payable, such Acquisition Loan shall not be deemed paid in full unless Additional Interest is paid along with such Acquisition Loan's outstanding principal balance and all other accrued and unpaid interest and any other sums due under the Loan Documents.

**Section 2.10. Payments Generally; Pro Rata Treatment; Sharing of Set-offs.**

(a) The Loan Documents will require each Borrower to make each payment required to be made by it under the Loan Documents (whether of principal, interest or fees or otherwise) prior to 12:00 noon, Maryland time, on the date when due, in immediately available funds, without set-off or counterclaim. Any amounts received after such time on any date may, in the discretion of the Administrative Agent, be deemed to have been received on the next succeeding Business Day for purposes of calculating interest thereon. All such payments will be made to the Administrative Agent at its offices as follows:

if by check, by mailing to:

Enterprise Community Loan Fund, Inc.  
Attn: Loan Repayments  
P.O. Box 64361  
Baltimore, MD 21264-4361

or by nationally recognized overnight carrier to:

M&T Bank / Montgomery Park  
1800 Washington Boulevard  
Baltimore, MD 21230  
Attn: Lockbox #64361

and if by wire transfer to:

|                  |   |
|------------------|---|
| Bank Name        | M & T Bank Corporation  |
| Bank Location:   | Buffalo, NY   |
| Bank ABA#:       | 022 000 046   |
| Bank Acct. Name: | Enterprise Community Loan Fund,<br>Inc. Program Related Investments |
| Bank Account #:  | 970-215-571   |
| Reference:       | Loan # _____  |
|                  | Borrower Name:  |
|                  | Re: Denver TOD +  |

with a notice/copy to

ENTERPRISE COMMUNITY LOAN FUND, INC.  
Attention of: Jonathan Clarke  
Facsimile No.: 206-443-8510  
Email address: [jclarke@enterprisecommunity.org](mailto:jclarke@enterprisecommunity.org)

The Administrative Agent will distribute any such payments received by it for the account of any other Person to the appropriate recipient within five (5) business days following receipt thereof; any such distribution will be (unless a different manner of payment is requested) by wire transfer in accordance with the wiring instructions set forth on each of the Lender's signature pages. If any payment hereunder will be due on a day that is not a Business Day, the date for payment will be extended to the next succeeding Business Day, and, in the case of any payment accruing interest, interest thereon will be payable for the period of such extension. All payments hereunder will be made in Dollars. For purpose of clarity, during the Availability Period, Lenders shall only receive the payment of interest only; any principal repayments made during the Availability Period will be retained by Administrative Agent for the purpose of relending such amounts for new Acquisition Loans, with any such funds still held by Administrative Agent at the end of the Availability Period, repaid to each Lender and applied to principal repayments accordingly.

(b) If at any time funds are received by and available to the Administrative Agent that are not sufficient to pay fully all amounts of principal, interest and fees then due with respect to any Acquisition Loan, whether the funds result from the sale of a Property by its Borrower or upon the foreclosure of a Property, or upon the disposition of a Property under any other circumstance, such funds will be applied as follows:

(i) Such proceeds will be applied first to pay amounts with statutory priority over Senior Debt, including, but not limited to, tax liens, water/sewer liens, and, to the extent they have priority over Senior Debt, mechanics' and materialmen's liens.

(ii) At such time as all such claims with statutory priority have been paid in full, then any remaining proceeds will be paid to Senior Lenders pro rata

in accordance with their relative Applicable Percentages until all costs and expenses of the Senior Lenders, including reasonable attorneys' fees, and all obligations of such Borrower to Senior Lenders, are paid in full. If after such application of proceeds, the Senior Debt has not been paid in full, the Senior Lenders shall have recourse against the particular Borrower and any Guarantor of the Acquisition Loan in question.

(iii) At such time as all of a Borrower's obligations to Senior Lenders have been paid in full, then any remaining proceeds will be paid to the Third Tier Lenders until all costs and expenses of the Third Tier Lenders pro rata in accordance with their respective Applicable Percentages, including reasonable attorneys' fees, and all obligations of that Borrower to Third Tier Lenders, are paid in full. If there are no remaining proceeds or any remaining proceeds (distributed on a pro rata basis among the Third Tier Lenders) are not sufficient to pay the Ford/MacArthur Third Tier Debt in full, then Ford and MacArthur shall have recourse against the particular Borrower and any Guarantor of the Acquisition Loan in question, subject to the Senior Lenders' priority right of payment of any recovery from such Borrower or Guarantor.

(iv) At such time as all of a Borrower's obligations to Senior Lenders and Third Tier Lenders have been paid in full, then any remaining proceeds will be paid to the Second Tier Lender until all costs and expenses of the Second Tier Lender, including reasonable attorneys' fees, and all obligations of that Borrower to the Second Tier Lender, are paid in full.

(v) At such time as all of a Borrower's obligations to Senior Lenders, Third Tier Lenders and Second Tier Lender have been paid in full, then any remaining proceeds will be paid to the Top Loss Lender until all costs and expenses of the Top Loss Lender, including reasonable attorneys' fees, and all obligations of that Borrower to the Top Loss Lender, are paid in full.

(vi) Any excess, after application as provided above, will be distributed to the Borrower.

(c) if any Lender failed to make its Applicable Percentage of any Acquisition Loan Advance pursuant to Section 2.04, then the Administrative Agent may, in its discretion (notwithstanding any contrary provision hereof), apply any amounts thereafter received by the Administrative Agent for the account of such Lender to satisfy such Lender's obligations under such Section until such unsatisfied obligation is fully paid.

### **Section 2.11. Recourse.**

The portion of each Acquisition Loan equal to the Recourse Amount will be a full recourse obligation of the Borrower and guaranteed by each Guarantor. The balance of each Acquisition Loan will be non-recourse to the Borrower and not governed by any Acquisition Loan Guaranty.

**ARTICLE III**  
**CONDITIONS**

**Section 3.01. Effective Date.**

The obligations of the Lenders to make Acquisition Loan Advances hereunder will not become effective until the date on which each of the following conditions is satisfied:

(a) The Administrative Agent (or its counsel) will have received from each party hereto either (i) a counterpart of this Agreement signed on behalf of such party or (ii) written evidence satisfactory to the Administrative Agent (which may include telecopy or other electronic transmission of a signed signature page of this Agreement) that such party has signed a counterpart of this Agreement.

(b) The Administrative Agent will notify the Lenders of the Effective Date, and such notice will be conclusive and binding.

**ARTICLE IV**  
**LOAN DOCUMENTS**

**Section 4.01. Loan Documents.**

The Loan Documents are annexed hereto and made a part hereof and consist of:

Document 1: Acquisition Loan Commitment Letter

Document 2: Acquisition Loan Agreement

Document 3: Acquisition Loan Note

Document 4: Acquisition Loan Deed of Trust

Document 5: Acquisition Loan Guaranty

Document 6: Environmental Indemnity Agreement

The Loan Documents shall also consist of such other agreements, documents and instruments which are executed and delivered in connection with any of the Acquisition Loans.

The principal terms and conditions of the Acquisitions Loans to be made pursuant to this Agreement are set forth in the annexed Loan Documents. By executing and delivering this Agreement, the parties hereto acknowledge their respective agreement with such terms and conditions, which in addition to the lending terms will include, but not limited to, (i) the representations and warranties to be made by each Borrower, (ii) the affirmative and negative covenants to be complied with by each Borrower, (iii) the reporting requirements imposed upon

the Borrower and any Guarantor and (iv) a description of the events of default and remedies with respect thereto. Based on the required periodic reports from each Borrower and Guarantor, Administrative Agent will on a semi-annual basis, (i) review the financial condition of each Borrower and any Guarantor, (ii) review each Borrower's compliance with applicable covenants and (iii) provide each Lender with its report based on such review within sixty (60) days from the end of each semi-annual reporting period, which report will include a status update of the Facility's progress with respect to its stated goals and an analysis of impediments encountered. Administrative Agent shall provide to each Lender on July 15 of each year (for the reporting period July 1 of the prior year through June 30 of the current year) a report of each Acquisition Loan's (i) current balance for principal and interest, (ii) the amount of payments received, (iii) amounts due and owing (if any) and the dates of such obligations (if applicable), and (iv) any other pertinent information required by any Lender.

**Section 4.02 Borrower's obligations with respect to Books and Records; Inspection Rights of Administrative Agent.**

The Loan Documents will include appropriate provisions requiring the Borrower to keep proper books of record and account in which full, true and correct entries are made of all dealings and transactions in relation to its business and activities. Those provisions will permit any representatives designated by the Administrative Agent, upon two (2) Business Days' prior notice, to visit and inspect a Borrower's Property, to examine and make extracts from the Borrower's books and records, and to discuss Borrower's affairs, finances and condition with Borrower's officers and independent accountants, all at such reasonable times and as often as reasonably requested. Administrative Agent shall likewise permit the Lenders and their authorized representatives, including with respect to Denver, its Auditor, upon two (2) Business Days' prior notice, access to and the right to examine any books, documents, papers and records of Administrative Agent related to this Agreement during regular business hours.

**Section 4.03 Indemnification by Borrower; Damage Waiver.**

(a) The Loan Documents will include appropriate provisions requiring the Borrower to indemnify the Administrative Agent, each Lender and each of their respective Related Parties (each such Person being called an "Indemnatee") against, and hold each Indemnatee harmless from, any and all losses, claims, damages, liabilities and related expenses, including the fees, charges and disbursements of any counsel for any Indemnatee, incurred by or asserted against any Indemnatee arising out of, in connection with, or as a result of (i) the Borrower's Loan or the use of the proceeds therefrom, (iii) any actual or alleged presence or release of Hazardous Materials on or from any property now or hereafter owned or operated by the Borrower, or any Environmental Liability related in any way to the Borrower, or (iv) any actual or prospective claim, litigation, investigation or proceeding relating to any of the foregoing, whether based on contract, tort or any other theory and regardless of whether any Indemnatee is a party thereto; provided that such indemnity shall not, as to any Indemnatee, be available to the extent that such losses, claims, damages, liabilities or related expenses are determined by a court of competent jurisdiction by final and non-appealable judgment to have resulted from the gross negligence or willful misconduct of such Indemnatee.



(b) The Loan Documents' indemnification provisions shall further provide that to the extent permitted by applicable law, the Borrower shall not assert, and shall waive, any claim against any Indemnitee, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, the Borrower's Loan or any of the Loan Documents, or the use of the proceeds of the Loan.

(c) The indemnification provisions of the Loan Documents will also provide that all amounts due pursuant thereto shall be due and payable ten (10) days after written demand therefor.

## ARTICLE V

### THE ADMINISTRATIVE AGENT; COLLATERAL MATTERS

#### **Section 5.01. Appointment.**

Each of the Lenders hereby irrevocably appoints the Administrative Agent as its agent and authorizes the Administrative Agent to take such actions on its behalf and to exercise such powers as are delegated to the Administrative Agent by the terms hereof, together with such actions and powers as are reasonably incidental thereto.

#### **Section 5.02. Other Business with any Borrower.**

As long as there is no conflict of interest, any Lender serving as the Administrative Agent may make a loan to and generally engage in any kind of business with any of the Borrowers or any their respective Affiliates as if it were not the Administrative Agent hereunder.

#### **Section 5.03. Limitation of Liability; Etc.**

The Administrative Agent will not have any duties or obligations except those expressly set forth herein. Without limiting the generality of the foregoing, so long as the Administrative Agent has acted within its scope of duties and used its best business judgment, (a) the Administrative Agent will not be subject to any implied duties, (b) the Administrative Agent will not have any duty to take any discretionary action or exercise any discretionary powers, except discretionary rights and powers expressly contemplated hereby or that the Administrative Agent is required to exercise in writing as directed by the Required Lenders, and (c) except as expressly set forth herein, the Administrative Agent will not have any duty to disclose, and will not be liable for the failure to disclose, any information relating to any of the Borrowers that is communicated to or obtained by the Lender serving as Administrative Agent or any of its Affiliates in any capacity other than as Administrative Agent. The Administrative Agent will not be liable for any action taken or not taken by it (i) with the consent or at the request of the Required Lenders or (ii) in the absence of its own gross negligence or willful misconduct or (iii) if Administrative Agent substantially abides by Administrative Agent's usual practices and procedures for similar loans for its own account, as such practices and procedures may be modified from time to time as Administrative Agent deems appropriate under the circumstances based upon industry standards.

#### **Section 5.04. Administrative Agent's Reliance; Etc.**

The Administrative Agent will be entitled to rely upon, and will not incur any liability for relying upon, any notice, request, certificate, consent, statement, instrument, document or other writing believed by it to be genuine and to have been signed or sent by the proper Person. The Administrative Agent also may rely upon any statement made to it orally or by telephone and believed by it to be made by the proper Person, and will not incur any liability for relying thereon. The Administrative Agent may consult with legal counsel, independent accountants and other experts selected by it, and will not be liable for any action taken or not taken by it in accordance with the advice of any such counsel, accountants or experts.

**Section 5.05. Delegation.**

The Administrative Agent may perform any and all of its duties and exercise its rights and powers by or through any one or more sub-agents appointed by the Administrative Agent. The Administrative Agent and any such sub-agent may perform any and all its duties and exercise its rights and powers through their respective Related Parties. The exculpatory provisions of the preceding paragraphs will apply to any such sub-agent and to the Related Parties of the Administrative Agent and any such sub-agent, and will apply to their respective activities in connection with the syndication of the credit facilities provided for herein as well as activities as Administrative Agent.

**Section 5.06. Replacement Administrative Agent.**

Subject to the appointment and acceptance of a successor Administrative Agent as provided in this paragraph, the Administrative Agent may resign only with the consent of Required Lenders (which, in the case of the Administrative Agent's proposed resignation or removal as provided in the balance of this Section 5.06, will be determined without regard to the Commitment of the Lender then acting as Administrative Agent). Upon receipt of such consent, Administrative Agent's resignation will be effective upon its providing 30 days' prior written notice to all Lenders. Additionally, in the event the Required Lenders determine that the Administrative Agent has failed to perform its duties hereunder or has breached its standard of care hereunder, the Administrative Agent shall be given written notice of such determination and the basis therefor and shall have thirty (30) days within which to either contest such determination or to cure the specified failure or breach. All Lenders (not including the Lender who is serving as the Administrative Agent) shall review any contest by Administrative Agent of the determination of Administrative Agent's failure or breach or shall determine whether Administrative Agent has duly cured the claimed failure or breach, and should the Required Lenders decide that Administrative Agent's contest is unavailing or its claimed cure inadequate, the Required Lenders may remove the Administrative Agent as Administrative Agent. Upon any such resignation or removal, the Required Lenders will have the right, to appoint a successor. If no successor has both (a) been so appointed by the Required Lenders and (b) accepted such appointment within thirty (30) days after the retiring Administrative Agent gives notice of its resignation or after the Lenders' removal of the current Administrative Agent, then the majority of all Lenders (not including the Lender who has resigned or been removed as Administrative Agent) may appoint a successor Administrative Agent. Upon the acceptance of its appointment as Administrative Agent hereunder by a successor, such successor will succeed to and become vested with all the rights, powers, privileges and duties of the retiring Administrative Agent, and the current Administrative Agent will be discharged from its duties

and obligations hereunder. After the Administrative Agent's resignation or removal hereunder, the provisions of this Article will continue in effect for the benefit of such retiring Administrative Agent, its sub-agents and their respective Related Parties in respect of any actions taken or omitted to be taken by any of them while it was acting as Administrative Agent. Any successor Administrative Agent cannot be a Related Party with respect to the Administrative Agent it is succeeding.

**Section 5.07. Lender's Credit Decisions.**

Each Lender acknowledges that it has, independently and without reliance upon the Administrative Agent or any other Lender and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Agreement. Each Lender also acknowledges that it will, independently and without reliance upon the Administrative Agent or any other Lender and based on such documents and information as it will from time to time deem appropriate, continue to make its own decisions in taking or not taking action under or based upon this Agreement, any related agreement or any document furnished hereunder or thereunder.

**Section 5.08. Post-Foreclosure Plans.**

If any of the Properties is acquired by the Administrative Agent as a result of a foreclosure or the acceptance of a deed or assignment in lieu of foreclosure, or is retained in satisfaction of all or any part of the obligations of any Borrower, the title to any such Property will be held in the name of the Administrative Agent or a nominee or subsidiary of the Administrative Agent, as agent, for the ratable benefit of all Lenders. The Administrative Agent will prepare a recommended course of action for any such Property (a "Post-Foreclosure Plan"), which will be subject to the approval of Lenders whose aggregate Applicable Percentage equals no less than sixty-six (66%) percent. In accordance with the approved Post-Foreclosure Plan, the Administrative Agent will manage, operate, administer, or otherwise deal with the Property acquired, and will administer all transactions relating thereto, including, without limitation, employing a management agent, leasing agent and other agents, contractors and employees, including agents for the sale of such Property, and the collecting of rents and other sums from such Property and paying the expenses of such Property. Actions taken by the Administrative Agent with respect to any such Property, which are not specifically provided for in the approved Post-Foreclosure Plan or reasonably incidental thereto, will require the written consent of the Required Lenders by way of supplement to such Post-Foreclosure Plan. Upon demand therefor from time to time, each Lender, subject to the required approvals of any applicable Governmental Authority, if any, will contribute its share (based on its Applicable Percentage with respect to the Acquisition Loan which had funded the acquisition of the Property covered by the Post-Foreclosure Plan in question) of all reasonable costs and expenses incurred by the Administrative Agent pursuant to the approved Post-Foreclosure Plan in connection with the operation, management, maintenance and sale of such Property. In addition, the Administrative Agent will render or cause to be rendered to each Lender, on a monthly basis, an income and expense statement for such Property, and each Lender will promptly contribute its Applicable Percentage of any operating loss for such Property, and such other expenses and operating reserves as the Administrative Agent will deem reasonably necessary pursuant to and in accordance with the approved Post-Foreclosure Plan. To the extent there is net operating income

from such Property, the Administrative Agent will, in accordance with the approved Post-Foreclosure Plan, determine the amount and timing of distributions to the Lenders in consultation with the Lenders. All such distributions will be made to the Lenders in accordance with their respective Applicable Percentages. The Lenders acknowledge and agree that if title to any Property is obtained by the Administrative Agent or its nominee, such Property will not be held as a permanent investment but will be liquidated as soon as practicable. The Administrative Agent will undertake to sell such Property, at such price and upon such terms and conditions as the Required Lenders reasonably will determine to be most advantageous to the Lenders, which consideration may include the community impact of the proposed sale. Any purchase money mortgage or deed of trust taken in connection with the disposition of such Property in accordance with the immediately preceding sentence will name the Administrative Agent, as agent for the Lenders, as the beneficiary or mortgagee. In such case, the Administrative Agent and the Lenders will enter into an agreement with respect to such purchase money mortgage or deed of trust defining the rights of the Lenders in the same Applicable Percentages as provided hereunder, which agreement will be in all material respects similar to this Article insofar as the same is appropriate or applicable. At Administrative Agent's sole discretion, Administrative Agent may engage, at the foreclosed Borrower's cost and expense, a special servicer to prepare and carry-out any Post-Foreclosure Plans (subject, at all times, to such Lender approvals as are required by this Section). Notwithstanding anything to the contrary set forth in this Agreement, Top Loss Lender will not be requested or required to contribute any sums other than its Commitment, but to the extent the other Lenders are required to expend more than their respective Applicable Percentage on account of the contributions required by this Section 8.08, the Applicable Percentages of all Lenders, including the Top Loss Lender, will be adjusted accordingly.

