

**LOAN AGREEMENT  
(HOME PROGRAM)**

**THIS LOAN AGREEMENT** (“Agreement”), in two parts, Part I and Part II, is made between the **CITY AND COUNTY OF DENVER**, a municipal corporation organized pursuant to the Constitution of the State of Colorado (“City”), and **HABITAT FOR HUMANITY OF METRO DENVER, INC.** a Colorado nonprofit corporation, whose address is 7535 E. Hampden Ave, Suite 600, Denver, Colorado 80231 (“Borrower”), each individually a “Party” and collectively the “Parties.”

**WITNESSETH:**

**WHEREAS**, the City is acting pursuant to federal grant conditions with respect to affordable housing assistance pursuant to the Home Investment Partnership Program (“HOME Program”);

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

**WHEREAS**, the purpose of this Agreement is for the City to provide financing costs related to the development and construction of eight (8) income-restricted homeownership affordable units located on the Property, which will be known as Augustana Townhomes (the “Project”);

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

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

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

**PART I**

**1. LOAN TO BORROWER**: Subject to the terms of this Agreement, the City agrees to lend Borrower a sum not to exceed **Nine Hundred Thousand Dollars and No/100 Dollars (\$900,000.00)** (the “Loan”). In addition to this Agreement, Borrower will execute a promissory note in a form satisfactory to the City evidencing this Loan (the “Promissory Note”). Simple interest at a rate of zero percent (0%) per annum shall commence accruing on the outstanding principal balance of the Promissory Note on the date on which the first draw on the Loan is made. Principal and any interest accrued on the Loan shall mature and be due and payable on the fifth (5<sup>th</sup>) anniversary of the date of the Promissory Note (the “Maturity Date”), if not sooner paid. So long as Borrower is in compliance with

all terms and conditions of this Agreement, repayment shall be forgiven by the City on the Maturity Date.

2. **SECURITY**: Repayment of the Promissory Note shall be secured by a leasehold Deed of Trust (the “Deed of Trust”), in form satisfactory to City, granted by Borrower and encumbering the real property known and numbered as 5101 Leetsdale Drive, Denver, Colorado 80246 and legally described as set forth in **Exhibit C** (the “Property”). The City shall execute a partial release of the Deed of Trust upon the sale of each Unit (as defined below), so long as the Unit is being sold to a Qualified Buyer (as defined below).

3. **INTENTIONALLY OMITTED**

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

A. Loan proceeds will be used to finance costs associated with development of the Property for use as affordable housing, in accordance with **Exhibit A**, attached hereto and incorporated herein. No funds will be disbursed until Borrower has complied with all federal environmental and historic preservation clearances as certified by HOST in writing.

B. Borrower shall submit to the City requisitions with documentation of incurred costs on the City’s Department of Housing Stability (“HOST”) approved forms, and otherwise comply with the disbursement terms and conditions set forth in **Exhibit B**, attached hereto and incorporated herein. Borrower may not request disbursement of funds until the funds are needed for payment of eligible costs.

C. Where the City’s funds are disbursed for construction, (i) the City shall monitor the construction activities for the purpose of verifying eligible costs, and (ii) the City shall retain five percent (5%) of each disbursement of funds, which retainage shall be released upon compliance with the requirements of **Exhibit B**.

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

E. Soft costs as defined in and allowed pursuant to 24 C.F.R. § 92.206 that were incurred after August 17, 2023 are eligible for reimbursement. Hard costs incurred after the effective date of this Agreement are eligible for reimbursement.

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

**A.** Borrower must satisfy all conditions set forth in this Agreement on or before August 25, 2024 (the “Closing Deadline”). Failure to meet this deadline may result in the termination of this Agreement at the sole discretion of the HOST Executive Director or Executive Director’s designee (the “Executive Director”). No funds shall be disbursed under this Agreement until such time as (i) all conditions of this Agreement have been met and (ii) Borrower has closed on all financing necessary to complete the Project.

**B.** Borrower agrees that (a) documentation for all draw down requests will be submitted no later than twenty-four (24) months after the date of the Promissory Note and (b) Borrower shall complete the Project within a twenty-four (24) month period after the date of the Promissory Note. All cost overruns and/or funding shortfalls shall be the sole responsibility of Borrower. Borrower must submit monthly status reports during the period of construction. All cost overruns and/or funding shortfalls shall be the sole responsibility of Borrower.

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

**6. RESTRICTIONS ON PROPERTY:**

**A. Affordability Limitations.**

**i.** Borrower agrees that each of the eight (8) dwellings units created pursuant to this Agreement (each a “Unit” and collectively the “Units”) must be encumbered by a Notice of Voidable Title Transfer and Covenant for the Occupancy and Resale Price Restrictions, substantially in form of **Exhibit D** (the “Covenant”), and subjected to a sublease of Borrower leasehold interest (the “Land Lease”), whereby the land underlying each Unit will be leased and the improvements sold (a “Sale”) (i) during the HOME Compliance Period (as defined below) to a household whose annual income is at or below 80% of the area median income; and (ii) at any time after the HOME Compliance Period to a household whose annual income is at or below 100% of the area median income (a “Qualified Buyer”). The term “Sale” shall include the resale of a Unit during the term of the Land Lease and Covenant.

ii. For each Sale of a Unit, Borrower must verify the household income of each purchaser to ensure that they are a Qualified Buyer. Borrower must provide to HOST an income verification of the purchaser for each sale or resale of a Unit.

B. Term of Land Lease and Covenant. A Land Lease for each Unit shall have a term of ninety-nine (99) years. A Covenant shall encumber each Unit for a period ninety-nine (99) years from the date of project completion as defined in 24 C.F.R. § 92.2. The ninety-nine (99) year term consists of: fifteen (15) years as required by HUD HOME Program regulations (the “HOME Compliance Period”), and an additional eighty-four (84) years as required by the City. After the HOME Compliance Period expired, Borrower will have satisfied the HOME Program requirements, but the Covenant will remain in full force and effect for the balance of the term.

C. Unit Requirements; Maximum Sale Price. Borrower shall deliver the Units in the number and types set forth below and sell the Units to purchasers at an initial sale at a price that does not exceed the then current maximum sales price published by HOST. If Borrower is the senior lender to a prospective purchaser, Borrower may seek written approval from HOST to sell a Unit in excess of the published maximum sales price; provided, however, that the purchase price may not exceed 95% of the median purchase price for the Denver area, as established pursuant to 24 C.F.R. § 92.254. All subsequent Sales of Units shall be governed by the terms of the Land Lease and Covenant.

<b>Unit Size</b>	<b>Number of Units</b>
3 Bedroom	4
4 Bedroom	4

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

A. Examination of Records and Audits: Any authorized agent of the City, including the City Auditor or his or her representative, the Comptroller of the United States, and HUD, have the right to access and the right to examine, copy and retain copies, at City’s election in paper or electronic form, any pertinent books, documents, papers and records related to Borrower’s performance pursuant to this Agreement, provision of any goods or services to the City, and any other transactions related to this Agreement. Borrower shall cooperate with City representatives and City representatives shall be granted access to the foregoing documents and information during

reasonable business hours and until the latter of three (3) years after the final payment under the Agreement or expiration of the applicable statute of limitations. When conducting an audit of this Agreement, the City Auditor shall be subject to government auditing standards issued by the United States Government Accountability Office by the Comptroller General of the United States, including with respect to disclosure of information acquired during the course of an audit. No examination of records and audit pursuant to this paragraph shall require Parties to make disclosures in violation of state or federal privacy laws. Parties shall at all times comply with D.R.M.C. 20-276. The records maintained by Borrower shall include, without limitation, (i) records evidencing the income of each household purchasing a Unit, and (ii) the purchase price of each Unit.

**B. Required Information and Reports.**

**i.** Borrower shall submit to the City a quarterly report detailing the initial Sale of the Units and the status of any unsold Unit. The report must include, but not be limited to, the information related to the sale of any Unit, the income of each household purchasing a Unit, an income verification of the purchaser, and the purchase price of the Unit.

**ii.** After the initial Sale of the Units, Borrower shall submit to the City annual reports detailing the resale of the Units. The report must include, but not be limited to, the information related to the sale of any Unit, the income of each household purchasing a Unit, an income verification of the purchaser, and the purchase price of the Unit. This obligation will survive the term of this Agreement and will remain for the term of the Covenant for each Unit.

**C. Access and Inspections.** For the purposes of assuring compliance with the Agreement, the City shall have the reasonable right of access to the Property, without charges or fees, during the period of construction and, after construction has been completed, any point prior to the initial Sale of a Unit.

**8. FINANCIAL STATEMENTS:** Borrower must furnish to the City by June 1<sup>st</sup> of each year this Agreement is in effect, or within thirty (30) days of the City making a request, financial statements of Borrower audited by an independent certified public accountant, which must include an annual balance sheet and profit and loss statement of Borrower, in a form reasonably required by the City.

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

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

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

**C. Appraisal.** Borrower must provide the City with an as-built appraisal of the Property, which must be satisfactory in form and substance to the City.

**D. Organizational Documents.** Borrower must provide the City with (i) evidence that it is a Colorado nonprofit corporation in good standing and authorized to transact business in the State of Colorado; (ii) evidence in a form satisfactory to the City that the person executing this Agreement and any other documents related to the Loan has the full power and authority to bind Borrower; and (iii) all organizational documents related to Borrower, which must be acceptable to the City. Organization documents include, but are not limited to, Articles of Incorporation, bylaws, and, as a nonprofit corporation, a tax-exempt letter from the Internal Revenue Service and a list of board members.

