

**LOAN AGREEMENT  
(LINKAGE FEE REVENUE FUND)**

**THIS LOAN AGREEMENT** (“Loan Agreement”) is made between the **CITY AND COUNTY OF DENVER**, a municipal corporation organized pursuant to the Constitution of the State of Colorado (“City”), and **NDHC AFFORDABLE COMMUNITIES, INC.**, a Colorado nonprofit corporation, whose address is 1735 Gaylord Street, Denver, Colorado 80206 (“Borrower”), each a “Party” and collectively the “Parties.”

**WITNESSETH:**

**WHEREAS**, the City is making certain monies available to ensure the development of an affordable housing project containing seventy (70) income-restricted homeownership dwelling units (the “Project”);

**WHEREAS**, the Borrower is eligible to receive funds from the City, and is ready, willing and able to meet the conditions associated therewith;

**WHEREAS**, the City and Forest City Enterprises, Inc. (“Forest City”) entered into a Development Agreement dated March 2, 2001 and which was amended on May 23, 2005 and April 25, 2014 (collectively, the “Development Agreement”) with the subject of the Development Agreement relating to the development of the former Stapleton International Airport;

**WHEREAS**, the Development Agreement requires Forest City to comply with the requirements of an Affordable Housing Plan (the “Plan”) attached as an exhibit to the Development Agreement;

**WHEREAS**, the Project is being developed by Borrower to fulfill, in part, the requirements of the Plan to provide affordable housing;

**WHEREAS**, the Plan establishes the minimum parameters related to the affordability requirements of dwelling units for the Project; and

**WHEREAS**, the Borrower is developing the Project on the Property (as defined below);

**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 **Two Million Four Hundred Forty-Nine Thousand Nine Hundred Seventy-Six Dollars and 00/100 (\$2,449,976.00)** (the “Loan”). In addition to the Loan Agreement, the Borrower must execute a promissory note in form satisfactory to the City NDHC Affordable Communities, Inc.  
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evidencing this Loan (the “Promissory Note”) and one or more covenants securing the Property for use as affordable housing as required by Section 6 (the “Covenant”). The outstanding principal balance of the Loan shall bear simple interest at a rate of zero percent (0%) per annum until paid in full or forgiven in accordance with the terms hereof. Upon each sale of a Unit (as defined in Paragraph 6) to a Qualified Buyer (as defined in the Covenant), the City will forgive Thirty-Five Thousand and 00/100 Dollars (\$35,000.00) of the Loan.

2. **SECURITY**: Repayment of the Promissory Note shall be secured by a Deed of Trust (the “Deed of Trust”), in form satisfactory to City, granted by Borrower and encumbering the real property known and numbered as 5702 N. Central Park Boulevard and legally described as set forth in Exhibit D (the “Property”). The City shall execute a partial release of the Deed of Trust upon the sale of each Unit (as defined below) so long as the Unit is being sold to a Qualified Buyer (as defined in the Covenant).

3. **SUBORDINATION AND ADDITIONAL DOCUMENTS**:

A. The Executive Director, or the Executive Director’s designee (the “Executive Director”), of the City’s Department of Housing Stability (“HOST”) is authorized to execute documents necessary to subordinate the lien of the City’s Deed of Trust so long as (i) the subordination agreement is negotiated based on the form attached hereto as **Exhibit E**, with the final form being satisfactory to the City Attorney; (ii) encumbrances prior to the City’s Deed of Trust do not exceed the Fifteen Million Dollars and No/100 (\$15,000,000.00); and (iii) Borrower is not then in default of its obligations pursuant to this Loan Agreement, the Promissory Note, the Deed of Trust, or the Covenant.

B. The Executive Director is authorized to execute documents necessary to accomplish the Loan, as set forth herein, so long as (i) such documents are in a form satisfactory to the City Attorney; (ii) encumbrances prior to the City’s Deed of Trust do not exceed Fifteen Million Dollars and No/100 (\$15,000,000.00); and (iii) Borrower is not in default of its obligations pursuant to this Loan Agreement, the Promissory Note, the Deed of Trust, or the Covenant

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

A. Loan proceeds will be used to finance costs associated with development of the Property for use as affordable housing. Loan proceeds may be used for soft costs and hard construction costs.

B. The Borrower shall submit to the City requisitions with documentation of incurred costs on HOST approved forms, and otherwise comply with disbursement terms and conditions set forth in **Exhibit B**, attached hereto and incorporated herein.

C. Where the City's funds are disbursed for construction, (i) the City shall monitor the construction activities for the purpose of verifying eligible costs, and (ii) the City shall retain ten percent (10%) of each disbursement of funds, which retainage shall be released upon compliance with the requirements of **Exhibit B**.

D. In addition to the retainage specified above, HOST shall retain Ten Thousand Dollars and No/100 Dollars (\$10,000.00) of the total funds to be disbursed under this Loan Agreement (the "Compliance Retainer"), which retainage shall be released upon compliance with the requirements of **Exhibit B**.

E. Expenses incurred prior to September 29, 2022, are not eligible for reimbursement.

**5. DEADLINE FOR DISBURSEMENT OF FUNDS:**

A. Borrower must satisfy all conditions set forth in this Loan Agreement on or before October 13, 2023 (the "Closing Deadline"). Failure to meet this deadline may result in the termination of this Loan Agreement at the Executive Director's sole discretion. No funds shall be disbursed under this Loan Agreement until such time as (i) all conditions of this Loan Agreement have been met and (ii) Borrower has closed on all financing necessary to complete the Project.

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

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

**6. RESTRICTIONS ON USE OF PROPERTY:**

A. Affordability Limitations. Borrower agrees that it will develop and construct seventy (70) units (each a "Unit") at the Property and must sell each Unit to a Qualified Buyer. In the event the Borrower sells a Unit to a person who is not a Qualified Buyer or does not record a

Covenant prior to a sale, Borrower shall immediately pay to the City an amount equal to the subsidy for the Unit, which rounded up is Thirty-Five Thousand and 00/100 Dollars (\$35,000.00) per unit.

