

**LOAN AGREEMENT
HOME PROGRAM**

PART I

THIS LOAN AGREEMENT (this “Loan Agreement”), in two parts, Part I and Part II, is made and entered between the **CITY AND COUNTY OF DENVER**, a municipal corporation organized pursuant to the Constitution of the State of Colorado (“City”), and **LARADON WEST, LLC**, a Wisconsin limited liability company, whose address is 200 N. Main Street, Oregon, WI 53575 (“Borrower” or “Contractor”).

WITNESSETH:

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

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

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

1. LOAN TO BORROWER: Subject to the terms of this Loan Agreement, the City agrees to lend Borrower the sum of One Million Eight Hundred Twenty Thousand and No/100 U.S. Dollars (\$1,820,000.00). In addition to this Loan Agreement, the City and Borrower will enter into a promissory note in a form satisfactory to the City evidencing this Loan (the “Promissory Note”) and a covenant securing the Property for use as affordable housing as required by Section 6 hereof (the “Covenant”). Simple interest shall accrue on the outstanding principal balance of the Promissory Note at a rate of one percent (1%) per annum commencing on the date on which the first draw on the Loan is made. Commencing on June 1, 2021, and continuing on June 1 of each year thereafter through June 1, 2038, Borrower shall make an annual amortizing payment of principal and interest of \$70,246 solely from Surplus Cash Flow. “Surplus Cash Flow” means any Cash Flow (as such term is defined in Borrower’s Amended and Restated Operating Agreement dated as of _____, 2018 (the “Operating Agreement”)) for the previous calendar year that remains after payment of the amounts set forth in clauses “First” through “Sixth” of Exhibit A-4 of the Operating Agreement. Borrower shall

send annual audited financial statements to the City in order for the City to verify Borrower's Surplus Cash Flow calculations. In the event Surplus Cash Flow is insufficient to pay in full any annual payment due hereunder, the unpaid balance thereof will be paid from the next available Surplus Cash Flow and simple interest will continue to accrue on unpaid principal. Principal and interest shall be due and payable at such place as may be designated by City. To the extent the full amount of principal and interest due and owing to the City has not been repaid, the entire unpaid balance of principal and accrued interest shall be due and payable on or before June 1, 2038 ("Maturity Date").

2. **SECURITY**: Repayment of the Promissory Note shall be secured by a Leasehold Deed of Trust (the "Deed of Trust"), in form satisfactory to City, granted by Borrower and encumbering the real property known and numbered as 5120 N. Broadway Avenue, Denver, Colorado (the "Property") subject to prior encumbrances not exceeding Eighteen Million and No/100 U.S. Dollars (\$18,000,000.00) in principal amount.

3. **SUBORDINATION**: The Executive Director (the "Executive Director") of the City's Office of Economic Development ("OED"), or permitted designee, is authorized to execute documents necessary to subordinate the lien of the City's Deed of Trust so long as (i) the subordination agreement is substantially in the form attached hereto as **Exhibit D**; (ii) encumbrances prior to the City's Deed of Trust do not exceed \$18,000,000; (iii) Borrower is not then in default of its obligations pursuant to this Loan Agreement, the Promissory Note, or the Deed of Trust; and (iv) all additional financing for the Project is committed.

4. **USE AND DISBURSEMENT OF FUNDS**: Loan proceeds will be used to finance costs associated with development of the Property for use as affordable housing, in accordance with **Exhibit A** attached hereto and incorporated herein. No funds will be disbursed until Borrower has complied with all federal environmental and historic preservation clearances as certified by OED in writing. The Borrower shall submit to the City requisitions with documentation of incurred costs on OED approved forms, and otherwise comply with the financial administration requirements set forth in **Exhibit B** attached hereto and incorporated herein. Where the City's funds are disbursed for construction, (i) the City shall monitor the construction activities for the purpose of verifying eligible costs, and (ii) the City shall retain ten percent (10%) of each disbursement of funds, which retainage shall be released upon final inspection and approval of the City and receipt of proof of release of liens from all applicable

contractors, subcontractors, and suppliers. Acquisition funds, if any, shall be disbursed at a scheduled closing, and the City's warrant shall be payable jointly to Borrower and the seller of the Property. In addition, OED shall retain Ten Thousand and No/100 U.S. Dollars (\$10,000.00) of the total funds to be disbursed under this Loan Agreement, which retainage shall be released upon receipt from Borrower of all information necessary for the U.S. Department of Housing and Urban Development ("HUD") HOME Program reporting. The City's disbursement of funds is subject to availability of funds from HUD through its Cash Management System. These budget items may be revised with the written approval of OED, provided the revised budget does not exceed the amount of the loan. Expenses incurred prior to November 1, 2017 shall not be eligible for reimbursement.

5. DEADLINE FOR DISBURSEMENT OF FUNDS: Borrower agrees that all conditions required hereunder for closing shall be met on or before June 1, 2018, or the Loan Agreement shall then terminate. Borrower further agrees that documentation for all draw down requests will be submitted no later than twenty-four (24) months after loan closing. This timeline includes requests for disbursement of the ten thousand and No/100 U.S. Dollar (\$10,000.00) retainage set forth in Section 4, above. These deadlines may be extended with the written approval of OED.

6. RESTRICTIONS ON USE OF PROPERTY:

A. Affordability limitations. One (1) of the units at the Property (the "High HOME Unit") shall have rents not exceeding the lesser of (i) fair market rent for comparable units in the area as established by the U.S. Department of Housing and Urban Development ("HUD"), under 24 C.F.R. 888.11, or (ii) a rent that does not exceed 30% of the adjusted income of a family whose annual income equals 60% of the median income for the Denver area, as determined by HUD, with adjustments for number of bedrooms in the unit. Two (2) of the units at the Property (the "Low HOME Units") shall have rents not exceeding the lesser of (i) 30% of the annual income of a family whose income equals 50% of the median income for the area, as determined by HUD, with adjustments for number of bedrooms in the unit, or (ii) the HOME Unit rent as calculated above. Seven (7) of the units at the Property (the "Very Low HOME Units") shall have rents not exceeding the lesser of (i) 30% of the annual income of a family whose income equals 50% of the median income for the area, as determined by HUD, with adjustments for number of bedrooms in the unit, or (ii) the HOME Unit rent as calculated above.

The High HOME Unit, Low HOME Units and Very Low HOME Units are referred to herein collectively as the “HOME Units.” By executing this Loan Agreement, Borrower acknowledges receipt of HUD's current rent guidelines from the OED. It shall be Borrower's responsibility to obtain updated guidelines from OED or HUD, and comply with same.

Eighty (80) of the units at the Property (the “City Units”) shall have rents not exceeding the lesser of (i) a rent that does not exceed 30% of the adjusted income of a family whose annual income equals 60% of the median income for the Denver area, as determined by HUD, with adjustments for number of bedrooms in the unit, or (ii) fair market rent for comparable units in the area as established by the HUD.

The City shall determine maximum monthly allowances for utilities and services annually in accordance with 24 C.F.R. 92.252(d)(1). 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 and approval in accordance with 24 C.F.R. 92.252(d)(2) & (f)(2) within ninety (90) days after OED requests rent information from the Borrower.

