

**LOAN AGREEMENT  
(HOME-ARP)**

**THIS LOAN AGREEMENT**, in two Parts, Part I and Part II, is made between the **CITY AND COUNTY OF DENVER**, a municipal corporation organized pursuant to the Constitution of the State of Colorado (“City”), and **RENEWAL VILLAGE HOUSING CORPORATION**, a Colorado nonprofit corporation, whose address is 2111 Champa Street, Denver, Colorado 80205 (“Borrower”), each a “Party” and collectively the “Parties.”

**WITNESSETH:**

**WHEREAS**, the City is acting pursuant to federal grant conditions with respect to federal assistance provided to the City pursuant to the Home Investment Partnership Program (“HOME Program”) and Section 3205 of the American Rescue Plan (P.L. 117-2) (“HOME-ARP”);

**WHEREAS**, through HOME-ARP, the U.S. Congress authorized the use of HOME-ARP funds to provide housing, shelter, and services to specific qualifying populations;

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

**WHEREAS**, the funds provided to Borrower pursuant to this Loan Agreement will be used by Borrower for the partial repayment of the acquisition bridge loan for the Property;

**WHEREAS**, the Property will operate 108 affordable rental units and 107 non-congregate shelter units (the “Project”), which will be known as Renewal Village; and

**WHEREAS**, the City is making certain monies available to Borrower to ensure that the Project is developed and operates on the Property; and

**WHEREAS**, Borrower is eligible to receive HOME-ARP funds from the City 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 Loan Agreement, the City agrees to lend Borrower the sum of Ten Million Four Hundred Twenty Thousand Three Hundred Thirty-One Dollars and NO/100 (\$10,420,331.00) (the “Loan”). In addition to this Loan Agreement, Borrower will execute a promissory note in a form satisfactory to the City evidencing this Loan (the “Promissory Note”). The Loan will mature and be due and payable on the 60<sup>th</sup> anniversary of the

Promissory Note (“Maturity Date”), if not paid sooner. The outstanding principal balance of the Loan shall bear simple interest at a rate of 0% per annum until paid in full or forgiven in accordance with the terms hereof. Repayment shall be forgiven by the City on the Maturity Date so long as Borrower is in compliance with the terms and conditions of this Loan Agreement.

2. **SECURITY**: Repayment of the Promissory Note shall be secured by a Deed of Trust in form satisfactory to City (the “Deed of Trust”), granted by Borrower and encumbering the real property known and numbered as 200 W. Warner Place, Denver, Colorado 80216 and legally described as set forth in Exhibit D (the “Property”).

3. **SUBORDINATION**:

A. **City’s Subordination of Deed of Trust and Covenant**.

i. The Executive Director or the Executive Director’s designee (the “Executive Director”) of the City’s Department of Housing Stability (“HOST”) is authorized to execute documents necessary to subordinate the lien of the Deed of Trust and Covenant so long as (i) the subordination agreement is substantially in the form attached hereto as **Exhibit E**; (ii) encumbrances prior to the Deed of Trust do not exceed Eleven Million Dollars and NO/100 (\$11,000,000.00); (iii) Borrower is not then in default of its obligations pursuant to this Loan Agreement, the Promissory Note, Covenant, or Deed of Trust; and (iv) all additional financing for the Project is committed.

ii. The Executive Director is authorized to execute documents necessary to subordinate the lien of the Deed of Trust and Covenant to land use restriction agreements (“LURAs”) such as, but not limited to, the LURA required by the Colorado Housing and Finance Authority, so long as (i) the subordination agreement is in the form acceptable to the City Attorney; (ii) encumbrances prior to the Deed of Trust do not exceed Eleven Million Dollars and NO/100 (\$11,000,000.00); (iii) Borrower is not then in default of its obligations pursuant to this Loan Agreement, the Promissory Note, Covenant, or Deed of Trust.

B. **Other Documents**. The Executive Director is authorized to execute documents necessary to accomplish the Loan so long as (i) such documents are in a form satisfactory to the City Attorney; (ii) encumbrances prior to the Deed of Trust do not exceed Eleven Million Dollars and NO/100 (\$11,000,000.00); (iii) Borrower is not then in default of its obligations pursuant to this Loan Agreement, the Promissory Note, Covenant, or Deed of Trust.