B. Unit Requirements. Borrower shall deliver the Units in the number and types set forth below and sell the Units to a Qualified Buyer at no more than the “Maximum Sale Price.”

Unit Type	Number of Units	Average Sq. Ft. of Units	Maximum Sale Price
2 Bedroom	70	800 sq. ft.	\$210,000

C. Covenant Running with the Land. Prior to or as a condition of sale of each Unit to a Qualified Buyer, the Borrower shall execute and record a Covenant setting forth the affordability limitations described in subparagraph A above. The Covenant shall be in a form satisfactory to the City and substantially in the form of the covenant attached as **Exhibit A**. Each Covenant shall be recorded against title to the Unit in the real estate records of the City and County of Denver and shall constitute a covenant running with the land. Borrower’s violation of the Covenant shall be enforceable as an event of default pursuant to this Loan Agreement. The Covenant shall encumber each Unit for a period of twenty (20) years from the date of its recording.

D. Condominium Documents. Borrower will subject the Property to a condominium regime under the Colorado Common Interest Ownership Act (“CCIOA”), acting as “Declarant,” as such quoted term is defined in CCIOA. In the documents governing the operation of the condominium homeowner’s association (the “HOA Documents”), Borrower will prohibit the homeowners’ association (the “HOA”) from delivering the CCIOA-required HOA status letters and transfer fees to a Unit owner, a Unit seller’s or buyer’s title company, or a Unit buyer’s lender unless and until the HOA has received written verification that the buyer is a Qualified Buyer. The HOA Documents shall prohibit this requirement from being amended out of the HOA Documents without the Declarant’s prior written consent. Borrower shall not grant such consent in its role as Declarant without first obtaining the City’s prior written consent for so long as this Loan Agreement remains in effect.

7. **AFFIRMATIVE MARKETING**: The owner of the Project shall comply with an affirmative marketing program (the “Affirmative Marketing Program”) to provide information and otherwise attract eligible homeowners from all racial, ethnic, and gender groups in the Property’s

housing market area in accordance with 24 CFR 92.351. Except Borrower may limit eligibility or give preference to a particular segment of the population in accordance with 24 CFR 92.253(d). Prior to making any disbursement, Borrower must provide the plan required by the Affirmative Marketing Program (the “Affirmative Marketing Plan”) to HOST. The Affirmative Marketing Plan must be approved by HOST prior to Borrower adopting it or engaging in any affirmative marketing of the Project.

**8. 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.

**9. PUBLICATIONS/ANNOUNCEMENTS:** HOST approval must be obtained prior to publicizing activities or projects funded by HOST or prior to any radio or television announcements, newspaper advertisements, press releases, pamphlets, mail campaigns, or any other marketing methods for any activities or projects funded by HOST. In any event, all such publicizing activities must include the following statement: “The funding source for this activity is the City and County of Denver, Department of Housing Stability.” HOST shall be acknowledged in any events regarding the project being funded, including groundbreaking and openings.

**10. EXAMINATION OF RECORDS; REPORTING REQUIREMENTS:**

A. Examination of Records: The Borrower agrees that the City, or any of its duly authorized representatives shall, until the expiration of five (5) years after the date of sale by Borrower of a particular Unit, 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 with respect to the construction and sale of such Unit. 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 the initial Qualified Buyer that purchases the Unit, and (ii) the purchase price of the Unit upon its initial sale to a Qualified Buyer.

B. Required Information and Reports. Upon the sale of each Unit, Borrower shall submit to HOST notice of the sale and documents evidencing the income of the initial NDHC Affordable Communities, Inc.  
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Qualified Buyer that purchases the Unit and the purchase price of the Unit.

C. **Access and Inspections.** For the purposes of assuring compliance with the Loan Agreement, the City shall have the reasonable right of access to the Property, without charges or fees, (i) during the period of construction and (ii) during the period of Bower's ownership of the Property.

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

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

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

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

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

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

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

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

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

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

**12. ADDITIONAL CONDITIONS:**

A. The obligation of the City to lend the above sums is limited to funds appropriated for the purpose of this Loan Agreement and paid into the City treasury.

B. 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.

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

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

F. Certificates of Insurance evidencing the above shall be submitted to HOST 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.

**15. DEFENSE & INDEMNIFICATION:**

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

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

C. Borrower will defend any and all Claims which may be brought or threatened against City and will pay on behalf of City any expenses incurred by reason of such Claims

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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 Borrower under the terms of this indemnification obligation. The Borrower shall obtain, at its own expense, any additional insurance that it deems necessary for the City's protection.

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

**16. DEFAULT AND ACCELERATION:**

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

(1) Any breach of this Loan Agreement, the Promissory Note, the Deed of Trust, or the Covenant;

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

(3) Borrower becomes delinquent to the City Loan or on any other contractual or tax obligations as due;

(4) Borrower fails to comply with any rule, regulation or provision referred to in the Loan Agreement;

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

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

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

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

C. Acceleration; Interest Upon Default; and Withholding Disbursements. Upon the existence of a default and the failure to cure within the Cure Period, and without necessity of further notice, presentment, demand, protest, or notice of protest of any kind, all of which are expressly waived by 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 and if the default remains after the Cure Period, the principal shall draw interest at the rate of fifteen percent (15%) per annum. If any of the Loan funds have not been disbursed to Borrower, the City may suspend or terminate the Loan Agreement, in whole or in part, and withhold one hundred percent (100%) of any undisbursed funds.

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

**17. 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, NDHC Affordable Communities, Inc.  
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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.

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

**19. 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.

**20. 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.

**21. DURATION/BINDING EFFECT:** This Loan Agreement shall remain in effect until the expiration of the monitoring period described in Paragraph 10 and shall be binding upon the parties and shall inure to the benefit of their respective successors, assignees, representatives, and heirs. For the avoidance of doubt, Borrower shall no longer have any obligations under this Loan Agreement as to a particular Unit as of the expiration of the 5-year period following initial sale of such Unit.