**Section 5.09. Reports to Lenders.**

Administrative Agent will provide a report including the following to all Lenders on a quarterly basis, within forty-five (45) days of the end of each quarter:

1. Portfolio monitoring report that describes the outstanding loans and loan performance, including a description of portfolio diversification and other key credit risk factors; loans that have been approved but have not yet closed; and loan Acquisition Loan Applications that are awaiting approval;
2. Delinquency report noting any events of default, occurrence of any servicer trigger event, and occurrence of any material adverse change for any Acquisition Loan;
3. Analysis of the Facility's performance compared to the stated goals and priorities of the Facility, including metrics from the Opportunity Index, as described in the Underwriting Guidelines;
4. A description of the charitable purpose of each Acquisition Loan, which will be updated and revised if there has been any change from what had been previously reported; and
5. Other information as reasonably requested by any Lender.

## ARTICLE VI

### STRATEGIC OVERSIGHT COMMITTEE

#### **Section 6.01. Role of Strategic Oversight Committee**

The Facility's Strategic Oversight Committee is hereby established for the purpose of overseeing the direction and business of the Facility toward meeting its stated purpose and goal of preserving or creating 2,000 units of affordable housing along with other supportive community assets with transit access in Geographic Denver and the Region.

The Strategic Oversight Committee is charged with regularly reviewing and assessing the Facility's progress, pipeline, and status and making strategic recommendations to the Administrative Agent regarding Facility-level business decisions. The Strategic Oversight Committee *does not* have authority or authorization to make any underwriting, servicing, or loan approval/denial decisions, which are the responsibility of the Administrative Agent.

#### **Section 6.02. Committee Membership**

The Strategic Oversight Committee will consist of 5-7 members, with permanent representation from the Administrative Agent and each of the Top Loss Lenders who choose to participate, and up to one rotating seat for a representative appointed collectively by the Third Loss Lenders (not including ECLF) and up to one rotating seat for a representative appointed by the Senior Lenders (not including ECLF). The designated representative of the Administrative Agent will chair the Strategic Oversight Committee. The Strategic Oversight Committee will meet semi-annually and on an as needed basis during the Availability Period and annually thereafter. Each Strategic Oversight Committee member who does not have a permanent seat will have a term of a single-year, which may be renewed by the party making the original appointment.

#### **Section 6.03. Quorum**

A quorum is constituted when at least a majority of the Committee is present.

#### **Section 6.04. Responsibilities of the Committee**

The Strategic Oversight Committee will be responsible for the following:

1. Review of the Facility's progress toward meeting its stated goals and objectives;
2. Recommending to the Administrative Agent any changes or adjustments to Facility operations necessary to meet stated goals and objectives;
3. Advising the Administrative Agent of unforeseen regulatory or market risks to Facility's success and on material Facility level strategic decisions;

4. Make the determination, described in Section 2.09(f), whether a Borrower who appears to have failed to comply with its covenant to maintain or develop the Property which the Borrower acquired with an Acquisition Loan as affordable housing and/or for some community benefit is obligated to pay Additional Interest.

## ARTICLE VII

### MISCELLANEOUS

#### Section 7.01. Notices.

(a) Except in the case of notices and other communications expressly permitted to be given by telephone (and subject to paragraph (b) below), all notices and other communications provided for herein will be in writing and will be delivered by hand or overnight courier service, mailed by certified or registered mail return receipt requested or sent by confirmed telecopy, as follows:

- (i) if to the Administrative Agent, to:

ENTERPRISE COMMUNITY LOAN FUND, INC.  
70 Corporate Center  
11000 Broken Land Parkway, Suite 700  
Columbia, Maryland 21044  
Attention of: Timothy Martin, Chief Credit Officer  
Phone: 410-772-2496  
Facsimile No.: 410-772-5282

with a copy to

ENTERPRISE COMMUNITY LOAN FUND, INC.  
c/o Enterprise Community Partners, Inc.  
70 Corporate Center  
11000 Broken Land Parkway, Suite 700  
Attention of: General Counsel  
Phone: 410-772-2453  
Facsimile No.: 410-772-3076  
and

- (ii) if to any other Lender, to it at its address set forth on its respective signature page.

(b) Notices and other communications to the Lenders hereunder may be delivered or furnished by electronic communications via telecopy number and/or email address to the contact person set forth on each Lender's signature page; the foregoing will not apply to notices pursuant to Article II unless otherwise agreed by the Administrative Agent and the applicable Lender. The Administrative Agent may, in its discretion, agree

to accept notices and other communications to it hereunder by electronic communications pursuant to procedures approved by it; provided that approval of such procedures may be limited to particular notices or communications.

(c) Any party hereto (including any Lender) may change its contact person, address or telecopy number or email address for notices and other communications hereunder by notice to the other parties hereto. All notices and other communications given to any party hereto in accordance with the provisions of this Agreement will be deemed to have been given on the date of receipt.

**Section 7.02. Successors and Assigns.**

The provisions of this Agreement will be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

**Section 7.03. Counterparts; Integration.**

This Agreement may be executed in counterparts (and by different parties hereto on different counterparts), each of which will constitute an original, but all of which when taken together will constitute a single contract. This Agreement constitutes the entire contract among the parties relating to the subject matter hereof and supersedes any and all previous agreements and understandings, oral or written, relating to the subject matter hereof.

**Section 7.04. Severability.**

Any provision of this Agreement held to be invalid, illegal or unenforceable in any jurisdiction will, as to such jurisdiction, be ineffective to the extent of such invalidity, illegality or unenforceability without affecting the validity, legality and enforceability of the remaining provisions hereof; and the invalidity of a particular provision in a particular jurisdiction will not invalidate such provision in any other jurisdiction.

**Section 7.05. Governing Law**

This Agreement will be construed in accordance with and governed by the law of the State of Colorado.

**Section 7.06. Waiver of Jury Trial.**

EACH PARTY HERETO HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (a) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (b) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS

AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

**Section 7.07. Headings.**

Article and Section headings and the Table of Contents used herein are for convenience of reference only, are not part of this Agreement and will not affect the construction of, or be taken into consideration in interpreting, this Agreement.

**Section 7.08. Prior Appropriation.**

Notwithstanding any other provision of the Agreement, the Top Loss Lenders' maximum payment obligation will not exceed their respective Commitments. With respect to the Top Loss Lender consisting of the City and Count of Denver, the Parties agree that such Top Loss Lender's payment obligations hereunder, whether direct or contingent, shall extend only to funds appropriated annually by the Denver City Council, paid into the Treasury of the City of Denver, and encumbered for the purpose of this Agreement. The Parties agree that (i) the Top Loss Lender consisting of the City and Count of Denver does not by this Agreement irrevocably pledge present cash reserves for payment or performance in future fiscal years and (ii) this Agreement is not intended to create a multiple-fiscal year direct or indirect debt or financial obligation of the Top Loss Lender consisting of the City and Count of Denver. In no event shall the limitations set forth in this Section in any way affect the Commitments of the other Lenders.

**Section 7.09. No Discrimination.**

In connection with the performance of services under this Agreement, Administrative Agent agrees not to refuse to hire, discharge, promote or demote, or to discriminate in matters of compensation against any person otherwise qualified, solely because of race, color, religion, national origin, gender, age, military status, sexual orientation, marital status, or physical or mental disability. The Administrative Agent agree to insert the foregoing provision in the Loan Agreements so that all Borrowers are required to comply therewith.

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(SIGNATURE PAGES FOLLOW)



**Contract Control Number:**

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

SEAL

**CITY AND COUNTY OF DENVER**

ATTEST:

By \_\_\_\_\_

\_\_\_\_\_

APPROVED AS TO FORM:

REGISTERED AND COUNTERSIGNED:

By \_\_\_\_\_

By \_\_\_\_\_

By \_\_\_\_\_



**Contract Control Number:**

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

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

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

**ATTEST: [if required]**

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

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

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



SCHEDULE A - OUTSTANDING ULC LOANS

**Denver TOD active loans at September 11, 2014**

| LOAN#   | LOAN NAME                       | NOTE AMOUNT         | PRINCIPAL BALANCE   | Senior Lenders      |                   | 3rd Tier            |                   |                     | 2nd Tier          | Top Loss            | MATURITY DATE |
|---------|---------------------------------|---------------------|---------------------|---------------------|-------------------|---------------------|-------------------|---------------------|-------------------|---------------------|---------------|
|         |                                 |                     |                     | ECLF                | MHCLF             | CHFA                | ROSE              | ECLF                | ECP               | Denver              |               |
| 10L0009 | DEN TOD - ULC - DAHLIA APTS     | 1,000,000.00        | 1,000,000.00        | 370,371.00          | 37,037.00         | 148,148.00          | 37,037.00         | 148,148.00          | 74,074.00         | 185,185.00          | Apr-15        |
| 10L0020 | DEN TOD - ULC - YALE COMMONS    | 1,192,500.00        | 1,192,500.00        | 441,667.42          | 44,166.62         | 176,666.49          | 44,166.62         | 176,666.49          | 88,333.25         | 220,833.11          | Jul-15        |
| 11L0032 | DEN TOD - ULC - SANTA FE APTS   | 1,246,500.00        | 1,246,500.00        | 461,667.46          | 46,166.62         | 184,666.48          | 46,166.62         | 184,666.48          | 92,333.24         | 230,833.10          | Aug-16        |
| 11L0061 | DEN TOD - ULC - WALNUT & E 38TH | 1,530,000.00        | 1,530,000.00        | 566,667.63          | 56,666.61         | 226,666.44          | 56,666.61         | 226,666.44          | 113,333.22        | 283,333.05          | Nov-16        |
| 13L0003 | DEN TOD - ULC - PARK HILL       | 3,690,000.00        | 2,640,000.00        | 977,779.44          | 97,777.68         | 391,110.72          | 97,777.68         | 391,110.72          | 195,555.36        | 488,888.40          | Mar-18        |
|         |                                 | <b>8,659,000.00</b> | <b>7,609,000.00</b> | <b>2,818,152.95</b> | <b>281,814.53</b> | <b>1,127,258.13</b> | <b>281,814.53</b> | <b>1,127,258.13</b> | <b>563,629.07</b> | <b>1,409,072.66</b> |               |

| <u>Tier</u>              | <u>Lender</u>               | <u>\$ Amount</u>  | <u>App. %*</u> | <u>Base Rate**</u> | <u>Blended Rate***</u> | <u>Tier LTV</u> |
|--------------------------|-----------------------------|-------------------|----------------|--------------------|------------------------|-----------------|
| <b>Denver Top Loss</b>   | City/County of Denver       | 2,500,000         | 20.83%         | 0.00%              | 0.50%                  | 90.0%           |
| <b>Regional Top Loss</b> | Colo Housing & Finance Auth | 2,000,000         | 16.67%         | 2.00%              | 2.50%                  |                 |
|                          | Colo Division of Housing    | 500,000           | 4.17%          | 1.00%              | 1.50%                  |                 |
| <b>2nd Tier</b>          | Enterprise Comm Partners    | 1,000,000         | 4.17%          | 2.00%              | 2.50%                  | 71.3%           |
| <b>3rd Tier</b>          | ECLF (MacArthur)            | 2,000,000         | 8.33%          | 2.00%              | 3.50%                  | 67.5%           |
|                          | ECLF (Ford)                 | 3,000,000         | 12.50%         | 1.00%              | 2.50%                  |                 |
|                          | Gates Family Foundation     | 1,000,000         | 4.17%          | 2.00%              | 2.50%                  |                 |
|                          | Denver Foundation           | 250,000           | 1.04%          | 2.00%              | 2.50%                  |                 |
|                          | Rose Foundation             | 500,000           | 2.08%          | 2.00%              | 2.50%                  |                 |
| <b>Senior</b>            | ECLF (EQ2)                  | 3,000,000         | 12.50%         | 2.00%              | 4.50%                  | 42.2%           |
|                          | ECLF                        | 6,250,000         | 26.04%         | 4.00%              | 6.50%                  |                 |
|                          | MHCLF                       | 1,000,000         | 4.17%          | 4.00%              | 4.50%                  |                 |
|                          | Mercy                       | 1,000,000         | 4.17%          | 5.50%              | 6.00%                  |                 |
|                          |                             | <b>24,000,000</b> |                |                    |                        |                 |

\*Note Applicable Percentage adds up to more than 100% because any Facility loan will have either Top Loss Denver or Top Loss Regional capital, but not both.

\*\*These are base rates payable to the respective lenders and do not include any fees

\*\*\*These are blended rates that are passed on to Borrowers after inclusion of servicing fees and balance sheet costs

**Schedule of Fees:**

ECLF Loan Servicing (all lenders): 50 bps  
ECLF Balance Sheet charge (Non-Recourse \$): 100 bps  
ECLF Balance Sheet charge (Recourse \$): 200 bps

Anticipated Borrower rate for Geographic Denver loans w/ Denver Top Loss: **3.69%**

Anticipated Borrower rate for Regional & Denver loans w/ Regional Top Loss: **4.06%**

**DENVER REGIONAL TOD FUND  
UNDERWRITING GUIDELINES**

| <b>PROJECT LOAN - ACQUISITION LOAN</b>                |  |
|---|--|
| <b>Administrative Agent on behalf of all Lenders:</b> | Enterprise Community Loan Fund, Inc.   |
| <b>Loan Type:</b>                                     | Acquisition  |
| <b>Loan Amount:</b>                                   | Maximum loan amount of \$5,000,000. Loans over this amount may be considered on an exception basis, but would require the approval of the Required Lenders.  |
| <b>Development Parameters:</b>                        | <p>All acquisition sites must be:</p> <ul style="list-style-type: none"> <li>• Located in the seven-county Denver Metro Area, which consists of the following counties: Adams, Arapahoe, Boulder, Broomfield, Denver, Douglas and Jefferson, including incorporated cities; and/or</li> <li>• Located within ½ mile of an existing or future fixed rail station or within ¼ mile of a high frequency, high volume bus corridor</li> </ul>  |
| <b>Loan to Value:</b>                                 | Up to 90% of the lesser of the as-is appraised value or the purchase price, to include funds for predevelopment expenses.  |
| <b>Equity Requirement:</b>                            | Minimum of 10% cash equity, based on the lesser of the as-is appraised value or the purchase price   |
| <b>Eligible Use:</b>                                  | <p>The following uses are eligible for Facility financing:</p> <ol style="list-style-type: none"> <li>1. Multifamily affordable rental housing</li> <li>2. Multifamily affordable for-sale housing, if approved by Required Lenders.</li> <li>3. Mixed-use projects that provide community facility and/or nonprofit space in addition to housing. Examples of such facilities are childcare centers, health clinics, charter schools, fresh food markets or other community facility/nonprofit uses designed to meet the needs of low-income residents and community members</li> <li>4. Vacant/underutilized land that will be acquired for the purpose of producing any of the above.</li> </ol> <p>Emphasis will be placed on acquiring properties with interim income potential, particularly existing affordable rental housing.</p> |
| <b>Eligible Borrowers:</b>                            | Eligible Project Borrowers may be nonprofit or for-profit entities, municipal agencies and redevelopment agencies, and joint ventures comprised of such entities, with a track record of developing affordable   |

|                                    |  |
|------------------------------------|--|
|                                    | housing or other projects that meet a community need ("Project Sponsors"). Special purpose entities affiliated with the Project Sponsors are also eligible.  |
| <b>Affordability Requirements:</b> | At least 70% of the dwelling units in the Properties funded by the Facility must be affordable to households earning no more than 60% AMI, with a goal of 15% of all units affordable to households earning from 0 to 30% of AMI.  |
| <b>Geographic Distribution:</b>    | No less than 50% of the Facility's Commitments shall fund Acquisition Loans for Properties located within Geographic Denver, the Top Loss Debt for which shall be funded by Denver, (ii) no less than 30% of the Facility's Commitments will fund Acquisition Loans for Properties located within the Region but outside the City of Denver, the Top Loss Debt for which shall be funded by CHFA and CDOH. In the event the unadvanced portion of the Denver Commitment is insufficient to fund the Top Loss Debt required to fund any Acquisition Loan to acquire Property within Geographic Denver, unadvanced and uncommitted portions of the CDOH and CHFA Commitments will be available to fund any such insufficiency.   |
| <b>Opportunity Requirements:</b>   | <p>In order to ensure that the transactions financed by the Facility maximize access to opportunity for low-income residents, the Administrative Agent will evaluate the extent to which Properties funded by the Facility and the surrounding neighborhoods provide access to opportunity for low-income residents. The Administrative Agent will seek to determine the quality of and access to the following critical community elements:</p> <ol style="list-style-type: none"> <li>1. Transit (frequency, bike/ped infrastructure, etc.)</li> <li>2. Education (high performing Pre-12, degree, and adult)</li> <li>3. Employment (middle-skill/career jobs &amp; training)</li> <li>4. Healthy food/open space (grocery, markets, parks)</li> <li>5. Healthcare options (hospitals, clinics, services)</li> <li>6. Critical Services (day care, counseling, banking, etc.)</li> <li>7. Energy efficiency</li> </ol> <p>Data information will be collected at the closing of each Acquisition Loan and updated quarterly.</p> |

|                             |   |
|-----------------------------|---|
| <b>Financial Covenants:</b> | <ol style="list-style-type: none"> <li>1. Debt to Equity ratio not to exceed 3:1</li> <li>2. Maintain a minimum equity balance equal to the outstanding amount owed by Borrower to the Facility.</li> <li>3. Unrestricted cash balance equal or greater to \$500,000 plus 6 months of interest for all outstanding debt for operating properties that meet a 1.10 DCR.</li> <li>4. Unrestricted cash balance equal to or greater than \$1,000,000</li> </ol>  |
|                             | <p>plus 24 months of interest for all outstanding debt for vacant properties and properties not meeting a 1.10 DCR.</p> <ol style="list-style-type: none"> <li>5. 7 years experience in affordable housing and/or non-housing related property development and 5 properties of similar scope successfully financed and completed.</li> <li>6. Borrowers (and their principals) must be in good standing with relevant jurisdiction and must be current on all taxes.</li> <li>7. Borrowers (and their principals) must be in good standing with all Lenders, any applicable state and federal agencies, and any other current lenders/funders, including HUD/FHA when applicable to permanent financing.</li> <li>8. Borrowers (and their principals) must have no material defaults on development financing, including federal and state debt, within the past 7 years.</li> <li>9. Borrowers (or their principals) must maintain an organizational debt coverage ratio of 1.10. The ratio will be calculated as Earnings Before Interest Expense and Depreciation plus Liquid Investments not reserved against future debt payments divided by debt payments for the year. <math>(EBID + \text{Investments not reserved}) / \text{Debt payments} \geq 1.10</math></li> </ol> |
| <b>Recourse:</b>            | <p>Each Acquisition Loan will be a recourse obligation of each borrower to the extent of the approx 68% portion thereof (the “Recourse Amount”) funded by Senior Debt and the portion of Third Tier Debt funded by Ford and MacArthur; the balance of each Acquisition Loan will be a non-recourse obligation of the Borrowers. However, if any Borrower is a special purpose entity (“SPE”), then its sponsor and/or principal(s) will provide a guaranty of payment with respect to the Recourse Amount.</p>  |
| <b>Interest Rate:</b>       | <p>Loan pricing will be fixed at loan closing, with interest to be paid quarterly. The rate will depend on the ultimate blend of capital in any given loan (see Schedule B) and will be reflected in the Acquisition Loan Note.</p>   |