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

A. Loan proceeds will be used for the partial repayment of the acquisition bridge loan for the Property. The Project budget and construction timeline shall be substantially similar to details set forth in **Exhibit A**, attached hereto and incorporated herein. Borrower shall submit to the City requisitions with documentation of incurred costs on HOST approved forms, and otherwise comply with the disbursement terms and conditions forth in **Exhibit B** attached hereto and incorporated herein.

B. No funds will be disbursed until Borrower has complied with all federal environmental and historic preservation clearances as certified by HOST in writing. The City's disbursement of funds is subject to availability of funds from the U.S. Department of Housing and Urban Development ("HUD") through its Cash Management System.

C. HOST shall retain Ten Thousand Dollars and No/100 Dollars (\$10,000.00) of the total funds to be disbursed under this Loan Agreement (the "Compliance Retainer"). This amount shall be released upon receipt from Borrower of all information necessary for the City's reporting requirements under HOME-ARP.

D. Expenses incurred prior to November 10, 2022 are not eligible for reimbursement.

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

A. Borrower must satisfy all conditions set forth in this Loan Agreement on or before December 22, 2023 (the "Closing Deadline"). Failure to meet this deadline may result in the termination of this Loan Agreement at the Executive Director's sole discretion. No funds shall be disbursed under this Loan Agreement until such time as (i) all conditions of this Loan Agreement have been met and (ii) Borrower has closed on all financing necessary to complete the Project.

B. Borrower agrees that (a) documentation for all draw down requests will be submitted no later than twenty-four (24) months after the date of the Promissory Note and (b) Borrower shall complete the Project within a twenty-four (24) month period after the date of the Promissory Note. These deadlines may be extended with the written approval of HOST. All cost overruns and/or funding shortfalls shall be the sole responsibility of 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 USE OF PROPERTY:**

A. Housing Units. Borrower agrees to provide 108 income-restricted residential dwelling units at the Property (the “Affordable Units”).

i. Affordability Limitations.

1. Fifty-Four (54) of the units at the Property (the “50% Units”) shall have tenant rents not exceeding the lesser of (i) fair market rent for comparable units in the area as established by HUD, under 24 C.F.R. 888.113, or (ii) a rent that does not exceed 30% of the adjusted income of a family whose annual income equals 50% of the median income for the Denver area, as determined by HUD, with adjustments for number of bedrooms in the unit. All fifty-four (54) of the 50% Units shall be considered “HOME-ARP Units” for a period of fifteen (15) years from the date of project completion as defined in 24 C.F.R. § 92.2 and be subject to the HOME-ARP requirements and the HOME-ARP provisions in subsection (iii.) below.

2. Fifty-Four (54) of the units at the Property (the “30% Units”) shall have tenant rents not exceeding the lesser of (i) fair market rent for comparable units in the area as established by the HUD, under 24 C.F.R. 888.113, or (ii) a rent that does not exceed 30% of the adjusted income of a family whose annual income equals 30% of the median income for the Denver area, as determined by HUD, with adjustments for number of bedrooms in the unit. Fourteen (14) of the 30% Units shall be considered “HOME-ARP Units” for a period of fifteen (15) years from the date of project completion as defined in 24 C.F.R. § 92.2 and be subject to the HOME-ARP requirements and HOME-ARP provisions in subsection (iii.) below.

3. By executing this Loan Agreement, Borrower acknowledges receipt of HUD's current rent guidelines from HOST. It shall be Borrower's responsibility to obtain updated guidelines from HOST to confirm the annual calculation of the maximum rents for the Denver area.

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

ii. Occupancy/Income Limitations.

1. The 50% Units shall be occupied by tenants whose incomes

are at or below fifty percent (50%) of the median income for the Denver area as determined by HUD, with adjustments for family size.

