

## AGREEMENT

**THIS AGREEMENT** is made by and between the **CITY AND COUNTY OF DENVER**, a municipal corporation organized pursuant to the Constitution of the State of Colorado (the “City”), and **FAMILY HOMESTEAD**, a Colorado non-profit corporation (the “Borrower”), whose address is 999 Decatur Street, Denver, Colorado 80204.

### WITNESSETH:

**WHEREAS**, the City desires to provide funds for the acquisition of a facility to be used for emergency and transitional housing for homeless families; and

**WHEREAS**, the Borrower is ready, willing and able to provide such services;

**NOW THEREFORE**, in consideration of the premises, and the mutual covenants and obligations herein contained, and subject to the terms and conditions of this Agreement, the parties agree as follows:

**1. SERVICES TO BE PROVIDED:** The Borrower agrees to acquire the improvements on the real property located at 3630-3666 Columbine Street, Denver, Colorado; 3625-3685 Elizabeth Street, Denver, Colorado; 2505-2511 East 36th Avenue, Denver, Colorado; and 2520-2532 East 37th Avenue, Denver, Colorado (collectively, the “Property”) in accordance with the scope of services and budget set forth in **Exhibit A**, and the financial administration requirements set forth in **Exhibit B**, to the extent applicable, each of which is attached hereto and incorporated herein by this reference. **Exhibit B** shall apply only to the acquisition of the Property and not to the ongoing management thereof. The services will be performed in a lawful, satisfactory and proper manner, and in accordance with written policies and procedures as may be prescribed by the City.

**2. TERM:** This Agreement shall begin on July 1, 2017, and end forty years from the date of the Promissory Note (as defined below), unless such time is extended by written agreement of the parties, executed in the same manner as this Agreement.

**3. PAYMENT OF FUNDS:** The amount to be paid by the City to the Borrower shall not exceed Five Hundred Thousand and NO/100 Dollars (\$500,000.00). The obligation of the City for payments under this Agreement is limited to monies appropriated by the City Council and paid into the City Treasury. The obligation of the City shall be from month-to-

month as monies are made available. Funds will be released to the Borrower in accordance with the billing procedure set forth in the Scope of Services.

4. **LEAD BASED PAINT:** Borrower agrees to comply with the Lead Based Paint Poisoning Prevention Act, 42 U.S.C. 4801 and HUD regulations at 24 C.F.R. 570.608.

5. **ENVIRONMENTAL AND HISTORIC CLEARANCE:** No loan proceeds may be obligated or spent until Borrower has received written environmental and historic clearance from City's Office of Economic Development ("OED"). The Borrower covenants that it shall not allow any hazardous substances to be above, in, on, or under the Property, and that it shall not generate, use, have, manage, or release or allow the generation, use, presence, management or release of any hazardous substance above, in, on, under or from the Property. Borrower shall be solely responsible for and shall indemnify and hold harmless the City, its officers, agents, and employees, from and against any loss, damage, cost, expense or liability directly or indirectly arising out of or attributable to the use, generation, storage, release, threatened release, discharge, disposal or presence of hazardous substances on, under or about the Property.

6. **MAINTENANCE AND REPLACEMENT:** Borrower shall maintain the Property in compliance with all applicable housing quality standards and local code requirements.

7. **ANNUAL MONITORING:** Borrower shall fully cooperate with City in an annual monitoring of Borrower's performance and site inspection to verify compliance with the requirements of this Agreement.

8. **SIGNAGE:** If requested by OED, Borrower agrees to post a sign, in a form approved by OED, indicating that the project is receiving City assistance.

9. **TIME OF PERFORMANCE; RESTRICTIONS ON USE OF PROPERTY:**  
A. Borrower agrees to (a) continue to use the Property as an emergency and transitional housing for homeless families for a period of forty (40) years from the date of the Promissory Note and (b) complete acquisition of such building no later than December 31, 2018. For value received, the Borrower shall pay to the City the principal sum of Five Hundred Thousand and NO/100 Dollars (\$500,000.00), or the amount actually disbursed by the City, whichever is less, if and only if the Property ceases to be used as emergency and transitional housing for homeless families during such forty-year period. However, OED shall retain Five

Thousand and NO/100 Dollars (\$5,000.00) of the total funds to be disbursed under this Agreement, which retainage shall be released upon receipt from Borrower of all information necessary for the City's reporting requirements. The City's disbursement of funds is subject to availability of funds through its Cash Management System. These budget items may be revised with the written approval of OED, provided the revised budget does not exceed the amount of the loan. Expenses incurred prior to July 1, 2017 are not eligible for reimbursement.

B. The Borrower agrees to execute a promissory note (the "Promissory Note"), Covenant (as defined below) and deed of trust (the "Deed of Trust") encumbering the Property, containing terms and conditions satisfactory to the City, evidencing and securing such obligation, containing terms and conditions satisfactory to the City, evidencing such obligation.

C. The Executive Director (the "Executive Director") of OED, or permitted designee, is authorized to execute documents necessary to subordinate the lien of the City's Deed of Trust so long as (i) the subordination agreement is substantially in the form attached hereto as **Exhibit C**; (ii) encumbrances prior to the City's Deed of Trust do not exceed \$1,350,000.00; and (iii) Borrower is not then in default of its obligations pursuant to this Agreement, the Promissory Note, Covenant or the Deed of Trust.