|                   |  |
|-------------------|--|
| <b>Repayment:</b> | <p>Interest-only payments, with principal due at maturity or upon receipt of any repayment source, including the closing of construction financing or internally generated funds.</p> <p>Interest-only payments will be made via cash flow from operations of acquired property or from Borrowers' (or their principals') general cash flow from operations. Borrowers (or their principals) shall be required to evidence and maintain sufficient unrestricted liquidity to comfortably make all required interest payments under this Facility.</p> <p>If deemed necessary by the Administrative Agent, some/all of the interest payments may be made from a capitalized interest reserve funded through loan proceeds. The interest reserve may be reduced or eliminated if the Borrower or its principals demonstrates the financial strength to make out of pocket interest payments, identifies another source to pay interest payments or there is a source of stable cash flow</p> |
|-------------------|--|

|                           |  |
|---------------------------|--|
|                           | <p>from the acquisition property. If any interest reserve is exhausted, Borrower will make payments out of pocket.</p> <p>The loan is prepayable without penalty or premium.</p>   |
| <b>Fees:</b>              | <p>The Borrower will pay an Commitment Fee of 1.50% of the Project Loan, payable half upon acceptance of the Acquisition Loan Commitment Letter and the balance upon closing. There will also be a \$2,500 application fee, which will be credited against the Commitment Fee at closing. The Borrower will pay the Administrative Agent's attorneys' legal fees.</p>      |
| <b>Covenants:</b>         | <p>Standard for this type of loan and some special covenants for this Facility that will be reflected in the Loan Documents.</p>   |
| <b>Events of Default:</b> | <p>Standard.</p>   |
| <b>Term:</b>              | <p>The maximum loan term is five (5) years.</p>  |
| <b>Security:</b>          | <p>All loans will be secured by real estate in a first priority position. Other secured loans will be subordinate and subject to subordination and standstill agreements.</p> <p>Additional collateral may also be required, if appropriate.</p>   |
| <b>Loan Conditions:</b>   | <p>Closing will be contingent upon the favorable review and approval of:</p> <ul style="list-style-type: none"> <li>• Standard financial covenants (see above)</li> <li>• Standard due diligence requirements</li> <li>• No material adverse change in financial condition and performance</li> <li>• State of title and survey acceptable to lender's attorney</li> </ul> |



|                                |   |
|--------------------------------|---|
| <b>Non-Compliance</b>          | Should Borrower pursue an alternative development plan or disposition that is deemed by the Strategic Oversight Committee as non-compliant with the Facility’s stated goals and affordability requirements, the Administrative Agent will recoup from Borrower, on behalf of all investors, an “exit fee” equal to the difference between the loan’s stated interest rate and such rate increased by 400 bps, retroactive to the commencement of the term of the Acquisition Loan. The exit fee will be waived if Borrower can evidence that it made a good faith effort throughout the term of the Acquisition Loan to pursue a compliant use. |
| <b>Zoning:</b>                 | By the 24 <sup>th</sup> month of the term of any loan, if required zoning is not already in place, borrower must initiate a re-zoning process with the appropriate municipality.  |
| <b>Third Party Reports:</b>    | MAI appraisal with as-is market value for the land and any existing buildings dated within six (6) months of loan closing.<br><br>Environmental site assessment, geotechnical survey, property condition report and other reports as required by the Lender dated within six (6)  |
|                                | months of loan closing.   |
| <b>Reporting Requirements:</b> | In addition to the standard reporting requirements for a loan of this nature, Borrower must agree to comply with any additional reporting requirements required by the Administrative Agent to document the impact of the Facility. All reporting requirements will be clearly defined in the Loan Documents .  |



**TOD FUND APPLICATION SUMMARY**

**Directions:**

1. This Basic Loan Application Summary must signed below by an authorized representative of the applicant.
2. A non-refundable application fee (\$2,500) is also required with the Loan Application. The application fee will be credited towards the loan origination fee if the loan is approved and closed. All checks should be made payable to Enterprise Community Loan Fund, Inc.
3. To insure that the application fee is credited to the proper account, please include this completed form with the borrower's check and mail to the lock box at M&T Bank:

Enterprise Community Loan Fund  
 P.O. Box 64361  
 Baltimore, MD 21264-4361

4. Send a COPY of the check and application to the attention of:

Enterprise Community Loan Fund  
 Portfolio Associate  
 70 Corporate Center, 11000 Broken Land Parkway  
 Columbia, MD 21044

**or**

By fax at 410-772-5282  
 Attn: Portfolio Associate

**Loan Information:**

Date Submitted:

Loan Amount Requested:

Proposed Loan Term:

Loan Purpose:

**Borrower Information:** (\*as defined in the corporate documents)

Legal Name of Borrower\*:

Address:

City:  State:  Zip:

Project Contact:

Legal Signatory, Title\*:

Phone:  E-mail:

Fax:  Tax ID #:  Tax Status:

Cong. Dist.  Census tract:

Closing Attorney's Name & Contact Information:

**Sponsor Information:**

Sponsor Name:

Address:

City:  State:  Zip:

Signatory, Title:

Phone:  E-mail:

Fax:  Tax ID #:  Tax Status:

**Project Description:**

Project Address:

Rail or High Freq. Bus Access:

Project Summary:

**# of Units to be developed:**

|              |  |                    |  |             |  |
|--------------|--|--------------------|--|-------------|--|
| Rental Units |  | Supportive Housing |  | Rehab Units |  |
|--------------|--|--------------------|--|-------------|--|



[date]

**VIA EMAIL**

[Borrower]  
[Borrower's address].  
\_\_\_\_\_, Colorado \_\_\_\_\_

Attn: \_\_\_\_\_

RE: Acquisition Loan to fund the acquisition of [Property address], \_\_\_\_\_, Colorado  
(Loan # \_\_L\_\_\_\_)

Dear Friend:

This is to advise you that your application for a loan to acquire the property(-ies) identified below has been approved by Enterprise Community Loan Fund, Inc. ("ECLF"), acting in its capacity as the administrative agent for a number of lenders, including itself, pursuant to that certain Master Credit Agreement (the "MCA") dated as of \_\_\_\_\_, 2014, among those lenders and ECLF. The MCA created a loan facility to make acquisition loans to fund the acquisition of properties located in close proximity to existing or future fixed rail stations or high frequency, high volume bus corridors in the City and County of Denver and surrounding counties, which properties are slated to remain or be developed as affordable housing and/or for some other community benefit.

This letter (this "Commitment Letter") constitutes the commitment (the "Commitment") of ECLF, as administrative agent for the lenders who are parties to the MCA, to make an acquisition loan (the "Loan") to the entity described below as Borrower, subject to the terms and conditions set forth in this Commitment Letter.

1. **BORROWER** [Borrower]

Borrower is a [state of formation] [type of entity]. Borrower's purpose, among other purposes, is to purchase, develop and operate the property to be acquired by this Loan and to develop it as affordable housing and/or for some other community benefit.

Borrower will notify ECLF if there is a change of Borrower's structure prior to Settlement (defined below).

2. **MAXIMUM PRINCIPAL LOAN AMOUNT; LOAN DOCUMENTS**

The maximum principal Loan amount is [Loan amount] AND NO/100 DOLLARS (\$\_\_\_\_\_.00). The Loan will be evidenced by a acquisition loan note (the "Note"), secured by a deed of trust (the "DOT") and governed by a loan agreement (the "Loan Agreement") and such other documents required by ECLF (collectively, with the Note and Loan Agreement, the "Loan Documents").

3. **PURPOSE; PROPERTY**

Borrower will use the proceeds of the Loan to fund costs in connection with the acquisition of [Property Address], \_\_\_\_\_, Colorado (the "Property"). The Property is to be maintained or developed as affordable housing and/or for some community benefit.

4. **TERM**

\_\_\_\_\_ ( ) years. The term shall end on the last calendar day of the \_\_\_\_\_th anniversary of the date of Settlement. "Settlement" means the execution and delivery of the Note and other Loan Documents and the satisfaction of all other conditions precedent to Settlement as required by this Commitment and the Loan Agreement, including the requirements set forth on **Exhibit A** attached hereto.

5. **ANNUAL**

\_\_\_ ( ) percent simple interest per annum, calculated on the basis of

**INTEREST RATE**

the actual number of days elapsed over a year of 360 days. Interest shall accrue as of the first disbursement, which will take place at Settlement (whether to Borrower or placed in escrow). The Interest Rate will be subject to adjustment commencing as of (i) January 1, 2019 and (ii) then again as of April 1, 2020, to cover the then cost of funds of ECLF. In no event shall the increase in interest rate result in the applicable interest exceeding 4.5%..

The interest rate due and payable is below the market rate of interest and such lower rate is in consideration for Borrower's complying with its agreement to maintain or develop the Property as affordable housing and/or for some community benefit. In the event, Borrower fails to either maintain or develop the Property as such, unless Borrower can demonstrate to ECLF's satisfaction that such failure is despite its good faith efforts to the contrary and/or due to reasons beyond its control, the stated interest rate (or the stated interest rate as adjusted, as aforesaid) shall be increased by 400 basis points, which increase shall be retroactive to the date any portion of the Loan is disbursed. The difference between the stated Interest Rate (and any adjusted Interest Rate) and the increase resulting from adding 400 basis points thereto is referred to herein as the "Additional Interest."

**6. REPAYMENT**

The entire principal balance of the Note, together with all accrued and unpaid interest thereon, including Additional Interest, if applicable, and all other fees, costs and charges, if any, due and payable pursuant to the Loan Documents shall be due and payable in full on the earlier to occur of (i) \_\_\_\_\_, 20\_\_ {referring to the last calendar day of the \_\_\_\_\_ anniversary of the date of Settlement}, or (ii) the date of Borrower's closing for the construction/permanent financing and/or syndication of low-income housing tax credit equity for the Property (the "Maturity Date").

Interest payments shall be due and payable quarterly, with the first payment due the first day of the first quarter following Settlement, and each subsequent payment due the first day of each quarter thereafter, up to and including the Maturity Date. The first payment due shall be for interest accrued from the date of Settlement through the last day of the first quarter following Settlement.

The Loan may be prepaid without penalty or premium.

Recourse to the Borrower shall be limited to the portion of the Loan's original principal amount equal to \$\_\_\_\_\_, plus any and all interest which may accrue and remain unpaid thereon but also including any Additional Interest, if applicable (the "Recourse Amount").

If Additional Interest is determined to be due and payable, the Acquisition Loan shall not be deemed paid in full unless Additional Interest is paid along with the Acquisition Loan's outstanding principal balance and all other accrued and unpaid interest and any other sums due pursuant to the Loan Documents.

**7. SECURITY**

Borrower shall execute and deliver to ECLF (or cause to be executed and delivered to ECLF) at Settlement the DOT encumbering the Property,

securing the original principal amount of the Loan, and constituting a valid first priority lien on Borrower's fee simple interest in the Property;

No other liens shall be permitted on the Property or other collateral unless specifically approved in advance in writing by ECLF.

8. **GUARANTY**

[Guarantor] ("Guarantor[s]") shall provide[, on a joint and several basis,] an unconditional guaranty of payment limited to the Recourse Amount (the "Guaranty"). The Guarantor[s] and Borrower will also execute the Environmental Indemnity Agreement as joint and several indemnitors.

9. **ELIGIBLE USES OF LOAN; LOW INCOME RESTRICTION**

The Loan shall be used to pay for only approved acquisition expenses in connection with the acquisition of the Property and in accordance with the budget for the Property. The Property will either continue to or will be developed to provide housing for low-income individuals and/or families defined herein as a household with a combined annual household income of [95% or less of area median {if for sale housing}] [60% or less of area median {if rental housing}] [0 to 30% of area median {for those 15% of all Denver TOD units where this is applicable}].

10. **FEES; SETTLEMENT EXPENSES**

As a condition precedent to the obligation of ECLF to fund the Loan, Borrower shall pay to ECLF the following fees:

- A. Application Fee: \$2,500, which is non-refundable and credited towards the fees due at Settlement.
- B. Loan Origination Fee: one and one-half percent (1.5%) of the maximum principal amount of the Loan, due and payable as set forth below.
- C. Legal Fee: \$\_\_\_\_\_, non-refundable and due and payable as set forth below. ECLF reserves the right to require additional legal fees if there are extensive negotiations of the Loan Documents between Borrower and ECLF or other extraordinary legal work is required to reach Settlement, such fees to be due and payable at Settlement.

The Loan Origination Fee and Legal Fee shall be due and payable as follows:

- (1) Commitment: half of the Origination Fee due at the acceptance of this Commitment Letter.
- (2) Settlement: The balance of fees due, including the balance of the Origination Fee and the Legal Fee (less a credit for the \$2,500.00 Application Fee), are due and payable on the date of Settlement.

Borrower shall pay all recording and transfer fees, taxes, lender's title and other insurance premiums, survey fees and all other Settlement expenses. The Loan shall be closed at no expense whatsoever to ECLF.

11. **SETTLEMENT REQUIRE-**

Prior to Settlement, Borrower must furnish all items set forth on **Exhibit A** attached hereto and made a part hereof as soon as reasonably

**MENTS**

practicable prior to the expected date of Settlement, except the Loan Documents which shall be executed at Settlement by Borrower (or Guarantor).

Borrower agrees that the Loan and this Commitment Letter are subject to such additional documentation and legal requirements as may be deemed necessary by ECLF or ECLF's counsel.

**12. ADDITIONAL SETTLEMENT ITEMS**

In addition to the Loan Documents and other items listed on Exhibit A, ECLF must receive, review and approve, in its sole and absolute discretion, the following additional items prior to or concurrently with Settlement:

- TBD

**13. DISBURSEMENTS**

The Loan proceeds shall be disbursed to or for the account of Borrower, subject to the conditions of and in accordance with the procedures set forth in this Commitment Letter and the Loan Agreement.

The Loan proceeds shall be disbursed in one lump sum at Settlement, with the balance owed on the Loan Origination Fee, Legal Fee, or other funds advanced directly to ECLF in accordance with this Commitment Letter and the Loan Documents.

**14. REPORTING**

As to be set forth more fully in the Loan Agreement, Borrower and each Guarantor, as applicable, shall provide, at minimum, the following financial and other information during the term of the Loan and shall submit such reports to ECLF at [eclfcomp@enterprisecommunity.org](mailto:eclfcomp@enterprisecommunity.org):

- A. Within one hundred fifty (150) days after the end of each fiscal year of Borrower, Borrower shall submit to ECLF its annual financial statements on an audited basis, certified by an independent certified public accountant and in conformity with generally accepted accounting principles, consistently applied.
- B. Within one hundred fifty (150) days after the end of the calendar year Guarantor, Guarantor shall submit to ECLF its annual financial statements on an audited basis, certified by an independent certified public accountant and in conformity with generally accepted accounting principles, consistently.
- C. Within forty-five (45) days after the end of each fiscal quarter of Borrower, Borrower shall submit to ECLF its quarterly financial statements, fairly presenting its financial position at the end of the fiscal quarter and the results of its operations for the fiscal quarter, prepared internally, in conformity with generally accepted accounting principles, consistently applied.
- D. Within forty-five (45) days after the end of each fiscal quarter of Guarantor, Guarantor shall submit to ECLF its quarterly financial statements, fairly presenting its financial position at the end of the fiscal quarter and the results of its operations for the fiscal quarter, prepared internally, in conformity with generally accepted accounting principles, consistently applied.

- E. Within forty-five (45) days after the end of each fiscal quarter of Borrower, Borrower and/or Guarantor shall furnish to ECLF a narrative report on the Property covering, among other things, (i) a description of the status of the Property, including the status of any take-out financing, (ii) any problems or issues that might affect the timely payment of the Loan; (iii) any change in the take-out financing for the Property, including in the specified income levels of households to which the units will be rented/sold, as the case maybe under such financing; and (iv) status of zoning. Property reports must be current as of the date submitted.
- F. Within forty-five (45) days after the end of each fiscal quarter of Borrower [or Borrower's principal, if Borrower is a SPE], a short narrative description of Borrower [or Borrower's principal, if Borrower is a SPE]'s acquisition and preservation activities initiated or conducted during the prior six-month period, in reasonable detail, including, with respect to each property, but not limited to, addresses, number of existing and projected units, acquisition price, estimated rehabilitation or construction budget, anticipated rents (or, to the extent applicable, sales price) of units, and level of affordability of units;
- G. As property taxes related to the Property are due, Borrower shall submit to ECLF evidence that such taxes have been paid timely and fully.

15. **COVENANTS**

The Loan Documents will require Borrower to comply with certain covenants and agreements, including the following:

- (i) if the Property needs to be rezoned and is not rezoned by the applicable Governmental Authority by the second anniversary of the Loan, then the Borrower itself will initiate the rezoning of the Property;
- (ii) if the Borrower's proposed take-out financing is 9% low income housing tax credits ("LIHTC") or private activity bonds, the Borrower must apply for the credits to Colorado Housing and Finance Agency ("CHFA") and for the bonds to CHFA or another party, as applicable, no later than 15 months prior to the maturity date of the Loan;
- (iii) if the ultimate development of the Property involves new construction, the plans for the Property must meet or exceed requirements for accessibility as mandated by the Americans with Disabilities Act and general Fair Housing Act standards and meet the "Universal Design" measures listed in Enterprise Green Communities Criteria (a copy of the current version of which can be accessed at: <http://www.greencommunitiesonline.org/tools/criteria/GreenCriteria.pdf>), as well as meet or exceed the accessibility requirements of any other applicable state or federal law or regulation (including, without limitation, to the extent applicable, Section 504 of the Rehabilitation Act and the Uniform Federal Accessibility Standards) in effect at the time in question and other applicable standards;



(iv) the affordability of the Property once ultimately developed shall be [60% or less of area median income {for rental housing}] [95% or less of area median income {for for-sale housing}] [0 to 30% of area median {for those 15% of all Denver TOD units where this is applicable}]; and

(v) the Property shall be developed in accordance with either Enterprise Green Communities Criteria or any comparable higher standard (as approved by ECLF) in effect at the time of development.

Borrower's quarterly reports to ECLF will include evidence of compliance with the above covenants, which evidence shall be submitted prior to the any specified deadline date where applicable.

16. **[RESERVED]** [Reserved]

17. **COMMITMENT ACCEPTANCE; SETTLEMENT DATE:** To accept this Commitment, Borrower must execute and return to ECLF this Commitment Letter within \_\_\_\_ days of the date hereof (the "Commitment Period"). If ECLF does not receive the executed Commitment Letter within the Commitment Period, this Commitment Letter shall be null and void, without further notice to Borrower.

Settlement must occur no later than \_\_\_\_\_ 201\_, time being of the essence. If Settlement does not occur timely, this Commitment Letter shall become null and void.