**22. 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.

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

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

With a copy of any such notice to:

Denver City Attorney's Office  
1437 Bannock St., Room 353  
Denver, Colorado 80202  
NDHC Affordable Communities, Inc.  
Contract No. HOST-202265609

Notices hand delivered or sent by overnight courier are effective upon delivery. Notices sent by certified mail are effective upon receipt. 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.

**24. DISPUTES:** All disputes between the City and Borrower arising out of or regarding this Loan Agreement will be resolved by administrative hearing pursuant to the procedure established by D.R.M.C. § 56-106(b)-(f). For the purposes of that administrative procedure, the City official rendering a final determination shall be the Executive Director as defined in this Loan Agreement.

**25. NONRECOURSE:** It is agreed that the execution of this Loan Agreement, the Promissory Note, the Deed of Trust, and the Covenant shall impose no personal liability on Borrower or any officer, owner, or member of Borrower for payment of any of the obligations described herein or therein, and the City's sole recourse shall be against the Project.

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

**27. FURTHER ASSURANCES.** Each party shall do and perform, or cause to be done and performed, all such further acts and things, and shall execute and deliver all such other agreements, certificates, instruments and documents, as the other party may reasonably request in order to carry out the intent and accomplish the purposes of this Loan Agreement and the consummation of the transactions contemplated hereby.

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

List of Exhibits to Loan Agreement

Exhibit A – Form of Covenant

Exhibit B – Disbursement Terms and Conditions

Exhibit C – INTENTIONALLY OMITTED

Exhibit D – Legal Description of Property

Exhibit E – Form of Subordination Agreement

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

HOST-202265609-00  
NDHC AFFORDABLE COMMUNITIES, INC.

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

**SEAL**

**CITY AND COUNTY OF DENVER:**

**ATTEST:**

By:

\_\_\_\_\_

\_\_\_\_\_

**APPROVED AS TO FORM:**

**REGISTERED AND COUNTERSIGNED:**

Attorney for the City and County of Denver

By:

By:

\_\_\_\_\_

\_\_\_\_\_

By:

\_\_\_\_\_

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

HOST-202265609-00  
NDHC AFFORDABLE COMMUNITIES, INC.

By: See attached signature page

Name: See attached signature page  
(please print)

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

ATTEST: [if required]

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

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

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

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

HOST-202265609-00  
NDHC AFFORDABLE COMMUNITIES, INC.

By: 

Name: Getabecha Mekonnen  
(please print)

Title: President  
(please print)

ATTEST: [if required]

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

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

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



EXHIBIT A – FORM OF COVENANT

**NOTICE OF VOIDABLE TITLE  
TRANSFER  
AND  
STAPLETON AFFORDABLE HOUSING  
COVENANT**

**FOR UNIT \_\_\_\_\_ AT \_\_\_\_\_**

**Denver, Colorado**

**\_\_\_\_\_, 20\_\_**

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**NOTICE OF VOIDABLE TITLE TRANSFER AND  
STAPLETON AFFORDABLE HOUSING COVENANT  
FOR  
UNIT \_\_\_\_\_ AT \_\_\_\_\_**

THIS NOTICE OF VOIDABLE TITLE TRANSFER AND STAPLETON AFFORDABLE HOUSING COVENANT FOR UNIT \_\_\_\_\_ at \_\_\_\_\_ (“Covenant”) is made on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by \_\_\_\_\_, a \_\_\_\_\_ (“Developer”).

**WITNESSETH:**

**WHEREAS**, Developer is the owner of certain real property located in the City and County of Denver, Colorado and further described on Exhibit A attached hereto and incorporated herein by this reference (“Unit”); and

**WHEREAS**, the Unit is a part of a residential housing project (“Project”) developed by Developer that is subject to that certain \_\_\_\_\_ [*insert title of sub-association declaration*] recorded on \_\_\_\_\_ at Reception No. \_\_\_\_\_ in the real estate records of the City and County of Denver, Colorado (“Sub-Declaration”), and that certain \_\_\_\_\_ [*insert title of applicable sub-association map*] recorded on \_\_\_\_\_ at Reception No. \_\_\_\_\_ in the real estate records of the City and County of Denver, Colorado; and

**WHEREAS**, the Developer desires to subject the Unit to the Stapleton Affordable Housing Plan (“Plan”), as such Plan is further defined and described in Exhibit D to the Master Declaration and, to this end, desires to encumber the Unit with the occupancy, resale and other conditions and restrictions set forth herein, thereby establishing Affordable Workforce Housing as defined by the Plan; and

**WHEREAS**, the City of Denver (“City”) (and agencies of the City, including without limitation Denver’s Department of Housing Stability) shall be the beneficiary of this Covenant and shall have the authority to administer and enforce certain terms and conditions in this Covenant as specifically set forth herein, and as provided in accordance with that certain Minor Amendment to Development Agreement dated May 23, 2005, by and between Forest City Enterprises, Inc., an Ohio corporation, and the City and County of Denver recorded on \_\_\_\_\_, 2005, at Reception No. \_\_\_\_\_ in the real estate records of the City and County of Denver; and

NOW THEREFORE, in consideration of the promises and covenants hereinafter set forth, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto hereby declare, covenant and agree as follows:

## ARTICLE I DEFINITIONS

"AMI" shall mean the Area Median Income reported annually for single persons and households of various sizes by HUD for the metropolitan statistical area that includes the County.

"City" shall mean and refer to the City and County of Denver, Colorado, its agencies, and its successors and assigns.

"Control Period" shall mean a period beginning upon the date of the recordation of a deed evidencing the initial sale of the Unit by the Developer to a Qualified Buyer, and terminating twenty (20) years thereafter; *provided, however*, that such termination shall be subject to the continuing obligations specifically set forth under Section VI.D. herein.