D. The Executive Director of OED, or permitted designee, is authorized to execute documents necessary to subordinate the City's Deed of Trust to that certain Denver Housing Authority land lease, so long as (i) such documents are in a form satisfactory to the City Attorney; (ii) encumbrances prior to the City's Deed of Trust do not exceed \$1,350,000.00; and (iii) Borrower is not then in default of its obligations pursuant to this Agreement, the Promissory Note, the Covenant, or the Deed of Trust.

E. **The Covenant.**

(1) Affordability limitations. Sixteen (16) of the units at the Property (the "City Units") shall have rents not exceeding the lesser of (i) fair market rent for comparable units in the area as published by the Colorado Housing and Finance Authority ("CHFA"), or (ii) a rent that does not exceed 30% of the annual income of a family whose income equals 50% of the median income for the Denver area, as published by CHFA, with adjustments for smaller and larger families. Sixteen (16) of the units at the Property (the "Low City Units") shall have rents not exceeding the lesser of (i) 30% of the annual income of a family whose income equals 30% of the median income for the

Denver area, as published by CHFA, with adjustments for smaller and larger families, or (ii) the City Unit rent as calculated above. By executing this Agreement, Borrower acknowledges receipt of CHFA's current rent guidelines from the OED. It shall be Borrower's responsibility to obtain updated guidelines from OED or CHFA to confirm the annual calculation of the maximum rents for the Denver area.

The City shall determine maximum monthly allowances for utilities and services annually using the CHFA model. Rents shall not exceed the maximum rents as determined above minus the monthly allowance for utilities and services.

The City shall review rents for compliance within ninety (90) days after OED requests rent information from the Borrower.

(2) Occupancy/Income Limitations. The City Units shall be occupied by tenants whose incomes are at or below fifty percent (50%) of the median income for the Denver area as published by CHFA. The Low City Units shall be occupied by tenants whose incomes are at or below 30% of the median income for the Denver area as published by CHFA. By executing this Agreement, Borrower acknowledges receipt of CHFA's current income guidelines from OED. It shall be Borrower's responsibility to obtain updated guidelines from OED or CHFA, and comply with same.

(3) Designation of Units. All of the City and Low City Units are floating, and are designated as follows:

<b>BEDROOMS</b>	<b>City Units</b>	<b>Low City Units</b>
1 Bedroom		
2 Bedroom		
3 Bedroom	8	8
4 Bedroom	8	8
<b>TOTAL</b>	<b>16</b>	<b>16</b>

Borrower shall provide the address of the City Units and Low City Units to the City by the time of project completion.

(4) Covenant Running with the Land. At closing, Borrower shall execute a covenant in form satisfactory to the City ("Covenant"), setting forth the rental and occupancy limitations described in subparagraphs (1) and (2) above, which

shall be recorded in the real estate records of the City and County of Denver and which shall constitute a covenant running with the land. The Covenant shall encumber the Property for a period not less than forty (40) years from the date of the Covenant. Violation of said Covenant shall be enforceable as an event of default pursuant hereto.

F. After forty (40) years from the date of the Promissory Note, presuming compliance by Borrower with its obligations hereunder, the Promissory Note will be cancelled, and the deed of trust and covenant will be released by the City (at Borrower's expense). The Director of OED, or the Director's designee, may execute documents necessary to subordinate the lien of its deed of trust, so long as: (i) Borrower is not then in default of its obligations hereunder; (ii) such documents are in a form satisfactory to the City Attorney's Office; and (iii) said Director concludes, in her sole discretion, that the City's interests remain adequately protected..

G. The Borrower shall at its own expense, maintain said premises and real property in good condition, and repair and rehabilitate any improvements which may be damaged or destroyed by fire, casualty or causes whatsoever. The City is not obligated to make any repairs or replacements to the rehabilitated premises.

**10. RECORDS AND REPORTS:** Borrower will provide OED with narrative reports on activities undertaken as further described in **Exhibit A - Scope of Services**. The Borrower must maintain income, racial, ethnic and gender data on persons who have benefited from the services provided under this Agreement.

**11. NO DISCRIMINATION IN EMPLOYMENT:** In connection with the performance of work under this Agreement, the Borrower agrees not to refuse to hire, discharge, promote or demote, or to discriminate in matters of compensation against any person otherwise qualified, solely because of race, color, religion, national origin, gender, age, military status, sexual orientation, marital status, or physical or mental disability; and further agrees to insert the foregoing provision in all subcontracts hereunder.

**12. DEFENSE & INDEMNIFICATION:**

A. Borrower hereby agrees to defend, indemnify, and hold harmless City, its appointed and elected officials, agents and employees against all liabilities, claims, judgments, suits or demands for damages to persons or property arising out of, resulting from, or relating to the work performed under this Agreement ("Claims"), unless such Claims have been specifically

determined by the trier of fact to be sole negligence or willful misconduct of the City. This indemnity shall be interpreted in the broadest possible manner to indemnify City for any acts or omissions of Borrower or its subcontractors either passive or active, irrespective of fault, including City's concurrent negligence whether active or passive, except for the sole negligence or willful misconduct of City.

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

C. Borrower will defend any and all Claims which may be brought or threatened against City and will pay on behalf of City any expenses incurred by reason of such Claims including, but not limited to, court costs and attorney fees incurred in defending and investigating such Claims or seeking to enforce this indemnity obligation. Such payments on behalf of City shall be in addition to any other legal remedies available to City and shall not be considered City's exclusive remedy.