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

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

iii. HOME-ARP Compliance. As detailed in Section IV of Notice: CPD-21-10, “Requirements for the Use of Funds in the HOME-American Rescue Plan Program (the “Implementation Notice”), HOME-ARP requires that funds be used to primarily benefit individuals and families in specified “qualifying populations.” Any individual or family who meets the criteria for these populations is eligible to receive assistance or services funded through HOME-ARP without meeting additional criteria (e.g., additional income criteria). Homeless persons are a qualifying population. If the project is targeted to the defined homeless population, meeting the homelessness criteria satisfies eligibility without regard to income requirements. Seventy percent (70%) of all HOME-ARP Units will admit households based only upon their status as being within the qualifying population. HOME-ARP Units must be occupied by households that meet the definition of a qualifying population at the time of admission to the HOME-ARP Unit. A qualifying household after admission retains its eligibility to occupy a HOME-ARP Unit restricted for qualifying populations, irrespective of the qualifying household’s changes in income or whether the household continues to meet the definition of a qualifying population. A HOME-ARP Unit restricted for a qualifying household remains in compliance with the HOME-ARP restrictions as long as the unit is occupied by a qualifying household that met the definition of a qualifying population at the time of admission.

iv. Designation of Units. All of the Affordable Units are floating, and are designated as follows:

<b>BEDROOMS</b>	<b>30% Units</b>	<b>50% Units</b>
Studio	54	54
<b>TOTAL</b>	54	54

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

B. Non-Congregate Shelter Units. Borrower agrees to provide 107 non-congregate shelter units at the Property (the “NCS Units”).

i. Operating Requirements.

1. Borrower must make a minimum of eighty percent (80%) of the NCS Units available for shelter guests. “Available” means that a room is operational and not otherwise unavailable for occupancy due to repairs, maintenance, or similar activities. Rooms that are being cleaned or turned over when a guest vacates the room will be considered “available” so long as they can be occupied by another guest within twenty-four (24) hours of the guest vacating the room.

2. Borrower must obtain the written approval from the Executive Director of HOST prior to converting any room or area being used as non-congregate or congregate shelter to another use.

3. Borrower must have or retain a service provider that provides a minimum of three (3) staff members on site and working at the Project at all times.

4. Borrower must employ staff or retain a service provider that assists shelter guests with rehousing. Staff satisfying this requirement may include case managers, housing advocates, or other similar positions so long as the staff member’s responsibilities include assisting guests with rehousing. Borrower or its service provider must have a minimum ratio of staff focusing on rehousing at the Project as follows: if the Project serves individuals, there must be a minimum of 1:50 staff-to-guest ratio; if the Project serves families, there must be a minimum of 1:40 staff-to-guest ratio; and if the Project serves minors and transitional aged youth, there must be a minimum of 1:30 staff-to-guest ratio.

ii. Conversion of NCS Units to Affordable Rental Housing. Borrower may convert the NCS Units to affordable housing units with the written approval of the Executive Director of HOST. Any conversion of NCS Units will require a written affordable housing agreement approved and executed by the Executive Director of HOST and Borrower or any successor owner of the Property. The Executive Director may consent to the amendment of the Covenant to memorialize the terms of the affordable housing agreement. If Borrower does not seek and obtain Executive Director approval for the conversion of the NCS Units to affordable rental housing, NCS Units shall continue to be used as a non-congregate shelter for the term of the Covenant.

C. Covenant Running with the Land. At closing, Borrower shall execute a covenant in form satisfactory to the City (“Covenant”), setting forth the use restrictions described in this section. The Covenant shall be recorded in the real estate records of the City and County of Denver and shall constitute a covenant running with the land. The Covenant shall encumber the Property for sixty (60) years from the date of project completion as defined in 24 C.F.R. § 92.2. After the first 15-year period of the Covenant has lapsed, Borrower will have satisfied the HUD and HOME-ARP requirements applicable to the HOME-ARP Units. The HOME-ARP Units shall continue to be considered 50% Units and 30% Units, respectively, and such units shall continue to be subject to the Covenant and rental and occupancy restrictions applicable to such units for the remainder of the term of the Covenant. The NCS Units shall also continue to be subject to the covenant and the requirements set forth in this section for the remainder of the term of the Covenant. Violation of said Covenant shall be enforceable as an event of default pursuant hereto.