**E. Intentionally omitted.**

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

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

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

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

**J. Construction; Timeline.** Borrower must provide the City with a certified copy of the construction budget and development timeline, which must be satisfactory in form and substance to the City.

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

**11. CONDITIONS:**

**A.** This Agreement is subject to the Home Investment Partnership Program Grant Agreement entered into between the City and HUD; the National Affordable Housing Act of 1990; and the federal regulations at 24 C.F.R. Part 92. The obligation of the City to lend the above sums is limited to funds appropriated by the U.S. Congress and City Council, paid into the Treasury of the City, and encumbered for the purpose of this Agreement. The City does not by this Agreement irrevocably pledge present cash reserves for payment or performance.

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

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

**12. INSURANCE:** Borrower or its contractor(s) shall procure and maintain insurance in the following types and amounts:

**A.** Where loan proceeds are disbursed for construction, Builders Risk Insurance or an Installation Floater in the amount of the value of the Property as improved and renovated, with the City and County of Denver named as loss payee.

**B.** Commercial General Liability Insurance covering all operations by or on behalf of Borrower, on an occurrence basis with limits not less than \$1,000,000 per occurrence, \$2,000,000 products and completed operations aggregate, and \$2,000,000 policy aggregate. Borrower's contractor shall include all subcontractors as insureds under its policy or shall furnish separate certificates of insurance for each subcontractor.

C. Worker's Compensation and Employer's Liability Insurance at statutory limits and otherwise sufficient to ensure the responsibilities of Borrower and its contractor under Colorado law.

D. 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.

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

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

**13. DEFENSE & INDEMNIFICATION:**

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

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

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



or seeking to enforce this indemnity obligation. Such payments on behalf of City shall be in addition to any other legal remedies available to City and shall not be considered City's exclusive remedy.

**D.** Insurance coverage requirements specified in this Agreement shall in no way lessen or limit the liability of Borrower under the terms of this indemnification obligation. 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.

**14. DEFAULT AND ACCELERATION:**

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

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

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

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

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

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

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

of any jurisdiction; or any such proceeding shall be instituted against Borrower; or Borrower terminates or dissolves.

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

**C. Acceleration; Interest Upon Default; and Withholding Disbursements.** Upon the existence of a default and the failure to cure within the Cure Period, and without necessity of further notice, presentment, demand, protest, or notice of protest of any kind, all of which are expressly waived by Borrower, the City shall have the right to accelerate any outstanding obligations of Borrower, which shall be immediately due and payable, including payments under the Promissory Note, to foreclose upon the Property, and to enforce or assign its rights under the Deed of Trust. Upon default and if the default remains after the Cure Period, the principal shall draw interest at the rate of fifteen percent (15%) per annum. If any of the Loan funds have not been disbursed to Borrower, the City may suspend or terminate the Agreement, in whole or in part, and withhold one hundred percent (100%) of any undisbursed funds.

**D. Effect of Default on Eligibility for Further Funding.** If Borrower is in default, the City may declare Borrower ineligible for any further participation in City funding, in addition to other remedies as provided by law.

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

Habitat for Humanity of Metro Denver, Inc.  
Attn: Jaime Gomez  
7535 E. Hampden Ave, Suite 600  
Denver, Colorado 80217

and if to the City at:

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

With a copy to:

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

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

16. **AUDIT**: Non-profit organizations that expend \$750,000 or more in a year in federal awards shall have a single or program-specific audit conducted for that year in accordance with the provisions of 2 C.F.R. Part 200, "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards" (the OMB Omni Circular") and applicable federal regulations.

17. **SECTION 3 COMPLIANCE**: This Agreement is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968 and implementing regulations thereunder, as more fully described in Part II.

18. **CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION:**

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

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

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

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

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

**19. USE, POSSESSION, OR SALE OF ALCOHOL OR DRUGS:** The Borrower shall cooperate and comply with the provisions of Executive Order 94 concerning the use, possession or sale of alcohol or drugs. Violation of this provision can result in the City terminating the Agreement or barring the Borrower from City facilities or from participating in City operations. The Contractor shall cooperate and comply with the provisions of 2 CFR Part 2429 regarding a Drug-Free Workplace.

**20. ASSIGNMENT AND SUBCONTRACTING:** The City is not obligated or liable under this Agreement to any party other than Borrower. Borrower shall not assign, sublet or subcontract with respect to any of the rights, benefits, obligations or duties under this Agreement except upon prior written consent of the City.

**21. CITY NOT PARTY TO CONSTRUCTION CONTRACT:** The City is not, and nothing in this Agreement shall be construed to constitute the City, a party to any construction contract pursuant to which the loan or grant proceeds hereof are expended.

22. **PUBLICATIONS/ANNOUNCEMENTS**: HOST approval must be obtained prior to publicizing activities or projects funded by HOST or prior to any radio or television announcements, newspaper advertisements, press releases, pamphlets, mail campaigns, or any other marketing methods for any activities or projects funded by HOST. 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, Department of Housing Stability.” HOST shall be acknowledged in any events regarding the project being funded, including groundbreakings and openings.

23. **ACKNOWLEDGEMENT OF FUNDING**: Borrower will provide and install at the Property signs, in a form mutually agreeable to the Executive Director and Borrower, acknowledging the participation of the City and the City funding of the Project.

24. **WAIVER**: No waiver of any breach or default under this Agreement shall be held to be a waiver of any other or later breach or default. All remedies afforded in this Agreement shall be construed as cumulative, in addition to every other remedy provided herein or by law.

25. **COUNTERPARTS**: This Agreement may be executed in multiple counterparts, each of which, when executed and delivered, shall be deemed to be an original and, taken together, shall constitute one and the same instrument.

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

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

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

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

**List of Exhibits/Attachments to Loan Agreement**

**Exhibit A** – Project Timeline and Costs

**Exhibit B** – Disbursement Terms and Conditions

**Exhibit C** – Legal Description of Property

**Exhibit D** – Form Notice of Voidable Title Transfer and Covenant for the Occupancy and Resale Price Restrictions and Right of Repurchase.

**Part II**

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

HOST-202370649-00  
HABITAT FOR HUMANITY OF METRO DENVER, INC.

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

**SEAL**

**CITY AND COUNTY OF DENVER:**

**ATTEST:**

By:

\_\_\_\_\_

\_\_\_\_\_

**APPROVED AS TO FORM:**

**REGISTERED AND COUNTERSIGNED:**

Attorney for the City and County of Denver

By:

By:

\_\_\_\_\_

\_\_\_\_\_

By:

\_\_\_\_\_

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

HOST-202370649-00  
HABITAT FOR HUMANITY OF METRO DENVER, INC.

By: See attached signature page

Name: See attached signature page  
(please print)

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

ATTEST: [if required]

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

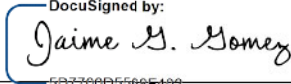
Name: \_\_\_\_\_  
(please print)

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



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

HOST-202370649-00  
HABITAT FOR HUMANITY OF METRO DENVER, INC.

By:  \_\_\_\_\_  
5B7700D5566F402...

Name: Jaime G. Gomez  
(please print)

Title: Chief Executive Officer  
(please print)

ATTEST: [if required]

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

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

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

EXHIBIT A

**Project Timeline - Augustana Townhomes**  
5101 Leetsdale Drive, Denver CO 80246

Site Control: 1/20/2020

Construction financing closes: N/A (Self Financing)

Construction Start: 11/1/2023

Construction Complete: 3/1/2025

Construction Loan Payoff: N/A (Self Financing)

Final Sale: 7/1/2025

**Project Sources and  
Uses**

**Uses**

Hard Costs	\$3,266,000	Approved City Use
Soft Costs	\$718,700	
Acquisition	\$50,000	
Developer Fees	\$115,840	Other Funding
<b>Total</b>	<b>\$4,150,540</b>	

**Sources**

**Total**

Mortgage Proceeds	\$2,394,000
DOH HDG Grant	\$320,000
Denver HOST	\$900,000
Developer Equity	\$536,540
<b>Total</b>	<b>\$4,150,540</b>

## EXHIBIT B

### DISBURSEMENT TERMS AND CONDITIONS

#### I. Disbursement Request Procedures

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

## EXHIBIT B

- i. A completed and signed HOST expense certification form.
  - ii. For hard cost draws, a completed standard AIA Form G702 and Form G703 certified by the architect and signed and notarized by the general contractor. If the Disbursement Request includes costs for minor construction not shown on the G702 and G703, the scope of work and contractor invoices must be submitted.
  - iii. Invoices and other evidence satisfactory to HOST and DOF for “hard” or direct costs provided to the Project with respect to the Disbursement Request. All invoices must show the Project name and address.
  - iv. Invoices and other evidence satisfactory to the City for “soft” or indirect costs provided to the Project with respect to the Disbursement Requests. All invoices must show the Project name and address.
  - v. Evidence satisfactory to HOST and DOF to demonstrate proof of payment of any cost or expense contained on a Disbursement Request. Evidence of proof of payment may include, but not be limited to: cancelled checks; copies of checks; documentation of cost or expense in a general ledger; credit or debit card statements; final signed settlement statements, wire transfer records, or bank statements.
  - vi. An updated itemized budget.
  - vii. Current certificates of insurance.
  - viii. Lien waivers from all applicable contractors, subcontractors, and suppliers.
  - ix. For loan agreements receiving federal funding and to which the Davis-Bacon Act applies, Borrower must be current in submissions of all paperwork and documentation requested by the City to demonstrate compliance with the requirements of the Davis-Bacon Act.
  - x. For acquisition Disbursement Requests being funded at loan closing, the following items will be required: a) Preliminary closing statement; b) wire instructions on bank letterhead including date wire is required; and c) final settlement statement and recorded documents after closing.
- h. The Borrower must cooperate with HOST in obtaining or providing any additional documentation that may be required by HOST, DOF, or any other agency of the City.
  - i. The City will retain the first \$10,000.00 of Disbursements for the purposes of the Compliance Retainer as set forth in the Loan Agreement. The \$10,000.00 that is retained pursuant to this provision will be released under the terms described in Section II.
  - j. The City will disburse to the Borrower 95% of hard expenses for each Disbursement and all of the soft expenses. The retained 5% of hard expense (the “Retainage”) shall be disbursed as all or part of the final Disbursement under the terms described in Section II.