B. Occupancy/Income Limitations. The High HOME Unit and the City Units shall be occupied by tenants whose incomes are at or below sixty percent (60%) of the median income for the Denver area as determined by HUD pursuant to section 24 C.F.R. 5.609 or any successor regulation. The Low HOME Units shall be occupied by tenants whose incomes are at or below 50% of the median income for the Denver area as determined by HUD pursuant to section 24 CFR 5.609 or any successor regulation. The Very Low HOME Unit shall be occupied by tenants whose incomes are at or below 30% of the median income for the Denver area as determined by HUD pursuant to section 24 CFR 5.609 or any successor regulation. By executing this Loan Agreement, Borrower acknowledges receipt of HUD’s current income guidelines from OED. It shall be Borrower’s responsibility to obtain updated guidelines from OED or HUD, and comply with same.

C. Designation of Units. All of the HOME Units are floating, but shall be comprised of the following unit sizes:

BEDROOMS	Units
1 Bedroom	6
2 Bedroom	2
3 Bedroom	2

TOTAL	10
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Borrower shall provide the initial addresses of the High HOME Units, Low HOME Units, and Very Low HOME Units to the City by the time of project completion.

A. Covenant Running with the Land. At closing, Borrower shall execute a covenant covering the HOME Units (the “HOME Covenant”) and the City Units (the “City Covenant”), each in form satisfactory to the City, setting forth the rental and occupancy limitations described in subparagraphs A and B above, which shall be recorded in the real estate records of the City and County of Denver and which shall constitute a covenant running with the land. The HOME Covenant shall encumber the Property for a period not less than forty (40) years from the date of project completion as defined in 24 C.F.R. 92.2. The forty (40) year term consists of: twenty (20) years as required by HUD, and an additional twenty (20) years as required by the City. After the first twenty (20) years from the date the HOME Covenant is recorded have lapsed, Borrower will have satisfied the minimum requirements imposed by HUD. However, the same covenants will continue to be imposed by the City for an additional twenty (20) years. The City Covenant shall encumber the Property for a period not less than thirty (30) years from the date of project completion. Violation of said City Covenant shall be enforceable as an event of default pursuant hereto.

7. **LEASES** : Borrower shall enter into a written lease with the tenant for a period of not less than one year, unless by mutual agreement between the tenant and the Borrower a shorter period is specified.

8. **PROHIBITED LEASE TERMS**: Leases or other instruments pursuant to which HOME 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.

9. PROHIBITION OF CERTAIN FEES: Borrower is prohibited from charging fees that are not customarily charged in rental housing (e.g. laundry room access fees), except that Borrower may charge 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.

10. TERMINATION OF TENANCY: Borrower may not terminate the tenancy or refuse to renew the lease of a tenant of any of the HOME Units except for serious or repeated violations of the terms and conditions of the lease; for violation of applicable Federal, State, or local laws; or for other good cause. Any termination or refusal to renew must be preceded by not less than thirty (30) days by Borrower's service upon the tenant of a written notice specifying the grounds for the action.

11. MAINTENANCE AND REPLACEMENT: Borrower 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.

12. TENANT SELECTION: Borrower must adopt written tenant selection policies and 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. 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.

13. LEAD-BASED PAINT HAZARDS: Housing Assisted with HOME funds constitutes HUD-associated housing for the purpose of the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821 *et seq.*), and is therefore subject to 24 C.F.R. Part 35.

14. AFFIRMATIVE MARKETING: Borrower shall comply with the affirmative marketing procedures outlined in the marketing plan, attached hereto as **Exhibit C** and incorporated herein, 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).

15. EXPENSE: The Borrower agrees to pay all direct costs, expenses and attorney fees reasonably incurred by the City in connection with the Borrower's breach or default of this Loan Agreement or the Promissory Note, Deed of Trust, or Covenant, and agrees to pay reasonable loan closing costs, including the costs of title insurance or guarantee as determined by City.

16. PUBLICATIONS/ANNOUNCEMENTS: Contractors using radio or television announcements, newspaper advertisements, press releases, pamphlets, mail campaigns, or any other marketing methods funded by OED, or publicizing activities or projects funded by OED shall first receive approval from OED. In any event, all such publicizing activities must include the following statement: "The funding source for this activity is the City and County of Denver,

Office of Economic Development.” OED shall be acknowledged in any events regarding the project being funded, including groundbreaking and openings.

17. EXAMINATION OF RECORDS/ANNUAL MONITORING: The Borrower agrees that the Comptroller General 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 the section above entitled “**RESTRICTIONS ON USE OF PROPERTY,**” have access to and the right to examine any directly pertinent books, documents, papers, and records of the Borrower involving transactions related to this Loan Agreement. Borrower must also require its contractors and subcontractors to allow access to such records when requested. Borrower shall fully cooperate with City in an annual monitoring of Borrower’s performance and site inspection to verify compliance with the requirements of this Loan Agreement. The records maintained by Borrower shall include, without limitation, (i) records evidencing the income of each family occupying a HOME Unit or Low HOME Unit, and (ii) a copy of the lease pursuant to which each HOME Unit is occupied.

Borrower shall submit to the City the following reports: (1) Annual report on rents and occupancy of HOME and Low HOME Units to verify compliance with affordability requirements in Paragraph 6; (2) Reports (including financial reports) that enable the City to determine the financial condition and continued financial viability of the rental project; and (3) For floating units, information on unit substitution and filling vacancies to ensure that the project maintains the required unit mix.

18. CONDITIONS:

A. This Loan Agreement is subject to the Home Investments Partnership Program Grant Agreement entered into between the City and HUD, the National Affordable Housing Act of 1990, and HUD regulations at 24 C.F.R. Part 92. The obligation of the City to lend the above sums is limited to funds appropriated for the purpose of this Loan Agreement by the United States of America and paid into the City treasury.

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

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

19. NO DISCRIMINATION IN EMPLOYMENT: In connection with the

performance of work under this Loan Agreement, the Borrower agrees not to refuse to hire, discharge, promote or demote, or to discriminate in matters of compensation against any person otherwise qualified, solely because of race, color, religion, national origin, gender, age, military status, sexual orientation, marital status, or physical or mental disability; and further agrees to insert the foregoing provision in all subcontracts hereunder.

20. 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, \$1,000,000 for each personal and advertising injury claims, \$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. Special cause of loss form 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. Certificates of Insurance evidencing the above shall be submitted to OED prior to the disbursement of funds hereunder. Policies shall include a waiver of subrogation and rights of recovery as against the City. Insurance companies providing the above referenced coverage must be authorized to issue insurance in Colorado and be otherwise acceptable to the Director of Risk Management.

21. DEFENSE & INDEMNIFICATION:

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

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

22. DEFAULT AND ACCELERATION. Borrower expressly agrees that any breach of this Loan Agreement, the Promissory Note, the Deed of Trust, or the Covenant shall constitute a default. The City also may declare a default if 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. Upon the existence of a default, and without necessity of notice, presentment, demand, protest, or notice of protest of any kind, all of which are expressly waived by the Borrower, the City shall have the right to accelerate any outstanding obligations of the Borrower, which shall be immediately due and

payable, including payments under the Promissory Note, to foreclose upon the Property, and to enforce or assign its rights under the Deed of Trust. Upon default, the principal shall draw interest at the rate of fifteen percent (15%) per annum. Notwithstanding any provision herein to the contrary, the City agrees that any cure of any default made or tendered by the investor member of Borrower shall be deemed to be a cure by the Borrower and shall be accepted or rejected on the same basis as if made or tendered by the Borrower.