D. Insurance coverage requirements specified in this Agreement shall in no way lessen or limit the liability of the Borrower under the terms of this indemnification obligation. The Borrower shall obtain, at its own expense, any additional insurance that it deems necessary for the City's protection.

E. This defense and indemnification obligation shall survive the expiration or termination of this Agreement.

**13. BORROWER'S INSURANCE:**

A. **General Conditions:** Borrower agrees to secure, at or before the disbursement of funds, the following insurance covering all operations, goods or services provided pursuant to this Agreement. Borrower shall keep the required insurance coverage in force at all times during the term of the Agreement, or any extension thereof, during any warranty period, and where loan proceeds are disbursed for construction, required insurance coverage shall be kept in force for eight (8) years after termination of the Agreement. The required insurance shall be underwritten by an insurer licensed or authorized to do business in Colorado and rated by A.M. Best Company as "A-"VIII or better. Each policy shall contain a valid provision or endorsement requiring

notification to the City in the event any of the required policies be canceled or non-renewed before the expiration date thereof. Such written notice shall be sent to the parties identified in the Notices section of this Agreement. Such notice shall reference the City contract number listed on the signature page of this Agreement. Said notice shall be sent thirty (30) days prior to such cancellation or non-renewal unless due to non-payment of premiums for which notice shall be sent ten (10) days prior. If such written notice is unavailable from the insurer, contractor shall provide written notice of cancellation, non-renewal and any reduction in coverage to the parties identified in the Notices section by certified mail, return receipt requested within three (3) business days of such notice by its insurer(s) and referencing the City's contract number. If any policy is in excess of a deductible or self-insured retention, the City must be notified by the Borrower. Borrower shall be responsible for the payment of any deductible or self-insured retention. The insurance coverages specified in this Agreement are the minimum requirements, and these requirements do not lessen or limit the liability of the Borrower. The Borrower shall maintain, at its own expense, any additional kinds or amounts of insurance that it may deem necessary to cover its obligations and liabilities under this Agreement.

B. **Proof of Insurance:** Borrower shall provide a copy of this Agreement to its insurance agent or broker. Borrower may not commence services or work relating to the Agreement prior to placement of coverage. Borrower shall provide a certificate of insurance to the City, preferably an ACORD certificate, which complies with all insurance requirements of this Agreement. The City requests that the City's contract number be referenced on the Certificate. The City's acceptance of a certificate of insurance or other proof of insurance that does not comply with all insurance requirements set forth in this Agreement shall not act as a waiver of Borrower's breach of this Agreement or of any of the City's rights or remedies under this Agreement. The City's Risk Management Office may require additional proof of insurance, including but not limited to policies and endorsements.

C. **Additional Insureds:** For Commercial General Liability, Auto Liability and Excess Liability/Umbrella, Borrower and subcontractor's insurer(s) shall name the City and County of Denver, its elected and appointed officials, employees and volunteers as additional insured.

D. **Waiver of Subrogation:** For all coverages required under this Agreement, with the exception of Professional Liability – if required, Borrower's insurer shall waive subrogation

rights against the City.

E. **Subcontractors and Subconsultants:** All subcontractors and subconsultants (including independent contractors, suppliers or other entities providing goods or services required by this Agreement) shall be subject to all of the requirements herein and shall procure and maintain the same coverages required of the Borrower. Borrower shall include all such subcontractors as additional insured under its policies (with the exception of Workers' Compensation) or shall ensure that all such subcontractors and subconsultants maintain the required coverages. Borrower agrees to provide proof of insurance for all such subcontractors and subconsultants upon request by the City.

F. **Workers' Compensation/Employer's Liability Insurance:** Unless exempt pursuant to applicable State law, Borrower shall maintain Workers' Compensation coverage at statutory limits.

G. **Commercial General Liability:** Borrower shall maintain Commercial General Liability insurance policy limits of \$1,000,000 per accident and \$2,000,000 policy aggregate.

H. **Business Automobile Liability:** Borrower shall maintain Business Automobile Liability with limits of \$1,000,000 combined single limit applicable to all owned, hired and non-owned vehicles used in performing services under this Agreement

I. **Builders' Risk or Installation Floater:** Where loan proceeds are disbursed for construction, Borrower or its contractor shall maintain Builders' Risk Insurance or an Installation Floater in the amount of the value of the Property as improved and renovated, with the City and County of Denver as loss payee.

J. Certificates of Insurance evidencing the above shall be submitted to OED prior to the disbursement of funds hereunder with the exception of Builders' Risk or Installation Floater, which shall be submitted to OED prior to renovation or construction activities. Insurance companies providing the above referenced coverage must be licensed or authorized to do business in Colorado.

L. **Additional Provisions:**

(1) For Commercial General Liability and Excess Liability, the policies must provide the following:

(a) That this Agreement is an Insured Contract under the policy;



- (b) Defense costs in excess of policy limits;
- (c) A severability of interests or separation of insureds provision (no insured vs. insured exclusion); and
- (d) A provision that coverage is primary and non-contributory with other coverage or self-insurance maintained by the City.