## EXHIBIT B

- k. At all times during the construction of the Project, the City shall have the right, but not the obligation, to enter and inspect all work done, and all materials, equipment, and other matters relating to the Project.
- l. HOST reserves the right, in its sole and absolute discretion, to revise or modify the processes, procedures, and requirements related to the disbursement procedures. HOST will notify Borrower of any such changes to the disbursement procedures.
- m. The City will not make any Disbursements of Loan proceeds to the Borrower for costs or expenses that:
  - i. Are prohibited by Federal or City regulations related to the funding source.
  - ii. Are not requested or otherwise not in accordance with Loan Agreement or the procedures for a Disbursement Request set forth herein.
  - iii. Were requested or incurred, or both, after the termination of the Loan Agreement or outside the time periods set forth in the Loan Agreement.
  - iv. Were requested during the occurrence and continuation of an event of default specified in the Loan Agreement.

### II. Disbursement of Compliance Retainer and Retainage

- a. *Compliance Retainer.* For the City to release the Compliance Retainer, a Disbursement Request must be submitted along with the following information:
  - i. A completed HOST expense certification form.
  - ii. For loans funded with federal funds, any required federal forms or reports. The City must review and approve any completed federal forms or reports for any federally funded loan agreement.
  - iii. All documents or items required to be submitted to the City pursuant to the Loan Agreement not previously provided.
  - iv. A certificate of occupancy or a temporary certificate of occupancy.
  - v. Current certificates of insurance.
  - vi. Updated title policy with date down endorsement or copy of date down endorsement for senior lender dated within 15 days of draw request.
  - vii. The Project must pass a Housing Quality Standards (“HQS”) inspection performed by the City.
  - viii. Lease-up information on the City Units or HOME Units, as applicable. The information must include number of bedrooms in the unit, household size, tenant household incomes, date of income certification, tenant paid portion of rent, total lease rent, voucher amounts, voucher type (project based or tenant based), utility allowance amount, lease start and end dates, and demographic data. HOST will review this information to confirm the Project’s lease-up is in compliance with the affordability restrictions contained in the Loan Agreement and Rental & Occupancy Covenant.
  - ix. Any other documents required by HOST.

## EXHIBIT B

- b. *Retainage*. For the City to release the Retainage, a Disbursement Request must be submitted along with the following information:
- i. A completed HOST expense certification form.
  - ii. Final lien waivers or proof of release of liens in form and substance satisfactory to the City from all applicable contractors, subcontractors, and suppliers, as applicable.
  - iii. A copy of the completed AIA G704 Form for the senior lender, signed by the architect, general contractor, and Borrower that shows -\$0.00- as the cost estimate of work that is incomplete or defective.
  - iv. A copy of the completed AIA G706 Form for the senior lender, signed by the general contractor and notarized, verifying that all debts and claims have been settled.
  - v. A copy of the completed AIA G706A Form for the senior lender, signed by the general contractor and notarized, stating that all releases or waivers of liens have been received.
  - vi. All documents or items required to be submitted to the City pursuant to the Loan Agreement not previously provided.
  - vii. A certificate of occupancy or a temporary certificate of occupancy.
  - viii. Current certificates of insurance.
  - ix. Updated title policy with date down endorsement or copy of date down endorsement for senior lender dated within 15 days of draw request.
  - x. The Project must also pass a Housing Quality Standards (“HQS”) inspection performed by the City.
  - xi. Uniform Relocation Assistance and Real Property Acquisition Policies Act (“URA”) Determination, as applicable.
  - xii. Environmental mitigation memorandum of understanding, as applicable.
  - xiii. Any other documents required by HOST.

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

- a. The making of each Disbursement shall be subject to the satisfaction of each of the following additional conditions precedent, and a waiver of any condition to any Disbursement shall not constitute a waiver as to any subsequent Disbursement. The City may, in its sole discretion, withhold all or a portion of a Disbursement if any of the following conditions have not been satisfied or if the Borrower has not submitted the required documentation and information required by the Loan Agreement, including the documentation and information required by these terms and conditions.
- i. *No Default*. The Borrower must be in full compliance with, and must not be in default under the Promissory Note, the Deed of Trust, or the Covenant or any other document executed by the Borrower in connection with the Loan.
  - ii. *Time to Complete the Project*. In the sole opinion of the City, there must be sufficient time remaining to complete the construction of the Project in accordance with the terms of the Loan Agreement, and in conformance with federal regulations and requirements for federally funded loans.

## EXHIBIT B

- iii. *Sufficient Funds Available to Complete the Project.* If requested by the City, the Borrower shall furnish evidence satisfactory to the City, in its sole discretion, that the amount of the Loan yet to be disbursed, together with any other sources of funds available to the Borrower and not yet disbursed, will be sufficient to complete the Project in compliance with the Loan Agreement and to pay all costs therefore, and all other direct or indirect costs relating to the Loan and the Project.
- iv. *Lien waivers.* If requested by the City, the Borrower shall furnish data in a form satisfactory to the City with respect to prior Disbursements and expenditures relating to the Project, and shall furnish lien waivers from the contractor and all subcontractors for work done and materials supplied to the Project to the date of the Disbursement Request.
- v. *Use of Funds.* Subject to the terms of the Loan Agreement, the Borrower shall use the proceeds of the Loan exclusively for the costs of the Project.
- vi. *Compliance with Federal Requirements.* As applicable, Borrower must be compliant with all federal requirements, including, but not limited to, compliance with the Davis-Bacon Act and Section 3 of the Housing and Urban Development Act of 1968, and all reporting obligations under any such federal requirements.
- vii. *Pass-Through Loans.* If the Loan Agreement is structured as a “pass-through” loan, Borrower must demonstrate that Borrower has the authority to submit disbursement requests on behalf of the Project owner, which may be done by providing HOST with an operating agreement or partnership agreement establishing such authority. A “pass-through” loan is defined as a loan made by the City to the Borrower where Loan proceeds will be granted or loaned by the Borrower to the developer or owner of the Project for construction and development costs.

#### IV. **Financial Management Systems – The Borrower must maintain financial systems that meet the following standards:**

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

## EXHIBIT B

- d. Actual expenditures or outlays must be compared with budgeted amounts and financial information must be related to performance or productivity data, including the development of cost information whenever appropriate or specifically required.
- e. For contracts subject to Federal Agreements, applicable 2 C.F.R. Part 200 cost principles, agency program regulations, and the terms of the agreement will be followed in determining the reasonableness, allowability and allocability of costs.
- f. Source documents such as cancelled checks, paid bills, payrolls, time and attendance records, contract documents, etc., shall be provided for all disbursements. The Borrower will maintain auditable records, i.e., records must be current and traceable to the source documentation of transactions.
- g. For contracts subject to Federal Agreements, the Borrower shall maintain separate accountability for HOST funds as referenced in 2 C.F.R. Part 200.
- h. The Borrower must properly report to Federal, State, and local taxing authorities for the collection, payment, and depositing of taxes withheld. At a minimum, this includes Federal and State withholding, State Unemployment, Worker's Compensation (staff only), City Occupational Privilege Tax, and FICA.
- i. A proper filing of unemployment and worker's compensation (for staff only) insurance shall be made to appropriate organizational units.
- j. The Borrower shall participate, when applicable, in HOST provided staff training sessions in the following financial areas including, but not limited to (1) Budgeting and Cost Allocation Plans; (2) Vouchering Process.

### V. **Audit Requirements**

- a. For contracts subject to Federal Agreements, if the Borrower expends seven hundred and fifty thousand dollars (\$750,000) or more of federal awards in the Borrower's fiscal year, the Borrower shall ensure that it, and its sub recipients(s), if any, comply with all provisions of the 2 C.F.R. Part 200.
- b. A copy of the final audit report must be submitted to the HOST Financial Manager within the earliest of thirty (30) calendar days after receipt of the auditor's report; or nine (9) months after the end of the period audited.
- c. A management letter, if issued, shall be submitted to HOST along with the reporting package prepared in accordance with the Single Audit Act Amendments and the 2 C.F.R. Part 200. If the management letter is not received by the subrecipient at the same time as the Reporting Package, the Management Letter is also due to HOST within thirty (30) days after receipt of the Management Letter, or nine (9) months after the end of the audit period, whichever is earlier. If the Management Letter has matters related to HOST funding, the Contactor shall



## **EXHIBIT B**

prepare and submit a Corrective Action Plan to HOST in accordance with the Single Audit Act Amendments and the 2 C.F.R. Part 200, as set forth in 2 C.F.R. 200.511(c) for each applicable management letter matter.