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

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

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

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

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

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

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

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

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

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

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

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

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



or negligent.

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

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

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

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

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

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

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

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

**13. MANAGEMENT OF PROPERTY**: Borrower shall provide and maintain good and efficient management of the Property satisfactory to the City. Borrower must execute and maintain in effect a management agreement for the Project with a qualified manager that has experience with

affordable housing. Borrower shall notify the City of any (i) changes to the manager of the Property and (ii) of any significant changes staffing changes to the manager.

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

A. Examination of Records: Borrower agrees that the Comptroller of the United States, HUD, the City, or any of their duly authorized representatives shall, until the expiration of five (5) years after the expiration of the affordability period set forth in Section 6, have access to and the right to examine any directly pertinent books, documents, papers, and records of Borrower involving transactions related to this Loan Agreement. Borrower must also require its contractors and subcontractors to allow access to such records when requested. The records maintained by Borrower shall include, without limitation, (i) records evidencing the income of each family occupying an Affordable Unit, and (ii) a copy of the lease pursuant to which each Affordable Unit is occupied.

B. Required Information and Reports.

i. Affordable Units.

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

2. Borrower must report data and information housing services and outcomes in the Homeless Management Information System ("HMIS") in accordance with and

subject to the HMIS reporting conditions established below for NCS Units.

ii. NCS Units. Borrower must report data and information on shelter utilization and shelter outcomes in HMIS. HOST may modify the data reporting requirements that Borrower must submit into the HMIS. HOST will provide Borrower with written notice at least thirty (30) days prior to modifying any HMIS reporting requirements. Borrower agrees to fully comply with the rules and regulations, as may be amended, required by HUD which govern the HMIS. Borrower, in addition to the HUD requirements, must conform to the HMIS policies and procedures established and adopted, and as may amended or updated, by the MDHI Continuum of Care. The current policies and procedures are outlined in the COHMIS Policies and Procedures, and the COHMIS Security, Privacy and Data Quality Plan. Borrower's aggregate HMIS data may be shared with the funder and the community to improve system performance and assist with monitoring. MDHI will monitor HMIS related compliance and performance on an annual basis through a site visit. HOST will monitor program performance and contract compliance on an annual basis. Technical assistance and training resources for the HMIS are available to the Borrower via the COHMIS Helpdesk. HMIS data will be used to monitor this contract. HMIS reports may be sent to HOST directly from MDHI. Borrower will also have access to all reports generated for this contract. HOST may request aggregate data from MDHI for City related reporting needs.

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

**15. FINANCIAL STATEMENTS**: Borrower must furnish to the City annually, by June 1 or within thirty (30) days of a request by HOST, the most recently available 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.

**16. TRANSFERS**: Borrower acknowledges that the City has examined and relied on the experience of Borrower and its general partners, directors, and members in owning and operating affordable housing projects and shelters, such as the Project, in agreeing to make the Loan, and the

City will continue to rely on Borrower's ownership and control of the Property and Project as a means of maintaining the affordability requirements and the value of the Property as security for repayment of the Loan. Without the prior written consent of the City, which may not be unreasonably withheld, Borrower shall not: (i) sell, convey, assign, or otherwise transfer or dispose of the Property or any part thereof (other than leases to tenants); or (ii) sell, convey, assign, or otherwise transfer any interest in Borrower; or (iii) change the control or management of Borrower.

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

**18. MAINTENANCE AND REPLACEMENT:** The owner of the Project shall maintain the Property in compliance with all applicable housing quality standards and local code requirements. Newly constructed or substantially rehabilitated housing must meet applicable requirements referenced at 24 C.F.R. 92.251.

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

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

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

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

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

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

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

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; and Covenant.** Borrower must execute and deliver to the closing agent the Promissory Note. Borrower must execute and deliver to the closing agent for recordation the Covenant and 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 Loan Agreement.

J. **Construction Budget; 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

21. **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 Loan Agreement, the Promissory Note, Deed of Trust, or Covenant. Borrower agrees to pay reasonable loan closing costs, including all recording charges, title insurance charges, costs of

surveys, costs for certified copies of instruments, costs incurred for obtaining any documents or reports required pursuant to this Loan Agreement, and all other costs incurred by the City in connection with the Loan.