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

24. AUDIT REQUIREMENT: Non-profit organizations that expend \$750,000 or more in a year in federal awards shall have a single or program-specific audit conducted for that year in accordance with the provisions of 2 CFR Chapter I, Chapter II, Parts 200, 215, 220, 225, and 230, “Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards” (the “OMB Omni Circular”) and applicable federal regulations.

25. 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.

26. 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.

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

28. 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 attached hereto.

29. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION:

A. The Contractor represents and warrants that it and its principals are not

presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency.

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

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

D. The Contractor will immediately notify OED 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 subparagraph A of this Section is a material representation of fact upon which reliance was placed when this transaction was entered into.

30. 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.

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

32. NOTICES: All notices required by the terms of the Agreement must be hand delivered, sent by overnight courier service, mailed by certified mail, return receipt requested, or mailed via United States mail, postage prepaid, if to Contractor at the address first above written, with a copy to Contractor's investor member at:

Wincopin Circle LLLP, c/o Enterprise Community Asset Management, Inc.

70 Corporate Center
11000 Broken Land Parkway, Suite 700
Columbia, Maryland 21044
Attention: General Counsel

and if to the City at:

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

With a copy of any such notice to:

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

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

33. ELECTRONIC SIGNATURES AND ELECTRONIC RECORDS:

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

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Contract Control Number:

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

SEAL

CITY AND COUNTY OF DENVER

ATTEST:

By _____

APPROVED AS TO FORM:

REGISTERED AND COUNTERSIGNED:

By _____

By _____

By _____



Contract Control Number: OEDEV-201738563-00

Contractor Name:

Laradon West, LLC

By: GEC Laradon, LLC

By: Gorman + Company, LLC

By: Michael Redman

Name: Michael Redman
(please print)

Title: Corporate Secretary
(please print)

ATTEST: [if required]

By: Emily Francis

Name: Emily Francis
(please print)

Title: Development Coordinator, Gorman+Company, LLC
(please print)



EXHIBIT A

Project Timeline – Laradon Homes
5120 N Broadway Avenue, Denver, CO 80216

Construction financing closes	April 11, 2018
General Contractor notice to proceed	April 12, 2018
Certificate of Occupancy	December 31, 2019
Lease-up completion date of restricted units	April 1, 2020
Conversion to permanent financing	August 1, 2020

SOURCES (CONSTRUCTION)	
Construction Loan	\$16,550,000
CDOH - HTF Funds	\$8
City of Denver	\$1,820,000
Deferred Developer Fee	\$0
LIHTC - 4% + State	\$4,397,526
Laradon Matching Funds	\$500,000
TOTAL	\$24,067,526

USES (CONSTRUCTION)	
Land Acquisition	\$0
Hard Costs	\$18,955,503
Soft Costs	\$3,295,190
Developer Fee	\$1,816,833
Reserves	\$0
TOTAL	\$24,067,526

SOURCES (PERMANENT)	
First Mortgage	\$8,200,000
CDOH - HOME Funds	\$800,000
City of Denver	\$1,820,000
Deferred Developer Fee	1,001,667
Laradon Hall Loan	\$500,000
LIHTC - 4%	\$11,113,752
LIHTC - State	\$3,545,781
TOTAL	\$26,981,200

USES (PERMANENT)	
Land Acquisition	\$0
Hard Costs	\$18,955,503
Soft Costs	\$4,584,887
Developer Fee	\$2,818,500
Reserves	\$622,310
TOTAL	\$26,981,200

PROJECT ACTIVITIES			
ACTIVITY	TOTAL COST	CITY FUNDS	OTHER FUNDS
Land Acquisition	\$0		\$0
Hard Costs	\$18,955,503	\$1,820,000	\$17,135,503
Soft Costs	\$4,584,887		\$4,584,887
Developer Fee	\$2,818,500		\$2,818,500
Reserves	\$622,310		\$622,310
TOTAL	\$26,981,200	\$1,820,000	\$26,981,200

EXHIBIT B

FINANCIAL ADMINISTRATION:

1.1 Compensation and Methods of Payment

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

1.2 Vouchering Requirements

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

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

1.3 Payroll

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

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

1.4 Fringe Benefits

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

1.5 General Reimbursement Requirements

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

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

2.1 Program Income

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

3.1 Financial Management Systems

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

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

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

4.1 Audit Requirements

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

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

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

5.1 Budget Modification Requests

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

6.1 Procurement

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

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

7.1 Bonding

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

8.1 Records Retention

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

9.1 Contract Close-Out

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

10.1 Collection of amounts due

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

EXHIBIT C
(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 HOME 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 HOME 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 HOME Programs will:

- (1) prohibit discrimination in the rental of housing rehabilitated through the City’s HOME 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

WHEN RECORDED MAIL TO:

Citibank, N.A.
Transaction Management Group/Post Closing
388 Greenwich Street, 8th Floor
New York, New York 10013
Attention: Tanya Jimenez
Re: Laradon Homes Apartments Deal ID No. 24396

SUBORDINATION AND INTERCREDITOR AGREEMENT (OED)

THIS SUBORDINATION AND INTERCREDITOR AGREEMENT (this “**Agreement**”) dated as of _____, 20__, is made by and between the **CITY AND COUNTY OF DENVER**, a municipal corporation of the State of Colorado (the “**Junior Lender**”) and **CITIBANK, N.A.**, a national banking association (“**Senior Lender**”) and acknowledged by **LARADON WEST, LLC**, a Wisconsin limited liability company (“**Borrower**”).

RECITALS:

A. Borrower has applied to the Colorado Housing and Finance Authority, a body corporate and political subdivision of the State of Colorado (“**Governmental Lender**”), for a loan (the “**Borrower Loan**”) and has applied to Senior Lender for a taxable loan (the “**Taxable Loan**”; together with the Borrower Loan, the “**Senior Loan**”) for the acquisition, rehabilitation, construction, development, equipping and/or operation of a 91-unit multifamily residential project located in the City and County of Denver, Colorado, known or to be known as Laradon Homes Apartments (the “**Property**”).

B. The Senior Loan is evidenced by (i) that certain Multifamily Note (Fixed Rate), dated as of April 12, 2018, in the maximum principal amount of \$14,500,000 made by Borrower payable to the order of Governmental Lender (the “**Tax-Exempt Note**”), and (ii) that certain Multifamily Construction Note (Variable Rate), dated as of April 12, 2018, in the maximum principal amount of \$2,050,000 made by Borrower payable to the order of Senior Lender (the “**Variable Rate Note**”, and together with the Tax-Exempt Note, as the same may from time to time be extended, consolidated, substituted for, modified, increased, amended and/or supplemented (the “**Senior Note**”) and (iii) that certain Borrower Loan Agreement, dated as of April 1, 2018, by and between Borrower and Governmental Lender (the “**Borrower Loan Agreement**”).

C. The Senior Loan is secured by, among other things, that certain Multifamily Leasehold Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing dated as

of April 1, 2018, executed by Borrower for the benefit of Governmental Lender (the “**Tax-Exempt Deed of Trust**”) which Tax-Exempt Deed of Trust recorded in the City and County of Denver, Colorado (“**Official Records**”) encumbers the Property, and (ii) that certain Subordinate Multifamily Leasehold Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing, dated as of April 1, 2018, executed by Borrower for the benefit of Senior Lender (the “**Taxable Deed of Trust**”, and together with the Tax-Exempt Deed of Trust, as the same may from time to time be extended, consolidated, substituted for, modified, increased, amended and supplemented, the “**Senior Security Instrument**”), which Taxable Deed of Trust recorded in the Official Records encumbers the Property.