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

### **VI. Procurement**

- a. The Borrower shall follow the City Procurement Policy to the extent that it requires that at least three (3) documented quotations be secured for all purchases or services (including insurance) supplies, or other property that costs more than ten thousand dollars (\$10,000) in the aggregate.
- b. The Borrower will maintain records sufficient to detail the significant history of procurement. These records will include, but are not limited to the following: rationale for the method of procurement, selection of contract type, Borrower selection or rejection, and the basis for the contract price.
- c. If there is a residual inventory of unused supplies exceeding five thousand dollars (\$5,000) in total aggregate upon termination or completion of award, and if the supplies are not needed for any other federally sponsored programs or projects the Borrower will compensate the awarding agency for its share.

### **VII. Bonding**

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

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

- a. Any funds paid to a Borrower in excess of the amount to which the Borrower is finally determined to be entitled under the terms of the award constitute a debt to the Federal Government and/or the City. If not paid within a reasonable period after demand, HOST may: 1) Make an administrative offset against other requests

## **EXHIBIT B**

for reimbursements, 2) Withhold advance payments otherwise due to the Borrower, or 3) Pursue other action permitted by law.

# Exhibit C

## LEGAL DESCRIPTION

The following real property located in the City and County of Denver, State of Colorado:

A LEASEHOLD AS CREATED BY THAT CERTAIN LEASE DATED \_\_\_\_\_, EXECUTED BY AUGUSTANA LUTHERAN CHURCH, A COLORADO NON PROFIT CORPORATION, AS LESSOR, AND HABITAT FOR HUMANITY OF METRO DENVER, INC., A COLORADO NONPROFIT CORPORATION, AS LESSEE, AS REFERENCED IN THE DOCUMENTS ENTITLED " \_\_\_\_\_ " WHICH WAS RECORDED \_\_\_\_\_ UNDER RECEPTION NO. \_\_\_\_\_, FOR THE TERM AND UPON AND SUBJECT TO ALL THE PROVISIONS CONTAINED IN SAID DOCUMENTS, AND IN SAID LEASE.

THE LEASEHOLD INTEREST WILL ENCOMPASS THE FOLLOWING REAL PROPERTY:

\*\*\*\*\*

NOTE: THE FOLLOWING LEGAL DESCRIPTION IS PRELIMINARY AND IS SUBJECT TO CHANGE UPON COMPLIANCE WITH THE REQUIREMENTS UNDER THE TITLE COMMITMENT.

\*\*\*\*\*

PARCEL A:

ALL OF BLOCKS 202 AND BLOCK 203 AND VACATED ALLEY IN BLOCK 202 EAST CAPITOL HILL SUBDIVISION OF BLOCK E, JERSEY SUBDIVISION AND THE PORTIONS OF SOUTH ELM STREET AND SOUTH DAKOTA AVENUE, BOTH BEING VACATED BY ORDINANCE NO. 677, SERIES 1985 RECORDED DECEMBER 16, 1985 AT RECEPTION NO. **1204747**

CITY AND COUNTY OF DENVER, STATE OF COLORADO.

PARCEL B:

A PARCEL OF LAND LOCATED IN THE NORTHEAST 1/4 OF SECTION 18, TOWNSHIP 4 SOUTH, RANGE 67 WEST OF THE 6TH PRINCIPAL MERIDIAN, CITY AND COUNTY OF DENVER, STATE OF COLORADO, BEING MORE PARTICULARLY DESCRIBED AS FOLLOW:

COMMENCING AT THE NORTH WEST CORNER OF BLOCK 203 EAST CAPITAL HILL SUBDIVISION OF BLOCK E, JERSEY SUBDIVISION;  
THENCE SOUTH 00 DEGREES 00 MINUTES 59 SECONDS WEST A DISTANCE OF 537.55 FEET TO THE POINT OF BEGINNING; THENCE CONTINUING ALONG SAID BEARING A DISTANCE OF 113.50 FEET;

THENCE SOUTH 89 DEGREES 59 MINUTES 01 SECONDS EAST A DISTANCE OF 34.75 FEET;

THENCE SOUTH 82 DEGREES 59 MINUTES 40 SECONDS EAST A DISTANCE OF 36.82 FEET TO A POINT ON THE CENTERLINE OF VACATED SOUTH ELM STREET, VACATED BY ORDINANCE 677, SERIES 1985;

THENCE NORTH 00 DEGREES 00 MINUTES 05 SECONDS WEST ALONG SAID CENTERLINE A DISTANCE OF 118.30 FEET TO THE INTERSECTION OF SOUTH ELM STREET AND SOUTH DAKOTA AVENUE, BOTH BEING VACATED BY SAID ORDINANCE 677, SERIES 1985;

THENCE SOUTH 89 DEGREES 45 MINUTES 43 SECONDS WEST ALONG THE CENTERLINE OF VACATED SOUTH DAKOTA AVENUE A DISTANCE OF 71.26 FEET TO THE POINT OF BEGINNING.

PARCEL C:

LOTS 1 THROUGH 6, INCLUSIVE, AND THE VACATED NORTH AND SOUTH ALLEY LYING WEST OF AND ADJOINING LOTS 1 THROUGH 7 AND 12 BLOCK 205;

LOTS 30 THROUGH 40, INCLUSIVE, BLOCK 205 AND VACATED EASTERLY 1/2 OF SOUTH ELM STREET LYING WEST OF AND ADJOINING SAID LOTS 30 THROUGH 40, JERSEY SUBDIVISION;

LOTS 35 THROUGH 40, INCLUSIVE, BLOCK 206, AND ALL OF VACATED SOUTH FAIRFAX STREET LYING BETWEEN BLOCKS 205 AND 206, JERSEY SUBDIVISION, AND ALL OF VACATED EAST DAKOTA AVENUE LYING BETWEEN THE WESTERLY LINE OF SOUTH FAIRFAX ST. AND THE EASTERLY LOT LINE OF LOT D, JERSEY SUBDIVISION, CITY AND COUNTY OF DENVER, STATE OF COLORADO. EXCEPT ANY PORTION THEREOF DESCRIBED IN ORDINANCE NO. 746, SERIES 1986 RECORDED NOVEMBER 13, 1986, UNDER RECEPTION NO. **49188**.

# Exhibit D

AFTER RECORDING RETURN TO:  
Habitat for Humanity of Metro Denver, Inc.  
PO Box 5667  
Denver, CO 80217  
ATTN: Gov't Grants Mgr. / Loan Services Mgr.

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## NOTICE OF VOIDABLE TITLE TRANSFER AND COVENANT FOR THE OCCUPANCY AND RESALE PRICE RESTRICTIONS AND RIGHT OF REPURCHASE

This NOTICE OF VOIDABLE TITLE TRANSFER AND COVENANT FOR THE OCCUPANCY AND RESALE PRICE RESTRICTIONS AND RIGHT OF REPURCHASE (this “*Covenant*”) is made this \_\_\_\_ day of \_\_\_\_\_, 20\_\_ by **HABITAT FOR HUMANITY OF METRO DENVER, INC.**, a Colorado nonprofit corporation (as defined further below, “*Habitat*”), whose address is 7535 E. Hampden Ave, Suite 600, Denver, CO 80231, for the benefit of Habitat and its successors and assigns.

### **WARNING TO POTENTIAL LENDERS AND BUYERS**

**THIS COVENANT IS SENIOR TO ALL DEEDS OF TRUST AND OTHER LIENS FINANCING THE PROPERTY (AS DEFINED BELOW) AND IMPOSES EXTRAORDINARY FINANCIAL AND LEGAL LIABILITY ON ANYONE WHO BREACHES THE TERMS OF THIS COVENANT INCLUDING, WITHOUT LIMITATION, VOIDING A NONCOMPLIANT SALE.**

### RECITALS

A. Pursuant to the terms of that certain Ground Lease dated \_\_\_\_\_, 2023 by and between Augustana Lutheran Church, a Colorado nonprofit corporation, and Habitat (the “*Ground Lease*”), a Memorandum of which was recorded with the Clerk and Recorder of the City and County of Denver, Colorado on \_\_\_\_\_, 2023 at Reception No. \_\_\_\_\_, Habitat is holder of a leasehold interest in the real property more particularly described on Exhibit A-1, and the owner of the fee interest in the improvements located on such real property (“*Improvements*”).

## Exhibit D

B. Habitat has agreed to sublease its leasehold interest in the real property described on the attached Exhibit A-1 (the “*Leasehold Estate*”) and to sell the Improvements (together with the Leasehold Estate, as used herein, the “*Property*”) to an Eligible Buyer (as defined herein), such transaction having been induced, in part, by the obligation of such Eligible Buyer to abide by the provisions herein, which provisions shall bind the Property and its successor Owners (as defined below) for the benefit of Habitat. The Property has the street address: \_\_\_\_\_.

C. Habitat is a nonprofit housing ministry whose primary mission is to provide affordable homes for qualified low- to moderate-income families.

D. Habitat provides housing to selected families on a nonprofit basis and, through an affiliate, finances the purchase of these homes through an affordable mortgage to provide families with financial stability and financial opportunity. The provisions contained in this Covenant reflect Habitat's desire to be a good steward of the resources that have been donated to build, sell and finance Habitat homes while empowering Habitat homeowners economically.

E. Habitat received federal funding from the City and County of Denver pursuant to the HOME Investment Partnerships (“HOME”) Program to acquire and/or develop the Property for the purpose of preserving the Property for low- and moderate-income households.