"CPI-U" shall mean the most recent United States Department of Labor (Bureau of Labor Statistics) Consumer Price Index for All Urban Consumers for the consolidated metropolitan statistical area that includes the County. In the event that the CPI-U is substantially changed, re-named, or abandoned by the United States Government, then in its place shall be substituted the index established by the United States Government that most closely resembles the CPI-U.

"County" shall mean the City and County of Denver, Colorado.

"Eligible Capital Improvements" shall mean those certain capital improvements to the Unit that are specifically designated by HOST (as defined below) as eligible for purposes of determining the Maximum Sale Price of the Unit pursuant to Article VI hereof. To qualify for an Eligible Capital Improvement the Owner must submit to HOST, in advance of commencing the installation or construction of the improvement, a request for approval of any proposed capital improvement, and obtain that approval from HOST.

"First Mortgage" shall mean and refer to any unpaid and outstanding mortgage, deed of trust or other security instrument recorded in the records of the Clerk and Recorder of the County, for the original benefit of an Institutional Lender, encumbering the Unit having priority of record over all other recorded liens except those liens made superior by statute. "Institutional Lender" shall mean a federally or state chartered bank or savings and loan or a recognized mortgage banking institution.

"First Mortgagee" shall mean and include the holder or beneficiary of any First Mortgage.

"HOST" shall mean the City's Department of Housing Stability or any successor agency.

"Household" shall mean: (1) a single person; or (2) any number of persons bearing to each other the relationship of husband, wife, mother, father, grandmother, grandfather, son, daughter, brother, sister, stepson, stepdaughter, stepbrother, stepsister, stepmother, stepfather, grandson, granddaughter, mother-in-law, father-in-law, sister-in-law, brother-in-law, daughter-in-law, son-in-law, uncle, aunt, nephew or niece, living together as a single nonprofit housekeeping unit; or (3) two (2) unrelated adults over the age of eighteen (18) years plus, if applicable, any persons

bearing to either of the two (2) unrelated adults the relationship of son, daughter, stepson, stepdaughter, mother, father, grandmother, grandfather, grandson, granddaughter, sister, brother, living together as a single nonprofit housekeeping unit.

“HUD” shall mean the United States Department of Housing and Urban Development, and its successors or assigns.

“Income” shall mean the definition of income set forth pursuant to the United States 1990 Census Long Form, including the income inclusions and exclusions applicable thereto, or any other definition determined by the City pursuant to Denver Revised Municipal Code Section 27-101 *et seq.*

“Maximum Sale Price” shall have the meaning set forth in Article VI hereof.

“Mortgage” shall mean and refer to any recorded mortgage, deed of trust or other interest in the Unit held solely as security for the performance of an obligation.

“Mortgagee” shall mean and refer to any person or entity named as the mortgagee or beneficiary under any Mortgage, or their allowed assignees.

“Owner” shall mean and refer to any person or entity at any time being the record owner of the Unit in compliance with the terms and provisions of this Covenant; it being understood that such person or persons shall be deemed an “Owner” hereunder only during the period of his, her or their recorded ownership interest in the Unit. “Owner” does not include a person whose interest is solely that of a Mortgagee.

“Project” shall mean the land and the improvements that are subject to the Sub-Declaration (as defined in the Recitals above), of which the Unit is a part.

“Qualified Buyers” shall mean a person or persons (1) constituting a Household who for the initial sale or resale within 3 years of initial sale have a combined annual Income that does not exceed eighty percent (80%) of AMI at the time of the purchase of the Unit, or for resale during the control period from 3 years after initial sale to 6 years after initial sale at a price which is affordable by and that are in fact sold to households earning 90% and below of AMI for owner-occupancy and from 6 years after initial sale to the end of the control period at a price which is affordable by and that are in fact sold to households earning 100% and below of AMI for owner-occupancy; and (2), in connection with sales after the initial sale of the Unit by Developer, holding a valid verification of eligibility from the City (as further described hereinafter) which entitles the Household to buy the Unit. If an affordable unit remains unsold after an active 12 month marketing period, it may be sold to a City approved non-profit 501(c)(3) partner, governmental or quasi-governmental entity for use as affordable housing but will remain classified as Affordable Workforce Housing. All City approved non-profit partners, governmental or quasi-governmental bodies who purchase, or otherwise take title to, the Unit for the purpose of sale or rental under any program designed to assist the construction or occupancy of housing for families of low or moderate income are deemed to be “Qualified Buyers”. The

verification of eligibility shall be calculated based on Income at the time of execution of a contract for purchase of the Unit.

## **ARTICLE II COVENANT BINDS THE PROJECT**

This Covenant shall constitute covenants running with title to the Unit as a burden thereon, for the benefit of, and enforceable by, the City. This Covenant shall bind the Developer and all Owners. Each Owner, upon acceptance of a deed to the Unit, shall be personally obligated hereunder for the full and complete performance and observance of all covenants, conditions and restrictions contained herein during the Owner's period of ownership of the Unit, and the Owner shall execute a Memorandum of Acceptance as set forth on Exhibit B attached hereto. Each and every conveyance of the Unit, for all purposes, shall be deemed to include and incorporate by this reference, the terms and conditions contained in this Covenant, even without reference to this Covenant in any document of conveyance.

## **ARTICLE III QUALIFIED BUYERS**

A. Qualified Buyers. Except as otherwise provided herein, the ownership, use and occupancy of the Unit shall be limited exclusively to housing for natural persons who meet the definition of Qualified Buyers.

B. Exceptions. Notwithstanding the foregoing paragraph, the following transfer of ownership of the Unit from a Qualified Buyer shall not be subject to Article V (Voluntary Sale By Owner) and Section VI.A. (Calculation of Maximum Sale Price), so long as the transferee shall occupy the Unit as his or her permanent residence (as defined in Section IV.B. below): A transfer resulting from the death of an Owner where the transfer is to at least one (1) person taking title by will or by operation of law.