D. Borrower has requested that Senior Lender enter into that certain Funding Loan Agreement, dated as of April 1, 2018, by and between Governmental Lender and Senior Lender, pursuant to which Senior Lender will make a loan to Governmental Lender (the “**Funding Loan**”), the proceeds of which will be used to make the Borrower Loan to Borrower pursuant to the Borrower Loan Agreement.

E. The Tax-Exempt Note, the Tax-Exempt Deed of Trust, and the Borrower Loan Agreement have each been assigned by Governmental Lender to Senior Lender to secure the Funding Loan. The Borrower and Senior Lender have entered into that certain Construction Funding Agreement dated as of April 1, 2018, (the “**Construction Funding Agreement**”) and that certain Construction Loan Agreement dated as of April 1, 2018 (the “**Construction Loan Agreement**” and together with the Construction Funding Agreement, the “**Senior Loan Agreement**”), each regarding the manner in which the improvements at the Property will be completed and paid for.

F. Junior Lender has made a loan (the “**Junior Loan**”) to Borrower in the original principal amount of [\$1,820,000], which Junior Loan is evidenced by that certain Promissory Note, dated as of [_____, 2018], made by Borrower to Junior Lender (the “**Junior Note**”) and secured by that certain Deed of Trust (the “**Junior Security Instrument**”) encumbering the Property, and recorded concurrently herewith in the Official Records of Denver County, and advanced to Borrower as set forth in that certain Loan Agreement, by and between Junior Lender and Borrower, dated as of [_____, 2018] (the “**Junior Loan Agreement**”). As a condition to that certain Junior Loan Agreement, Borrower agreed to execute that certain Rental and Occupancy Covenant - HOME and that certain City Affordability Covenant (each as defined below), pursuant to the requirements of the Junior Loan Agreement, and intended to be recorded concurrently herewith in the real property records of the office of the Clerk and Recorder of the City and County of Denver, State of Colorado.

G. Citibank, N.A., a national banking association (together with its successors and assigns, “**Servicer**”), will act as the initial servicer of the Senior Loan.

H. As a condition to the making of the Senior Loan, Senior Lender requires that Junior Lender execute and deliver this Agreement prior to the making of the Junior Loan and the granting of the Junior Security Instrument by Borrower.

NOW, THEREFORE, for Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and to induce the

making of the Senior Loan and to induce Senior Lender to consent to the Junior Loan and the Junior Security Instrument, Junior Lender hereby agrees as follows:

1. **Definitions.** Capitalized terms used but not defined in this Agreement shall have the meanings ascribed thereto in the Senior Security Instrument. As used in this Agreement, the terms set forth below shall have the respective meanings indicated:

“*Bankruptcy Proceeding*” means any bankruptcy, reorganization, insolvency, composition, restructuring, dissolution, liquidation, receivership, assignment for the benefit of creditors, or custodianship action or proceeding under any federal or state law with respect to Borrower, any guarantor of any of the Senior Indebtedness, any of their respective properties, or any of their respective partners, members, officers, directors, or shareholders.

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

“*City Affordability Covenant*” means that certain City Affordability Covenant dated as of [____], made by Borrower for the benefit of Junior Lender, as the same may from time to time be extended, consolidated, substituted for, modified, amended or supplemented.

“*Condemnation*” means any proposed or actual condemnation or other taking, or conveyance in lieu thereof, of all or any part of the Property, whether direct or indirect.

“*Enforcement Action*” means the joining or initiating any legal or equitable action to enforce collection of all or any part of the Junior Indebtedness, the advertising of or commencement of any foreclosure or trustee’s sale proceedings, the exercise of any power of sale, the acceptance of a deed or assignment in lieu of foreclosure or sale, the collecting of Rents, the obtaining of or seeking of the appointment of a receiver, the taking of possession or control of any of the Property, the commencement of any suit or arbitration proceeding based upon the Junior Note or any other of the Junior Loan Documents, or the exercising of any rights of set-off or recoupment.

“*Enforcement Action Notice*” means a written notice from Junior Lender to Senior Lender, given following a Junior Loan Default and the expiration of any notice or cure periods provided for such Junior Loan Default in the Junior Loan Documents, setting forth in reasonable detail the Enforcement Action proposed to be taken by Junior Lender.

“*Junior Indebtedness*” means all indebtedness of any kind at any time evidenced or secured by, or arising under, the Junior Loan Documents, whether incurred, arising or accruing before or after the filing of any Bankruptcy Proceeding.

“*Junior Loan Default*” means any act, failure to act, event, condition, or occurrence which constitutes, or which with the giving of notice or the passage of time, or both, would constitute, an “Event of Default” as defined in the Junior Loan Documents.

“*Junior Loan Documents*” means, collectively, the Junior Note, the Junior Security Instrument, the Junior Loan Agreement, the Rental and Occupancy Covenant – HOME and the

City Affordability Covenant, all of which are listed on Exhibit B attached hereto, together with modifications, amendments and supplements thereto.

“*Junior Security Instrument*” has the meaning given in the Recitals to this Agreement, as the same may from time to time be extended, consolidated, substituted for, modified, amended or supplemented.

“*Loan Agreement*” shall have the meaning set forth above in the Recitals.

“*Loss Proceeds*” means all monies received or to be received under any insurance policy, from any condemning authority, or from any other source, as a result of any Condemnation or Casualty.

“*Property*” means (i) the land and improvements known or to be known as Laradon Homes Apartments, located in the City and County of Denver, State of Colorado, which Property is more particularly described on Exhibit A attached hereto, and (ii) all furniture, fixtures and equipment located at such apartments and other property, accounts, deposits and rights and interests of Borrower encumbered by the Senior Security Instrument and/or the other Senior Loan Documents.

“*Rental and Occupancy Covenant - HOME*” means that certain Rental and Occupancy Covenant- HOME dated as of [_____], made by Borrower for the benefit of Junior Lender, as the same may from time to time be extended, consolidated, substituted for, modified, amended or supplemented.

“*Senior Indebtedness*” means all indebtedness of any kind at any time evidenced or secured by, or arising under, the Senior Loan Documents, whether incurred, arising or accruing before or after the filing of any Bankruptcy Proceeding.

“*Senior Loan Agreement*” has the meaning given in the Recitals to this Agreement.

“*Senior Loan Default*” means any act, failure to act, event, condition, or occurrence which constitutes, or which with the giving of notice or the passage of time, or both, would constitute, an “Event of Default” as defined in the Senior Security Instrument.

“*Senior Loan Documents*” means, collectively, the Senior Security Instrument, the Senior Note, the Borrower Loan Agreement, the Senior Loan Agreement and all of the other documents, instruments and agreements now or hereafter evidencing, securing or otherwise executed in connection with the Senior Loan, as the same may from time to time be extended, consolidated, substituted for, modified, amended and supplemented in accordance with the provisions of this Agreement.

“*Senior Note*” has the meaning given in the Recitals to this Agreement, as the same may from time to time be extended, consolidated, substituted for, modified, amended and supplemented.

“*Senior Security Instrument*” has the meaning given in the Recitals to this Agreement, as the same may from time to time be extended, consolidated, substituted for, modified, amended and supplemented.