In the event ECLF agrees to provide an extension to the above time periods, the extended Commitment may be on different terms and conditions, including, but not limited to, different interest rate and fees.

#### 18. **TERMINATION OF COMMITMENT:**

In addition to termination of this Commitment upon the expiration of the Commitment Period or upon Borrower's failure to reach Settlement in a timely manner, ECLF may terminate this Commitment upon the occurrence of any of the following upon notice to Borrower:

(i) Borrower or any Guarantor makes any material misrepresentation in any documents evidencing the Loan application or in any Loan application meetings with employees or representatives of ECLF prior to Settlement;

(ii) any material adverse change shall have occurred with respect to the Property or other collateral at any time prior to the date of Settlement, or if any material part of the Property is taken in condemnation or other like proceedings (or if such proceedings are pending at the time of Settlement) or any other changes which in the judgment of ECLF indicates the infeasibility of the planned development and required affordability of the Property;

(iii) if Borrower or any Guarantor shall be involved in any arrangement, bankruptcy, reorganization or insolvency proceeding or has suffered any material adverse change in its financial condition, or, there are any other changes which in the sole judgment of ECLF indicate the inability of Borrower or any Guarantor to fulfill its obligations under the Loan or the Guaranty or to complete the Property; or

(iv) if Borrower fails to diligently provide requested information and materials to ECLF or does not otherwise diligently and promptly pursue the satisfaction of the Settlement conditions and requirements.

19. **RELATIONSHIP OF THE PARTIES.** Nothing set forth herein or in the subsequent conduct of the parties shall be deemed to constitute ECLF as Borrower's partner or agent for any purpose whatsoever, the relationship between the parties being solely that of creditor and debtor.

20. **ASSIGNMENT:** The identity of the entity or parties with whom ECLF is dealing being of material importance to ECLF, this Commitment Letter is issued on the condition that Borrower's rights and obligations may not be assigned without ECLF's prior written approval.

21. **MISCELLANEOUS PROVISIONS:**

- A. Governing Law; Venue: Borrower agrees that the performance and construction of this Commitment Letter shall be governed by the laws of the State of Colorado (exclusive of principles of conflicts of laws). BORROWER AGREES THAT ANY SUIT, ACTION OR PROCEEDING WITH RESPECT TO ANY OF THE OBLIGATIONS UNDER THIS COMMITMENT LETTER SHALL BE BROUGHT IN ANY STATE OR FEDERAL COURT LOCATED IN THE STATE OF COLORADO, AND BORROWER CONSENTS TO THE IN PERSONAM JURISDICTION OF SUCH COURTS. BORROWER IRREVOCABLY WAIVES ANY OBJECTION TO, AND ANY RIGHT OF IMMUNITY FROM, THE JURISDICTION OF SUCH COURTS OR THE EXECUTION OF JUDGMENTS RESULTING THEREFROM, ON THE GROUNDS OF VENUE OR THE CONVENIENCE OF THE FORUM.
- B. Entire Agreement: The terms of this Commitment Letter constitute the entire agreement and understanding of the parties. No statements, agreements or representations, oral or written, which may have been made to the parties or any one or more of them, by any other party or by any employee or agent of such other party on behalf of such party, with respect to this Commitment Letter, will be of any force or effect except to the extent stated in this Commitment Letter, and all prior agreements and representations made with respect to this Commitment Letter are hereby merged herein.
- C. Amendments: This Commitment Letter shall not be modified except in writing signed by the parties. None of the terms and conditions contained in this Commitment Letter shall be considered abrogated or waived by reason of any failure or refusal to enforce the same.
- D. Survival of Commitment Letter: The terms and conditions of this Commitment Letter shall survive the Settlement of the Loan and shall be in full force and effect throughout the term of the Loan. This Commitment Letter shall be considered a Loan Document, provided, however, if any of the terms and conditions of this Commitment Letter conflict with any of the terms and conditions of the other Loan Documents, the terms and conditions of the other Loan Documents shall prevail.
- E. Information to be Supplied by Borrower. Borrower shall furnish, in a timely manner to ECLF, all information requested in writing by ECLF that ECLF reasonably deems necessary to ensure compliance with all Settlement requirements and a timely Settlement of the Loan.
- F. Patriot Act. By signing below, Borrower and each Guarantor represent that neither the Borrower nor the Guarantor, nor any principal of Borrower or Guarantor, nor any person or entity owning a direct or indirect interest in or having a direct control over Borrower is a person or entity that is named as a "specifically designated national and blocked person" on the most current list published by the U.S. Treasury Department Office of Foreign Assets control at its official website:  
<http://www.treas.gov/ofac/t11sdn.pdf>.
- G. Counterparts. This Commitment Letter may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which when so executed and delivered shall be deemed to be an original and all of which taken together shall constitute one and the same instrument.

As an indication of your acceptance of the foregoing terms and conditions, please sign and return **one** original Commitment Letter **by the end of the Commitment Period** to the attention of:

ENTERPRISE COMMUNITY LOAN FUND, INC.  
70 Corporate Center  
11000 Broken Land Parkway, STE 700  
Columbia, MD 21044  
Attention: \_\_\_\_\_

Please keep a copy of the signed Commitment Letter for your files. Upon ECLF's receipt of the signed Commitment Letter, Loan Documents will be drafted and forwarded to you for review.

ENTERPRISE COMMUNITY LOAN FUND, INC. is pleased to make this Loan and to help make the Property possible. Should you have any questions concerning this Loan, please feel free to contact \_\_\_\_\_ at \_\_\_\_\_.

Very truly yours,

Timothy E. Martin  
Chief Credit Officer

**THE FOREGOING TERMS AND CONDITIONS ARE HEREBY AGREED TO THIS \_\_\_\_\_ DAY OF NOVEMBER, 2013. Borrower has duly executed this Commitment Letter under seal, with the intention that it constitutes a sealed instrument.**

**BORROWER:**

**[Borrower]**

**By \_\_\_\_\_**

**Name:**

**Title:**

**THE UNDERSIGNED GUARANTOR ACKNOWLEDGES AND APPROVES THE GUARANTY PROVISIONS SET FORTH HEREIN THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 201\_.**

**GUARANTOR:**

**[Guarantor]**

**By \_\_\_\_\_**

**Name:**

**Title:**

## EXHIBIT A

THE FOLLOWING ARE THE DOCUMENTS REQUIRED BY ECLF FOR SETTLEMENT AND THE DURATION OF THE TERM OF THE LOAN. THE DOCUMENTS WHICH ARE TO BE PROVIDED BY BORROWER MUST BE RECEIVED BY ECLF AND BY ECLF'S COUNSEL (IN FORM AND SUBSTANCE ACCEPTABLE TO ECLF AND ECLF'S COUNSEL) AS SOON AS REASONABLY PRACTICABLE PRIOR TO SETTLEMENT UNLESS OTHERWISE INDICATED. BORROWER AGREES THAT THE COMMITMENT LETTER AND THIS EXHIBIT IS SUBJECT TO SUCH ADDITIONAL LEGAL OR OTHER REQUIREMENTS AS MAY BE DEEMED NECESSARY BY ECLF AND ECLF'S COUNSEL. ALL DOCUMENTATION MUST BE PROPERLY SIGNED AND CURRENT.

### PLEASE SEND DOCUMENTS TO:

#### **ENTERPRISE COMMUNITY LOAN FUND, INC.**

c/o Enterprise Community Partners, Inc.  
70 Corporate Center  
11000 Broken Land Parkway, STE 700  
Columbia, MD 21044

Attn: \_\_\_\_\_, \_\_\_\_\_r

**phone:** 410.772. \_\_\_\_\_

**email:** \_\_\_\_\_@enterprisecommunity.org

**cc:** \_\_\_\_\_@enterprisecommunity.org

Please **email to ECLF in PDF format** if possible.

## LEGEND

**DR - Draft Received** (*under review by ECLF's counsel*)

**NR - Needs Revisions** (*see footnote, if any, for additional information*)

**NA - Not Applicable** (*on original Closing List but subsequently deemed "NA" by ECLF based on facts of loan or borrower*)

**W - Waived** (*on original Closing List but subsequently waived by ECLF; waived at sole discretion of ECLF*)

**F - Final** (*approved by ECLF's counsel; satisfactory for Closing*)

**A - Approved** (*approved by ECLF's counsel as to form; final to be submitted at later date*)

**PC - Post Closing** (*item to be submitted post-closing*)

**FOR SETTLEMENT/INITIAL DISBURSEMENT**

**LOAN DOCUMENTATION (provided by ECLF unless otherwise noted):**

Status

|    |   |
|----|---|
| 1. | Commitment Letter                                     |
| 2. | Commitment Fee (due upon return of Commitment Letter) |
| 3. | Promissory Note                                       |
| 4. | Loan Agreement  |
| 5. | DOT, Assignment of Rents and Security Agreement       |
| 6. | UCC-1 Financing Statement (Property) (County)         |
| 7. | UCC-1 Financing Statement (Property) (State)          |
| 8. | Environmental Indemnity Agreement                     |
| 9. | Guaranty  |

**10. ORGANIZATIONAL DOCUMENTS OF BORROWER ([entity type]):**

**[Borrower]**

|    |  |
|----|--|
| a. | Certificate of Good Standings ( <i>issued within 90 days prior to Settlement</i> )   |
| b. | Articles of Organization/Certificate of Incorporation (and amendments)   |
| c. | Operating Agreement/By-Laws (and amendments)   |
| d. | Borrowing Resolution   |
| e. | Incumbency Certificate with certification re Organizational Documents and Borrowing Resolution   |
| f. | 501c3 IRS Determination Letter, if applicable  |
| g. | OFAC Clearance (ECLF to process and provide; <b>must submit <u>EIN</u> to ECLF at least 5 days prior to closing</b> )  |
| h, | OFAC Clearance (each signatory) (ECLF to process and provide; <b>each signatory must submit <u>copy of his/her driver's license</u> to ECLF at least 5 days prior to closing</b> ) |

**11. ORGANIZATIONAL DOCUMENTS OF GUARANTOR ([entity type]):**

**[Guarantor]**

|    |  |
|----|--|
| a. | Certificate of Good Standing ( <i>issued within 90 days prior to Settlement</i> )  |
| b. | Articles of Organization/Certificate of Incorporation (and amendments)   |
| c. | Operating Agreement/By-Laws (and amendments)   |
| d. | Guaranty Resolution  |
| e. | Incumbency Certificate with certification re Organizational Documents and Guaranty Resolution  |
| f. | 501c3 IRS Determination Letter, if applicable  |
| g. | OFAC Clearance (ECLF to process and provide; <b>must submit <u>EIN</u> to ECLF at least 5 days prior to closing</b> )  |
| h, | OFAC Clearance (each signatory) (ECLF to process and provide; <b>each signatory must submit <u>copy of his/her driver's license</u> to ECLF at least 5 days prior to closing</b> ) |

**[11. DOCUMENTS OF INDIVIDUAL GUARANTOR: \_\_\_\_\_**

- \_\_\_\_\_ Personal tax return for prior year
- \_\_\_\_\_ Certified personal financial statement
- \_\_\_\_\_ Credit report]

**12. REAL PROPERTY DOCUMENTS:**

|    |   |
|----|---|
| a. | Sales Contract ( <i>with all amendments and assignments and showing Borrower's site control of the Property</i> ) |
|----|---|

|    |   |
|----|---|
| b. | Appraisal ( <i>ordered by ECLF and dated within 6 months of Settlement; performed by an appraiser designated by ECLF; at Borrower's sole cost and expense; must include evidence of zoning</i> )  |
| c. | Zoning analysis   |
| d. | Property Condition Report (vacant, improved property)   |
| e. | Capital Needs Assessment (occupied property)  |
| f. | Phase I Environmental Report or such other environmental reports and analyses as ECLF shall request ( <i>dated within 6 months of Settlement</i> ). <ul style="list-style-type: none"> <li>• Statement of Qualifications must include certification that vendor carries Professional Liability Insurance in an amount of not less than \$1,000,000.</li> <li>• If not otherwise provided in a separate report, reports on the following must be included: <ul style="list-style-type: none"> <li>• lead-based paint</li> <li>• asbestos</li> <li>• lead-in water</li> <li>• mold</li> <li>• radon</li> <li>• underground storage tanks</li> </ul> </li> </ul> |
| g. | Phase II Environmental Report or Audit , if applicable  |
| h. | Geotechnical Survey   |
| i. | Environmental Reliance Letter ( <i>must name ECLF as "Enterprise Community Loan Fund, Inc., its successors and assigns"</i> )   |
| j. | Current Rent Roll   |
| k. | Form of Current Lease   |
| l. | Management Agreement  |
| m. | Operating Pro Forma   |
| n. | Property financial statements for prior three year period and year-to-date  |
| o. | Sources and Uses for funding for capital improvements during term of Acquisition Loan   |

### 13. TITLE INSURANCE REQUIREMENTS:

***Borrower, we suggest you fax the title commitment requirements directly to your title company to ensure exact coverage.***

|    |   |
|----|---|
| a. | Preliminary Title Report ( <i>may be in form of Title Insurance Commitment below</i> )  |
| b. | Title Insurance Commitment or Pro Forma Title Insurance Policy for a form 2006 ALTA ECLF's Policy of Title Insurance issued by a title insurer acceptable to ECLF, in form and substance acceptable to ECLF, insuring the DOT. <p>Title Insurance Commitment must include:</p> <ul style="list-style-type: none"> <li>• legible and complete copies of all instruments listed as exceptions</li> <li>• results of a UCC search showing no liens on collateral in the appropriate records</li> </ul> <p>The Title Insurance Requirements are as follows:</p> <ul style="list-style-type: none"> <li>• Named Insured must be: "ENTERPRISE COMMUNITY LOAN FUND, INC., its successors and/or assigns, as their interests may appear"</li> <li>• Insured Amount must be the amount of the Note</li> <li>• Must insure the DOT to be a valid first priority lien on the Property free and clear of all defects and encumbrances not previously approved by ECLF or its counsel in writing</li> <li>• With extended coverage (e.g., no survey exceptions other than those previously approved by ECLF; full coverage against mechanics' and</li> </ul> |

|    |  |
|----|--|
|    | <ul style="list-style-type: none"> <li>materialmen's liens)</li> <li>• Must be current to the date of Settlement</li> <li>• Land Same as Survey or other applicable endorsement(s) insuring the location, boundaries, dimensions, subdivision or other status of land (at discretion of ECLF)</li> <li>• such other endorsements as ECLF may require in its sole discretion upon review of Title Insurance Commitment and/or Survey</li> </ul>   |
| c. | <p>ALTA Survey of the Property:</p> <ul style="list-style-type: none"> <li>• updated within ninety (90) days of Settlement</li> <li>• certified to "ENTERPRISE COMMUNITY LOAN FUND, INC, its successors and/or assigns."</li> </ul> <p><i>Borrower: You or your attorney should contact the title insurer to determine the type of survey required by the title insurer to enable the title insurer to meet ECLF's requirements for an ALTA ECLF's Policy with a Land Same as Survey Endorsement</i></p> |
| d. | Final Title Policy and Endorsements as required above  |

**14. INSURANCE:**

***Borrower, we suggest you fax all insurance requirements directly to your insurance provider to ensure exact coverage.***

**REQUIREMENTS FOR ALL INSURANCE:**

- Carrier must be rated "A-" or higher in the AM Best Guide with a Financial Size Category of at least VI.
- Named Insured must be Borrower's full legal name
- Policy must be current, not expired.
- **Additional Insured/Certificateholder (as required below) must appear as:**  
**ENTERPRISE COMMUNITY LOAN FUND, INC.**  
**70 Corporate Center**  
**11000 Broken Land Parkway, STE 700**  
**Columbia, MD 21044**  
**Attention: Portfolio Associate**  
**eclfcomp@enterprisecommunity.org**  
**Ref: Loan #13L0057**
- Certificate must be signed by an authorized representative of the insurance carrier.

|    |  |
|----|--|
| a. | <p>Certificate of Insurance (ACORD 25) evidencing Borrower's <b><u>Commercial General Liability Insurance</u></b> (in amounts not less than \$1,000,000 per occurrence, \$2,000,000 in the annual aggregate, \$2,000,000 products/completed operations aggregate and \$1,000,000 umbrella), <b><u>Worker's Compensation Insurance</u></b> (in amounts consistent with state statutory requirements), and <b><u>Auto Insurance</u></b> (in amount not less than \$1,000,000), naming ENTERPRISE COMMUNITY LOAN FUND, INC. as an <b><u>Additional Insured</u></b> on the Commercial General Liability Insurance and Auto Insurance and as a <b><u>Certificateholder</u></b> for the Worker's Compensation Insurance.</p> <p>____ Commercial General Liability<br/> ____ Auto<br/> ____ Worker's Compensation</p> |
|----|--|



|    |  |
|----|--|
| b. | <p><b>Evidence of Property Insurance</b> (ACORD 27), evidencing insurance for the existing Property and any new construction at the Property as follows:</p> <ul style="list-style-type: none"> <li>• includes accurate description of the Property</li> <li>• coverage on a replacement cost basis</li> <li>• naming ENTERPRISE COMMUNITY LOAN FUND, INC. as <u>Mortgagee/Lender's Loss Payee</u> with address and contact information as listed above</li> <li>• no coinsurance requirement, or, waiving coinsurance through an agreed value coverage endorsement</li> <li>• covering: <ul style="list-style-type: none"> <li>○ Special Perils</li> <li>○ Equipment Breakdown (on a full replacement cost basis for boilers, electrical wiring, heating, air conditioning and refrigeration equipment)</li> <li>○ Building Ordinance</li> <li>○ Business Income, Rental Income or Rental Value Insurance for 12 months' scheduled gross income</li> <li>○ Earthquake</li> <li>○ Flood, if Property is located in a flood zone beginning with an "A" or a "V".</li> <li>○ Sinkhole</li> </ul> </li> <li>• If coverage is placed on a <u>Builder's Risk form</u> it must also include the following: <ul style="list-style-type: none"> <li>○ Soft Costs and Rents (covering a minimum of 12 months of interest payments on the Loan and other soft costs needed for re-building the Property such as design expenses, Property management fees, permits, and fees)</li> <li>○ Testing of Systems Coverage (except hot testing)</li> <li>○ Broad Collapse</li> <li>○ Automatic Permission to Occupy (OR if tenants or owner-occupants could move in before construction is completed, a Permit to Occupy Endorsement)</li> <li>○ No Automatic Cancellation except (1) transfer of ownership or (2) insured's insurable interest ceases.</li> </ul> </li> </ul> |
| c. | Evidence of <b>Environmental Impairment Liability Insurance</b> (if available), if the Environmental Reports show significant potential for environmental liability  |
| d. | Flood Insurance, if the Property or any portion thereof is located in a designated official flood hazard area  |

**15. SETTLEMENT DOCUMENTS:**

|    |  |
|----|--|
| a. | Settlement agent contact information (name, title, address, email address, phone, and fax)   |
| b. | Settlement agent's wiring instructions (if disbursement to be sent at Settlement)  |
| c. | Settlement instruction letter, counter-signed by Settlement agent (provided by ECLF)   |
| d. | Settlement Statement (provided by Settlement Agent)  |
| e. | Loan origination fee (balance due)   |
| f. | Legal Fee  |
| g. | ECLF's Internal Disbursement Request Form (provided by ECLF; if disbursement to be sent at Settlement and/or fees or other items to be netted from Loan) |

**16. LOAN-SPECIFIC REQUIREMENTS:**

|    |  |
|----|--|
| a. |  |
| b. |  |

|  |    |  |
|--|----|--|
|  | c. |  |
|  | d. |  |
|  | e. |  |

**LOAN AGREEMENT**

(#\_L\_\_\_)

**THIS LOAN AGREEMENT** (this "Agreement") is made as of the \_\_\_\_\_ day of \_\_\_\_\_, 201\_, by and between [**Borrower**] ("Borrower"), a [state of formation] [type of entity] with its principal office at [address], \_\_\_\_\_, Colorado \_\_\_\_\_, and **ENTERPRISE COMMUNITY LOAN FUND, INC.** ("ECLF"), a Maryland non-stock, nonprofit corporation with its principal office at 70 Corporate Center, 11000 Broken Land Parkway, Suite 700, Columbia, Maryland 21044.