(2) For claims-made coverage:

- (a) The retroactive date must be on or before the contract date or the first date when any goods or services were provided to the City, whichever is earlier

(3) Borrower shall advise the City in the event any general aggregate or other aggregate limits are reduced below the required per occurrence limits. At their own expense, and where such general aggregate or other aggregate limits have been reduced below the required per occurrence limit, the Borrower will procure such per occurrence limits and furnish a new certificate of insurance showing such coverage is in force.

**14. REQUIRED BACKGROUND CHECKS:** The Borrower shall cooperate and comply with the City’s Office of Economic Development’s “Background Checks Concerning Placement of Youth Participants Policy” for programs or services provided to youth under age 18.

**15. PUBLICATIONS/ANNOUNCEMENTS:** Borrowers using radio or television announcements, newspaper advertisements, press releases, pamphlets, mail campaigns, or any other marketing methods funded by OED, or publicizing activities or projects funded by OED shall first receive approval from OED. In any event, all such publicizing activities must include the following statement: “The funding source for this activity is the City and County of Denver, Office of Economic Development.” OED shall be acknowledged in any events regarding the project being funded, including groundbreakings and openings.

**16. CONDITIONS:**

A. This Agreement is subject to and incorporates herein the as all attachments.

B. This Agreement is further subject to the City’s Charter and Revised Municipal Code, as the same may be amended from time to time.

**17. PROHIBITION AGAINST EMPLOYMENT OF ILLEGAL ALIENS TO PERFORM WORK UNDER THIS AGREEMENT:**

A. The Agreement is subject to Article 17.5 of Title 8, Colorado Revised Statutes, and as amended hereafter (the “Certification Statute”) and the Borrower is liable for any violations as provided in the Certification Statute.

B. The Borrower certifies that:

(1) At the time of its execution of this Agreement, it does not knowingly employ or contract with an illegal alien who will perform work under this Agreement.

(2) It will participate in either the E-Verify Program, as defined in § 8-17.5-101(3.7), C.R.S., or the employment verification program established by the Colorado Department of Labor and Employment under § 8-17.5-102(5)(c), C.R.S. (the “Department Program”), to confirm the employment eligibility of all employees who are newly hired for employment to perform work under this Agreement.

C. The Borrower also agrees and represents that:

(1) It shall not knowingly employ or contract with an illegal alien to perform work under the Agreement.

(2) It shall not enter into a contract with a sub-consultant or subcontractor that fails to certify to the Borrower that it shall not knowingly employ or contract with an illegal alien to perform work under the Agreement.

(3) It has confirmed the employment eligibility of all employees who are newly hired for employment to perform work under this Agreement, through participation in either the E-Verify Program or the Department Program.

(4) It is prohibited from using either the E-Verify Program or the Department Program procedures to undertake pre-employment screening of job applicants while performing its obligations under the Agreement.

(5) If it obtains actual knowledge that a sub-consultant or subcontractor performing work under the Agreement knowingly employs or contracts with an illegal alien, it will notify such sub-consultant or subcontractor and the City within three days. The Borrower will also then terminate such sub-consultant or subcontractor if within three days after such notice the sub-consultant or subcontractor does not stop employing or contracting with the illegal alien, unless during such three day period the sub-consultant or subcontractor provides

information to establish that the sub-consultant or subcontractor has not knowingly employed or contracted with an illegal alien.

(6) It will comply with any reasonable request made in the course of an investigation by the Colorado Department of Labor and Employment under authority of § 8-17.5-102(5), C.R.S.

D. The Borrower is liable for any violations as provided in the Certification Ordinance. If Consultant violates any provision of this section or the Certification Ordinance, the City may terminate this Agreement for a breach of the Agreement. If the Agreement is so terminated, the Borrower shall be liable for actual and consequential damages to the City. Any such termination of a contract due to a violation of this section or the Certification Ordinance may also, at the discretion of the City, constitute grounds for disqualifying Borrower from submitting bids or proposals for future contracts with the City.

**18. EXAMINATION OF RECORDS:** The Borrower agrees that the City or any of its duly authorized representatives shall, until the expiration of three (3) years after the Borrower's final payment under this Agreement, have access to and the right to examine any directly pertinent books, documents, papers and records of the Borrower involving transactions related to this Agreement.

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

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

With a copy of any such notice to:

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

Notices hand delivered or sent by overnight courier are effective upon delivery. Notices sent by certified mail are effective upon receipt. Notices sent by mail are effective upon deposit with the U.S. Postal Service. The parties may designate substitute addresses where or persons to whom

notices are to be mailed or delivered. However, these substitutions will not become effective until actual receipt of written notification.

**20. ELECTRONIC SIGNATURES AND ELECTRONIC RECORDS:** Borrower consents to the use of electronic signatures by the City. The Agreement, and any other documents requiring a signature hereunder, may be signed electronically by the City in the manner specified by the City. The Parties agree not to deny the legal effect or enforceability of the Agreement solely because it is in electronic form or because an electronic record was used in its formation. The Parties agree not to object to the admissibility of the Agreement in the form of an electronic record, or a paper copy of an electronic document, or a paper copy of a document bearing an electronic signature, on the ground that it is an electronic record or electronic signature or that it is not in its original form or is not an original.