2. Junior Loan and Junior Loan Documents are Subordinate; Acts by Senior Lender do not Affect Subordination.

(a) Junior Lender hereby agrees on behalf of itself and its successors and permitted assigns that the Junior Indebtedness is and shall at all times continue to be, subordinate, subject and inferior (in payment and priority) to the prior payment in full of the Senior Indebtedness, and that the liens, rights, payment interests, priority interests and security interests granted to Junior Lender in connection with the Junior Loan and under the Junior Loan Documents are, and are hereby expressly acknowledged to be in all respects and at all times, subject, subordinate and inferior in all respects to the liens, rights, payment, priority and security interests granted to Senior Lender under the Senior Loan and the Senior Loan Documents and the terms, covenants, conditions, operations and effects thereof. The Borrower and Junior Lender agree that none of the units are subject to D.R.M.C. 27-101, et seq.

(b) Prior to a Senior Loan Default (regardless of whether such Default occurs prior to or during the pendency of a Bankruptcy Proceeding), Junior Lender shall be entitled to receive and retain payments made pursuant to and in accordance with the terms of the Junior Loan Documents, including, without limitation, repayment in full upon maturity of the Junior Loan. Junior Lender agrees that from and after such time as it has received from either Senior Lender or Borrower written notice that a Senior Loan Default then exists (which has not been expressly waived in writing by Senior Lender) or otherwise has actual knowledge of such a Senior Loan Default, Junior Lender shall not be entitled to receive or accept any payments under the Junior Loan.

(c) Intentionally deleted.

(d) The subordination of the Junior Indebtedness shall continue in the event that any payment under the Senior Loan Documents (whether by or on behalf of Borrower, as proceeds of security or enforcement of any right of set-off or otherwise) is required by a Bankruptcy Proceeding or receivership proceeding to be repaid or returned to Borrower or its insolvent estate, or avoided, set aside or required to be paid to Borrower, a trustee, receiver or other similar party under any bankruptcy or receivership. In such event, the Senior Indebtedness or part thereof originally intended to be satisfied shall be deemed to be reinstated and outstanding to the extent of any repayment, return, or other action, as if such payment on account of the Senior Indebtedness had not been made, unless such result is contrary to a judicial or administrative order.

(e) The subordination of the Junior Loan Documents and of the Junior Indebtedness shall apply and continue notwithstanding (i) the actual date and time of execution, delivery, recording, filing or perfection of the Senior Security Instrument and other Senior Loan Documents and of the Junior Security Instrument and other Junior

Loan Documents, and (ii) the availability of any collateral to Senior Lender, including the availability of any collateral other than the Property.

(f) By reason of, and without in any way limiting, the full subordination of the Junior Indebtedness and the Junior Loan Documents provided for in this Agreement, all rights and claims of Junior Lender under the Junior Security Instrument or under the Junior Loan Documents in or to the Property or any portion thereof, the proceeds thereof, the Leases thereof, the Rents, issues and profits therefrom, and the Loss Proceeds payable with respect thereto, are expressly subject and subordinate in all respects to the rights and claims of Senior Lender under the Senior Loan Documents in and to the Property or any portion thereof, the proceeds thereof, the Leases thereof, the Rents, issues and profits therefrom, and the Loss Proceeds payable with respect thereto.

(g) If Junior Lender, by subrogation or otherwise, shall acquire any interest, lien, estate, right or other interest in any of the Property, that lien, estate, right or other interest shall be fully subject and subordinate to the receipt by Senior Lender of payment in full of the Senior Indebtedness, and to the Senior Loan Documents, to the same extent as the Junior Indebtedness and the Junior Loan Documents are subordinate pursuant to this Agreement, except to the extent otherwise agreed in a contractual arrangement between Senior Lender, its successors and assigns, and Junior Lender; provided, however, nothing in this Agreement is intended, nor will it be construed, to in any way limit the exercise by the City and County of Denver (should it become the successor to the Junior Lender) of its governmental powers (including police, regulatory and taxing powers) with respect to Borrower or the Property to the same extent as if it were not a successor party to this Agreement or the transactions contemplated by this Agreement.

(h) Intentionally Omitted.

(i) Junior Lender hereby acknowledges and agrees that Senior Lender may, without the consent or approval of Junior Lender, agree with Borrower to extend, consolidate, modify, or amend any or all the Senior Loan Documents and otherwise act or fail to act with respect to any matter set forth in any Senior Loan Document (including, without limitation, the exercise of any rights or remedies, waiver, forbearance or delay in enforcing any rights or remedies, the declaration of acceleration, the declaration of defaults or events of default, the release, in whole or in part, of any collateral or other property, and any consent, approval or waiver), and all such extensions, consolidations, modifications, amendments acts and omissions shall not release, impair or otherwise affect Junior Lender's obligations and agreements hereunder. Notwithstanding the foregoing, Senior Lender may not modify any provision of the Senior Loan Documents that increases the Senior Indebtedness, except for increases in the Senior Indebtedness that result from protective advances made by Senior Lender in accordance with Section 12 of the Senior Security Instrument or advances made to cure defaults under the Junior Loan Documents.

3. Junior Lender Agreements.

(a) Without the prior written consent of the Senior Lender in each instance, Junior Lender shall not (i) amend, modify, waive, extend, renew or replace any material provision of any of the Junior Loan Documents, or (ii) pledge, assign, transfer, convey, or sell any interest in the Junior Indebtedness or any of the Junior Loan Documents; or (iii) take any action which has the effect of increasing the Junior Indebtedness, except for increases in the Junior Indebtedness that result from advances made by Junior Lender to protect the security or to cure defaults under the Senior Loan Documents; or (iv) bring any foreclosure or receivership action in connection with the Property; or (v) take any action concerning environmental matters affecting the Property; provided, however, nothing in this Agreement is intended, nor will it be construed, to in any way limit the exercise by the City and County of Denver should it become the successor to the Junior Lender of its governmental powers (including police, regulatory and taxing powers) with respect to Borrower or the Property to the same extent as if it were not a successor party to this Agreement or the transactions contemplated by this Agreement. Regardless of any contrary provision in the Junior Loan Documents, Junior Lender shall not collect payments for the purpose of escrowing for any cost or expense related to the Property or for any portion of the Junior Indebtedness, without consent of the Senior Lender. Junior Lender shall provide a copy to Senior Lender of any modifications to the Junior Loan Documents.

(b) Intentionally Omitted.

(c) Intentionally Omitted.

(d) Intentionally Omitted.

(e) Junior Lender shall not commence or join with any other creditor in commencing any Bankruptcy Proceeding involving Borrower. Junior Lender agrees that the subordination of the Junior Loan and the Junior Loan Documents shall not be affected in any way by Senior Lender electing, under Section 1111(b) of the federal bankruptcy code, to have its claim treated as being a fully secured claim.