## **ARTICLE IV RESTRICTIONS**

A. Occupancy. Owners shall not engage in any business activity on, in or about the Unit; *provided, however*, that Owners may use the Unit as a home office, except as otherwise limited by or pursuant to local zoning or the Sub-declaration. The Developer and the Owners shall permit no use or occupancy of the Unit that is not in compliance with this Covenant.

B. Unit Must Be Permanent Residence. Pursuant to the City's affordable housing rules and regulations, the Unit shall be utilized as the permanent residence of the Owner. A "permanent residence" shall mean the home or place in which one's habitation is fixed and to which one, whenever he or she is absent, has a present intention of returning after a departure or absence therefrom, regardless of the duration of the absence. In determining what is a permanent residence, the following circumstances relating to the Owner may be taken into account: business pursuits, employment, income sources, residence for income or other tax purposes, age, marital status, residence of parents, spouse and children, if any, location of personal and real property,

and motor vehicle registration. This residency requirement does not apply to governmental entities, quasi-governmental entities, or non-profit corporations designated by the City, although such entities shall use the Unit for affordable housing purposes.

C. Rental. The Owner of a Unit may share occupancy of the Unit with non-owners on a rental basis provided that the Owner continues to reside in the Unit and to meet the obligations contained in this Covenant. Upon approval of the Director of HOST, the Owner of a Unit may rent the Unit after actively marketing the unit for sale only through a City approved partner and only so long as the tenants' eligible income may not exceed 65% AMI, depending on unit type and the rental charged does not exceed levels permitted by HOST. The Affordable Covenant will remain in effect during the rental period; rental periods will not be included in the total duration of the control period. Rental without approval of the Director of HOST is not permissible.

D. No Discrimination. In the sale of the Unit, there shall be no discrimination on the basis of age, race, creed, color, sex, gender, familial status, military status, sexual orientation, disability, religion, national origin or marital status.

E. Maintenance of Unit. The Owner shall maintain the Unit in good, safe, and habitable condition in all respects, except for normal wear and tear, and in full compliance with all applicable laws, ordinances, and rules and regulations of any governmental authority and any homeowners association(s) with jurisdiction over matters concerning the condition of the Unit.

## **ARTICLE V VOLUNTARY SALE BY OWNER**

A. Notice. In the event that the Owner (other than Developer, it being understood and agreed that the provisions of this Article V shall not apply to Developer's initial sale of the Unit to a Qualified Buyer) desires to sell the Unit, the Owner shall provide written notice to HOST of such Owner's intent to sell at least fifteen (15) days prior to engaging a broker to list the Unit for sale or otherwise offering the Unit for sale. Said notice to HOST shall include the original or duplicate receipts for all claimed Eligible Capital Improvements to verify the costs of such improvements, and an affidavit from the Owner verifying that the receipts are valid and correct. HOST may keep a list of interested purchasers, and may provide same to any selling Owner, in HOST's sole discretion. HOST shall notify the selling owner of the Maximum Sale Price (see below), and the selling owner may then commence to market the Unit as further set forth below.

B. Sales Contract. After providing the notice required in Section V.A. above, the selling Owner may list the Unit for sale with a real estate agent licensed in the State of Colorado or the selling Owner may market the Unit as a so-called "for sale by owner", and may enter into a contract for the sale of the Unit upon such terms and conditions as the selling Owner shall, in the selling Owner's discretion, deem acceptable, *provided, however*, that:

- (i) the purchase price shall not exceed the Maximum Sales Price;



(ii) the selling Owner must believe in good faith that the purchaser is a Qualified Buyer and that the purchase price does not exceed the Maximum Sales Price; and

(iii) the contract must state as a contingency to closing that the purchaser will submit the application described in Section V.C. below to HOST within three (3) days after contract acceptance, and that the closing of the sale is expressly contingent upon the City's determination that the purchaser is a Qualified Buyer and that the purchase price does not exceed the Maximum Sales Price as evidenced by issuance of the Verification described in Section V.C. below.

C. Verification. Within three (3) days after contract acceptance (defined as the date of last execution of the contract by the purchaser or the selling Owner), the purchaser shall complete and submit an application form to HOST requesting a determination that the purchaser is a Qualified Buyer and that the purchase price does not exceed the Maximum Sales Price. HOST shall promulgate the form of such application, which shall request only such information as is necessary to determine whether the purchaser is a Qualified Buyer and whether the purchase price exceeds the Maximum Sales Price. HOST shall make its eligibility determination of the purchaser within ten (10) days after receipt of the completed application, as evidenced either by (i) the issuance of a verification, signed by HOST and in recordable form, stating that the purchaser is a Qualified Buyer, the amount of the purchase price and that the purchase price does not exceed the Maximum Sales Price ("Verification"); or (ii) delivering a notice to seller and purchaser that a Verification cannot be issued and stating the reason(s) therefor. Failure by HOST to make its determination and deliver the Verification or the notice as described above within the 10-day period will be deemed an approval of the purchaser and the purchase price, and HOST shall thereafter issue a Verification with respect to the transaction promptly upon request therefor by the selling Owner or the purchaser.

D. Recordation. Upon the Transfer of the Unit, the Verification shall be recorded in the real estate records of the City and County of Denver, Colorado, along with the deed for the Unit, and if the Verification is not so recorded, then the Transfer shall be null and void, subject to Section VII.E. below.

ADDITIONAL TERMS AND CONDITIONS OF RE-SALE OF THE UNIT MAY BE SET FORTH IN THE CITY'S DEPARTMENT OF HOUSING STABILITY RULES AND REGULATIONS, IF ANY, AS AMENDED FROM TIME TO TIME.