**21. DEFAULT AND REMEDIES:** The City may also suspend or terminate this Contract, in whole or in part, if Borrower materially fails to comply with any term of this Agreement, including if Borrower becomes delinquent on any obligation to the City inclusive of any loan, contractual, and tax obligation as due, or with any rule, regulations, or provisions referred to herein; and the City may declare the Borrower ineligible for any further participation in City funding, in addition to other remedies as provided by law. In the event there is probable cause to believe the Borrower is non-compliant with any applicable rules, laws, regulations, or Contract terms or City loan obligation, and only after the City provides a 30 day notice to cure that remains uncured by Borrower, the City may withhold up to one hundred (100) percent of said Contract funds until such time as the Borrower is found to be in compliance by the City or is otherwise adjudicated to be in compliance, or to exercise the City's rights under any security interest arising hereunder.

**[THE BALANCE OF THIS PAGE WAS INTENTIONALLY LEFT BLANK.]**

**Contract Control Number:**

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

SEAL

**CITY AND COUNTY OF DENVER**

ATTEST:

By \_\_\_\_\_

\_\_\_\_\_

APPROVED AS TO FORM:

REGISTERED AND COUNTERSIGNED:

By \_\_\_\_\_

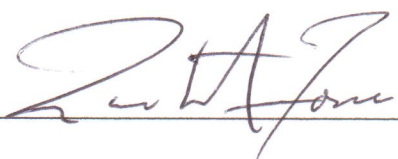
By \_\_\_\_\_

By \_\_\_\_\_



Contract Control Number: OEDEV-201732988-00

Contractor Name: FAMILY HOMESTEAD

By: 

Name: Leslie A. Jones  
(please print)

Title: Executive Director, Family Home Stead  
(please print)

**ATTEST: [if required]**

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

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

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



EXHIBIT A

SCOPE OF SERVICES

OFFICE OF ECONOMIC DEVELOPMENT
DIVISION OF HOUSING

FAMILY HOMESTEAD – PARKSIDE APARTMENTS ACQUISITION

I. INTRODUCTION

Period of Performance Start and End Dates: July 1, 2017 – December 31, 2017

Project Description:

The purpose of this contract agreement is to provide a \$500,000 performance loan through the Office of Economic Development’s Division of Housing. These funds will be provided to Family HomeStead to purchase from the Denver Housing Authority six 2-story apartment buildings used to provide emergency and transitional housing for homeless families with children. The structures include 33 apartments and are known as Parkside Apartments, located at 3630-3666 Columbine St, 3625-3685 Elizabeth St, 2505-2511 E 36th Ave, and 2520-2532 E 37th Ave, Denver, CO 80205. Repayment of the loan will be deferred and forgiven after 40 years unless the buildings are refinanced, sold, or change use.

Funding Source:

[X] General Fund: \$ 500,000

Organization: Family HomeStead
Address: 999 Decatur St., Denver, CO 80204
EIN#: 84-0769860

Contact Person: Les Jones, Executive Director
Phone: (303) 807-2610
Email: ladjon@aol.com

Organization Type:

[X] Non-Profit [ ] For-Profit [ ] Individual [ ] Partnership [ ] Corporation [ ] Publicly Owned [ ] Other

Council District(s): 9 Neighborhood(s): Clayton. Clients come from City Wide

Program income (of any type, e.g., fees) will be generated by this activity. [ ] Yes [X] No
Contract will be funding architectural, engineering or other project soft cost. [ ] Yes [X] No
If yes, final project will be completed within 24 months. [ ] Yes [ ] No
Purpose of this activity is to:
Help prevent homelessness [ ] Yes [X] No
Help the homeless [X] Yes [ ] No
Help those with HIV/AIDS [ ] Yes [X] No

II. ACTIVITY DESCRIPTION

1. Description of Activity: Family HomeStead has been housing homeless families since 1978, and now operates 87 private apartment units of emergency and transitional housing in seven locations in Denver and Lakewood. The organization provides a continuum of housing and social services funded by private local initiatives. Family HomeStead’s annual objective is to provide 24,000 days of emergency and transitional housing. Approximately 75% of the families that complete their supportive program achieve the following: move to next-step housing; obtain income to support next-step housing; and address the issues that caused their

EXHIBIT A

homelessness as identified in their case management plan. **This activity** will assist with the purchase of a 33-unit emergency and transitional housing development. Under a lease agreement, Family Homestead has been operating the property since March 2016, while it has been owned by the Housing Authority of the City and County of Denver. Family Homestead will acquire the improvements only and will enter into a 99-year lease agreement for the land. Constructed in 1978, the 33-unit complex is comprised of six 2-story apartment buildings, arranged in a rectangular configuration around an interior landscaped courtyard, with alley-accessed parking. The property has a mix of 17 four-bedroom units, and 16 three-bedroom units. One of the four-bedroom units is currently being used as an office for case management and property management. Units are walk-up townhome style. Building construction is wood frame with a partial brick veneer and average quality. Physical condition of the property is average to good relative to property in this market area of comparable age and construction quality. The units are generally fairly large, averaging 1,028 sf for three- bedroom units, and 1,173 sf for four-bedroom units. All units have full basements. Families requiring emergency housing will receive intensive case management services and rent-free independent apartments for 30-90 days. Referrals from the Denver Department of Human Services receive first priority for housing. Families needing six-month transitional housing must pay a minimal deposit and monthly rent of no more than 30% of their income, as defined by CHFA. Priority is given to families leaving Family HomeStead’s emergency housing program, shelters, and safehouses.