(f) Junior Lender agrees that the effectiveness of this Agreement and the rights of Senior Lender hereunder shall be in no way impaired, affected, diminished or released by any renewal or extension of the time of payment of the Senior Loan, by any delay, forbearance, failure, neglect or refusal of Senior Lender in enforcing payment thereof or in enforcing the lien of or attempting to realize upon the Senior Loan Documents or any other security which may have been given or may hereafter be given for the Senior Loan, by any waiver or failure to exercise any right or remedy under the Senior Loan Documents. Junior Lender acknowledges that Senior Lender, at its sole option, may release all or any portion of the Property from the lien of the Senior Security Instrument, and may release or waive any guaranty, surety or indemnity providing additional collateral to Senior Lender, and Junior Lender hereby waives any legal or equitable right in respect of marshaling it might have, in connection with any release of all or any portion of the Property by Senior Lender, to require the separate sales of any portion of the Property or to require Senior Lender to exhaust its remedies against any portion of the Property or any other collateral before proceeding against any other portion

of the Property or other collateral (including guarantees) for the Senior Loan. Senior Lender may pursue all rights and remedies available to it under the Senior Loan Documents, at law, or in equity, regardless of any Enforcement Action Notice or Enforcement Action by Junior Lender. At any time or from time to time and any number of times, without notice to Junior Lender and without affecting the liability of Junior Lender, (a) the time for payment of the Senior Indebtedness may be extended or the Senior Indebtedness may be renewed in whole or in part; (b) the time for Borrower's performance of or compliance with any covenant or agreement contained in the Senior Loan Documents, whether presently existing or hereinafter entered into, may be extended or such performance or compliance may be waived; (c) the maturity of the Senior Indebtedness may be accelerated as provided in the Senior Loan Documents; (d) any Senior Loan Document may be modified or amended by Senior Lender and Borrower in any respect, other than an increase in the principal amount that does not result from either protective advances made by Senior Lender pursuant to Section 12 of the Senior Security Instrument or advances to cure defaults under the Junior Loan Documents; and (e) any security for the Senior Indebtedness may be modified, exchanged, or surrendered or additional security may be pledged or mortgaged for the Senior Indebtedness.

(g) Junior Lender acknowledges that it entered into the transactions contemplated by the Junior Loan Documents and made the Junior Loan to Borrower without reliance upon any information or advice from Senior Lender. Junior Lender made its own underwriting analysis in connection with the Junior Loan, its own credit review of Borrower, and investigated all matters pertinent, in Junior Lender's judgment, to its determination to make the Junior Loan to Borrower. Junior Lender acknowledges that it is a sophisticated, experienced commercial lender, and was represented by competent counsel in connection with this Agreement.

(h) Junior Lender hereby represents that: (i) Junior Lender is now the owner and holder of the Junior Loan Documents; (ii) the Junior Loan Documents are now in full force and effect; (iii) the Junior Loan Documents have not been modified or amended; (iv) no default or event which, with the passing of time or giving of notice would constitute a default, under the Junior Loan Documents has occurred; (v) the current principal balance of the Junior Indebtedness is [\$1,820,000]; (vi) no scheduled monthly payments under the Junior Note have been prepaid except with the prior written consent of Senior Lender; (vii) none of the rights of Junior Lender under any of the Junior Loan Documents are subject to the rights of any third parties, by way of subrogation, indemnification or otherwise; and (viii) there are no other Junior Loan Documents other than those listed on Exhibit B hereto. Borrower further represents that it has provided to Senior Lender a true, complete, and correct copy of all the Junior Loan Documents.

(i) Intentionally deleted.

4. **Loan Default.**

(a) For ninety (90) days following the Senior Lender's receipt of written notice of a Junior Loan Default, Junior Lender shall not without the prior written consent of Senior Lender, which may be withheld in Senior Lender's sole and absolute discretion,

take any Enforcement Action, including, without limitation, (i) exercise any of Junior Lender's remedies under the Junior Security Instrument or any of the other Junior Loan Documents (including, without limitation, the commencement of any judicial or non-judicial action of proceeding (a) to enforce any obligation of Borrower under any of the Junior Loan Documents, (b) to have a receiver appointed to collect any monies payable to Borrower; or (c) to foreclose the lien(s) created by the Junior Security Instrument) or (ii) file or join in the filing of any involuntary Bankruptcy Proceeding against Borrower or any person or entity which owns a direct interest in Borrower; provided, however, that such limitation on the remedies of Junior Lender shall not derogate or otherwise limit Junior Lender's rights, following an event of default under the Junior Loan Documents to (a) compute interest on all amounts due and payable under the Junior Loan at the default rate described in the Junior Loan Documents, (b) compute prepayment premiums and late charges, and (c) enforce against any person, other than Borrower and any guarantors under the Senior Loan Documents, any guaranty of the obligations of Borrower under the Junior Loan.

(b) Senior Lender shall, simultaneously with the sending of any notice of a Senior Loan Default to Borrower, send to Junior Lender a copy of said notice under the Senior Loan Documents; provided, however, failure to do so shall not affect the validity of such notice or any obligation of Borrower to Senior Lender and shall not affect the relative priorities between the Senior Loan and the Junior Loan as set forth herein. Borrower covenants and agrees to forward to Junior Lender, within three (3) business days of Borrower's receipt thereof, a copy of any notice of a Senior Loan Default Borrower receives from Senior Lender.

(c) Junior Lender shall have the right, but shall have no obligation, to cure any Senior Loan Default; provided, if Junior Lender shall elect to cure any such Default, it shall so notify Senior Lender and shall commence and complete such curing within any sixty (60) days from the Junior Lender's notice of intent to cure such Senior Loan Default. Junior Lender shall not be subrogated to the rights of Senior Lender under the Senior Loan Documents by reason of Junior Lender having cured any Senior Loan Default. However, Senior Lender acknowledges that, to the extent so provided in the Junior Loan Documents, amounts advanced or expended by Junior Lender to cure a Senior Loan Default may be added to and become a part of the Junior Indebtedness.

(d) Junior Lender agrees that, notwithstanding any contrary provision contained in the Junior Loan Documents, a Senior Loan Default shall not alone constitute a default under the Junior Loan Documents if no other default occurred under the Junior Loan Documents.

(e) Junior Lender acknowledges that any conveyance or other transfer of title to the Property pursuant to a foreclosure of the Junior Security Instrument (including a conveyance or other transfer of title pursuant to the exercise of a power of sale contained in the Junior Security Instrument), or any deed or assignment in lieu of foreclosure or similar arrangement, shall be subject to the transfer provisions of the Senior Loan Documents; and the person (including the Junior Lender) who acquires title to the Property pursuant to the foreclosure proceeding (or pursuant to the exercise of a power of

sale contained in the Junior Security Instrument) shall not be deemed to be automatically approved by Senior Lender.

5. **Insurance.** Junior Lender agrees that all original policies of insurance required pursuant to the Senior Security Instrument shall be held by Senior Lender. The preceding sentence shall not preclude Junior Lender from requiring that it be named as a loss payee or additional insured, as its interest may appear, under all policies of property damage insurance maintained by Borrower with respect to the Property, provided such action does not affect the priority of payment of the proceeds of property damage insurance under the Senior Security Instrument under all policies of liability insurance maintained by Borrower with respect to the Property.

6. **Subordination Default.** Junior Lender and Borrower acknowledge and agree that a default by either such party under this Agreement shall, at the sole option of Senior Lender, constitute a default under the Senior Loan Documents. Each party hereto acknowledges that in the event any party fails to comply with its obligations hereunder, the other parties shall have all rights available at law and in equity, including the right to obtain specific performance of the obligations of such defaulting party and injunctive relief. No failure or delay on the part of any party hereto in exercising any right, power or remedy hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any such right, power or remedy preclude any other or further exercise thereof or the exercise of any other right, power or remedy hereunder.

7. **Enforcement Costs.** Borrower agrees to reimburse Senior Lender for any and all costs and expenses (including reasonable attorneys' fees) incurred by Senior Lender in connection with enforcing its rights against Junior Lender under this Agreement.