**W I T N E S S E I H:**

**WHEREAS**, Borrower is a state of formation] [type of entity];

**WHEREAS**, Borrower has requested that ECLF lend it the principal amount of [loan amount] NO/100 DOLLARS (\$\_\_\_\_\_.00) (the "Loan") to be used by Borrower, upon the terms and conditions provided herein, for the purpose of funding the costs in connection with the acquisition of [Property Address], \_\_\_\_\_, Colorado (the "Property");

**WHEREAS**, Borrower intends to maintain or develop the Property as affordable housing and/or for some other community benefit;

**WHEREAS**, Borrower's application for the Loan was approved by ECLF, acting in its capacity as the administrative agent for a number of lenders, including itself, pursuant to that certain Master Credit Agreement (the "MCA") dated as of \_\_\_\_\_, 2014, among those lenders and ECLF. The MCA created a loan facility to make acquisition loans, like the Loan, to fund the acquisition of properties, like the Property, located in close proximity to existing or future fixed rail stations or high frequency, high volume bus corridors in the City and County of Denver and surrounding counties, which properties are slated to remain or be developed as affordable housing and/or for some other community benefit; and

**NOW, THEREFORE**, in consideration of the promises and the mutual and dependent covenants hereinafter contained, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

**ARTICLE I**  
**THE LOAN**

Section 1.01 Amount and Disbursement. Subject to the terms and conditions of this Agreement, ECLF agrees to disburse to Borrower the sum of [loan amount] NO/100 DOLLARS (\$\_\_\_\_\_.00) (the "Disbursement"). The Loan proceeds shall be disbursed provided Borrower has satisfied all the conditions contained in Section 4.01 herein (the date of disbursement being hereinafter referred to as a "Disbursement Date").

Section 1.02 Note. The Loan shall be evidenced by an acquisition loan Note signed by Borrower (the "Note") payable to ECLF, or its order, on the dates and in the manner set forth in the Note.

Section 1.03 Purpose of, and Use of Proceeds of, the Loan. The purpose of the Loan is to provide Borrower with financing to acquire the Property. The Property will be maintained or developed as affordable, quality housing and/or some community benefit. Borrower represents that it shall use the proceeds of the Loan solely for the purposes described in Sections 3 and 9 of the [date of commitment letter] commitment letter from ECLF (the "Commitment Letter"). The terms of the Commitment Letter are incorporated herein and made a part hereof.

Section 1.04 Disbursement. The entire amount of the Loan shall be disbursed to Borrower in one (1) Disbursement in connection with Borrower's acquisition of the Property.

**Section 1.05 Loan Repayment. Please contact ECLF's Accounting Department at 410-772-2734, or email [igarvin@enterprisecommunity.org](mailto:igarvin@enterprisecommunity.org), for pay-off amounts when repayments are being made. Send Loan repayments in accordance with the payment instructions attached hereto as Exhibit A. Please include Loan number (# L) on all checks, wires, and correspondence.**

Section 1.06 Further Assurances. At any time, upon ECLF's request, Borrower shall, at its own expense, do any act and execute and deliver any document as may be reasonably requested by ECLF in connection with any sale, assignment or transfer of this Agreement or the Note and any other documents normally required for similar loans by prudent lenders in accordance with reasonable commercial standards.

Section 1.07 Recourse. The repayment of the Loan is a recourse obligation of the Borrower to the extent of the portion of the original principal amount of the Loan equal to \$\_\_\_\_\_, plus any and all interest which may accrue and remain unpaid thereon but also including any Additional Interest, if applicable (as hereinafter defined) (collectively, the "Recourse Amount").

Section 1.08 Additional Interest. The Interest Rate due and payable is below the market rate of interest and such lower rate is in consideration for Borrower's complying with its agreement to maintain or develop the Property as affordable housing and/or for some community benefit. In the event, Borrower fails to either maintain or develop the Property as affordable housing and/or for some community benefit, unless Borrower can demonstrate to ECLF's satisfaction that such failure is despite its good faith efforts and/or due to reasons beyond its control, the stated Interest Rate (or the Interest Rate as adjusted, as provided in the Note) shall be increased by 400 basis points, which increase shall be retroactive to the date any portion of the principal evidenced hereby is disbursed. The difference between the stated (and adjusted, if applicable) Interest Rate and the increase resulting from adding 400 basis points thereto is referred to herein as the "Additional Interest." If Additional Interest is determined to be due and payable, the Acquisition Loan shall not be deemed paid in full unless Additional Interest is paid along with the Acquisition Loan's outstanding principal balance and all other accrued and unpaid interest and any other sums due pursuant to the Loan Documents.

**ARTICLE II**  
**SECURITY INTERESTS**

Section 2.01 Security for Loan. To secure the due and punctual payment of any and all liabilities of Borrower to ECLF and to secure the prompt performance by Borrower

of each and every obligation of Borrower arising under the Loan Documents (as hereinafter defined), Borrower shall execute and deliver (or cause to be executed and delivered) to ECLF the following:

(a) a first lien position Deed of Trust (the "DOT") in favor of ECLF, encumbering the Property; and

(b) such financing and continuation statements pursuant to the Uniform Commercial Code ("UCC") as are in effect in the State of Colorado;

together with such other notices, assignments and security agreements as are appropriate under applicable law, all in form and substance satisfactory to ECLF, together with such further assurances as ECLF, from time to time, may deem necessary to create, perfect and preserve the security interests provided for herein.

All of the items in which ECLF shall have a security interest pursuant to this Section 2.01 shall be collectively referred to herein as the "Collateral".

In addition, [Guarantor} ("Guarantor") shall guaranty (the "Guaranty") the repayment of the Recourse Amount and will also require the Guarantor to cover the cost of collection, if applicable. The Guarantor[s] and Borrower will also execute the Environmental Indemnity Agreement as joint and several indemnitors.

Section 2.02. Security Agreement. This Agreement is also a security agreement under the Uniform Commercial Code for any of the Collateral which, under applicable law, may be subject to a security interest under the Uniform Commercial Code, whether acquired now or in the future, and all products and cash and non-cash proceeds thereof (collectively, "UCC Collateral"), and Borrower hereby grants to ECLF a security interest in the UCC Collateral. Borrower hereby authorizes ECLF to file financing statements, continuation statements and financing statement amendments in such form as ECLF may require to perfect or continue the perfection of this security interest and Borrower agrees, if ECLF so requests, to execute and deliver to ECLF such financing statements, continuation statements and amendments. Borrower shall pay all filing costs and all costs and expenses of any record searches for financing statements that ECLF may require. Without the prior written consent of ECLF, Borrower shall not create or permit to exist any other lien or security interest in any of the UCC Collateral. If an Event of Default (as defined in the Loan Documents) has occurred and is continuing, ECLF shall have the remedies of a secured party under the Uniform Commercial Code, in addition to all remedies provided by this Agreement or existing under applicable law. In exercising any remedies, ECLF may exercise its remedies against the UCC Collateral separately or together, and in any order, without in any way affecting the availability of ECLF's other remedies.

Section 2.03. Loan Documents. The Commitment Letter, the Note, the DOT, this Agreement, the Guaranty and the Environmental Indemnity Agreement, and any other agreements or documents now or in the future executed or delivered to ECLF by Borrower in connection with this Agreement or the making of the Loan are hereinafter collectively referred to as the "Loan Documents".

**ARTICLE III**  
**REPRESENTATIONS, WARRANTIES AND COVENANTS**

Section 3.01 Representations and Warranties:

Borrower hereby represents and warrants to ECLF as of the date hereof and the Disbursement Date as follows:

(a) There are no actions, suits or proceedings pending, or threatened against or affecting Borrower, the Property, or involving the validity or enforceability of any of the Loan Documents or the priority of the lien of the aforesaid DOT;

(b) Borrower is not in default with respect to any order, writ, injunction, decree or demand of any court or any governmental authority having jurisdiction over Borrower, the Property, or under the terms of any mortgage, deed of trust, lease, loan or credit agreement, partnership or joint venture agreement or other instrument to which Borrower is a party or by which Borrower, the Property, or the Property may be bound or affected;

(c) The consummation of the transactions hereby contemplated and the execution, delivery and performance of the Loan Documents will not result in any breach of, or constitute a default under, any mortgage, deed of trust, lease, loan or credit agreement, partnership or joint venture agreement or other instrument to which Borrower, the Property, may be bound or affected;

(d) This Agreement does, and the Loan Documents to which Borrower is a party shall, upon their creation, issuance, execution and delivery, constitute valid and binding obligations of Borrower, enforceable in accordance with their terms (except as enforceability may be subject to any applicable bankruptcy, insolvency or similar laws generally affecting the enforcement of creditors' rights);

(e) The proceeds of the Loan shall be used solely for the purposes provided for in this Agreement and the Commitment Letter;

(f) Borrower shall execute such additional instruments as may be requested by ECLF in order to carry out the intent of this Agreement and to perfect or give further assurances of any of the rights granted or provided for under the Loan Documents;

(g) Borrower has good and marketable title to the Collateral free and clear of any and all liens, security interests, charges or encumbrances of any sort;

(h) All tax returns (including, but not limited to, information returns) required to be filed by Borrower in any jurisdiction have in fact been filed, and all taxes, tax liens, assessments, fees and other governmental charges upon Borrower or upon any of its assets, income or franchises, which are due and payable have been paid;

(i) Borrower has or will have and maintain in full force and effect the insurance requirements as set forth in the Commitment Letter;

(j) Upon ECLF's request, Borrower shall erect and maintain at the Property, at a location selected by Borrower with ECLF's consent a sign indicating that financing is being provided by ECLF as part of the Denver TOD Fund, all to the reasonable satisfaction of ECLF; and

(k) Borrower hereby represents that it is, and will continue to be, in compliance with the Residential Lead-Based Paint Hazard Reduction Act of 1992 ("Title X"), Section 1018, which requires disclosure of known lead-based paint and/or lead-based paint hazards by persons who are selling or leasing any housing constructed prior to 1978.

Section 3.02 Covenants:

(a) Borrower shall keep proper books of record and account in which full, true and correct entries are made of all dealings and transactions in relation to its business and activities.

(b) if the Property needs to be rezoned and is not rezoned by the applicable Governmental Authority by the second anniversary of the Loan, then the Borrower itself will initiate the rezoning of the Property;

(c) if the Borrower's proposed take-out financing is 9% low income housing tax credits ("LIHTC") or private activity bonds, the Borrower must apply for the credits to Colorado Housing and Finance Agency ("CHFA") and for the bonds to CHFA or another party, as applicable, no later than 15 months prior to the maturity date of the Loan;

(d) if the ultimate development of the Property involves new construction, the plans for the Property must meet or exceed requirements for accessibility as mandated by the Americans with Disabilities Act and general Fair Housing Act standards and meet the "Universal Design" measures listed in Enterprise Green Communities Criteria (a copy of the current version of which can be accessed at:

**<http://www.greencommunitiesonline.org/tools/criteria/GreenCriteria.pdf>**), as well as meet or exceed the accessibility requirements of any other applicable state or federal law or regulation (including, without limitation, to the extent applicable, Section 504 of the Rehabilitation Act and the Uniform Federal Accessibility Standards) in effect at the time in question and other applicable standards;

(e) the affordability of the Property once ultimately developed shall be [60% or less of area median income {for rental housing}][95% or less of area median income {for for-sale housing} [0 to 30% of area median {for those 15% of all Denver TOD units where this is applicable}]; and

(f) the Property shall be developed in accordance with either Enterprise Green Communities Criteria or any comparable higher standard (as approved by ECLF) in effect at the time of development.

**ARTICLE IV**

## **CONDITIONS OF ECLF'S OBLIGATIONS**

Section 4.01 Conditions Precedent to all Disbursements. ECLF shall not be obligated to disburse any portion of the Loan proceeds unless and until the requirements set forth herein and the following conditions have been satisfied:

(a) ECLF shall have received the Loan Documents all properly executed by the respective parties;

(b) The DOT, along with UCC-1 Financing Statements securing ECLF shall have been recorded or filed, as applicable, in the appropriate records at the county recorder of land records and with the appropriate records with the state, with all filing fees and taxes paid by Borrower, and ECLF shall have received proof of such filing so as to perfect a security interest in the Collateral covered by such applicable Loan Documents and/or UCC-1 Financing Statement, and ECLF shall have received proof that no prior security instruments or financing statement from Borrower as debtor or from any other party affecting the Collateral shall have been filed in any such office in favor of any other party;

(c) ECLF shall have received a commitment of a mortgagee's policy of title insurance for the Property naming ECLF as an insured and which shall show the lien on the Property in favor of ECLF to be free and clear of all defects and encumbrances, except such as ECLF shall approve;

(d) The representations and warranties made herein shall be true and correct on and as of the date of the Disbursement Date hereunder with the same effect as if made on such date and Borrower shall be in compliance with the financial covenants set forth under Section 3.02 above, and ECLF shall have received such assurances in these respects as ECLF may reasonably require;

(e) There shall be no defaults then existing, or which would exist with the giving of any applicable notice and the expiration of any applicable grace period, under any of the Loan Documents; and

(f) Borrower shall comply with all other requirements and conditions of the Loan as set forth in the Commitment Letter from ECLF to Borrower, and any amendments thereto. Such requirements and conditions are incorporated herein by reference.

## **ARTICLE V** **REPORTS AND INSPECTIONS**

Section 5.01 Reports and Additional Information. As long as the Note, or any portion thereof, remains unpaid, Borrower shall furnish, or use its best efforts to cause to be furnished, to ECLF information, reports, statements, certificates and opinions of counsel with respect to the Loan, or the assets, operations or financial condition of Borrower, as ECLF may reasonably request. In particular, Borrower shall submit the following reports to ECLF at [eclcomp@enterprisecommunity.org](mailto:eclcomp@enterprisecommunity.org):



- A. Within one hundred fifty (150) days after the end of each fiscal year of Borrower, Borrower shall submit to ECLF its annual financial statements on an audited basis, certified by an independent certified public accountant and in conformity with generally accepted accounting principles, consistently applied.
- B. Within one hundred fifty (150) days after the end of the calendar year of Guarantor, Guarantor shall submit to ECLF its annual financial statements on an audited basis, certified by an independent certified public accountant and in conformity with generally accepted accounting principles, consistently.
- C. Within forty-five (45) days after the end of each fiscal quarter of Borrower, Borrower shall submit to ECLF its quarterly financial statements, fairly presenting its financial position at the end of the fiscal quarter and the results of its operations for the fiscal quarter, prepared internally, in conformity with generally accepted accounting principles, consistently applied.
- D. Within forty-five (45) days after the end of each fiscal quarter of Guarantor, Guarantor shall submit to ECLF its quarterly financial statements, fairly presenting its financial position at the end of the fiscal quarter and the results of its operations for the fiscal quarter, prepared internally, in conformity with generally accepted accounting principles, consistently applied.
- E. Within forty-five (45) days after the end of each fiscal quarter of Borrower, Borrower and/or Guarantor shall furnish to ECLF a narrative report on the Property covering, among other things, (i) a description of the status of the Property, including the status of any take-out financing, (ii) any problems or issues that might affect the timely payment of the Loan; (iii) any change in the take-out financing for the Property, including in the specified income levels of households to which the units will be rented/sold, as the case maybe under such financing; and (iv) status of zoning. Property reports must be current as of the date submitted.
- F. Within forty-five (45) days after the end of each fiscal quarter of Borrower [or Borrower's principal, if Borrower is a SPE], a short narrative description of Borrower [or Borrower's principal, if Borrower is a SPE]'s acquisition and preservation activities initiated or conducted during the prior six-month period, in reasonable detail, including, with respect to each property, but not limited to, addresses, number of existing and projected units, acquisition price, estimated rehabilitation or construction budget, anticipated rents (or, to the extent applicable, sales price) of units, and level of affordability of units;
- G. As property taxes related to the Property are due, Borrower shall submit to ECLF evidence that such taxes have been paid timely and fully.

Section 5.02 Site Inspections. Borrower agrees that, during the term of the Loan, ECLF or any of its representatives or designees, upon two (2) business days' prior notice, shall be permitted to visit and inspect at Borrower's Property, to examine and make extracts from the Borrower's books and records, and to discuss Borrower's affairs, finances and condition with Borrower's officers and independent accountants, all at such reasonable times and as often as

reasonably requested.

## **ARTICLE VI** **DEFAULT**

**Section 6.01 Events of Default.** If one or more of the events set forth in this Section 6.01 (each such event being herein called an "Event of Default") shall occur, ECLF shall have the rights and remedies set forth in Section 6.02 hereof:

(a) Borrower fails to make any payment of principal or of interest on the Note on or before the date any such payment is due. No more frequently than once each year, ECLF shall provide Borrower with notice of any payment default;

(b) Borrower fails to observe or perform any other material term, covenant or condition contained in this Agreement, the Note or the Loan Documents and such failure continues unremedied for a period of thirty (30) days after written notice thereof has been given to Borrower by ECLF specifying such default and requiring it to be remedied or, if such failure is not reasonably capable of being remedied within such 30-day period, Borrower has not commenced remedial action and is not proceeding with diligent efforts to remedy such failure, except, however, that no such notice shall be required for any event specifically described elsewhere in this Section 6.01;

(c) Any material representation or warranty made by Borrower herein or any statement or representation made by Borrower or any Guarantor in any certificate, report or opinion delivered pursuant thereto proves to have been false, misleading or incorrect in any material respect when, or as of when, made;

(d) Borrower or any Guarantor becomes insolvent; fails or ceases to pay its debts as they mature; makes an assignment for the benefit of creditors; files a petition in bankruptcy; is adjudicated insolvent or bankrupt; petitions or applies to any tribunal for the appointment of any receiver or any trustee; or commences any proceeding relating to Borrower or such Guarantor under any reorganization, arrangement, readjustment of debt, dissolution or liquidation law or statute of any jurisdiction, whether now or hereafter in effect, or there is commenced against Borrower or any Guarantor any such proceeding which shall not be dismissed within a period of sixty (60) days, or Borrower or any Guarantor, by any act, indicates its consent to, approval of, or acquiescence in any such proceeding or the appointment of any receiver of, or any trustee for, it or any substantial part of its property, or suffers any such receivership or trusteeship to continue undischarged for a period of sixty (60) days; or

(e) Borrower or any Guarantor fails to make any payments when due or is otherwise in default under the terms of any other loan or grant to Borrower from ECLF.