2. **Funds will be used to acquire the existing buildings known as Parkside Apartments, located at:** 3630-3666 Columbine St, 3625-3685 Elizabeth St, 2505-2511 E 36th Ave, and 2520-2532 E 37th Ave, Denver, CO 80205. No disruption in services to families is anticipated.

3. **Implementation Plan and Timeline**

The following table outlines the implementation plan and timelines for this contract.

Task	Projected Beginning & End Dates
Acquire improvements	07/01/2017 – 12/31/2017

- 4.

<b>Housing and Neighborhood Development Outcomes (To be reported on the Outcome and Performance Measurement Report OPMR):</b>	
<ul style="list-style-type: none"> <li>• Family HomeStead will continue to use this site to provide emergency and transitional housing and case management to homeless families with children.</li> <li>• From execution of loan documents through completion of acquisition, Family Homestead shall provide quarterly reports detailing progress toward completing acquisition of the property.</li> <li>• After acquisition and until the end of the 40-year loan term, Family HomeStead shall provide annual verification that the facility known as Parkside Apartments continues to operate as emergency and transitional housing for homeless families with children, accompanied by an annual written report describing the number, race/ethnicity, and income of families using both the emergency and the transitional facilities.</li> <li>• When available, Family HomeStead shall also include descriptions of the impact of housing and supportive services on facility residents and/or the community served.</li> <li>• In addition, Family HomeStead will rent the Parkside apartments to families at or below the income limits listed below:</li> </ul>	
8	3-BR units for rent at 30 % of Area median income
8	4-BR units for rent at 30 % of Area median income
8	3-BR units for rent at 50 % of Area median income
8	4-BR units for rent at 50 % of Area median income
1	Management/office unit



EXHIBIT A

**III. Budget**

Please refer to the Cost Allocation Plan and budget narrative for a detailed estimated description and allocation of funds. Organization receives income from operations.  Yes  No If Yes, describe:  
Non-personnel costs are being funded.  Yes  No

**IV. Reporting**

Data collection is required and must be completed demonstrating income eligibility and progress toward meeting the indicators contained in this Scope of Services. Disbursement of funds is contingent based on the ability to collect the required information.

Regardless of when the executed contract was received by the Contractor, Contractor is responsible for submitting a report from the start date of the contract; **even if no activity was conducted or expended. Contractor should report “No Activity” or outline those activities reimbursed with grant funds. If the Contractor completes the project and all money is drawn, a final report will be submitted indicating “final report” and no further reports are required.**

Contractor will email the following report to the Program Specialist, and copy the Contract Administrator:

Outcome Performance Measurement Report

Frequency:

- Monthly by the 15<sup>th</sup> day  Quarterly:15 days after the end of the quarter (until property acquisition complete)
- Other: Annual (after property acquisition is complete)

The Program Specialist will provide the format of the performance report to the Contractor. The information reported must include progress on the indicators included in this Scope of Services. The report includes current and cumulative (year-to-date) indicator information. Information on the overall progress of the program and/or project should be reported in the narrative section of the report. If the project is not being performed in a timely manner, an explanation must be included in the narrative section of the report.

**V. Program Requirements and Responsibilities**

1. Architectural/Engineering Services  Yes  No

2. Construction Management Services  Yes  No

3. Bids and Justification of Services  Yes  No

**4. Budget and Method of Payment for Services.**

1. All payment requests must be submitted with appropriate documentation of costs incurred. All reimbursed expenses must be incurred for the time within the contract. The final payment request must be received by OED within 45 days after the end of the service period stated in the contract.
2. The acquisition budget for the project will be that which is attached to the executed acquisition contract. All payment requests must conform to that budget.
3. The OED will withhold \$5,000 retainage from the total payment request. Release of retainage will occur when the acquisition has been completed, and a performance report has been received by the OED.
4. The OED will process a payment request upon receipt of all required and approved documents.

## EXHIBIT A

### 5. Project Management

- A. Project management requires that the following conditions be met:
  - 1. No costs incurred prior to the date of this contract will be paid or reimbursed by OED.
  - 2. The Contractor may request and OED may require that the warrant be made payable jointly to the Contractor and its vendor(s). Otherwise, the warrant will be made payable directly to the Contractor.
  - 3. The Contractor must maintain in its files all payrolls, invoices, billings, contracts, lien waivers, canceled checks and correspondence pertaining to this project for three years after the expiration of the loan agreement associated with this scope of work (including any amendments or attachments).

## **EXHIBIT B**

### **FINANCIAL ADMINISTRATION:**

#### **1.1 Compensation and Methods of Payment**

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

#### **1.2 Vouchering Requirements**

- 1.2.1 In order to meet Federal Government requirements for current, auditable books at all times, it is required that all vouchers be submitted monthly to OED in order to be paid.
  - a. The first exception will be that expenses cannot be reimbursed until the funds under this contract have been encumbered.
  - b. The second exception will be that costs cannot be reimbursed until they total a minimum of \$35 unless it is a final payment voucher, or the final voucher for the fiscal year (ending December 31).
- 1.2.2 No more than six (6) vouchers may be submitted per contract per month, without prior approval from OED.
- 1.2.3 All vouchers for all Agreements must be correctly submitted within forty-five (45) days of the Agreement end date to allow for correct and prompt closeout.
- 1.2.4 City and County of Denver Forms shall be used in back-up documents whenever required in the Voucher Processing Policy.