**22. CONDITIONS:**

A. This Loan Agreement is subject to the HOME-ARP Grant Agreement entered into between the City and HUD; the Cranston-Gonzalez national Affordable Housing Act (42 U.S.C. 12701 *et seq.*); the federal regulations at 24 C.F.R. Part 92; and the Implementation Notice, all of which constitute a part of this Loan Agreement. The obligation of the City to lend the above sums is limited to funds appropriated for the purpose of this Loan Agreement by the U.S. Congress and City Council and paid into the City treasury.

B. This Loan Agreement is subject to the terms and conditions set forth in Part II, which are incorporated herein.

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

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

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

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

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

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

E. Borrower shall maintain Automobile Liability with minimum limits of \$1,000,000 combined single limit applicable to all owned, hired and non-owned vehicles used in

performing services under this Agreement.

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

**24. DEFENSE & INDEMNIFICATION:**

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

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

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

D. Insurance coverage requirements specified in this Loan Agreement shall in no way lessen or limit the liability of 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 Loan Agreement.

**25. DEFAULT AND ACCELERATION:**

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

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

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

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

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

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

vi. Borrower is generally unable to pay its debts as they become due, or shall make an assignment for the benefit of creditors; or 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 Loan 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 Loan Agreement, the term “monetary default” means a failure by Borrower to make any payment required of it pursuant to the applicable Promissory Note or any other Loan document, and the term “nonmonetary default” means a failure by Borrower or any other person to perform any obligation contained in the Loan Agreement, Covenant, Collateral Assignment, 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 Collateral Assignment. Borrower agrees to pay a late fee of five percent (5%) of any installment not received on or before the day the installment is due. Upon default and if the default remains after the Cure Period, the principal shall draw interest at the rate of fifteen percent (15%) per annum. If any of the Loan funds have not been disbursed to Borrower, the City may suspend or terminate the Loan Agreement, in whole or in part, and withhold one hundred percent (100%) of any undisbursed funds.

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

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

Renewal Village Housing Corporation  
2111 Champa Street  
Denver, Colorado 80205  
Attn: General Counsel

With a copy to:

Renewal Village Housing Corporation

2111 Champa Street  
Denver, CO 80205  
Attn: Chief Real Estate Officer

If written notice of a default, with a copy to:

Colorado Coalition for the Homeless  
2111 Champa Street  
Denver, CO 80205  
Attn: Chief Executive Officer

and if to the City at:

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

With a copy to:

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

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

**27. SECTION 3 COMPLIANCE:** This Loan 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.

**28. AUDIT REQUIREMENT:** Non-profit organizations that expend Seven Hundred Fifty Thousand Dollars and 00/100 (\$750,000.00) 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, Costs Principles, and Audit Requirements for Federal Awards" and applicable federal regulations.

**29. CERTIFICATION REGARDING DEBARMENT, SUSPENSION,**

**INELIGIBILITY AND VOLUNTARY EXCLUSION:**

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

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

**30. ASSIGNMENT AND SUBCONTRACTING:** The City is not obligated or liable under this Loan 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 Loan Agreement except upon prior written consent of the City. The Parties acknowledge that Colorado Coalition for the Homeless, a Colorado nonprofit corporation, may be the service provider as contemplated by Section 6.

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

**32. 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 groundbreaking and openings.

**33. 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.

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

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

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

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

**38. NO DISCRIMINATION IN EMPLOYMENT:** In connection with the performance of work under this Loan 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.

**39. RECITALS:** All of the recitals above are hereby confirmed and incorporated herein

as part of this Loan Agreement.