**Section 6.02 Rights and Remedies on Default.** If any Event of Default shall occur, ECLF may exercise all or any of the remedies provided in this Agreement, the Note or the Loan Documents, or provided by law or equity, including, without limitation, the following:

(a) At any time after the occurrence of an Event of Default, without notice, and at the

expense of Borrower, ECLF may exercise as to the Property all the rights, powers, and remedies of a secured creditor and/or mortgagee under the laws of the State of Colorado, and with respect to the other Collateral, ECLF may exercise its rights pursuant to the laws of other jurisdictions as set forth in the Loan Documents;

(b) ECLF may, by written notice to Borrower, declare any portion or all of the Note and/or any and all other indebtedness of Borrower to ECLF forthwith to be due and payable, whether or not the indebtedness evidenced by the Note or other indebtedness shall be otherwise due and payable and whether or not ECLF shall have initiated any other action for the enforcement of such Note, or other indebtedness and whereupon such Note and/or such other indebtedness shall become due and payable pursuant to the terms thereof, as to principal, interest and any other amounts payable, without presentment, demand, protest, notice of protest, or further notice of any kind, all of which are hereby expressly waived by Borrower, anything contained herein or in any note or other evidence of indebtedness to the contrary notwithstanding;

(c) ECLF may protect and enforce its rights by appropriate judicial proceedings, including, in appropriate cases, an award of specific performance or other equitable remedy in aid of the exercise of any power granted in or pursuant to this Agreement, the Note or the Loan Documents; and

(d) ECLF may declare that Borrower and/or any Guarantor shall not be eligible for any further loans or grants from ECLF.

**ARTICLE VII**  
**INDEMNIFICATION BY BORROWER; DAMAGE WAIVER**

Section 7.01 Borrower shall indemnify ECLF, each lender which is a party to the MCA directors, officers, employees, agents and advisors and those of their respective affiliates (each an “Indemnitee”) against, and hold each Indemnitee harmless from, any and all losses, claims, damages, liabilities and related expenses, including the fees, charges and disbursements of any counsel for any Indemnitee, incurred by or asserted against any Indemnitee arising out of, in connection with, or as a result of (i) the Borrower’s Loan or the use of the proceeds therefrom, (ii) any actual or alleged presence or release of Hazardous Materials (as defined in Section 7.04 below) on or from any property now or hereafter owned or operated by the Borrower, or any Environmental Liability (as defined in Section 7.04 below) related in any way to the Borrower, or (iv) any actual or prospective claim, litigation, investigation or proceeding relating to any of the foregoing, whether based on contract, tort or any other theory and regardless of whether any Indemnitee is a party thereto; provided that such indemnity shall not, as to any Indemnitee, be available to the extent that such losses, claims, damages, liabilities or related expenses are determined by a court of competent jurisdiction by final and non-appealable judgment to have resulted from the gross negligence or willful misconduct of such Indemnitee.

Section 7.02 To the extent permitted by applicable law, the Borrower shall not assert, and shall waive, any claim against any Indemnitee, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, the Borrower’s Loan or any of the Loan Documents, or the use of the proceeds of the Loan.

Section 7.03 All amounts due from Borrower pursuant to this Article shall be due and payable to the applicable Indemnitee ten (10) days after written demand therefor.

Section 7.04 As used in this Article, the following terms shall be defined as follows

“Hazardous Materials” means all explosive or radioactive substances or wastes and all hazardous or toxic substances, wastes or other pollutants, including petroleum or petroleum distillates, asbestos or asbestos containing materials, polychlorinated biphenyls, radon gas, infectious or medical wastes and all other substances or wastes of any nature regulated pursuant to any Environmental Law, and any growth or existence of surface or airborne microbial constituents, regardless of genus, species, or whether commonly referred to as mildew, mold, mold spores, fungi, bacteria or similar description, in such condition, location or quantity as would, individually or in the aggregate, have any material adverse effect on (a) human health or the environment; (b) the value or condition of the Property in question; or (c) the business or financial condition as a whole of any Borrower or the Property in question.

“Environmental Laws” means all laws, rules, regulations, codes, ordinances, orders, decrees, judgments, injunctions, notices or binding agreements issued, promulgated or entered into by any Governmental Authority, relating in any way to the environment, preservation or reclamation of natural resources, the management, release or threatened release of any Hazardous Material or to health and safety matters.

“Environmental Liability” means any liability, contingent or otherwise (including any liability for damages, costs of environmental remediation, reduction in value, fines, penalties or indemnities), of a Borrower directly or indirectly resulting from or based upon (a) violation of any Environmental Law, (b) the generation, use, handling, transportation, storage, treatment or disposal of any Hazardous Materials, (c) exposure to any Hazardous Materials, (d) the release or threatened release of any Hazardous Materials into the environment or (e) any contract, agreement or other consensual arrangement pursuant to which liability is assumed or imposed with respect to any of the foregoing.

## **ARTICLE VIII** **INSURANCE REQUIREMENTS**

Borrower shall obtain and maintain insurance as specified in this Article at all times during the term of the Loan.

### **Section 8.01 Public Entity Borrowers; Non-Public Entity Borrowers**

- i. If Borrower is a "public entity" within the meaning of the Colorado Governmental Immunity Act, CRS §24-10-101, et seq., as amended (the “GIA”), then Borrower shall maintain at all times during the term of the Loan such liability insurance, by commercial policy or self-insurance, as is necessary to meet its liabilities under the GIA. The public entity Borrower shall provide proof of such insurance satisfactory to the Lender.
- ii. If Borrower is not a "public entity" within the meaning of the GIA, Borrower shall obtain and maintain during the term of the Loan insurance coverage and policies meeting the same requirements set forth below.

### **Section 8.02 Borrower’s Insurance Requirements:**

#### **Worker’s Compensation**

Worker’s Compensation Insurance as required by State statute, and Employer’s Liability Insurance covering all of Borrower’s employees, if any, acting within the course and scope of their employment. Lender is to be listed as certificat holder on Worker’s Comp policy.

**General Liability**

Commercial General Liability Insurance written on ISO occurrence form CG 00 01 10/93 or equivalent, covering premises operations, fire damage, independent contractors, products and completed operations, personal injury, and advertising liability with minimum limits as follows: **(a)** \$1,000,000 each occurrence; **(b)** \$2,000,000 general aggregate; and **(c)** \$2,000,000 products and completed operations aggregate.

**Umbrella**

\$1,000,000.00

**Automobile Liability**

Automobile Liability Insurance covering any auto (including owned, hired and non-owned autos) with a minimum limit of \$1,000,000 each accident combined single limit.

**Additional Insured**

Lender shall be named as additional insured on the Commercial General Liability Insurance policies (leases and construction agreements require additional insured coverage for completed operations on endorsements CG 2010 11/85, CG 2037, or equivalent).

**Primacy of Coverage**

Coverage required of Borrower shall be primary over any insurance or self-insurance program carried by Borrower or Lender.

**Cancellation**

The above insurance policies shall include provisions preventing cancellation or non-renewal without prior notice to the Borrower and Borrower shall forward such notice to Lender within seven days of Borrower's receipt of such notice.

**Subrogation Waiver**

All insurance policies in any way related to the Loan and secured and maintained by Borrower or its Subcontractors as required herein shall include clauses stating that each carrier shall waive all rights of recovery, under subrogation or otherwise, against Borrower or the Lender, its agencies, institutions, organizations, officers, agents, employees, and volunteers.

**In Force**

If any of the said policies shall fail at any time to meet these insurance requirements as to form or substance, or if a company issuing any such policy shall be or at any time cease to be acceptable to the Lender, or be or cease to be in compliance with any stricter requirements of the Loan Agreement, Borrower shall promptly obtain a new policy.

**Insurer**

All requisite insurance shall be obtained from financially responsible insurance companies, authorized to do business in the State of Colorado rated "A-" or higher in the AM Best Guide with a Financial Size Category of at least VI and otherwise and acceptable to Lender.

**Deductible**

Any and all deductibles or self-insured retentions contained in any insurance policy shall be assumed by and at the sole risk of the Borrower.

**Property Insurance**

Insurance on the buildings and other improvements now existing or hereafter erected on the premise and on the fixtures and personal property included in the Subject Property against loss by fire, and other hazards covered on a "all risk" coverage form of policy and such other perils as the Lender shall from time to time require with respect to properties of the nature and in the geographical area of the Subject Properties, and to be in an amount at least equal to the replacement cost value of the Subject Property. Borrower will at its sole cost and expense, from time to time and at any time, at the request of Lender provide Lender with evidence satisfactory to Lender of the replacement cost of the Subject Property. Lender to be named as "mortgagee/loss payee."

**Flood Insurance**

If the Subject Property or any part thereof is at any time located in a designated official flood hazard area, flood insurance insuring the buildings and improvements now existing or hereafter erected on the Subject Property and the personal property used in the operation thereof in an amount equal to the lesser of the amount required for property insurance or the maximum limit of coverage made available with respect to such buildings and improvements and personal property under applicable federal laws and the regulations issued thereunder.

**ARTICLE IX  
MISCELLANEOUS**

Section 9.01 Notices. All notices, requests, consents, waivers and other communications given under any of the provisions of this Agreement shall be in writing and shall be deemed given when delivered or mailed and if mailed, then first class postage prepaid, registered or certified mail, return receipt requested, and addressed as follows:

If to **ECLF**, at:                   **ENTERPRISE COMMUNITY LOAN FUND, INC.**  
70 Corporate Circle  
11000 Broken Land Parkway, Suite 700  
Columbia, MD 21044  
Attn: Timothy E. Martin, Chief Credit Officer  
  
c/o **ENTERPRISE COMMUNITY PARTNERS, INC.**

1 Whitehall Street, 11th Floor  
New York, NY 10004  
Attn: Alex S. Avitabile, VP and Deputy General Counsel

If to **Borrower**, at: **[BORROWER]**  
[Borrower's address].  
\_\_\_\_\_, Colorado \_\_\_\_  
Attn: \_\_\_\_\_

*With a copy to:*

Section 9.02 Entire Agreement; Modifications. The terms of the Loan Documents are incorporated herein. This Agreement and the Loan Documents, and the exhibits and schedules hereto and thereto, contain the entire agreement of the parties hereto with respect to the transactions contemplated hereby, and no change, modification or waiver of any provision hereof or thereof shall be valid unless in writing and signed by the party to be bound.

Section 9.03 No Waiver. No delay or failure on the part of ECLF in exercising any rights or remedies hereunder or under the Note or the Loan Documents and no partial or single exercise thereof, shall constitute a waiver of such rights or of any other rights or remedies hereunder or under any of such instruments.

Section 9.04 Applicable Law. Borrower agrees that this Agreement shall be construed and enforced in accordance with, and the rights of the parties shall be governed by, the laws of the State of Maryland, exclusive of its conflicts of law rules except to the extent that it deals with the rights of a mortgagee of real property located in the State of Colorado, to which extent the laws of the State of Colorado shall apply.

Section 9.05 Survival of Representations, Warranties and Agreements. All representations, warranties and agreements herein shall survive until the expiration of the term of this Agreement and payment of the Note issued hereunder, except to the extent that a representation, warranty, agreement or provision expressly provides otherwise.

Section 9.06 Severability. If any provision of this Agreement shall for any reason be held to be illegal, invalid or unenforceable, such illegality, invalidity or unenforceability shall not affect any other provision of this Agreement, but this Agreement shall be construed as if such illegal, invalid or unenforceable provision had never been contained herein.

Section 9.07 Successors and Assigns. Whenever in this Agreement any of the parties hereto is referred to, such reference shall be deemed to include the successors and assigns of such party. All covenants, promises and agreements in this Agreement contained by or on behalf of Borrower shall inure to the benefit of the respective successors and assigns of ECLF. **Borrower shall not have the right to assign any of its rights, or delegate any of its obligations, under this Agreement. Borrower represents and warrants that it will not**



**assign, sell or otherwise transfer the Loan, or any interest therein, without the prior written consent of ECLF.**

Section 9.08 Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

Section 9.09 Patriot Act. Borrower represents and warrants that neither Borrower, nor any principal nor entity signing on its behalf is now, nor has it ever been, named on (i) the list of Specifically Designated Nationals and Blocked Persons established pursuant to Executive Order 13224 and maintained by the U.S. Department of Treasury's Office of Foreign Assets Control or any successor agency or other entity or (ii) any other list of terrorists or terrorist organizations maintained by any agency of the United States or any other governmental authority. Borrower shall submit such information as ECLF may reasonably request to enable ECLF to confirm that Borrower is not named on any such list.

**[DOCUMENT EXECUTION OCCURS ON THE FOLLOWING PAGE]**

**IN WITNESS WHEREOF**, the parties hereto have duly executed this Agreement under seal, with the intention that it constitutes a sealed instrument, as of the date first above written.

**BORROWER:**

**[Borrower]**

By \_\_\_\_\_

**Name:**

**Title:**

**ECLF:**

**ENTERPRISE COMMUNITY LOAN FUND,  
INC.**, a Maryland non-stock, nonprofit corporation

By: \_\_\_\_\_(SEAL)

Name: Timothy E. Martin

Title: Chief Credit Officer

*[Borrower]*. #\_\_L\_\_\_\_



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**Exhibit A**

**Payment Instructions**

**For payment by wire:**

Bank Name: M & T Bank Corporation  
Bank Location: Buffalo, NY  
Bank ABA#: 022 000 046  
Bank Acct. Name: **Enterprise Community Loan Fund, Inc.**  
Program Related Investments  
Bank Account #: 970-215-571

Reference: Loan #     [ L ]      
Borrower Name:     [Borrower]    

**For payment by check:**

Please send to: **Enterprise Community Loan Fund, Inc.**  
Attn: Loan Repayments  
P.O. Box 64361  
Baltimore, MD 21264-4361

By Fed Ex: M&T Bank / Montgomery Park  
1800 Washington Boulevard  
Baltimore, MD 21230  
Attn: Lockbox #64361

Reference: Loan #     [ L ]      
Borrower Name:     [Borrower]    

**(Please reference loan number on check.)**

**ACQUISITION LOAN NOTE**

\$ \_\_\_\_\_ .00

[month] \_\_, 201\_\_  
\_\_\_\_\_, Colorado

**FOR VALUE RECEIVED**, the undersigned [**Borrower**], a [state of formation] [type of entity] with its principal office at [address], \_\_\_\_\_, CO \_\_\_\_\_ ("Maker"), hereby promises to pay to the order of **ENTERPRISE COMMUNITY LOAN FUND, INC.**, a Maryland nonprofit corporation ("Holder") with its principal office at 70 Corporate Center, 11000 Broken Land Parkway, Suite 700, Columbia, Maryland 21044, or to such other party and/or at such other address as the Holder of this Acquisition Loan Note may from time to time designate in writing, the principal sum of **[[Loan amount] AND NO/100 DOLLARS (\$ \_\_\_\_\_ .00)** or so much thereof as may be disbursed hereunder and remain unpaid together with interest from the date of each such disbursement on the balance of principal remaining unpaid from time to time at the rate of \_\_\_\_\_ (\_\_\_\_%) percent simple interest per annum (the "Interest Rate").

This Acquisition Loan Note is the Acquisition Loan Note referred to in the Loan Agreement, dated the date hereof (the "Loan Agreement"), by and between Maker, as borrower, and Holder, as lender, and evidences an Acquisition Loan being made pursuant to the Loan Agreement in connection with the acquisition of that certain property known as \_\_\_\_\_, \_\_\_\_\_, Colorado \_\_\_\_\_ (the "Property"). This Acquisition Loan Note is secured by a first position Acquisition Deed of Trust encumbering the Property.

This Acquisition Loan Note shall be payable in lawful currency of the United States. The acceptance by Holder of any payment under this Acquisition Loan Note in a form other than lawful currency of the United States shall not constitute a waiver of Holder's right to require that any and all subsequent payments be made in the specified form.

(i) Interest will be due and payable quarterly with the first payment due on \_\_\_\_\_ 1, 201\_\_ and continuing on every January 1, April 1, July 1 and October 1 thereafter until the Maturity Date (defined below).

(ii) The entire unpaid principal balance of this Acquisition Loan Note, together with all accrued and unpaid interest thereon, and all other fees, costs and charges, if any, due and payable pursuant to any of the Loan Documents shall be due and payable, in full, on the earlier to occur of (i) {the last calendar day of the month in which the \_\_th anniversary of this Acquisition Loan Note}, or (ii) upon Maker's receipt of permanent financing for the Property, or (iii) the transfer of title to the Property (the "Maturity Date").

All interest shall be calculated for the actual number of days elapsed on the basis of a 360-day year.

The Interest Rate is subject to adjustment commencing as of (i) January 1, 2019 and (ii) then again as of April 1, 2020, to cover the then cost of funds of Holder, but in no event will the adjustment result in the interest rate exceeding four and one-half (4.5%) percent. The Maker will be notified of the adjustment.

All payments on account of the indebtedness evidenced by this Acquisition Loan Note shall be applied first to late charges, costs and fees, if any, then to accrued interest due and owing, and then to unpaid principal.

This Acquisition Loan Note may be prepaid in whole or in part, at any time and from time to time, without penalty, premium or notice. Any such prepayments shall be applied first to escrow items, if any, then to late charges, costs and fees, if any, then to accrued interest then due and owing, and then to unpaid principal.

The Holder of this Acquisition Loan Note is entitled to the benefits of the Loan Agreement and may enforce the provisions of the Loan Agreement and exercise the rights and remedies provided in or otherwise available in respect of the Loan Agreement. Reference is made to the Loan Agreement for additional terms of the Loan evidenced by this Acquisition Loan Note, including without limitation provisions relating to the rights and remedies of the Holder of this Acquisition Loan Note.

All of the terms, covenants, provisions, conditions, stipulations, promises, and agreements contained in this Acquisition Loan Note, the Loan Agreement and the Acquisition Deed of Trust and certain other loan documents referred to in the Loan Agreement (collectively the "Loan Documents") shall be kept, observed, and performed by Maker and are hereby made a part of this Acquisition Loan Note and incorporated herein by reference to the same extent and with the same force and effect as if they were fully set forth herein, and Maker promises and agrees to keep, observe, and perform them or cause them to be kept, observed, and performed, strictly in accordance with the terms and provisions thereof.

Upon any default in the payment of interest, principal, or any other sum when due under this Acquisition Loan Note, which default is not cured within ten (10) days of the applicable due date, or upon the happening of any default or Event of Default described or incorporated in the Loan Agreement or other Loan Documents and the expiration of the applicable notice and cure period, if any, contained therein, the entire outstanding principal sum hereof and accrued but unpaid interest hereon may, at the sole option of Holder hereof, be declared immediately due and payable and, from the time of exercise of such option, shall bear interest at a rate of two percent (2%) over the Interest Rate until this Acquisition Loan Note is paid in full, time being of the essence of this obligation. Failure of Holder hereof to exercise this option in the event of any such default or Event of Default

shall not constitute a waiver of the right of Holder to exercise the same in the event of a subsequent default or Event of Default. If any payment of interest, principal, or any other sum shall become overdue for a period in excess of ten (10) days a "late charge" of five percent (5%) of the amount so overdue may be charged by Holder hereof for the purpose of defraying the expenses incident to handling such delinquent payment.