- 1.2.5 Only allowable costs determined in accordance with 2 CFR Chapter I, Chapter II, Parts 200, 215, 220, 225 and 230, “Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards” (the “OMB Omni Circular”) applicable to the organization incurring the cost will be reimbursed.
- 1.2.6 The reimbursement request, or draw request, for personnel and non-personnel expenses should be submitted to the City on a monthly basis, no later than the last day of the following month for expenses incurred in the prior month. The request for reimbursement should include:
- a. Amount of the request in total and by line item;
  - b. Period of services for current reimbursement;
  - c. Budget balance in total and by line item;
  - d. Authorization for reimbursement by the contract signatory (i.e., executive director or assistant director).
- 1.2.7 If another person has been authorized by the Contractor to request reimbursement for services provided by this contract, then the authorization should be forwarded in writing to OED prior to the draw request.
- 1.2.8 The standardized OED “Expense Certification Form” should be included with each payment request to provide the summary and authorization required for reimbursement.

### **1.3 Payroll**

- 1.3.1 A summary sheet should be included to detail the gross salary of the employee, amount of the salary to be reimbursed, the name of the employee, and the position of the employee. If the employee is reimbursed only partially by this contract, the amount of salary billed under other contracts with the City or other organizations should be shown on the timesheet as described below. Two items are needed for verification of payroll: (1) the amount of time worked by the employee for this pay period; and (2) the amount of salary paid to the employee, including information on payroll deductions.
- 1.3.2 The amount of time worked will be verified with timesheets. The timesheets must include the actual hours worked under the terms of this contract, and the actual amount of time worked under other programs. The total hours worked during the period must reflect all actual hours worked under all programs including leave time. The employee’s name, position, and signature, as well as a signature by an appropriate supervisor, or executive director, must be included on the timesheets. If the timesheet submitted indicates that the employee provided services payable under this contract for a portion of the total time worked, then the amount of reimbursement requested must be calculated and documented in the monthly reimbursement request.

- 1.3.3 A payroll register or payroll ledger from the accounting system will verify the amount of salary. Copies of paychecks are acceptable if they include the gross pay and deductions.

#### **1.4 Fringe Benefits**

- 1.4.1 Fringe benefits paid by the employer can be requested by applying the FICA match of 7.65 percent to the gross salary paid under this contract. Fringe benefits may also include medical plans, retirement plans, worker's compensation, and unemployment insurance. Fringe benefits that exceed the FICA match may be documented by 1) a breakdown of how the fringe benefit percentage was determined prior to first draw request; or, 2) by submitting actual invoices for the fringe benefits. If medical insurance premiums are part of the estimates in item #1, one-time documentation of these costs will be required with the breakdown. Payroll taxes may be questioned if they appear to be higher than usual.

#### **1.5 General Reimbursement Requirements**

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

by OED within forty-five (45) days after the end of the service period stated in the contract.

## **2.1 Program Income**

- 2.1.1 Program income includes, without limitation, income from fees for services performed, from the use or rental of real or personal property acquired with contract funds, from the sale of commodities or items fabricated under a contract agreement, and from payments of principal and interest on loans made with contract funds.
- 2.1.2 Program income may be deducted from total allowable costs to determine net allowable costs and may be used for current reimbursable costs under the terms of this contract. Program income which was not anticipated at the time of the award may be used to reduce the award contribution rather than to increase the funds committed to the project. ALL PROGRAM INCOME GENERATED DURING ANY GIVEN PERIOD SUBMITTED FOR PAYMENT SHALL BE DOCUMENTED ON THE VOUCHER REQUEST.
- 2.1.3 The Contractor, at the end of the program, may be required to remit to the City all or a part of any program income balances (including investments thereof) held by the Contractor (except AS APPROVED IN WRITING BY OED, INCLUDING those needed for immediate cash needs, cash balances of a revolving loan fund, cash balances from a lump sum drawdown, or cash or investments held for section 108 security needs), unless otherwise directed in writing by OED.

## **3.1 Financial Management Systems**

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

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

- 3.1.4 Actual expenditures or outlays must be compared with budgeted amounts and financial information must be related to performance or productivity data, including the development of cost information whenever appropriate or specifically required.
- 3.1.5 Applicable OMB Omni Circular cost principles, agency program regulations, and the terms of the agreement will be followed in determining the reasonableness, allowability and allocability of costs.
- 3.1.6 Source documents such as cancelled checks, paid bills, payrolls, time and attendance records, contract documents, etc., shall be provided for all disbursements. The Contractor will maintain auditable records, i.e., records must be current and traceable to the source documentation of transactions.
- 3.1.7 The Contractor shall maintain separate accountability for OED funds as referenced in 24 C.F.R. 85.20 and the OMB Omni Circular.
- 3.1.8 The Contractor must properly report to Federal, State, and local taxing authorities for the collection, payment, and depositing of taxes withheld. At a minimum, this includes Federal and State withholding, State Unemployment, Worker's Compensation (staff only), City Occupational Privilege Tax, and FICA.
- 3.1.9 A proper filing of unemployment and worker's compensation (for staff only) insurance shall be made to appropriate organizational units.
- 3.1.10 The Contractor shall participate, when applicable, in OED provided staff training sessions in the following financial areas including, but not limited to (1) Budgeting and Cost Allocation Plans; (2) Vouchering Process.