**40. ELECTRONIC SIGNATURES AND ELECTRONIC RECORDS:**

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

List of Exhibits to Loan Agreement

Exhibit A – Project Timeline and Costs

Exhibit B – Disbursement Terms & Conditions

Exhibit C – Affirmative Marketing Program

Exhibit D – Legal Description of Property

Exhibit E – Form of Subordination Agreement

Part II

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

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

HOST-202366697-00  
RENEWAL VILLAGE HOUSING CORPORATION

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-202366697-00  
RENEWAL VILLAGE HOUSING CORPORATION

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-202366697-00  
RENEWAL VILLAGE HOUSING CORPORATION

By: 

Name: Britta Fisher  
(please print)

Title: President  
(please print)

ATTEST: [if required]

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

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

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



EXHIBIT A

**Project Timeline & Funding - Renewal Village**  
200 W. Warner Place, Denver

Construction financing closes	N/A
General Contractor notice to proceed	May 2023
Construction completion	December 2023
Lease-up completion date of restricted units	May 2024
HOST Payments begin (if repaying)	N/A

<b>SOURCES AND USES (Permanent)</b>					
<b>Sources</b>	<b>Total</b>	<b>%</b>	<b>Uses</b>	<b>Total</b>	<b>%</b>
HOST Loan	\$10,420,331	38.2%	Land/Buildings	\$ 21,000,000	76.9%
DOH Loan	\$10,579,699	38.8%	Hard Costs	\$ 4,310,000	15.8%
Deferred Developer Fee	\$500,000	1.8%	Soft Costs	\$ 371,000	1.4%
Congressionally Designated Funding		0.0%	Developer Fee	\$ 1,619,000	5.9%
CCH Equity	\$1,999,970	7.3%	Reserves	\$ -	
Adams County Grant	\$3,800,000	13.9%			
	<b>\$27,300,000</b>	<b>100.0%</b>	<b>Total</b>	<b>\$ 27,300,000</b>	<b>100.0%</b>

## EXHIBIT A

### Construction Budget

<i>Land &amp; Buildings</i>	<i>Amount</i>	<i>Reimbursable</i>
<b>Land</b>		
Existing Structures*	\$ 21,000,000	
Demolition		
	\$ 21,000,000	yes
<i>Site Work</i>		
On Site Work		
Off Site Work (other planning requirements)		
	\$ -	no
<i>Rehab. &amp; New Construction</i>		
New Structures		
Rehabilitation	\$ 3,638,750	
Accessory Structures		
Green Systems (Solar, Geothermal, Other, etc.)		
General Requirements		
Contractor Overhead	\$ 661,250	
Contractor Profit		
Contractor Construction Contingency		
Owner Hard Cost Contingency	\$ -	
Furniture, Fixtures, & Equipment		
Building Permits	\$ 10,000	
Materials Inspection and Testing		
Other (Specify)		
Other (Specify)		
	\$ 4,310,000	no
<i>Professional Fees</i>		
Architect, Design	\$ 200,000	
Architect Construction Management/Admin		
Landscape Design		
Structural Engineering		
Civil Engineering		
Other Engineering		
Surveyor		
Attorney, Real Estate		
Green Consultant		
Green Charrette		
Construction Accounting		
Interior Design		
Consultant		
Other (Specify)		
	\$ 200,000	no