F. Accordingly, each Owner, on behalf of Owner's self and Owner's successors and assigns and any other person acquiring or owning an interest in and to the Property, by virtue of taking title to the Property, agrees: (i) to comply with the use and occupancy requirements set forth in this Covenant, (ii) to comply with Habitat's right to repurchase the Property set forth in this Covenant, (iii) if Habitat does not exercise its right to repurchase the Property, to Transfer (defined below) the Property only to Eligible Buyers and (iv) to comply with the resale restriction setting forth the Maximum Resale Price (as defined below) for which the Property may be sold, the amount of appreciation and the other terms and provisions controlling the resale of the Property.

### COVENANTS AND RIGHT OF REPURCHASE

The following covenants, conditions and restrictions and right of repurchase burden the Property and are intended to be and shall be construed as covenants and obligations of Owner, Owner's successors and assigns and any other person acquiring or owning an interest in the Property:

1. **Definitions.** Unless the context shall expressly provide otherwise, the following words and phrases shall have the following meanings:

1.1. “*AMF*” means the area median income for the Denver metropolitan statistical area, adjusted for Household (as defined below) size, as calculated from time to time by the U.S. Department of Housing and Urban Development (HUD).

1.2. “*Business Day*” is any day other than a Saturday, Sunday or holiday generally observed by banking institutions in the State of Colorado.

## Exhibit D

1.3. “**Eligible Buyer**” means, as reasonably determined by Habitat: (i) for the Initial Sale (as defined below), a Household which has a combined annual income that does not exceed eighty percent (80%) of AMI at the time of the purchase of the Property; (ii) for any sale after the Initial Sale but during the HOME Compliance Period (as defined in Section 9), a Household which has a combined annual income that does not exceed eighty percent (80%) of AMI at the time of such subsequent purchase; and (iii) for any sale after the Initial Sale and after the HOME Compliance Period, a Household which has a combined annual income that does not exceed one hundred percent (100%) of AMI at the time of such subsequent purchase.

1.4. “**Fair Market Value of the Property**” means the fair market value of the Property, excluding the impact the Maximum Resale Price has on the market for the Property at such time, as reasonably determined by Habitat after consulting with an independent real property appraiser by comparing homes of a similar square footage, number of stories, number of bedrooms, number of bathrooms, ownership structure (e.g., single family, townhome or condominium) and physical condition within the same municipality within a reasonable distance of the Property.

1.5. “**Household**” means, as reasonably determined by Habitat: (i) a single person; (ii) any number of persons bearing to each other the relationship of husband, wife, mother, father, grandmother, grandfather, son, daughter, brother, sister, stepson, stepdaughter, stepbrother, stepsister, stepmother, stepfather, grandson, granddaughter, mother-in-law, father-in-law, sister-in-law, brother-in-law, daughter-in-law, son-in-law, uncle, aunt, nephew, or niece, living together as a single nonprofit housekeeping unit; and/or (iii) two (2) unrelated adults over the age of eighteen (18) years plus, if applicable, any persons bearing to either of the two (2) unrelated adults the relationship of son, daughter, stepson, stepdaughter, mother, father, grandmother, grandfather, grandson, granddaughter, sister, or brother, living together as a single nonprofit housekeeping unit.

1.6. “**Habitat**” means Habitat for Humanity of Metro Denver, Inc., a Colorado nonprofit corporation and/or its successors and assigns.

1.7. “**Initial Sale**” means the sale of the Property by Habitat to an Eligible Buyer at a price that allows the Eligible Buyer to make monthly payments on any repayable mortgages in an amount that will not exceed thirty percent (30%) of the Eligible Buyer’s gross monthly income; any sale of the Property by Habitat to an Eligible Buyer after Habitat exercises its right of repurchase as authorized in Section 5 below shall not be considered an Initial Sale.

1.8. “**Maximum Resale Price**” is the amount equal to the sum of all mortgages at Initial Sale – and to include the amount of any non-Habitat-provided down payment – plus an appreciation rate of two percent (2%) compounded annually on the anniversary of the closing date of the Initial Sale; provided, however, such amount may be adjusted by Habitat in its reasonable discretion to take into account any material increase in the Fair Market Value of the Property on account of significant capital improvements made to the Property from time to time by Owner (which shall exclude items relating to normal upkeep and maintenance of the Property during the Term of this Covenant). Notwithstanding the foregoing, during the HOME Compliance Period the purchase

## Exhibit D

price may not exceed 95% of the median purchase price for the Denver area, as established pursuant to 24 C.F.R. § 92.254.

1.9. “**Owner**” means the purchaser of the Property in the Initial Sale and each other person (except Habitat) who, from time to time during the Term (as defined below), owns or holds title to the Property through a subsequent Transfer.

1.10. “**Primary Residence**” means a residence which is the usual place of return for housing as documented by at least two of the following: motor vehicle registration, driver's license, Colorado state identification card, voter registration, tax documents, or a utility bill. A person can only have one Primary Residence.

1.11. “**sale**” or “**sell**” means, unless the context otherwise requires, with respect to the Leasehold Estate, any lease, sublease, assignment or transfer of the Leasehold Estate and with respect to the Improvements, any sale, assignment, conveyance, transfer or disposition of the Improvements.

1.12. “**Transfer**” means with respect to the leasehold interest in the Leasehold Estate and the fee simple interest in and to the Improvements, as applicable, any sale, assignment or transfer that is voluntary, involuntary or by operation of law (whether by deed, contract of sale, gift, devise, bequest, public trustee's sale, deed in lieu of foreclosure, or otherwise) of any interest in the Property, including, but not limited to a fee simple interest, joint tenancy interest, a tenancy in common, a life estate, or any interest evidenced by a land contract by which possession of the Property is transferred and Owner obtains title. **IN THE EVENT THE PROPERTY IS TRANSFERRED OR ATTEMPTED TO BE TRANSFERRED IN A MANNER THAT IS NOT IN FULL COMPLIANCE WITH THE TERMS AND CONDITIONS THIS COVENANT, SUCH TRANSFER SHALL BE WHOLLY NULL AND VOID AT ITS INCEPTION AND SHALL CONFER NO TITLE WHATSOEVER UPON THE PURPORTED TRANSFEREE. DETERMINATION OF WHETHER OR NOT A TRANSFER OR ATTEMPTED TRANSFER IS NOT IN FULL COMPLIANCE WITH THIS COVENANT SHALL BE MADE BY HABITAT IN ITS REASONABLE DISCRETION.**

2. ***Covenant Runs with the Land.*** EACH OWNER, EACH OF OWNER'S SUCCESSORS AND ASSIGNS AND EACH OTHER PERSON ACQUIRING OR OWNING AN INTEREST IN AND TO THE PROPERTY, SHALL BE BOUND BY THE TERMS OF THIS COVENANT. The benefits and burdens of this Covenant, including Habitat's Repurchase Right (as defined below), touch and concern and run with the Property, and the Property shall be used, occupied and Transferred strictly in conformance with the provisions of this Covenant, for so long as this Covenant remains in force and effect. No party other than Habitat or its successor and assigns shall exercise the rights and privileges reserved herein to Habitat, and any assignment of Habitat's rights under this Covenant shall be recorded in the office of the Clerk and Recorder of the City and County of Denver, Colorado. **BY OWNER'S ACCEPTANCE OF TITLE TO THE**



## Exhibit D

**PROPERTY, OR ATTEMPT TO RECEIVE TITLE TO THE PROPERTY, OWNER EXPRESSLY WAIVES ANY AND ALL CLAIMS, DEMANDS, OBLIGATIONS OR CAUSES OF ACTION AS TO HABITAT, INCLUDING THOSE ARISING OUT OF OR IN CONNECTION WITH THE COVENANTS AND RESTRICTIONS CONTAINED IN THIS COVENANT**, which Owner knows or has constructive knowledge of or which may exist but which Owner does not know or believe to exist, whether the lack of knowledge or belief results through ignorance, oversight, error, negligence or otherwise, and which, if known, would materially affect Owner's decision to accept title to the Property.

3. ***Assumption of Obligations.*** Each prospective purchaser (in the capacity as a new Owner of the Property) – including at Initial Sale – shall expressly assume, pursuant to a document substantially in the form of Exhibit B attached hereto which shall be recorded in the office of the Clerk and Recorder of the City and County of Denver, Colorado, the covenants, conditions, restrictions and other obligations imposed on Owner under this Covenant and under any deed of trust securing the obligations under this Covenant.

4. ***Use and Occupancy.*** Owner, in connection with the purchase, occupancy, and ownership of the Property, shall comply with the following use and occupancy requirements (collectively, the “***Use and Occupancy Requirements***”):

4.1. Occupy the Property as Owner's sole, exclusive and permanent place of residence and Primary Residence during the time that the Property is owned by such Owner. A permanent residence shall mean the home or place in which one's habitation is fixed and to which one, whenever he or she is absent, has a present intention of returning after a departure or absence therefrom, regardless of the duration of the absence. In determining what is a permanent residence, the following circumstances relating to Owner shall be considered: business pursuits, employment, income sources, residence for income or other tax purposes, age, marital status, residence of parents, spouse and children, if any, location of personal and real property, and motor vehicle registration.

4.2. Not engage in any business activity on or in the Property, other than as permitted under (i) applicable zoning ordinances, and (ii) if applicable, all declarations, bylaws, rules, and regulations, or covenants of a condominium or common interest community governing the Property.

4.3. Not rent the Property for any period of time; provided Owner is not prohibited from sharing occupancy of the Property with non-owners on a rental basis provided Owner continues to reside in the Property.