## **ARTICLE VI MAXIMUM SALE PRICE**

A. Calculation of Maximum Sale Price. During the time that this Covenant is in effect, but excluding the Developer's initial sale of the Unit to a Qualified Buyer, the Unit may be Transferred for no more than an amount calculated in accordance with this Article VI ("Maximum Sales Price"), as follows:

(i) Start with the purchase price paid by the selling Owner, approved by the City and for which such Owner purchased the Unit according to the Owner's purchase contract for the Unit;

(ii) For each year from the date that the selling Owner acquired the Unit multiply the selling Owner's purchase price by the percentage change over the prior year in the CPI-U up to a maximum increase for any given year of 3.5 percent or a maximum decrease for any given year of 3.5 percent;

(iii) For each such year add the product of the multiplication described in (ii) above to the selling Owner's purchase price;

(iv) Add the costs of Eligible Capital Improvements that have been approved by the City up to the time of Transfer;

(v) Add the amount of the sale commission paid by the Owner, provided that this amount may not exceed the maximum allowable sales commission published by HOST on an annual basis;

(vi) Add any accrued negative amortization if the Unit was financed with a graduated payment mortgage; and

(vii) Add any applicable transfer assessment to be made, in connection with the sale, by the Master Community Association, Inc. pursuant to the Community Declaration for the Project Area Within the Former Stapleton International Airport recorded on October 4, 2001 at Reception No. 2001167472 in the real estate records of the City and County of Denver, Colorado, as may be amended or supplemented.

THE MAXIMUM SALES PRICE IS ONLY AN UPPER LIMIT ON THE RESALE PRICE FOR THE UNIT, AND NOTHING HEREIN SHALL BE CONSTRUED TO CONSTITUTE A REPRESENTATION, WARRANTY OR GUARANTEE BY THE DEVELOPER OR THE CITY THAT UPON TRANSFER THE OWNER SHALL OBTAIN THE MAXIMUM SALES PRICE. DEPENDING UPON CONDITIONS AFFECTING THE REAL ESTATE MARKET, THE OWNER MAY OBTAIN LESS THAN THE MAXIMUM SALES PRICE FOR THE UNIT UPON RESALE.

B. Other Improvements. Nothing in this Covenant shall prohibit an Owner from making an improvement to the Unit which does not qualify as an Eligible Capital Improvement. However, only Eligible Capital Improvements may be included in the calculation of the Maximum Sales Price.

C. Buyers May Not Pay Owner's Costs. No Owner shall permit any prospective buyer to assume any or all of the Owner's customary closing costs or accept any other consideration which would cause an increase in the purchase price above the bid price so as to induce the Owner to sell to such prospective buyer.

D. First Sale After Control Period Ends.

(1) When the Unit is offered for sale for the first time after the expiration of the Control Period, the City shall have the option ("Option") to either (a) purchase the Unit at the

Maximum Sale Price, or, in the alternative, (b) permit a sale of the Unit on the open market and receive one hundred percent (100%) of the Unit sale proceeds that exceed the Maximum Sale Price.

(2) When the Unit is to be offered for sale for the first time after the expiration of the Control Period, the Owner shall notify the City of the intended sale ("Notice of Intent to Sell") at least thirty (30) days prior to the Unit being offered for sale. Such Notice of Intent to Sell, sent to the City, shall set forth: (a) the legal description for the Unit; (b) the Owner's original purchase price for the Unit; (c) the date Owner purchased the Unit; (d) the cost and date of Eligible Capital Improvements undertaken by the Owner, if any, along with supporting documentation of such costs required as described elsewhere in this Covenant; (e) the date on which the Owner intends to offer the Unit for sale on the open market; and (f) an address and phone number at which the Owner may be contacted by the City.

(3) Within thirty (30) days from and after the City's receipt of the Notice of Intent to Sell and all information required by Section VI.D.2. above, the City shall deliver a notice to the Owner ("City's Notice of Maximum Sale Price & Election") setting forth: (a) the Maximum Sale Price (as determined by the City in accordance with Section VI.A.); and (b) a statement regarding whether the City elects to either (i) purchase the Unit at the Maximum Sale Price, or (ii) permit the sale of the Unit on the open market and receive 100% of the proceeds that exceed the Maximum Sale Price ("City's Sale Proceeds"). The Maximum Sale Price set by the City hereunder shall include the Eligible Capital Improvement credits only if the Owner delivers to the City the information required hereunder with the Owner's Notice of Intent to Sell.

(4) In the event that the City elects to purchase the Unit, the City's Notice of Maximum Sale Price & Election shall set forth the terms of the purchase, including the date, time and place of closing. The City shall set the closing no later than forty-five (45) calendar days after the date of the City's Notice of Maximum Sale Price & Election. At the closing of the purchase of the Unit, the City shall pay the Maximum Sale Price determined hereunder, and the Owner shall execute and deliver a special warranty deed to the City and surrender possession of the Unit to the City, free and clear of all encumbrances except any that are expressly assumed in writing by the City. At the closing of the sale of the Unit hereunder, Owner shall also provide and pay for a title insurance policy to the City from a title insurance company acceptable to the City insuring marketable title in the City consistent with the terms of the purchase of the Unit by the City. If the Owner fails or refuses to execute and deliver such a deed and title insurance policy at closing, the City may execute and deliver said deed, and secure such title policy at Owner's cost, on behalf of the Owner as the Owner's attorney-in-fact, and the Owner, by accepting title to the Unit, hereby irrevocably appoints the City as its attorney-in-fact for the herein purposes.

(5) In the event that the City elects not to purchase the Unit and instead permits the sale of the Unit on the open market, as provided in paragraph D.(3) above, then the Owner shall promptly deliver to the City any and all contracts for the sale of the Unit, and all amendments thereto. If the Unit sells for more than the Maximum Sale Price as set forth in the City's Notice of Maximum Sale Price & Election (or as otherwise determined by the City), the City shall be

entitled to full payment of the City's Sale Proceeds at and upon the closing of the sale of the Unit.

(6) If the City fails to timely deliver the City's Notice of Maximum Sale Price & Election, the City shall have no option to buy the Unit, and it shall be deemed that the City elects to permit the Owner to sell the Unit on the open market, with the City receiving the City's Sale Proceeds in accordance with the foregoing paragraph. If the Owner fails to deliver the Notice of Intent to Sell required hereunder, the City shall have such remedies against the selling Owner as are set forth in Article VII hereof.