# EXHIBIT A

<i>Construction Interim Costs</i>		
Hazard & Liability Insurance	\$ -	
Builder's Risk Insurance	\$ -	
Perform. & Pymt Bonds		
Construction Interest		
Constr. Origination Fees		
Tap Fees (Water/Sewer)		
Impact fees/Permits		
Materials Testing		
Power and Telecom Provider fees		
3rd Party/Bank Inspections/Admin		
Title & Recording	\$ 70,000	
Construction Lender Legal Fees		
Prop. Taxes During Construction		
Bridge Loan		
Ineligible Construction Interest		
Rate Lock		
Construction Loan Fee	\$ 70,000	no
<i>Permanent Financing</i>		
Bond Premium		
Bond Issue 30-day lag reserve		
Bond Cost of Issuance		
Discount Points		
Perm Loan Origination		
Credit Enhancement		
Title & Recording		
Legal Fees		
Prepaid MIP		
Forward Rate Lock		
Conversion Fee		
CHFA Appraisal		
Perm Loan Fee		
CHFA Construction Monitoring Fee	\$ -	no
<i>Soft Costs</i>		
Marketing/Leasing Costs		
Cost Estimating/Capital Needs Assessment	\$ 12,000	
Geotechnical/Soils Study		
Appraisal	\$ 24,000	
Market Study		
Environmental Study (Phase 1, Phase 2, Lead, Asbestos, etc.)	\$ 15,000	
Other Studies (traffic, wetlands, etc.)		
Tax Credit Fees		
Compliance Fees		
Cost Certification		
Green Certification Fees (LEED Certification, etc.)		
Relocation - Temporary		
Relocation - Permanent		
Soft Cost Contingency	\$ 50,000	
Other (Specify)		
Other (Specify)		
Other (Specify)	\$ 101,000	no
<i>Syndication Costs</i>		
Organization Costs		
Tax Opinion		
Syndication Legal Fees		
Other (Specify)		
Other (Specify)		
Other (Specify)	\$ -	no
<i>Developer Fees</i>		
Developer Fee	\$ 1,619,000	
Developer Overhead		
Developer Profit		
Third Party Development Management/Owner's Rep		
Financial/Tax Credit Consultant, Application Preparation, etc.		
Other Consultant Fees	\$ 1,619,000	no
<i>Project Reserves</i>		
Rent-up Reserves		
Operating Reserves		
Replacement Reserves		
Debt Service Reserves		
Other (Specify)		
Other (Specify)	\$ -	no
<b>Total</b>	<b>\$ 27,300,000</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 90% of hard expenses for each Disbursement and all of the soft expenses. The retained 10% of hard expense (the “Retainage”) shall be disbursed as all or part of the final Disbursement under the terms described in Section II.

## 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**  
**(Affirmative Marketing)**

**City and County of Denver**  
**Affirmative Marketing Program**

The City and County of Denver is committed to the goal of adequate housing for all its citizens and to affirmatively furthering fair housing opportunities. The City has developed written material explaining the City's Housing Programs for dissemination and will inform the public, owners, and potential tenants about Federal fair housing laws. These materials will display the "equal housing opportunity" slogan and logo. The City will also publicize its Housing programs through press releases, solicitations to property owners and written communications to fair housing groups and local lenders. The City will display the "equal housing opportunity" slogan on all such communications.

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

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

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

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

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

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

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

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

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

## **Exhibit D**

### **LEGAL DESCRIPTION**

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

THAT PART OF THE NORTHEAST 1/4 OF THE NORTHWEST 1/4 OF SECTION 22, TOWNSHIP 3 SOUTH, RANGE 68 WEST OF THE 6TH PRINCIPAL MERIDIAN, DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT THIS IS 235.65 FEET EAST OF AND 65 FEET SOUTH OF THE NORTHWEST CORNER OF THE NORTHEAST 1/4 OF THE NORTHWEST 1/4 OF SAID SECTION 22;

THENCE EAST PARALLEL WITH AND 65 FEET SOUTH OF THE NORTH LINE OF THE NORTHEAST 1/4 OF THE NORTHWEST 1/4 OF SAID SECTION 22, A DISTANCE OF 441.86 FEET;

THENCE SOUTHERLY, A DISTANCE OF 206.7 FEET, MORE OR LESS, TO A POINT THAT IS 270.33 FEET SOUTH OF AND 654.0 FEET EAST OF THE NORTHWEST CORNER OF THE NORTHEAST 1/4 OF THE NORTHWEST 1/4 OF SECTION 22;

THENCE SOUTHWESTERLY ON A CURVE TO THE RIGHT HAVING A RADIUS OF 536.6 FEET, A DISTANCE OF 479.37 FEET, MORE OR LESS, TO A POINT THAT IS 629.36 FEET SOUTH OF AND 360.75 FEET EAST OF THE NORTHWEST CORNER OF THE NORTHEAST 1/4 OF THE NORTHWEST 1/4 OF SAID SECTION 22;

THENCE SOUTHWESTERLY, A DISTANCE OF 135 FEET, MORE OR LESS, TO A POINT THAT IS 235.65 FEET EAST OF AND 647.0 FEET NORTH OF THE SOUTHWEST CORNER OF THE NORTHEAST 1/4 OF THE NORTHWEST 1/4 OF SAID SECTION 22;

THENCE NORTH, A DISTANCE OF 610.00 FEET, MORE OR LESS, TO THE POINT OF BEGINNING,

CITY AND COUNTY OF DENVER, STATE OF COLORADO.