8. **Notices.** Any notice which any party hereto may be required or may desire to give hereunder shall be deemed to have been given and shall be effective only if it is in writing and (i) delivered personally, (ii) mailed, postage prepaid, by United State registered or certified mail, return receipts requested, (iii) delivered by overnight express courier or (iv) sent by telecopier, in each instance addressed as follows:

To Junior Lender: City of and County of Denver
Office of Economic Development
201 West Colfax Avenue, Dept. 204
Denver, Colorado 80202
Attention: Deputy Director

If to Senior Lender: Citibank, N.A.
388 Greenwich Street, 8th Floor
New York, New York 10013
Attention: Transaction Management Group
Re: Laradon Homes Apartments Deal ID# 24396
Facsimile: (212) 723-8209

AND

Citibank, N.A.
325 East Hillcrest Drive, Suite 160
Thousand Oaks, California 91360
Attention: Operations Manager/Asset Manager
Re: Laradon Homes Apartments Deal ID# 24396
Facsimile: (805) 557-0924

Following the Conversion Date, with a copy to: Citibank, N.A.
c/o Berkadia Commercial Servicing Department
323 Norristown Road, Suite 300
Ambler, Pennsylvania 19002
Attention: Client Relations Manager
Re: Laradon Homes Apartments Deal ID# 24396
Facsimile: (215) 328-0305

And a copy of any notices of default sent to: Citibank, N.A.
388 Greenwich Street
New York, New York 10013
Attention: General Counsel's Office
Re: Laradon Homes Apartments Deal ID# 24396
Facsimile: (646) 291-5754

or at such other addresses or to the attention of such other persons as may from time to time be designated by the party to be addressed by written notice to the other in the manner herein provided. Notices, demands and requests given in the manner aforesaid shall be deemed sufficiently served or given for all purposes hereunder when received or when delivery is refused or when the same are returned to sender for failure to be called for.

9. **WAIVER OF TRIAL BY JURY.** TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW, ONLY THE BORROWER AND THE SENIOR LENDER HERETO (A) COVENANT AND AGREE NOT TO ELECT A TRIAL BY JURY WITH RESPECT TO ANY ISSUE ARISING OUT OF THIS AGREEMENT OR THE RELATIONSHIP BETWEEN THE PARTIES THAT IS TRIABLE OF RIGHT BY A JURY AND (B) WAIVE ANY RIGHT TO TRIAL BY JURY WITH RESPECT TO SUCH ISSUE TO THE EXTENT THAT ANY SUCH RIGHT EXISTS NOW OR IN THE FUTURE. THIS WAIVER OF RIGHT TO TRIAL BY JURY IS SEPARATELY GIVEN BY EACH PARTY, KNOWINGLY AND VOLUNTARILY WITH THE BENEFIT OF COMPETENT LEGAL COUNSEL. THE JUNIOR LENDER DOES NOT WAIVE RIGHTS TO TRIAL BY JURY.

10. **Term.** The term of this Agreement shall commence on the date hereof and shall continue until the earliest to occur of the following events: (i) the payment of all of the principal of, interest on and other amounts payable under the Senior Loan Documents; (ii) the payment of all of the principal of, interest on and other amounts payable under the Junior Loan Documents; (iii) the acquisition by Senior Lender of title to the Property pursuant to a foreclosure, or a deed in lieu of foreclosure, of (or the exercise of a power of sale contained in) the Senior Security Instrument; or (iv) the acquisition by Junior Lender of title to the Property pursuant to a foreclosure, or a deed in lieu of foreclosure, of (or the exercise of a power of sale contained in)

the Junior Security Instrument, but only if such acquisition of title does not violate any of the terms of this Agreement.

11. Miscellaneous.

(a) Junior Lender shall, within fifteen (15) business days following a request from Senior Lender, provide Senior Lender with a written statement setting forth the then current outstanding principal balance of the Junior Loan, the aggregate accrued and unpaid interest under the Junior Loan, and stating whether, to the knowledge of Junior Lender, any default or event of default exists under the Junior Loan, and containing such other information with respect to the Junior Indebtedness as Senior Lender may require.

(b) (i) Senior Lender shall give Junior Lender a concurrent copy of each notice of a Senior Loan Default or other material notice given by Senior Lender under the Senior Loan Documents.

(ii) Junior Lender shall give Senior Lender a concurrent copy of each notice of a Junior Loan Default or other material notice given by Junior Lender under the Junior Loan Documents.

(c) This Agreement shall bind and inure to the benefit of all successors and assigns of Junior Lender and Senior Lender. Senior Lender may assign its interest in the Senior Loan Documents without notice to or consent of Junior Lender. Junior Lender may assign its rights and interests hereunder to any governmental entity upon notice to Senior Lender or to a non-governmental entity following the prior written consent of Senior Lender, which consent may be withheld or conditioned in its sole and absolute discretion.

(d) Senior Lender hereby consents to the Junior Loan and the Junior Loan Documents; provided, however, that this Agreement does not constitute an approval by Senior Lender of the terms of the Junior Loan Documents. Junior Lender hereby consents to the Senior Loan and the Senior Loan Documents; provided, however, that this Agreement does not constitute an approval by Junior Lender of the terms of the Senior Loan Documents

(e) This Agreement may be executed in multiple counterparts, each of which shall constitute an original document and all of which together shall constitute one agreement.

(f) IN ALL RESPECTS, INCLUDING, WITHOUT LIMITATION, MATTERS OF CONSTRUCTION AND PERFORMANCE OF THIS AGREEMENT AND THE OBLIGATIONS ARISING HEREUNDER, THIS AGREEMENT HAS BEEN ENTERED INTO AND DELIVERED IN, AND SHALL BE CONSTRUED IN ACCORDANCE WITH AND GOVERNED BY, THE LAWS OF THE STATE WHERE THE PROPERTY IS LOCATED, WITHOUT GIVING EFFECT TO ANY PRINCIPLES OF CONFLICTS OF LAW.

(g) Time is of the essence in the performance of every covenant and agreement contained in this Agreement.

(h) If any provision or remedy set forth in this Agreement for any reason shall be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision or remedy of this Agreement and this Agreement shall be construed as if such invalid, illegal or unenforceable provision or remedy had never been set forth herein, but only to the extent of such invalidity, illegality or unenforceability.

(i) Each party hereto hereby represents that this Agreement has been duly authorized, executed and delivered by it and constitutes a legal, valid and binding agreement enforceable in all material respects in accordance with its terms.

(j) Borrower hereby acknowledges and consents to the execution of this Agreement, and agrees to be bound by the provisions hereof that are applicable to Borrower. Solely as between Senior Lender and Junior Lender, all of the signatories below hereby agree that to the extent of any conflict between the terms and provisions of this Agreement and the terms and provisions of the Senior Loan Documents and/or the Junior Loan Documents respectively, the terms and provisions of this Agreement shall govern and control. By executing this Agreement in the place provided below, Borrower hereby (i) acknowledges the provisions hereof, (ii) agrees not to take any action inconsistent with Senior Lender's rights or Junior Lender's rights under this Agreement, (iii) waives and relinquishes to the maximum extent permitted by law any and all rights, defenses and claims now existing or hereinafter accruing relating to Junior Lender's forbearance from exercising any rights and remedies pursuant to Section 4 of this Agreement, including, without limitation, any defenses based on the statute of limitations or any equitable defenses, such as laches, and (iv) acknowledges and agrees that (A) this Agreement is entered into for the sole protection and benefit of Senior Lender and Junior Lender (and their respective successors, assigns and participants), and no other person (including Borrower) shall have any benefits, rights or remedies under or by reason of this Agreement, (B) nothing in this Agreement is intended, or shall be construed to, relieve or discharge the obligations or liabilities of any third party (including Borrower under the Senior Loan Documents and the Junior Loan Documents), (c) neither of them nor any of their affiliates shall be, or be deemed to be, beneficiaries of any of the provisions hereof or have any rights hereunder whatsoever, and (D) no provision of this Agreement is intended to, or shall be construed to, give any such third party (including Borrower) any right subrogating to the rights of, or action against, Senior Lender or Junior Lender.