Maker and any and all endorsers, sureties, guarantors and assumers hereof, hereby jointly and severally waive presentment for payment, demand, protest, notices of nonpayment and dishonor and of protest, the benefits of homestead, and all other waivable exemptions, and all defenses and pleas on the ground of any extension(s) of the time of payment or of the due dates of this Note, in whole or in part, before or after maturity, with or without notice, it being further agreed by Maker and all such parties that they will pay any collection expense, court costs, and reasonable attorneys' fees which may be incurred in the collection or enforcement of this Note or any part hereof.

This Acquisition Loan Note shall be construed and enforced in accordance with, and the rights of the parties shall be governed by, the laws of the State of Colorado, exclusive of its conflicts of law rules.

In the event of any one or more of the provisions contained in this Acquisition Loan Note, any Loan Document or any other document executed in connection herewith shall, for any reason, be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision of this Acquisition Loan Note, such Loan Document, or any other such document and shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein or therein.

This Acquisition Loan Note and any instrument securing payment hereof and other agreements between the parties hereto are subject to the express condition that at no time shall Maker be obligated or required to pay interest hereunder at a rate which could subject Holder to either civil or criminal liability as a result of being in excess of the maximum rate which Maker is permitted by law to contract or agree to pay. If, by the terms of this Acquisition Loan Note, Maker is at any time required or obligated to pay interest at a rate in excess of such maximum rate, the rate of interest under this Acquisition Loan Note shall be deemed to be immediately reduced to such maximum rate and interest payable hereunder shall be computed at such maximum rate and the portion of all prior interest payments in excess of such maximum rate shall be applied and shall be deemed to have been payments in reduction of the principal balance of this Acquisition Loan Note.

This Acquisition Loan Note shall be the joint and several obligation of all makers, sureties, and endorsers and shall be binding upon them and their successors and assigns.

This Acquisition Loan Note may not be changed orally, but only by an agreement in writing signed by the parties against whom enforcement of any waiver, change, modification or discharge is sought.

The representative of Maker subscribing below represents that he/she has full power, authority and legal right to execute and deliver this Acquisition Loan Note and that the debt hereunder constitutes a valid and binding obligation of Maker.

The repayment of the sums due hereunder shall be a recourse obligation of the Maker to the extent of the portion of the Loan's original principal amount equal to \$\_\_\_\_\_, plus any and all interest which may accrue and remain unpaid thereon but also including any Additional Interest, if applicable (as hereinafter defined).

The Interest Rate due and payable in accordance with this Acquisition Loan Note is below the market rate of interest and such lower rate is in consideration for Maker's complying with its agreement to maintain or develop the Property as affordable housing and/or for some community benefit. In the event, Maker fails to either maintain or develop the Property as such, unless Maker can demonstrate to Holder's satisfaction that such failure is despite Maker's good faith efforts and/or due to reasons beyond the Maker's control, the Interest Rate (or the Interest Rate as adjusted, as aforesaid, if applicable) shall be increased by 400 basis points, which increase shall be retroactive to the date any portion of the principal evidenced hereby is disbursed. The difference between the Interest Rate (both as stated and as adjusted) and the increase resulting from adding 400 basis points thereto is referred to herein as the "Additional Interest."

IN WITNESS WHEREOF, Maker has duly executed this Acquisition Loan Note, as of the day and year first above written.

**MAKER:**

[Borrower]

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

Name:

Title:

State of Colorado

County of Denver

The foregoing Acquisition Loan Note was acknowledged before me this \_\_\_\_\_, 201\_, by \_\_\_\_\_, [Title] of [Borrower], on behalf of [Borrower].

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

Print Name: \_\_\_\_\_

My commission expires: \_\_\_\_\_



**DEED OF TRUST**  
(Due on Transfer – Strict)

THIS DEED OF TRUST is made this \_\_\_ day of \_\_\_\_\_, 201\_ (this “Deed of Trust”), between [**Borrower**], a [state of formation] [entity type] (“Borrower”), whose address is \_\_\_\_\_, \_\_\_\_\_, CO \_\_\_\_\_; and the Public Trustee of the county in which the Property (see paragraph 1) is situated (“Trustee”); for the benefit of ENTERPRISE COMMUNITY LOAN FUND, INC. (“Lender”), whose address is 70 Corporate Center, 11000 Broken Land Parkway, Suite 700,, Columbia, Maryland 21044, Borrower and Lender covenant and agree as follows:

**1. Property in Trust.** Borrower, in consideration of the indebtedness herein recited and the trust herein created, hereby grants and conveys to the Trustee in trust, with power of sale, the following legally described property located in the County of \_\_\_\_\_, City of \_\_\_\_\_, State of Colorado:

“See Exhibit A attached hereto for the legal description”

Known as No. \_\_\_\_\_, \_\_\_\_\_, Colorado \_\_\_\_\_, together with all its appurtenances (the “Property”).

**2. Note: Other Obligations Secured.** This Deed of Trust is given to secure to Lender:

A. the repayment of the indebtedness evidenced by Borrower’s note (Note) dated the date hereof, in the principal amount of [loan amount] and xx/100 (\$\_\_\_\_\_.00) Dollars, and which Note is the Note referred to in that certain Loan Agreement, dated as the date here, by and between Borrower, as maker, and Lender, as holder (as modified, amended or supplemented, from time to time, the “Loan Agreement”), and this Deed of Trust is Deed of Trust referred to in the Loan Agreement. This Deed of Trust shall also secure Borrower’s obligations under the Loan Agreement, the terms and conditions of which are hereby incorporated herein by reference. Notwithstanding anything to the contrary stated in this Deed of Trust and those of the Loan Agreement shall be resolved in favor of the Loan Agreement.

B. the payment of all other sums, with interest at the interest rate set forth in the Note, disbursed by Lender in accordance with this Deed of Trust to protect the security of this Deed of Trust; and

C. the performance of the covenants and agreements of Borrower herein contained.

**3. Title:** Borrower covenants that Borrower owns and has the right to grant

and convey the Property, and warrants title to the same, subject to general real estate taxes for the current year, easements of record or in existence, and recorded declarations, restrictions, reservations and covenants, if any, as of this date.

**3. Payment of Principal and Interest.** Borrower shall promptly pay when due the principal of and interest on the indebtedness evidenced by the Note, and late charges as provided in the Note and shall perform all of Borrower's other covenants contained in the Note.

**5. Application of Payments.** All payments received by Lender under the terms hereof shall be applied by Lender first to amounts disbursed by Lender pursuant to paragraph 9 (Protection of Lender's Security), and the balance in accordance with the terms and conditions of the Note.

**6. Charges; Liens.** Borrower shall pay all taxes, tax liens, assessments and other charges, fines and impositions attributable to the Property which may have or attain a priority over this Deed of Trust, and leasehold payments or ground rents, if any, by Borrower making payment when due, directly to the payee thereof. Despite the foregoing, Borrower shall not be required to make payments otherwise required by this paragraph if Borrower, after notice to Lender, shall in good faith contest such obligation by, or defend enforcement of such obligation in, legal proceedings which operate to prevent the enforcement of the obligation or forfeiture of the Property or any part thereof, only upon Borrower making all such contested payments and other payments as ordered by the court to the registry of the court in which such proceedings are filed.

**7. Property Insurance.** Borrower shall keep the improvements now existing or hereafter erected on the Property insured against loss by fire or hazards included within the term "extended coverage" in an amount at least equal to the lesser of (a) the insurable value of the Property or (b) an amount sufficient to pay the sums secured by this Deed of Trust as well as any prior encumbrances on the Property. All of the foregoing shall be known as "Property Insurance."

The insurance carrier providing the insurance shall be qualified to write Property Insurance in Colorado and shall be chosen by Borrower subject to Lender's right to reject the chosen carrier for reasonable cause. All insurance policies and renewals thereof shall include a standard mortgage clause in favor of Lender, and shall provide that the insurance carrier shall notify Lender at least ten (10) days before cancellation, termination or any material change of coverage. Insurance policies shall be furnished to Lender at or before closing. Lender shall have the right to hold the policies and renewals thereof.

In the event of loss, Borrower shall give prompt notice to the insurance carrier and Lender. Lender may make proof of loss if not made promptly by Borrower.

Insurance proceeds shall be applied to restoration or repair of the Property damaged, provided said restoration or repair is economically feasible and the security of this Deed of Trust is not thereby impaired. If such restoration or repair is not economically feasible or if the security of this Deed of Trust would be impaired, the insurance proceeds shall be applied to the sums secured by this Deed of Trust, with the excess, if any, paid to Borrower. If the Property is abandoned by Borrower, or if Borrower fails to respond to Lender within 30 days from the date notice is given in accordance with paragraph 16 (Notice) by Lender to Borrower that the Insurance carrier offers to settle a claim for insurance benefits, Lender is authorized to collect and apply the insurance proceeds, at Lender's option, either to restoration or repair of the Property or to the sums secured by this Deed of Trust.

Any such application of proceeds to principal shall not extend or postpone the due date of the installments referred to in paragraphs 4 (Payment of Principal and Interest) or change the amount of such installments. Notwithstanding anything herein to the contrary, if under paragraph 18 (Acceleration; Foreclosure; Other Remedies) the Property is acquired by Lender, all right, title and interest of Borrower in and to any insurance policies and in and to the proceeds thereof resulting from damage to the Property prior to the sale or acquisition shall pass to Lender to the extent of the sums secured by this Deed of Trust immediately prior to such sale or acquisition.

All of the rights of Borrower and Lender hereunder with respect to insurance carriers, insurance policies and insurance proceeds are subject to the rights of any holder of a prior deed of trust with respect to said insurance carriers, policies and proceeds.

**8. Preservation and Maintenance of Property.** Borrower shall keep the Property in good repair and shall not commit waste or permit impairment or deterioration of the Property and shall comply with the provisions of any lease if this Deed of Trust is on a leasehold. Borrower shall perform all of Borrower's obligations under any declarations, covenants, by-laws, rules, or other documents governing the use, ownership or occupancy of the Property.

**9. Protection of Lender's Security.** Except when Borrower has exercised Borrower's rights under paragraph 6 above, if Borrower fails to perform the covenants and agreements contained in this Deed of trust, or if a default occurs in a prior lien, or if any action or proceeding is commenced which materially affects Lender's interest in the Property then Lender, at Lender's option, with notice to Borrower if required by Law, may make such appearances, disburse such sums and take such action as is necessary to protect Lender's interest, including, but not limited to:

- (a) any general or special taxes or ditch or water assessments levied or accruing against the Property;
- (b) the premiums on any insurance necessary to protect any improvements comprising a part of the Property;

- (c) sums due on any prior lien or encumbrance on the Property;
- (d) if the Property is a leasehold or is subject to a lease, all sums due under such lease;
- (e) the reasonable costs and expenses of defending, protecting, and maintaining the Property and Lender's interest in the Property, including repair and maintenance costs and expenses costs and expenses of protecting and securing the Property, receiver's fees and expenses, inspection fees, appraisal fees, court costs, attorney fees and costs, and fees and costs of an attorney in the employment of Lender or holder of the certificate of purchase;
- (f) all other costs and expenses allowable by the evidence of debt or this Deed of Trust; and
- (g) such other costs and expenses which may be authorized by a court of competent jurisdiction.

Borrower hereby assigns to Lender any right Borrower may have by reason of any prior encumbrance on the Property or by law or otherwise to cure any default under said prior encumbrance.

Any amounts disbursed by Lender pursuant to this paragraph 9, with interest thereon, shall become additional indebtedness of Borrower secured by this Deed of Trust. Such amounts shall be payable upon notice from Lender to Borrower requesting payment thereof, and Lender may bring suit to collect any amounts so disbursed plus interest specified in paragraph 2B (Note; Other Obligations Secured). Nothing contained in this paragraph 9 shall require Lender to incur any expense or take any action hereunder.

**10. Inspection.** Lender may make or cause to be made reasonable entries upon and inspection of the Property, provided that Lender shall give Borrower notice prior to any such inspection specifying reasonable cause therefore related to Lender's interest in the Property.

**11. Condemnation.** The Proceeds of any award or claim for damages, direct or consequential, in connection with any condemnation or other taking of the Property, or part thereof, or for conveyance in lieu of condemnation, are hereby assigned and shall be paid to Lender as herein provided. However, all of the rights of Borrower and Lender hereunder with respect to such proceeds are subject to the rights of any holder of a prior deed of trust.

In the event of a total taking of the Property, the proceeds shall be applied to the sums secured by this Deed of Trust, with the excess, if any, paid to Borrower. In the event of a partial taking of the Property, the proceeds remaining after taking out any part of the award due any prior lien holder (net award) shall be divided between Lender and Borrower, in the same ration as the amount of the sums secured by this Deed of Trust immediately prior to the date of taking bears to Borrower's equity in the Property

immediately prior to the date of taking. Borrower's equity in the Property means the fair market value of the Property less the amount of sums secured by both this Deed of Trust and all prior liens (except taxes) that are to receive any of the award, all of the value immediately prior to the date of taking.

If the Property is abandoned by Borrower or if, after notice by Lender to Borrower that the condemnor offers to make an award or settle a claim for damages, Borrower fails to respond to Lender within 30 days after the date such notice is given, Lender is authorized to collect and apply the proceeds, at Lender's option, either to restoration or repair of the Property or to the sums secured by this Deed of Trust.

Any such application of proceeds to principal shall not extend or postpone the due date of the installments referred to in paragraphs 4 (Payment of Principal and Interest) nor change the amount of such installments.

**12. Borrower not Released.** Extension of the time for payment or modification of amortization of the sums secured by this Deed of Trust granted by Lender to any successor in interest of Borrower shall not operate to release, in any manner, the liability of the original Borrower, nor Borrower's successors in interest, from the original terms of this Deed of Trust. Lender shall not be required to commence proceedings against such successor or refuse to extend time for payment or otherwise modify amortization of the sums secured by this Deed of Trust by reason of any demand made by the original Borrower nor Borrower's successors in interest.

**13. Forbearance by Lender Not a Waiver.** Any forbearance by Lender in exercising any right or remedy hereunder, or otherwise afforded by law, shall not be a waiver or preclude the exercise of any such right or remedy.

**14. Remedies Cumulative.** Each remedy provided in the Note and this Deed of Trust is distinct from and cumulative to all other rights or remedies under the Note and this Deed of Trust or afforded by Law or equity, and may be exercised concurrently, independently or successively.

**15. Successors and Assigns Bound; Joint and Several Liability; Captions.** The covenants and agreements herein contained shall bind, and the rights hereunder shall inure to, the respective successors and assigns of Lender and Borrower, subject to the provisions of paragraph 24 (Transfer of the Property; Assumption). All covenants and agreements of Borrower shall be joint and several. The captions and headings of the paragraphs in this Deed of Trust are for convenience only and are not to be used to interpret or define the provisions hereof.

**16. Notice.** Except for any notice required by law to be given in another manner, (a) any notice to Borrower provided for in this Deed of Trust shall be in writing and shall be given and be effective upon (1) delivery to Borrower or (2) mailing such

notice by first class U.S. mail, addressed to Borrower at Borrower's address stated herein or at such other address as Borrower may designate by notice to Lender as provided herein, and (b) any notice to Lender shall be in writing and shall be given and be effective upon (1) delivery to Lender or (2) mailing such notice by first class U.S. mail to Lender's address stated herein or to such other address as Lender may designate by notice to Borrower as provided herein. Any notice provided for in this Deed of Trust shall be deemed to have been given to Borrower or Lender when given in any manner designated herein.

**17. Governing Law; Severability.** The Note and this Deed of Trust shall be governed by the law of Colorado. In the event that any provision or clause of this Deed of Trust or the Note conflicts with the law, such conflict shall not affect other provisions of this Deed of Trust or the Note which can be given effect without the conflicting provision, and to this end the provisions of the Deed of Trust and Note are declared to be severable.

**18. Acceleration; Foreclosure; Other Remedies.** Except as provided in paragraph 24 (Transfer of the Property; Assumption), upon Borrower's breach of any covenant or agreement of Borrower in this Deed of Trust, or upon any default in a prior lien upon the Property, (unless Borrower has exercised Borrower's rights under paragraph 6 above), at Lender's option, all of the sums secured by this Deed of Trust shall be immediately due and payable (Acceleration). To exercise this option, Lender may invoke the power of sale and any other remedies permitted by law. Lender shall be entitled to collect all reasonable costs and expenses incurred in pursuing the remedies provided in this Deed of Trust, including, but not limited to, reasonable attorney's fees.

If Lender invokes the power of sale, Lender shall give written notice to Trustee of such election. Trustee shall give such notice to Borrower of Borrower's rights as is provided by law. Trustee shall record a copy of such notice as required by law. Trustee shall advertise the time and place of the sale of the Property, for not less than four weeks in a newspaper of general circulation in each county in which the Property is situated, and shall mail copies of such notice of sale to Borrower and other persons as prescribed by law. After the lapse of such time as may be required by law, Trustee, without demand on Borrower, shall sell the Property at public auction to the highest bidder for cash at the time and place (which may be on the Property or any part thereof as permitted by law) in one or more parcels as Trustee may think best and in such order as Trustee may determine. Lender or Lender's designee may purchase the Property at any sale. It shall not be obligatory upon the purchaser at any such sale to see to the application of the purchase money.

Trustee shall apply the proceeds of the sale in the following order: (a) to all reasonable costs and expenses of the sale, including, but not limited to, reasonable Trustee's and attorney's fees and costs of title evidence; (b) to all sums secured by this Deed of Trust; and (c) the excess, if any, to the person or persons legally entitled thereto.

**19. Borrower's Right to Cure Default.** Whenever foreclosure is commenced for nonpayment of any sums due hereunder, the owners of the Property or parties liable hereon shall be entitled to cure said defaults by paying all delinquent principal and interest payments due as of the date of cure, costs, expenses, late charges, attorney's fees and other fees all in the manner provided by law. Upon such payment, this Deed of Trust and the obligations secured hereby shall remain in full force and effect as though no Acceleration had occurred, and the foreclosure proceedings shall be discontinued.

**20. Assignment of Rents; Appointment of Receiver; Lender in Possession.** As additional security hereunder, Borrower hereby assigns to Lender the rents of the Property; however, Borrower shall, prior to Acceleration under paragraph 18 (Acceleration; Foreclosure; Other remedies) or abandonment of the Property, have the right to collect and retain such rents as they become due and payable.

Lender or the holder of the Trustee's certificate of purchase shall be entitled to a receiver for the Property after Acceleration under paragraph 18 (Acceleration; Foreclosure; Other remedies), and shall also be so entitled during the time covered by foreclosure proceedings and the period of redemption, if any; and shall be entitled thereto as a matter of right without regard to the solvency or insolvency of Borrower or of the then owner of the Property, and without regard to the value thereof. Such receiver may be appointed by any court of competent jurisdiction upon ex parte application and without notice; notice being hereby expressly waived.