#### **4.1 Audit Requirements**

- 4.1.1 If the Contractor expends seven hundred and fifty thousand dollars (\$750,000) or more of federal awards in the Contractor's fiscal year, the Contractor shall ensure that it, and its sub recipients(s), if any, comply with all provisions of the OMB Omni Circular.
- 4.1.2 A copy of the final audit report must be submitted to the OED Financial Manager within the earliest of thirty (30) calendar days after receipt of the auditor's report; or nine (9) months after the end of the period audited.
- 4.1.3 A management letter, if issued, shall be submitted to OED along with the reporting package prepared in accordance with the Single Audit Act Amendments and the OMB Omni Circular. If the management letter is not received by the subrecipient at the same time as the Reporting Package, the Management Letter is also due to OED within thirty (30) days after receipt of the Management Letter, or nine (9) months after the end of the audit period, whichever is earlier. If the Management Letter has matters related to OED

funding, the Contactor shall prepare and submit a Corrective Action Plan to OED in accordance with the Single Audit Act Amendments and the OMB Omni Circular, as set forth in 24 C.F.R. Part 45 for each applicable management letter matter.

- 4.1.4 All audit related material and information, including reports, packages, management letters, correspondence, etc., shall be submitted to **OED Financial Management Unit**.
- 4.1.5 The Contractor will be responsible for all Questioned and Disallowed Costs.
- 4.1.6 The Contractor may be required to engage an audit committee to determine the services to be performed, review the progress of the audit and the final audit findings, and intervene in any disputes between management and the independent auditors. The Contractor shall also institute policy and procedures for its sub recipients that comply with these audit provisions, if applicable.

### **5.1 Budget Modification Requests**

- 5.1.1 Minor modifications to the services provided by the Contractor or changes to each line item budget equal to or less than a ten percent (10%) threshold, which do not increase the total funding to the Contractor, will require only notification to OED with the next monthly draw. Minor modifications to the services provided by Contractor, or changes to each line item budget in excess of the ten percent (10%) threshold, which do not increase the total funding to Contractor, may be made only with prior written approval by OED. Such budget and service modifications will require submittal by Contractor of written justification and new budget documents. All other contract modifications will require an amendment to this Agreement executed in the same manner as the original Agreement.
- 5.1.2 The Contractor understands that any budget modification requests under this Agreement must be submitted to OED prior to the last Quarter of the Contract Period, unless waived in writing by the OED Director.

### **6.1 Procurement**

- 6.1.1 The Contractor shall follow the City Procurement Policy to the extent that it requires that at least three (3) documented quotations be secured for all purchases or services (including insurance) supplies, or other property that costs more than five thousand dollars (\$5,000) in the aggregate.
- 6.1.2 The Contractor will maintain records sufficient to detail the significant history of procurement. These records will include, but are not limited to the following: rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price.



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

## **7.1 Bonding**

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

## **8.1 Records Retention**

- 8.1.1 The Contractor must retain for five (5) years financial records pertaining to the contract award. The retention period for the records of each fund will start on the day the single or last expenditure report for the period, except as otherwise noted, was submitted to the awarding agency.
- 8.1.2 The awarding agency and the Comptroller General of the United States, or any of their authorized representatives, shall have the right of access, upon reasonable notice, to any pertinent books, documents, papers, or other records which are pertinent to the contract, in order to make audits, examinations, excerpts, and transcripts.

## **9.1 Contract Close-Out**

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

## **10.1 Collection of amounts due**

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

## EXHIBIT C

### SUBORDINATION AGREEMENT

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

### PRELIMINARY STATEMENTS

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

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

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

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

### AGREEMENT

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

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

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

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

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

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

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

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

5. No Action. Except to the extent that Junior Lender obtains Senior Lender's permission pursuant to the following sentence, the Junior Lender will not commence any action or proceeding with respect to the Mortgaged Property or against the Borrower, will not take possession of, sell or dispose of, or otherwise deal with, the Mortgaged Property, and will not exercise or enforce any other right or remedy that may be available to the Junior Lender against the Borrower or with respect to the Mortgaged Property upon Borrower's default with respect to the Junior Obligations, without the Senior Lender's prior written consent, which shall not be unreasonably withheld or delayed. In addition, and without limiting the generality of the foregoing, if the Borrower is in default under the Senior Deed of Trust, any credit agreement or other agreement in favor of the Senior Lender (the "Senior Loan Documents") and the Senior Lender or Borrower intends to sell any part of the Mortgaged Property to an unrelated third party, the Junior Lender shall, upon the Senior Lender's request, promptly execute and deliver to

such purchaser such instruments as may reasonably be necessary to terminate and release any security interest or lien the Junior Lender might have in the Mortgaged Property to be sold.

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

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

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

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

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

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

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

“JUNIOR LENDER”

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

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

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

State of Colorado        )  
  ) ss.  
County of                    )

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

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

\_\_\_\_\_

Notary Public

“SENIOR LENDER”

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

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

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

\

State of Colorado )  
 ) ss.  
County of )

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

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

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

Acknowledged by BORROWER:

[INSERT BORROWER NAME], a [INSERT STATE]  
[INSERT ENTITY TYPE]

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

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

ATTACHMENT A

[INSERT LEGAL DESCRIPTION]