(k) No amendment, supplement, modification, waiver or termination of this Agreement shall be effective against any party unless such amendment, supplement, modification, waiver or termination is contained in a writing signed by such party.

(l) No party other than Senior Lender and Junior Lender shall have any rights under, or be deemed a beneficiary of any of the provisions of, this Agreement.

(m) Nothing herein or in any of the Senior Loan Documents or Junior Loan Documents shall be deemed to constitute Senior Lender as a joint venturer or partner of Junior Lender.

12. **Attached Exhibits.**

The following Exhibits are attached to this Agreement and are incorporated by reference herein as if more fully set forth in the text hereof:

Exhibit A – Legal Description

Exhibit B – Junior Loan Documents

Exhibit C – Modifications to Subordination and Intercreditor Agreement

The terms of this Agreement are modified and supplemented as set forth in said Exhibits. To the extent of any conflict or inconsistency between the terms of said Exhibits and the text of this Agreement, the terms of said Exhibits shall be controlling in all respects.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the undersigned have duly executed and delivered this Subordination and Intercreditor Agreement or caused this Subordination and Intercreditor Agreement to be duly executed and delivered by their respective authorized representatives as of the date first set forth above.

JUNIOR LENDER:

CITY AND COUNTY OF DENVER

By: _____
_____, Office of Economic
Development

STATE OF COLORADO)
) ss.
COUNTY OF DENVER)

The foregoing instrument was acknowledged before me this ____ day of _____, 2018, by _____ as the _____ of the Office of Economic Development, City and County of Denver, a municipal corporation of the State of Colorado, on behalf of the municipal corporation.

(S E A L)

Witness my hand and official seal.
My commission expires: _____

Notary Public

SENIOR LENDER:

CITIBANK, N.A.

By: _____

Name: Brian H. Dale

Title: Authorized Signatory

GENERAL ACKNOWLEDGMENT

STATE OF COLORADO)
)
COUNTY OF DENVER)

The foregoing instrument was acknowledged before me this ____ day of _____, 2018 by Brian H. Dale, Authorized Signatory of **CITIBANK, N.A.**, a national banking association.

Notary Public

Print Name: _____

My commission expires:

(signatures follow on subsequent page)

ACKNOWLEDGED AND AGREED AS OF THE DATE FIRST SET FORTH ABOVE:

BORROWER:

LARADON WEST, LLC,
a Wisconsin limited liability company

By: GEC Laradon, LLC,
a Wisconsin limited liability company,
its Managing Member

By: Gorman & Company, LLC,
a Wisconsin limited liability
company, its Manager

By: _____
Name: Brian Swanton
Title: President

ACKNOWLEDGMENT

STATE OF WISCONSIN

COUNTY OF DANE

This instrument was acknowledged before me on _____, 2018, by Brian Swanton, as President of Gorman & Company, LLC, a Wisconsin limited liability company, the Manager of GEC Laradon, LLC, a Wisconsin limited liability company, the Managing Member of **LARADON WEST, LLC**, a Wisconsin limited liability company.

Notary Public

(Seal, if any)

Printed Name: _____

My Commission Expires:

EXHIBIT A

LEGAL DESCRIPTION

Real property in the City and County of Denver, State of Colorado, described as follows:

Leasehold Interest as evidenced by that certain Memorandum of Lease by and between Laradon Hall Society For Exceptional Children and Adults, a Colorado Non-Profit Corporation, Lessor, and Laradon West, LLC, a Wisconsin limited liability company, Lessee, dated _____, 2018, and recorded _____, 2018 at Reception No. _____, in and to the following described land:

COMMENCING AT A FOUND AXLE IN RANGE BOX IN THE INTERSECTION OF LINCOLN STREET AND EAST 51ST AVENUE FROM WHENCE A FOUND AXLE IN RANGE BOX IN THE INTERSECTION OF BROADWAY STREET AND EAST 51ST AVENUE, BEARS S89°36'40"W A DISTANCE OF 310.04 FEET WITH ALL BEARINGS HEREIN RELATIVE THERETO, THENCE N45°12'19"W A DISTANCE OF 28.19 FEET TO THE SOUTHEAST CORNER OF BLOCK 3 OF MIDLAND ADDITION SUBDIVISION AND THE POINT OF BEGINNING; THENCE S89°36'40"W ALONG THE SOUTH LINE OF SAID BLOCK 3 A DISTANCE OF 119.29 FEET; THENCE N00°00'50"W A DISTANCE OF 57.77 FEET; THENCE S89°36'40"W A DISTANCE OF 150.75 FEET TO THE WEST LINE OF SAID BLOCK 3; THENCE N00°00'50"W ALONG THE WEST LINE OF SAID BLOCK 3 A DISTANCE OF 277.63 FEET; THENCE N89°38'02"E A DISTANCE OF 270.00 FEET TO THE EAST LINE OF SAID BLOCK 3; THENCE S00°01'17"E ALONG THE EAST LINE OF SAID BLOCK 3 A DISTANCE OF 335.29 FEET TO THE SOUTHEAST CORNER OF SAID BLOCK 3 AND THE POINT OF BEGINNING, CITY AND COUNTY OF DENVER, STATE OF COLORADO.

EXHIBIT B

JUNIOR LOAN DOCUMENTS

1. Promissory Note, dated as of [_____], made by Borrower to Junior Lender.
2. Leasehold Deed of Trust, dated as of [_____], made by Borrower for the benefit of Junior Lender.
3. Loan Agreement General Fund, dated as of [_____], by and between Borrower and Junior Lender.
4. Rental and Occupancy Covenant - HOME, dated as of [_____], by and between Junior Lender and Borrower.
5. City Affordability Covenant, dated as of [_____], by and between Junior Lender and Borrower.
6. [Other Subordinate Documents.]

EXHIBIT C

**MODIFICATIONS TO
SUBORDINATION AND INTERCREDITOR AGREEMENT**

The following modifications are made to the text of the Agreement that precedes this Exhibit:

None.

Capitalized terms used and not defined herein shall have the respective meanings ascribed to them in the Agreement.

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. “OED” means the City’s Office of Economic Development 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 Chapter I, Chapter II, Parts 200, 215, 220, 225 and 230, “Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards” (the “OMB Omni Circular”), 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 135, 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 135 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 135, 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 135. 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 135.

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 135 require employment opportunities to be directed, were not filled to circumvent the Contractor's

obligations under 24 C.F.R. Part 135.

F. Noncompliance with HUD's regulations in 24 C.F.R. Part 135 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 C.F.R. 570.500(a) 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 OED. 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 OED. 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 OED. 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 OED 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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