(7) The period extending from the end of the Control Period, through the first sale of the Unit after the Control Period, and ending on the date that the City either purchases the Unit or receives the City's Sale Proceeds under this Section VI.D. shall be referred to herein as the "Post-Control Period".

## **ARTICLE VII REMEDIES IN THE EVENT OF BREACH**

A. Inspection. In the event that the City and/or HOST has reasonable cause to believe that Owner is violating the provisions of this Covenant, the City and/or HOST, by its authorized representative, may inspect the Unit between the hours of 8:00 a.m. and 5:00 p.m., Monday through Friday, after a reasonable attempt to provide such Owner with twenty-four (24) hours advance written notice.

B. Cure/Hearing. In the event a violation of this Covenant is discovered, the City and/or HOST shall send a notice of violation to Owner detailing the nature of the violation and allowing Owner fifteen (15) days to cure such default. Said notice shall state that Owner may request a hearing before the City or HOST (as determined by the City or HOST) pursuant to Denver Revised Municipal Code Section 27-115 and 27-116 *et seq.* If no hearing is requested and the violation is not cured within the fifteen (15) day period, Owner shall be considered in violation of this Covenant. If a hearing is held before the City or HOST, the decision of the City or HOST based on the record of such hearing shall be final for the purpose of determining if a violation has occurred.

C. Enforcement. There is hereby reserved to the City the right to enforce this Covenant, including any and all remedies provided pursuant to the Denver Revised Municipal Code.

D. Voiding Transfers. In the event the Unit is Transferred in a manner that is not in full compliance with the terms and conditions of this Covenant, such Transfer shall be wholly null and void and shall confer no title whatsoever upon the purported transferee. Each and every Transfer of the Unit, for all purposes, shall be deemed to include and incorporate by this reference the covenants herein contained, regardless of reference therein to this Covenant.

E. HUD. Notwithstanding anything in this Covenant to the contrary, in the event that the Unit is encumbered by a HUD-insured mortgage, the City's remedies shall specifically not include remedies prohibited by HUD, such as: (i) voiding a conveyance, including a lease, by the Owner; (ii) terminating the Owner's interest in the Unit; (iii) limiting the amount of sales

proceeds retainable by the Owner to an amount less than that set forth pursuant to Article VI; or (iv) subjecting the Owner to contractual liability including damages, specific performance or injunctive relief, other than requiring repayment at a reasonable rate of interest of assistance provided to make the Unit affordable as low or moderate income housing.

## **ARTICLE VIII RELEASE OF COVENANT IN FORECLOSURE: CITY'S OPTION TO BUY**

A. Foreclosure. The City shall release this Covenant of record and waive its ability to enforce the provisions of this Covenant with respect to the Unit in the event that title to the Unit is conveyed by way of foreclosure, or delivery of a deed in lieu of foreclosure with respect to the Unit, to a First Mortgagee (which shall be the only party (including HUD as provided below) entitled to take the Unit free of this Covenant pursuant to the provisions of this Article VIII). In the event that the City (or a designee empowered to hold title to real property) purchases the Unit at foreclosure, the City, or its designee, may sell the Unit to Qualified Buyers, or rent the Unit until such time that the Unit can be sold to a Qualified Buyer in accordance with this Covenant. This Covenant shall automatically and permanently terminate upon assignment to HUD of a first deed of trust encumbering the Unit.

B. Notice of Foreclosure. In the event of (i) a foreclosure action being brought by the First Mortgagee (including assigns of the First Mortgagee), or (ii) the request for the First Mortgagee to accept title to the Unit by deed in lieu of foreclosure, the Owner shall deliver a copy of any notice of intent to foreclose or request for deed in lieu to the City within ten (10) days of receipt of such notice or request. Notice to the City shall be to the address of the City as provided in this Covenant. In the event that the First Mortgagee takes title to the Unit pursuant to a deed in lieu of foreclosure, the Owner shall give notice to the City upon the vesting of title to the Unit in the First Mortgagee.

## **ARTICLE IX TERM OF RESTRICTION**

This Covenant shall be effective and binding during the Control Period, and thereafter for the Post-Control Period, and as provided in Section VI.D., except as otherwise specifically provided herein. Notwithstanding the foregoing, any and all claims of the City available hereunder against the Owner personally shall survive any release or termination of this Covenant.

## **ARTICLE X GENERAL PROVISIONS**

A. Notices. All notices and demands required or permitted under this Covenant shall be in writing, as follows: (1) by personal delivery of the notice to the party entitled to receive it; (2) by mailing such notice by certified mail, return receipt requested, in which case the notice shall be deemed to be delivered three days after the date of its mailing; or (3) by Federal Express or any other overnight carrier, in which case the notice shall be deemed to be delivered as of the date it is sent. All notices which concern this Covenant shall be sent to the address of the appropriate party as set forth below, except if changed by a party by notice pursuant hereto, and except if a

separate memorandum of this Covenant is recorded against the Unit by the City summarizing the City's rights hereunder, then to the address set forth in such memorandum.

To the City: Community Planning and Development  
201 W. Colfax Avenue, #209  
Wellington Webb Building  
Denver, Colorado 80202  
Attn: Manager

With a copy to: Department of Housing Stability  
201 W. Colfax Avenue, Dept. #615  
Denver, Colorado 80202  
Attn: Director

and a copy to: City Attorney  
City of Denver  
201 W. Colfax Avenue, Dept. 1207  
Denver, Colorado 80202  
Attn: Municipal Operations Section

To the Developer: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

To the Qualified Buyer/Owner: To the Unit address.