4.4. Not permit any use or occupancy of the Property except in compliance with this Covenant during the period of such Owner's ownership of the Property.

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### 5. *Maximum Resale Price.*

5.1. During the time that this Covenant is in effect, the Property may not be Transferred for an amount (hereafter, a "**Purchase Price**") more than the Maximum Resale Price. **THE MAXIMUM RESALE PRICE IS ONLY AN UPPER LIMIT ON PRICE APPRECIATION FOR THE PROPERTY, AND NOTHING HEREIN SHALL BE CONSTRUED TO CONSTITUTE A REPRESENTATION, WARRANTY OR GUARANTEE BY HABITAT OR ANYONE ELSE THAT UPON TRANSFER OF THE PROPERTY THE OWNER SHALL OBTAIN THE MAXIMUM RESALE PRICE.**

5.2. A selling Owner shall not permit any prospective buyer to assume any of the selling Owner's debts or closing costs nor accept any other consideration which would cause a direct or indirect increase in the Purchase Price above the Maximum Resale Price. All such additional consideration, in any form, shall be considered by Habitat when determining whether the Purchase Price for the Property exceeds the Maximum Resale Price.

5.3. The Purchase Price shall include the full amount paid by the purchaser, without reduction for (i) the amount of any customary real estate brokerage commission actually paid by the selling Owner upon the Transfer of the Property, or (ii) any reasonable and customary closing costs and expenses actually incurred by the selling Owner at the time of sale, as evidenced by a title company settlement statement.

### 6. *Habitat's Right of Repurchase.*

6.1. If (i) Owner desires to Transfer the Property during the Term, then before placing the Property on the market, or (ii) Owner receives an unsolicited offer to purchase the Property, then before responding affirmatively to such offer, Owner shall first notify Habitat of such desire or offer in writing (the "**Notification**") and Habitat shall have the right, but not the obligation, to repurchase the Property pursuant to the terms of this Covenant (the "**Repurchase Right**"). Habitat shall notify Owner in writing of its decision to exercise or not exercise the Repurchase Right within sixty (60) days of receiving the Notification (the "**Exercise Notice**"). If Habitat chooses not to exercise the Repurchase Right, Owner may sell the Property to a third party free of Habitat's Repurchase Right in that instance but subject to all other covenants, conditions, restrictions and obligations set forth in this Covenant including Habitat's Repurchase Right relating to subsequent Transfers; provided, however, that if Owner does not close on such Transfer of the Property prior to the one (1) year anniversary of the date on which the Notification was received by Habitat, Owner shall be required to send another Notification to Habitat prior to the completion of any such desired sale and Habitat shall once again be entitled to exercise the Repurchase Right pursuant to the terms of this Covenant.

6.2. If the Repurchase Right is exercised by Habitat, closing of the repurchase ("**Closing**") shall take place within sixty (60) days of the date Habitat sends the Exercise Notice on a date and at a time and place reasonably determined by Habitat. At Closing, Owner shall execute a good and sufficient special warranty deed to the Property in a form acceptable to Habitat,

## Exhibit D

free and clear of all liens and encumbrances other than this Covenant, any deed of trust or other lien in favor of Habitat securing Habitat's benefits under this Covenant and general taxes for the year of closing. At Closing, Owner shall also execute an assignment of the Sublease (defined below) in a form acceptable to Habitat. Owner shall pay for a title insurance policy reasonably required by Habitat and all standard closing costs and expenses of the seller associated with Closing. General taxes for the year of Closing (based either on the most recent mill levy and assessment or the prior year's taxes, at Habitat's election), water and sewer charges, homeowner association or other common interest ownership or similar dues, if any, and other normal and customary items shall be prorated between Owner and Habitat as of the Closing date. Any local transfer tax shall be paid by Owner. Habitat will not pay any fees or commissions owed to any broker, finder, or agent on account of the sale of the Property; should Owner desire to use the services of a real estate broker it shall be at Owner's sole expense. Possession of the Property shall be delivered to Habitat at Closing, and if not so delivered, Owner shall be liable to Habitat for daily rent in an amount equal to the maximum daily rent (prorated) then permitted by the Colorado Housing and Finance Authority for similar Owners in similar properties in Denver, Colorado from Closing until possession is delivered to Habitat.

6.3. If Habitat chooses to exercise its Repurchase Right, the amount Habitat shall pay to Owner at Closing shall be the lesser of (i) the Fair Market Value of the Property as reasonably determined by Habitat as of the date of the exercise of its Repurchase Right, or (ii) the Maximum Resale Price. If Habitat exercises its Repurchase Right, Habitat shall make good faith efforts to sell the Property to an Eligible Buyer within twelve (12) months of the closing on the repurchase by Habitat.

### 7. *Sale to Eligible Buyer.*

7.1. If Habitat does not exercise its Repurchase Right, Owner shall keep Habitat reasonably informed of the status of Owner's sales efforts and shall notify Habitat upon identifying a prospective purchaser for the Property that Owner reasonably believes qualifies as an Eligible Buyer at a proposed price that Owner reasonably believes does not exceed the Maximum Resale Price. Owner and such prospective purchaser shall reasonably cooperate with Habitat, including providing verification of employment status and income for the applicable Household, as Habitat determines whether the following criteria are met: (i) the prospective purchaser must qualify as an Eligible Buyer, and (ii) the Purchase Price for the Property must not exceed the Maximum Sale Price. If such criteria are met, Habitat shall issue a certification with respect to such criteria (an "***Affordability Certificate***") within thirty (30) days of Owner disclosing the identity of a prospective purchaser for the Property and the prospective purchaser providing the applicable employment and income verification information to Habitat. Owner may not close the sale of the Property to a third party without first obtaining an Affordability Certificate from Habitat.

7.2. As a condition precedent to the issuance of the Affordability Certificate, the prospective purchaser (in the capacity as a new Owner of the Property) shall expressly assume, pursuant to a document substantially in the form of Exhibit B attached hereto which shall be recorded

## Exhibit D

in the office of the Clerk and Recorder of the City and County of Denver, Colorado, the covenants, conditions, restrictions and other obligations imposed on Owner under this Covenant and under any deed of trust securing the obligations under this Covenant. Coincident with the conveyance of the Improvements to any Eligible Buyer, the then-Owner of the Property and the new Owner of the Property shall execute an assignment of the Sublease in a form acceptable to Habitat.

### 8. *Remedies in the Event of Breach.*

8.1. If Habitat has reasonable cause to believe that Owner is violating the provisions of this Covenant, Habitat, by its authorized representative, may inspect the Property between the hours of 8:00 a.m. and 5:00 p.m., Monday through Friday, after providing Owner with no less than twenty-four (24) hours advance written notice. If Owner is absent from the Property at the time of Habitat's arrival for inspection pursuant to written notice given in accordance with this Section 8.1, Habitat is hereby authorized to gain entry by any necessary means and conduct an inspection of the Property for the purpose of determining whether such suspected violation has occurred, and for no other purpose. Habitat will exercise reasonable care to minimize damage to the Property in gaining entry for inspection, but any damage that is reasonably unavoidable will be repaired promptly at Owner's sole cost and expense.

8.2. In the event of a violation of this Covenant, to the maximum extent permitted by applicable law, Habitat shall have the right to seek specific performance of the Covenant and/or an injunction of any violation of the Covenant in a court of competent jurisdiction. The right to specific performance, injunction and/or other equitable relief shall be in addition to all other remedies available under statute, at law and in equity.

8.3. In the event of a violation of this Covenant involving any of the Use and Occupancy Requirements, Habitat will provide a written notice of violation to the Owner. Provided that Owner has not cured such violation within thirty (30) days of receipt of such notice, Habitat may exercise its Repurchase Right upon delivery of an Exercise Notice to Owner.

8.4. In the event of a violation of this Covenant involving a Transfer of the Property, any such sale shall be wholly null and void at its inception and shall then confer no title whatsoever upon the purported transferee. Additionally, Owner shall pay to Habitat, promptly upon written demand, the amount (the "**Indebtedness**") calculated by determining the difference between: (i) the greater of (a) the total consideration paid for the Property to the violating Owner, or (b) one hundred twenty percent (120%) of the Fair Market Value of the Property at the time of the violation; and (ii) the then-applicable Maximum Resale Price. The Indebtedness shall bear interest at the maximum interest rate authorized by law beginning on the date of the violation of this Covenant.

8.5. This Covenant shall be, and be deemed to be, an evidence of debt as defined in C.R.S. 38-38-100.3 (or any successor legislation). Owner's obligations under this Covenant shall be secured by, and Habitat is entitled to the benefits of, a deed of trust reasonably acceptable to Habitat to be executed by Owner concurrently with the Initial Sale for the benefit of Habitat and recorded in the office of the Clerk and Recorder of the City and County of Denver, Colorado.

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8.6. The obligation to pay the Indebtedness shall run with the land and shall be binding upon Owner and its successors in title to the Property, regardless of whether the violation triggering the obligation to pay the Indebtedness occurred while title to the Property was held by Owner or a prior Owner. Each Owner (except for Habitat) shall be jointly and severally liable with all prior Owners for the payment of the Indebtedness, without prejudice to any such Owner's right to recover from any other Owner. Any liability for the payment of the Indebtedness that arises during the Term shall survive the termination of this Covenant. Any Owner can avoid such continuing liability by, upon their Transfer of the Property, obtaining an Affordability Certificate and requiring the transferee to expressly assume, by document recorded in the office of the Clerk and Recorder of the City and County of Denver, Colorado, the obligations imposed on Owner under this Covenant and any deed of trust securing this Covenant. In such event, liability of the transferring Owner for any breach of this Covenant will automatically terminate and any transferee of the Property shall, by acceptance of the conveyance thereof, be deemed to have agreed to assume such liability from and after the date of the transfer.