Upon Acceleration under paragraph 18 (Acceleration; Foreclosure; Other remedies) or abandonment of the Property, Lender, in person, by agent or by judicially-appointed receiver, shall be entitled to enter upon, take possession of and manage the Property and to collect the rents of the Property including those past due. All rents collected by Lender or the receiver shall be applied, first to payment of the costs of preservation and management of the Property, second to payments due upon prior liens, and then to the sums secured by this Deed of Trust. Lender and the receiver shall be liable to account only for those rents actually received.

**21. Release.** Upon payment of all sums secured by this Deed of Trust, Lender shall cause Trustee to release this Deed of Trust and shall produce for Trustee the Note. Borrower shall pay all costs of recordation and shall pay the statutory trustee's fees. If Lender shall not produce the Note as aforesaid, then Lender, upon notice in accordance with paragraph 16 (Notice) from Borrower to Lender, shall obtain, at Lender's expense, and file any lost instrument bond required by Trustee or pay the cost thereof to effect the release of this Deed of Trust.

**22. Waiver of Exemptions.** Borrower hereby waives all right of homestead and any other exemption in the Property under state or federal law presently existing or hereafter enacted.

**23. No Secondary Financing.** Borrower shall not create or permit to be created any subordinate lien on the Property or any part thereof for borrowed money without the prior written consent of Lender.

**24. Transfer of the Property; Assumption.** The following events shall be referred to herein as a "Transfer": (i) a transfer or conveyance of title (or any portion thereof, legal or equitable) of the Property (or any part thereof or interest therein), (ii) the execution of a contract or agreement creating a right to title (or any portion thereof, legal or equitable) in the Property (or any part thereof or interest therein), (iii) or an agreement granting a possessory right in the Property (or any portion thereof), in excess of 3 years, (iv) a sale or transfer of, or the execution of a contract or agreement creating a right to acquire or receive, more than fifty percent (50%) of the controlling interest or more than fifty percent (50%) of the beneficial interest in Borrower, (v) the reorganization, liquidation or dissolution of Borrower. Not to be included as a Transfer are (i) the creation of a purchase money security interest for household appliances, or (ii) a transfer by devise, descent or by operation of the law upon the death of a joint tenant. At the election of Lender, in the event of each and every Transfer:

(a) All sums secured by this Deed of Trust shall become immediately due and payable (Acceleration).

(b) If a transfer occurs and should Lender not exercise Lender's option pursuant to this paragraph 24 to Accelerate, Transferee shall be deemed to have assumed all of the obligations of Borrower under this Deed of Trust including all sums secured hereby whether or not the instrument evidencing such conveyance, contract or grant expressly so provides. This covenant shall run with the Property and remain in full force and effect until said sums are paid in full. Lender may without notice to Borrower deal with Transferee in the same manner as with Borrower with reference to said sums including the payment or credit to Transferee of undisbursed reserve Funds on payment in full of said sums, without in any way altering or discharging Borrower's liability hereunder for the obligations hereby secured.

(c) Should Lender not elect to Accelerate upon the occurrence of such Transfer then, subject to (b) above, the mere fact of a lapse of time or the acceptance of payment subsequent to any of such events, whether or not Lender had actual or constructive notice of such Transfer, shall not be deemed a waiver of Lender's right to make such election nor shall Lender be estopped therefrom by virtue thereof. The issuance on behalf of Lender of a routine statement showing the status of the loan,



whether or not Lender had actual or constructive notice of such Transfer, shall not be a waiver or estoppel of Lender's said rights.

**25. Borrower's Copy.** Borrower acknowledges receipt of a copy of the Note and this Deed of Trust.

EXECUTED BY BORROWER.

[Borrower]

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

State of Colorado

County of Denver

The foregoing instrument was acknowledged before me this \_\_\_\_\_,  
201\_, by \_\_\_\_\_, [Title] of [Borrower], on behalf of [Borrower].

\_\_\_\_\_  
Notary Public  
Print Name: \_\_\_\_\_  
My commission expires: \_\_\_\_\_

## GUARANTY

(#)

[**THIS GUARANTY** (this "Guaranty "), dated as of the \_\_\_\_ day of \_\_\_\_\_, 201\_, given by the undersigned, \_\_\_\_\_, a \_\_\_\_\_, ("Guarantor") with its principal office at \_\_\_\_\_,]

[**THIS GUARANTY** (this "Guaranty"), dated as of the \_\_\_\_\_ day of \_\_\_\_\_, 2013, given by the undersigned \_\_\_\_\_, a \_\_\_\_\_ ("[abbreviated name]"), with its principal office at \_\_\_\_\_, and, \_\_\_\_\_, a \_\_\_\_\_ ("[abbreviated name]"), with its principal office at \_\_\_\_\_ (each, a "Guarantor Party" and collectively, "Guarantor"), ]

is made to induce **ENTERPRISE COMMUNITY LOAN FUND, INC.**, a Maryland non-stock, nonprofit corporation ("Lender"), with its principal office at 70 Corporate Center, 11000 Broken Land Parkway, Columbia, Maryland 21044, to make a loan to, provide funds to, or otherwise become the creditor of [borrower], a \_\_\_\_\_ ("Borrower") with an address at \_\_\_\_\_.

In consideration of the foregoing and intending to be legally bound herein, Guarantor agrees as follows:

1. Guarantor hereby agrees to guaranty to Lender for the payment of the Recourse Amount, as defined in that certain promissory note made by Borrower, as maker, to Lender, as payee (the "Note"), dated as of even date herewith, which evidences an indebtedness in the principal amount of \_\_\_\_\_ **AND NO/100 DOLLARS (\$\_\_\_\_\_)** as and when the Recourse Amount shall become due in accordance with the terms of the Note, whether at maturity, or by declaration, acceleration, or otherwise, together with all attorney's fees, collection fees, costs, and expenses of collection incurred by Lender in connection with enforcing this Guaranty. Guarantor acknowledges the receipt of a copy of the Note.

2. The term of this Guaranty shall commence on the date hereof and shall continue in full force and effect until the Recourse Amount has been paid in full.

3. Guarantor hereby waives:

a. Notice of acceptance of this Guaranty by Lender;

b. Notice of presentment, demand for payment, or protest of any of the liabilities of Borrower to Lender, or the obligation of any person, firm or corporation held by Lender as collateral security for the liabilities of Borrower to Lender;

c. All defenses, offsets and counterclaims which Guarantor may at any time have to any of the liabilities of Borrower to Lender; and

d. Trial by jury and the right thereto in any action or proceeding of any kind, or arising on, out of, under, or by reason of this Guaranty, the Note, or any other agreement or transaction between Guarantor or Borrower and Lender.

4. This Guaranty is absolute and unconditional and shall not be affected by any act or thing whatsoever, except the payment in full of the obligations of Borrower under the Note or of the Guarantor hereunder. The obligations of Guarantor hereunder shall not be affected, impaired or discharged, in whole or in part, by the fact that any of the liabilities of Borrower to Lender may become due or payable in, or in connection with, or by reason of, any agreement or transaction which may be invalid, irregular, or unenforceable for any reason. Lender shall have the right to proceed against Guarantor [any Guarantor Party] immediately upon any Event of Default (as defined by the Loan Agreement of even date herewith executed by Borrower and Lender) by Borrower and shall not be required to take any action or proceeding of any kind against Borrower or any other party liable for the liabilities for Borrower to Lender, under this Guaranty, or otherwise, before proceeding against Guarantor [any Guarantor Party] hereunder.

5. Lender shall have the right, from time to time, and at any time, in the sole discretion of Lender and without any notice to or consent from Guarantor, and without affecting, impairing or discharging in whole or in part, the obligation of Guarantor hereunder, to compromise, release, substitute, exercise, enforce, or fail to refuse to exercise or enforce any claims, rights or remedies of any kind which Lender may have, at any time, against Borrower or to any other party liable for the liabilities of Borrower to Lender, or any thereof, or with respect to any security of any kind held by Lender at the time, whether under the Note, or any other agreement, or this Guaranty, or otherwise; and to release, substitute, or surrender and to enforce, collect or liquidate, any security of any kind held by the Lender at any time.

6. Each Guarantor Party represents and warrants as follows:

a. [for personal guaranty - "INTENTIONALLY OMITTED"] Guarantor [abbreviated name #1] is a \_\_[entity type]\_\_\_\_\_ duly organized, validly existing and in good standing under the laws of !, and has paid all taxes and filed all reports, if any, necessary to maintain its status and good standing as a ! \_[entity type]\_\_\_\_\_. No proceeding or action is pending or, to the best of Guarantor's [abbreviated name #1's] knowledge, threatened against Guarantor [abbreviated name #1] which could affect its status and good standing as a ! [entity type]\_\_\_\_\_. [repeat for additional guarantor parties]

b. Guarantor [The Guarantor Party] has the power and authority to execute and deliver and to perform all of its obligations under this Guaranty. Nothing exists to impair the effectiveness of the obligation of Guarantor to Lender hereunder, or the immediate taking effect of this Guaranty as the sole agreement between Guarantor and Lender with respect to becoming Guarantor for the liabilities of Borrower to Lender;

c. The execution, delivery and performance of this Guaranty will not result in any breach of, or constitute a default under, any mortgage, deed of trust, lease, loan or credit agreement, partnership or joint venture agreement or other instrument to which Guarantor [the Guarantor Party] may be bound or affected;

d. This Guaranty upon its creation, issuance, execution and delivery, constitutes a valid and binding obligation of Guarantor [the Guarantor Party], enforceable in accordance with its terms (except as enforceability may be subject to any applicable bankruptcy, insolvency or similar laws generally affecting the enforcement of creditors' rights);

e. There are no actions, suits or proceedings pending, or, to the best of Guarantor's [the Guarantor Party's] knowledge, threatened against or affecting Guarantor [the Guarantor

Party] that would materially effect Guarantor's [the Guarantor Party's] ability to perform its obligations under this Guaranty;

f. Guarantor [The Guarantor Party] is not in default with respect to any order, writ, injunction, decree or demand of any court or any governmental authority having jurisdiction over Guarantor [the Guarantor Party], or under the terms of any mortgage, deed of trust, lease, loan or credit agreement, partnership or joint venture agreement or other instrument to which Guarantor [the Guarantor Party] is a party or by which Guarantor [the Guarantor Party] may be bound or affected;

g. Any financial statements which were submitted to Lender by Guarantor [the Guarantor Party] or anyone on behalf of Guarantor [the Guarantor Party] and all books of account and records of Guarantor [the Guarantor Party] are true and correct in all material respects and have been prepared in conformity with generally accepted accounting principles; correctly reflect valid transactions and asset values, correctly reflect the financial condition of Guarantor [the Guarantor Party] as of their respective dates and the results of Guarantor's [the Guarantor Party's] operations during the respective periods covered thereby and Guarantor [the Guarantor Party] has no liabilities or obligations either contingent or otherwise except as those disclosed on said financial statements submitted to Lender.

h. There has been no material adverse change which has not been disclosed to Lender in Guarantor's [the Guarantor Party's] financial condition from that shown in its balance sheet, profit and loss statement, and any other financial data which has been submitted to Lender as an inducement to grant the loan to Borrower;

i. All tax returns (including, but not limited to, information returns) required to be filed by Guarantor [the Guarantor Party] in any jurisdiction have in fact been filed, and all taxes, assessments, fees and other governmental charges upon Guarantor [the Guarantor Party] or upon any of its assets, income or franchises, which are due and payable have been paid; and

j. Guarantor [The Guarantor Party] shall execute such additional instruments as may be reasonably requested by Lender in order to carry out the intent of this Guaranty and to perfect or give further assurances of any of the rights granted or provided for under the Loan Documents.

7. All rights and remedies of Lender are cumulative to the full extent permitted by law and it is agreed by Guarantor that this is a continuing guaranty and shall remain in force and effect until written notice shall have been actually received by Guarantor that it has been released by Lender.

[8. INTENTIONALLY OMITTED] [8. The obligations of the Guarantor Parties who collectively constitute the Guarantor are joint and several.]

9. This Guaranty shall be construed and enforced in accordance with, and the rights of the parties shall be governed by, the laws of the State of Maryland, exclusive of its conflicts of law rules.

10. If any provision of this Guaranty or of any other document or agreement that is part of this transaction shall contravene or be invalid under the laws of the United States or of any state, such contravention or invalidity shall not invalidate this Guaranty or the supporting documents to

this Guaranty or any other agreement that is part of this transaction but they shall be construed as not containing said provision, and the rights and obligations of the parties through this Guaranty and its supporting documents and other agreement shall be interpreted, construed and enforced accordingly.

**IN WITNESS WHEREOF**, Guarantor has duly executed this Guaranty under seal, with the intention that it constitutes a sealed instrument, as of the date first above written.

**GUARANTOR:**

[Guarantor]

By: \_\_\_\_\_(SEAL)  
Name:  
Title:

[Guarantor]

By: \_\_\_\_\_(SEAL)  
Name:  
Title:

State of Colorado

County of \_\_\_\_\_

The foregoing instrument was acknowledged before me this \_\_\_\_\_, 201\_,  
by \_\_\_\_\_, [Title] of [Guarantor], on behalf of [Guarantor].

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

Print Name: \_\_\_\_\_

My commission expires: \_\_\_\_\_

State of Colorado

County of \_\_\_\_\_

The foregoing instrument was acknowledged before me this \_\_\_\_\_, 201\_,  
by \_\_\_\_\_, [Title] of [Guarantor], on behalf of [Guarantor].

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

Print Name: \_\_\_\_\_

My commission expires: \_\_\_\_\_

## ENVIRONMENTAL INDEMNITY AGREEMENT

(#\_L\_\_\_\_)

**THIS ENVIRONMENTAL INDEMNITY AGREEMENT** (the "Agreement"), is made as of the \_\_\_ day of \_\_\_\_\_, 201\_, by **[Borrower]**, a [state][entity type] with its principal office at [address], CO \_\_\_\_\_ and by **[Guarantor]**, a [state][entity type] with its principal office at [address], CO \_\_\_\_\_ ("Guarantor"; Borrower and Guarantor being collectively hereinafter referred to as "Indemnitor"), in favor of **ENTERPRISE COMMUNITY LOAN FUND, INC.**, a Maryland nonprofit corporation with its principal office at 70 Corporate Center, 11000 Broken Land Parkway, Columbia, Maryland 21044 ("Lender").

**WHEREAS**, Lender has agreed to loan Borrower the principal sum of [loan amount] AND NO/100 DOLLARS (\$\_\_\_\_\_00) (the "Loan") for the purpose of financing the acquisition of real property located at \_\_\_\_\_, \_\_\_\_\_, Colorado \_\_\_\_\_ (the "Property"); and

**WHEREAS**, Borrower's application for the Loan was approved by Lender, acting in its capacity as the administrative agent for a number of lenders, including Lender, pursuant to that certain Master Credit Agreement (the "MCA") dated as of \_\_\_\_\_, 2014, among those lenders and Lender. The MCA created a loan facility to make acquisition loans, like the Loan, to fund the acquisition of properties, like the Property, located in close proximity to existing or future fixed rail stations or high frequency, high volume bus corridors in the City and County of Denver and surrounding counties, which properties are slated to remain or be developed as affordable housing and/or for some other community benefit; and

**WHEREAS**, as a condition to making the Loan, Indemnitor is required to execute this Agreement;

**NOW, THEREFORE**, in consideration of the foregoing, which shall be deemed a material part of this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Indemnitor represents and warrants as follows:

1. Except as identified in the environmental reports listed on Schedule A annexed hereto and hereby made a part hereof (collectively the "Environmental Reports"), to the best knowledge of Indemnitor after due inquiry and investigation in accordance with good commercial or customary practices, the Property does not contain:

(a) underground storage tanks that are not otherwise identified or discussed in the Environmental Reports;

(b) transformers or other equipment containing polychlorinated biphenyls (PCBs) in amounts that exceed acceptable standard levels that are not otherwise identified or discussed in the Environmental Reports; or

(c) any other materials or substances that are prohibited or regulated by Federal, State or local laws, or that are known to pose a hazard to the environment or human health that are not otherwise identified or discussed in the Environmental Reports.

2. Upon any site development or other activity to prepare the Property for the Project, Indemnitor shall remove, remediate or abate all hazardous materials or substances, if any, in accordance with all federal, state and local laws and regulations.

3. Indemnitor is and will continue to be in compliance with the Residential Lead-Based Paint Hazard Reduction Act of 1992 ("Title X"), Section 1018, which requires disclosure of known lead-based paint and/or lead-based paint hazards by persons who are selling or leasing any housing

4. If, in relation to the Property, Lender, or any of the lenders who are a party to the MCA, becomes liable under any statute, regulation, ordinance or other provision of federal, state or local law pertaining to the protection of the environment or otherwise pertaining to public health or employee safety, including without limitation, protection from hazardous waste, lead-based paint, asbestos, methane gas, ureaformaldehyde insulation, oil, toxic substance, underground storage tanks, polychlorinated biphenyls, and radon, Indemnitor shall indemnify and hold harmless Lender, and the lenders who are a party to the MCA, their respective officers, agents, employees, affiliates, subsidiaries, successors and assigns for any and all costs, expenses (including reasonable attorneys' fees), damages, or liabilities to the extent that Lender is required to discharge such costs, expenses, damages or liabilities in whole or in part from any source. The indemnification shall be a recourse obligation of Indemnitor. The indemnification authorized by this paragraph shall include, but not be limited to, the costs and expenses (including reasonable attorneys' fees) of the removal of any liens affecting any property of Lender or any lender who is a party to the MCA, as applicable, as a result of such legal action.

5. This Agreement and the representations, warranties and indemnification contained herein shall survive full repayment of the Loan and reconveyance of the Deed of Trust encumbering the Property for which Lender is the beneficiary (the "Deed of Trust"), and any transfer of the Property, whether by sale, foreclosure, deed in lieu of foreclosure, or otherwise; provided, however, such indemnification shall not apply to environmental matters arising from the generation, storage, selling, treating, processing, recycling or disposing of hazardous materials or substances on or at the Property or any land adjacent to the Property or any violation of any federal, state or local law, regulation or administrative requirement occurring after the release or termination of the Deed of Trust.

6. This Agreement shall be construed and enforced in accordance with, and the rights of the parties shall be governed by, the laws of the State of Colorado, exclusive of its conflicts of law rules.

7. The obligations of the parties who constitute the Indemnitor shall be joint and several.

[Signatures occur on the following page]



**IN WITNESS WHEREOF**, Indemnitor has executed this Agreement, the year and day hereinabove written.

**[Borrower]**

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

**[Guarantor]**

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

**ACKNOWLEDGMENT**

State of Colorado

County of \_\_\_\_\_

The foregoing instrument was acknowledged before me this \_\_\_\_\_, 201\_,  
by \_\_\_\_\_, [Title] of [Borrower], on behalf of [Borrower].

\_\_\_\_\_  
Notary Public  
Print Name: \_\_\_\_\_  
My commission expires: \_\_\_\_\_

State of Colorado

County of \_\_\_\_\_

The foregoing instrument was acknowledged before me this \_\_\_\_\_, 201\_,  
by \_\_\_\_\_, [Title] of [Guarantor], on behalf of [Guarantor].

\_\_\_\_\_  
Notary Public  
Print Name: \_\_\_\_\_  
My commission expires: \_\_\_\_\_

**SCHEDULE A**  
**ENVIRONMENTAL REPORTS**