Purported address (for information only): 200 W. Warner Place

# Exhibit E

## SUBORDINATION AGREEMENT

THIS SUBORDINATION AGREEMENT (this "Agreement") dated [INSERT DATE], is made between the **CITY AND COUNTY OF DENVER**, a municipal corporation of the State of Colorado, the present holder of a certain deed of trust, whose address is Department of Housing Stability, 201 W. Colfax Ave., Dept. 615, Denver, Colorado 80202 (the "Junior Lender") and [INSERT LENDER NAME], a [INSERT STATE][INSERT ENTITY TYPE], whose address is [INSERT LENDER'S ADDRESS] (the "Senior Lender").

### PRELIMINARY STATEMENTS

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

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

B. The Senior Lender plans to grant Borrower a loan of \$[INSERT NUMERIC AMOUNT], which loan will be evidenced by a Promissory Note ("Senior Note") in like amount and secured by a deed of trust ("Senior Deed of Trust") which will cover and encumber all or part of the Mortgaged Property (the Senior Note together with the Senior Deed of Trust and all other documents evidencing, securing, or executed with the Senior Obligations (defined below) are collectively the "Senior Loan Documents"); and the Senior Deed of Trust is to be recorded in the records of the office of the Clerk and Recorder of [INSERT COUNTY] County, State of Colorado.

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

### AGREEMENT

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

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

"Senior Obligations" means each and every debt, liability and obligation of every type and description that the Borrower may now or at any time hereafter owe to the Senior

Lender in connection with the Senior Deed of Trust, up to the maximum amount of [INSERT PRINCIPAL AMOUNT OF SENIOR LOAN], whether such debt, liability or obligation now exists or is hereafter assumed, created or incurred and whether it is or may be direct or indirect, due or to become due, or absolute or contingent.

"Junior Obligations" means each and every debt, liability and obligation of every type and description that the Borrower may now or at any time hereafter owe to the Junior Lender in connection with the Junior Deed of Trust, whether such debt, liability or obligation now exists or is hereafter assumed, created or incurred and whether it is or may be direct or indirect, due or to become due, or absolute or contingent..

2. Subordination. The Junior Lender hereby agrees that (regardless of any priority otherwise available to the Junior Lender by law or by agreement) any security interest that the Junior Lender might now hold in the Mortgaged Property, is fully subordinate to any security interest that the Senior Lender may now or hereafter hold in the Mortgaged Property up to the maximum amount of [INSERT PRINCIPAL AMOUNT OF SENIOR LOAN].

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

4. Payments Before Default Under Senior Loan Documents. Until the Junior Lender receives notice from the Senior Lender that a default has occurred in connection with the Senior Loan Documents as set forth in Section 8 herein, the Junior Lender shall be entitled to retain for its own account all payments made in connection with the Junior Obligations.

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

6. No Action. Except to the extent that Junior Lender obtains Senior Lender's permission pursuant to the following sentence, the Junior Lender will not commence any action or proceeding with respect to the Mortgaged Property or against the Borrower, will not take possession of, sell or dispose of, or otherwise deal with, the Mortgaged Property, and will not exercise or enforce any other right or remedy that may be available to the Junior Lender against the Borrower or with respect to the Mortgaged Property upon Borrower's default with respect to



the Junior Obligations or Junior Deed of Trust, without the Senior Lender's prior written consent, which shall not be unreasonably withheld or delayed.

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

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

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

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

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

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

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

“JUNIOR LENDER”

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

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

Title: \_\_\_\_\_, Department of Housing Stability

State of Colorado        )  
  ) ss.  
County of                    )

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

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

\_\_\_\_\_

Notary Public

“SENIOR LENDER”

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

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

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

\

State of Colorado            )  
  ) ss.  
County of                    )

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

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

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

Acknowledged by BORROWER:

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

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

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

ATTACHMENT A

[INSERT LEGAL DESCRIPTION]

**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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