8.7. Habitat shall have the right to enforce the terms and provisions of this Covenant. Habitat shall provide written notification to the Executive Director of the Department of Housing Stability of the City and County of Denver of any violation or default in the terms of this Covenant, and the date in which the violation or default occurred. In the event Habitat has not commenced any action to enforce the provisions of this Covenant on or before the date that is thirty (30) days from the date on which Habitat becomes aware of any violation or default of the terms of this Covenant, the City and County of Denver shall have the right to enforce the provisions of this Covenant, and Habitat shall cooperate in assigning to the City and County of Denver any and all rights of enforcement hereunder. Notwithstanding the foregoing, Habitat shall have no liability or obligation for not enforcing the provisions of this Agreement.

9. **Term.** The term of this Covenant shall commence on the date of closing of the Initial Sale (**INSERT DATE HERE IF KNOWN**) and shall run concurrently with the term of the “**Sublease**” for the Property entered into by Habitat and the Eligible Buyer at the Initial Sale (the “**Term**”). After the first fifteen (15) year period of the Covenant has lapsed (the “HOME Compliance Period”), Borrower will have satisfied the HUD Program requirements, but the Covenant will remain in full force and effect for the balance of the term. Upon termination of this Covenant, the provisions of this Covenant shall automatically become ineffective without the requirement for further action on the part of any party.

10. **Estoppel Certificates.** Habitat shall at any time and from time to time, upon not less than fifteen (15) days prior request by Owner, execute, acknowledge and deliver a statement in writing certifying that this Covenant is unmodified and in full force and effect, or, if there have been any modifications, that the same is in full force and effect as modified, including a statement as to whether a default exists and, if such a default exists, specifying the nature of the default.

11. **Notice.** All notices given by Owner or Habitat in connection with this Covenant must be in writing. Any notice to Owner in connection with this Covenant shall be deemed to have

## Exhibit D

been received by Owner five (5) days following deposit in the mail by first class mail or when actually delivered to Owner's notice address if sent by other means. Notice to any one Owner shall constitute notice to all Owners unless applicable law expressly requires otherwise. The notice address for Owner shall be the street address of the Property. Any notice to Habitat shall be given by delivering it or by mailing it by first class mail to Habitat's address stated herein unless Habitat has designated another address by notice to Owner. Any notice in connection with this Covenant shall not be deemed to have been given to Habitat until actually received by Habitat. If any notice required by this Covenant is also required under applicable law, the applicable law requirement will satisfy the corresponding requirement under this Covenant.

### 12. *General Provisions.*

12.1. *Time Periods.* In the event the last day permitted for the performance of any act required or permitted under this Covenant falls on a day other than a Business Day, the time for such performance will be extended to the next succeeding Business Day. Each time period under this Covenant will exclude the first day and include the last day of such time period.

12.2. *Modifications; Waiver.* This Covenant may not be modified or discharged in any respect except by a further Covenant in writing duly executed by Habitat or its successors and assigns, and with approval of an authorized representative of the City's Department of Housing Stability (or its successor). Any consent, waiver, approval or authorization will be effective only if in writing duly executed by Habitat or its successors and assigns and the City representative. No waiver shall be deemed a continuing waiver with respect to any breach or default, whether of similar or different nature, unless expressly stated in writing.

12.3. *Severability.* The invalidation or unenforceability in any circumstances of any of the provisions of this Covenant will in no way affect any of the other provisions hereof, which will remain in full force and effect.

12.4. *Liberal Construction; Descriptive Headings.* This Covenant shall be liberally construed in favor of maintaining affordable housing in a manner consistent with Habitat's nonprofit mission. The section headings and subheadings identified herein are for reference purposes only and shall not be used to interpret the meaning of any provision hereof.

12.5. *Attorneys' Fees and Costs.* The substantially prevailing party in any legal proceeding (including but not limited to any arbitration, mediation or other form of procedure, whether or not brought to final termination) brought to enforce rights hereunder shall recover from the other party to such proceeding its reasonable attorneys' fees and costs, whether or not incurred before or after the demand for such proceeding.

12.6. *Governing Law.* This Covenant, including all questions concerning the construction, validity and interpretation of this Covenant, and the exhibits hereto, will be governed under and controlled pursuant to the internal laws, and not the law of conflicts, of the State of Colorado.

## Exhibit D

13. **Property Interests.** Any and all references herein to a purchase and/or a sale of the Property shall include a sublease of the Leasehold Estate and a special warranty deed transferring and conveying the Improvements.

IN WITNESS WHEREOF, Habitat has executed this Covenant as of the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

**HABITAT FOR HUMANITY OF METRO DENVER, INC.**, a Colorado nonprofit corporation

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

STATE OF COLORADO                                    )  
  ) ss.  
CITY AND COUNTY OF DENVER                    )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by \_\_\_\_\_ as \_\_\_\_\_ of Habitat for Humanity of Metro Denver, Inc., a Colorado nonprofit corporation.

WITNESS my hand and official seal.

[seal]

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

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

**EXHIBIT A-1**  
**LEASEHOLD ESTATE**

**[TO BE SAME PARCEL OF LAND SUBLEASED TO BUYER; NOT THE ENTIRETY OF  
THE PROPERTY LEASED TO HABITAT]**



**EXHIBIT B**  
**FORM OF**  
**MEMORANDUM OF**  
**NOTICE OF VOIDABLE TITLE TRANSFER AND COVENANT FOR THE**  
**OCCUPANCY AND RESALE PRICE RESTRICTIONS AND RIGHT OF REPURCHASE**  
**AND**  
**ASSUMPTION OF DEED OF TRUST**

\_\_\_\_\_ (“**Purchaser**”) is purchasing the improvements located upon a leasehold interest in the real property located at \_\_\_\_\_ and more particularly described on Exhibit A attached hereto and which is incorporated herein by this reference (“**Property**”). The leasehold interest and the improvements are subject to the Notice of Voidable Title Transfer and Covenant for the Occupancy and Resale Price Restrictions and Right of Repurchase (the “**Covenant**”) dated \_\_\_\_\_, 202\_\_ for the benefit of Habitat for Humanity of Metro Denver, Inc., a Colorado nonprofit corporation (“**Habitat**”), and recorded in the Denver County real property records on \_\_\_\_\_, at Reception No. \_\_\_\_\_. Unless otherwise defined herein, all capitalized terms in this Memorandum shall have the meanings set forth in Covenant.

Purchaser hereby acknowledges the Covenant and agrees to perform and be bound by all of the terms, conditions and restrictions set forth in the Covenant in the capacity as an “Owner” as defined therein. Purchaser further hereby assumes and agrees to perform and be bound by all the terms and conditions contained in the Deed of Trust granted to the Public Trustee of Denver County for the benefit of Habitat and recorded in the Denver County real property records on \_\_\_\_\_, at Reception No. \_\_\_\_\_ as if Purchaser was the original maker, grantor and/or signatory thereunder.

Purchaser hereby acknowledges the Covenant voids title passage if a transfer is attempted which is non-compliant with the affordability restrictions in the Covenant, which, other than transfers to Habitat if Habitat exercises its Repurchase Right as described in the Covenant, include both the Maximum Resale Price and the requirement to sell to an Eligible Buyer. Except for transfers to Habitat in accordance with the Covenant, transfer of the Property for a price that exceeds the Maximum Resale Price, or to a party that is not an Eligible Buyer means title is not transferred (void) and the buyer has no title or ownership of the property.

Purchaser hereby acknowledges that the terms of the Covenant restrict the resale price, with such Maximum Resale Price listed on Exhibit B, attached hereto and which is incorporated herein by reference.

Purchaser hereby acknowledges that the terms of the Covenant limits rentals except as described in the Covenant.

Purchaser hereby acknowledges that the terms of the Covenant do not allow sale of the Property unless Habitat has delivered in writing a determination not to exercise its Repurchase Right.

Habitat hereby acknowledges that it has issued an Affordability Certificate in connection with the purchase of the Property by the Purchaser.

IN WITNESS WHEREOF, Purchaser and Habitat have executed this Memorandum as of the \_\_\_ day of \_\_\_\_\_, 2\_\_.

**PURCHASER**

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

**HABITAT FOR HUMANITY OF METRO DENVER, INC.,** a Colorado nonprofit corporation

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

STATE OF COLORADO )  
 ) ss.  
CITY AND COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_ day of \_\_\_\_\_, 2\_\_, by \_\_\_\_\_.

WITNESS my hand and official seal.

[seal]

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

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

STATE OF COLORADO )  
 ) ss.  
CITY AND COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2\_\_\_\_, by \_\_\_\_\_ as \_\_\_\_\_ of Habitat for Humanity of Metro Denver, Inc., a Colorado nonprofit corporation.

WITNESS my hand and official seal.

[seal]

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

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

**EXHIBIT A**

**The Property**

[LEGAL DESCRIPTION FROM SUBLEASE]

**EXHIBIT B**

**Maximum Resale Price**

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

**ARTICLE I**  
**FEDERAL REQUIREMENTS**

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

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

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

B. “Contractor” means a person or entity that has entered into an Agreement with the City under which the person or entity will receive federal funds under the Home Investment Partnership Program (“HOME”). “Subcontractor” means any person or entity that enters into an agreement or contract with a Contractor.

C. “HOST” means the City’s Department of Housing Stability or a person authorized to act on its behalf.

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

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

**Sec. 101. Cranston-Gonzales National Affordable Housing Act.** This Agreement is subject to Title II of the Cranston-Gonzales National Affordable Housing Act of 1990 (42 U.S.C. 12701-12839), and HUD regulations at 24 C.F.R. Part 92.

**Sec. 102. Uniform Administrative Requirements.** This Agreement is subject to the requirements of 2 CFR Part 200, “Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards” (the “OMB Omni Circular”), and applicable sections of 24 C.F.R. Parts 84 and 85 as they relate to the acceptance and use of Federal funds.

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

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

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

**Sec. 104. Nondiscrimination in Housing Under Title VIII of the Civil Rights Act of 1968.** This Agreement is subject to the requirements of Title VIII of the Civil Rights Act of 1968 (P.L. 90-284), and implementing regulations at 24 C.F.R. 100, prohibiting housing discrimination on the basis of race, color, religion, sex, disability/handicap, familial status, or national origin. The Contractor agrees to carry out the services under this Agreement in a manner so as to affirmatively further fair housing.

**Sec. 105. Nondiscrimination Under Age Discrimination Act of 1975.** This Agreement is subject to the requirements of the Age Discrimination Act of 1975 (42 U.S.C. 6101 *et seq.*) and implementing regulations at 24 C.F.R. 146. Except as provided in the Act, no person shall, on the basis of age, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving funds under this Agreement. The Contractor will include the provisions of the above clause in every subcontract which is paid for in whole or in part with assistance provided under this Agreement.

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

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

**Sec. 108. Nondiscrimination on the Basis of Handicap Under Rehabilitation Act of 1973.** This Agreement is subject to Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), as amended, and regulations at 24 C.F.R. Part 8, providing that no otherwise qualified individual with handicaps in the United States shall, solely by reason of a handicap, be excluded from

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

**Sec. 109. Violence Against Women Reauthorization Act of 2013.** This Agreement is subject to the Violence Against Women Reauthorization Act of 2013, which provides protections to victims of domestic violence in public housing, as well as in housing funded by the HOME program.

**Sec. 110. “Section 3” Compliance in the Provision of Training, Employment and Business Opportunities.**

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

B. The parties to this contract agree to comply with HUD’s regulations in 24 C.F.R. Part 75, which implement section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the Part 75 regulations.

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

D. The Contractor agrees to include this section 3 clause in every subcontract subject to compliance with regulations in 24 C.F.R. Part 75, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 C.F.R. Part 75. The Contractor will not subcontract with any subcontractor where the Contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 C.F.R. Part 75.

E. The Contractor will certify that any vacant employment positions, including training positions, that are filled (1) after the Contractor is selected but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 C.F.R. Part 75



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

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

**Sec. 111. Relocation Assistance and Property Acquisition Requirements.** This Agreement is subject to the relocation and acquisition requirements of the Uniform Relocation Assistance and Real Property Acquisition Policy Act of 1970, as amended, and implementing regulations at 49 C.F.R. Part 24; Section 104(d) of the Housing & Community Development Act, as amended, and implementing regulations at 24 C.F.R. Parts 42 and 92. The Contractor must comply with the City's Anti-Displacement and Relocation Assistance Plan on file.

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

**Sec. 113. Political Activity Prohibited.** None of the funds provided under this Agreement shall be used directly or indirectly for any partisan political activity, or to further the election or defeat of any candidate for public office.

**Sec. 114. Lobbying Prohibited.** None of the funds provided under this Agreement shall be used for publicity or propaganda purposes designed to support or defeat legislation pending before the U.S. Congress.

**Sec. 114(a). Prohibition on Use of Federal Funds for Lobbying; Requirements for Disclosure Statements, and Certification. Section 319, P.L. 101-121.** Any contractor, subcontractor and/or grantee receiving federal appropriated funds certifies by signing this Agreement, in two parts Part I, and Part II and signing and/or entering into any other agreement in connection with this Agreement, to the best of his or her knowledge and belief, that:

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

B. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall

complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

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

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

**Sec. 115. Copyrights.** If this Agreement results in a book or other copyright material, the author is free to copyright the work but HUD and the City reserve a royalty-free, nonexclusive and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, all copyrighted material and all material which can be copyrighted, as stated in 24 C.F.R. 84.36.

**Sec. 116. Patents.** Any discovery or invention arising out of or developed in the course of work under this Agreement shall be promptly and fully reported to HUD for determination as to whether patent protection on such invention or discovery should be sought, and how the rights under any patent shall be allocated and administered in order to protect the public interest.

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

## **ARTICLE II**

### **DISBURSEMENTS AND ACCOUNTING**

**Sec. 201. Eligible and Ineligible Costs.** Costs under this Agreement are governed by the OMB Omni Circular as applicable. All costs incurred by the Contractor using monies under this Agreement must be reasonable and relate clearly to the specific purposes and end product of the Agreement. To be eligible for reimbursement, expenditures must: (A) Be necessary and reasonable for proper and efficient performance of the contractual requirements and in accordance with the approved budget; (B) Be allocable to Federal awards under the provisions of the OMB Omni Circular; (C) Be authorized or not prohibited under State or local laws or regulations; (D) Conform to any limitations or exclusions set forth in these principles, Federal laws, terms and conditions of the Federal award, or other governing regulations as to types of amounts of cost items; (E) Be consistent with policies, procedures and practices applied uniformly to activities of the City, both Federally assisted and non-Federally assisted; (F) Be accorded consistent treatment—a cost may not be assigned to a Federal award as a direct cost if any other cost incurred for the same purpose

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

The following costs or expenditures by the Contractor are specifically ineligible for reimbursement: bad debts, contingency reserves, contributions and donations, entertainment and fines and penalties.

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

**Sec. 203. Charges Against Project Account.**

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

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

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

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

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

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

**Sec. 204. Method of Payment and Disbursements.** The Contractor must submit properly executed invoices and requests for payment to HOST. The City agrees to establish a payment procedure that will provide funds in a timely and regular manner. When disbursing funds for construction, the City may withhold the final ten percent (10%) of the money made available under the Agreement pending final payment. The Contractor agrees to disburse funds within seventy-two (72) hours of receiving payment from the City.

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

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

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

### **ARTICLE III**

#### **CONSTRUCTION CONTRACTS AND LABOR STANDARDS**

**Sec. 301. Lead-Based Paint Hazards.** The construction or rehabilitation of residential structures with assistance provided under this Agreement is subject to the HUD Lead-Based Paint Regulations, 24 C.F.R. 92.355. The Contractor is responsible for the inspections and certifications required.

**Sec. 302. Davis-Bacon Act.** Except for the construction or rehabilitation of residential property that contains less than twelve (12) HOME units, the Contractor and all subcontractors hired under contracts for more than \$2,000.00 for the construction or repair of any building or work financed in whole or in part with assistance provided under this Agreement, shall comply with the Davis-Bacon Act, 40 U.S.C. 276a to 276a-5, and applicable regulations of the Department of Labor under 29 C.F.R. Part 5, requiring the payment of wages at rates not less than those prevailing on similar construction in the locality as determined by the Secretary of Labor. The current Davis-Bacon wage rate schedule must be included in all bid and contract documents, as well as the “Federal Labor Standards Provisions,” Form HUD-4010.

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

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

**Sec. 304. Anti-Kickback Act.** If this Agreement involves construction or repair, then it is subject to the Copeland “Anti-Kickback” Act of 1934 (40 U.S.C. 276c) and Department of Labor regulations (29 C.F.R. Part 5), prohibiting and prescribing penalties for “kickbacks” of wages. Wages must be paid at least once a week in accordance with the requirements of 29 C.F.R. 5.5.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

#### **ARTICLE IV**

#### **ENVIRONMENTAL AND HISTORIC CONDITIONS**

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

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

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

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

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

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

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

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

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

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

H. Safe Drinking Water Act of 1974, (42 U.S.C. 300h-3), prohibiting federal financial assistance for any project which the Environmental Protection Agency determines may contaminate an aquifer which is the sole or principal drinking water source for an area;

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

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

K. Clean Air Act, (42 U.S.C. 7401 – 7671q, implementing regulations at 40 C.F.R. Part 51), prohibiting federal assistance for any activity which does not conform to the State implementation plan for national primary and secondary ambient air quality standards;



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

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

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

## **ARTICLE V** **TERMINATION**

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

**Sec. 502. Termination for Cause.**

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

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

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

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

**Sec. 505. Return of HOME funds.** Upon termination of this Agreement for any reason, or upon expiration of this Agreement, any HOME funds on hand and any accounts receivable attributable to the use of HOME funds must be immediately returned to the City. If HOME funds are spent on a project that is terminated before completion, the funds must be repaid to the City's HOME Investment Trust Fund.

**ARTICLE VI**  
**MISCELLANEOUS**

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

**Sec. 602. Subject to Local Laws.** This Agreement shall be construed and enforced in accordance with Colorado law, and the Charter and Revised Municipal Code of the City and County of Denver. Venue for any legal action relating to this Agreement shall lie in the District Court in and for the City and County of Denver, Colorado.

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

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

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

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

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

**Sec. 608. Notices.** All notices shall be given by certified mail. Notices to the City shall be separately addressed to the Mayor and the Director of HOST. Either of the parties may designate in writing substitute addresses or persons to receive notices.

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

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