B. Owner's Disclosure. Each Owner who takes title from Developer and every subsequent Owner of the Unit shall execute and record a Memorandum of Acceptance in the form attached hereto as Exhibit B (completed with the appropriate information relating to the Unit and such Owner) coincident with such Owner's deed to his or her Unit in the real property records of the City and County of Denver, Colorado, and such Owner shall promptly deliver a copy of same to HOST.

C. Severability. Whenever possible, each provision of this Covenant and any other related document shall be interpreted in such a manner as to be valid under applicable law; but if any provision of any of the foregoing shall be invalid or prohibited under said applicable law, such provisions shall be ineffective to the extent of such invalidity or prohibition without invalidating the remaining provisions of this Covenant.

D. Choice of Law. This Covenant shall be governed and construed in accordance with the laws of the State of Colorado.

E. Waiver. No claim of waiver, consent or acquiescence with respect to any provision of this Covenant shall be valid against the City except on the basis of a written instrument executed by the City.

F. Further Actions. The parties to this Covenant agree to execute such further documents and take such further actions as may be reasonably required to carry out the provisions and intent of this Covenant or any agreement or document relating hereto or entered into in connection herewith.

G. Modifications. Except as otherwise provided herein, any modification to this Covenant shall be effective only when made in a writing signed by the Owner and the City and recorded with the Clerk and Recorder of the County.

H. No Third Party Beneficiaries. This Covenant is made and entered into for the sole protection and benefit of the City and County of Denver, the Owner and the Developer. No other person, persons, entity or entities, including without limitation prospective buyers of the Unit, shall have any right of action with respect to this Covenant or right to claim any right or benefit from the terms provided in this Covenant or be deemed a third party beneficiary of this Covenant.

**(INTENTIONALLY LEFT BLANK)**





**EXHIBIT A**  
**Unit Description**

UNIT \_\_\_\_\_, \_\_\_\_\_ [*INSERT NAME OF PROJECT*],  
County of \_\_\_\_\_, State of Colorado, according to the Map thereof recorded on  
\_\_\_\_\_, 20\_\_, at Reception No. \_\_\_\_\_, and the Declaration  
recorded on \_\_\_\_\_, 20\_\_, at Reception No. \_\_\_\_\_, in the records  
of the Clerk and Recorder of the County of \_\_\_\_\_, Colorado,

also known by street and number as: \_\_\_\_\_

**EXHIBIT B**  
**Memorandum of Acceptance**

\_\_\_\_\_ (Project Name)

WHEREAS, \_\_\_\_\_, the Buyer, is purchasing from \_\_\_\_\_, the Seller, at a price of \$ \_\_\_\_\_, a home described as:

UNIT \_\_\_\_\_, \_\_\_\_\_ *[INSERT NAME OF PROJECT]*, County of \_\_\_\_\_, State of Colorado, according to the Map thereof recorded on \_\_\_\_\_, 20\_\_, at Reception No. \_\_\_\_\_, and the Declaration recorded on \_\_\_\_\_, 20\_\_, at Reception No. \_\_\_\_\_, in the records of the Clerk and Recorder of the County of \_\_\_\_\_, Colorado, also known by street and number as: \_\_\_\_\_ (the "Unit"); and

WHEREAS, the Seller of the Unit is requiring as a prerequisite to the sale transactions that the Buyer acknowledge and agree to the terms, conditions and restrictions found in that certain instrument entitled "NOTICE OF VOIDABLE TITLE TRANSFER AND AMENDED AND RESTATED STAPLETON AFFORDABLE HOUSING COVENANT FOR UNIT \_\_\_\_\_ at \_\_\_\_\_", recorded on \_\_\_\_\_, 20\_\_, under Reception No. \_\_\_\_\_, in the real property records of the City and County of Denver, Colorado ("Covenant").

NOW, THEREFORE, as an inducement to the Seller to sell the Unit, the Buyer:

1. Acknowledges that Buyer has carefully read the entire Covenant, has had the opportunity to consult with legal and financial counsel concerning the Covenant and fully understands the terms, conditions, provisions, and restrictions contained in the Covenant.
2. Understands that resale pricing is restricted and profits may be required to be shared after the termination of the Covenant; and that the Covenant provides that the owner of the Unit must occupy the Unit as his/her permanent residence.
3. Directs that this memorandum be placed of record in the real estate records of the City and County of Denver, Colorado and a copy provided to Denver's Office of Economic Development.

**IN WITNESS WHEREOF**, the parties hereto have executed this instrument of the day and year first above written.

BUYER(S):

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

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

STATE OF                                )  
  ) ss.  
COUNTY OF                            )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 200\_\_ ,  
by \_\_\_\_\_.

Witness my hand and official seal.

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

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

## EXHIBIT B

### DISBURSEMENT TERMS AND CONDITIONS

#### I. **Disbursement Request Procedures**

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

## EXHIBIT B

- i. A completed HOST expense certification form.
  - ii. For hard cost draws, a completed standard AIA Form G702 and Form G703 certified by the architect and signed and notarized by the general contractor. If the Disbursement Request includes costs for minor construction not shown on the G702 and G703, the scope of work and contractor invoices must be submitted.
  - iii. Invoices and other evidence satisfactory to HOST and DOF for “hard” or direct costs provided to the Project with respect to the Disbursement Request. All invoices must show the Project name and address.
  - iv. Invoices and other evidence satisfactory to the City for “soft” or indirect costs provided to the Project with respect to the Disbursement Requests. All invoices must show the Project name and address.
  - v. Evidence satisfactory to HOST and DOF to demonstrate proof of payment of any cost or expense contained on a Disbursement Request. Evidence of proof of payment may include, but not be limited to: cancelled checks; copies of checks; documentation of cost or expense in a general ledger; credit or debit card statements; final signed settlement statements, wire transfer records, or bank statements.
  - vi. An updated itemized budget.
  - vii. Updated certificates of insurance at least 30 days prior to expiration.
  - viii. Project update summarizing construction progress, delays, timeframe to completion, and if remaining funding is sufficient to finish the project.
  - ix. Lien waivers from all applicable contractors, subcontractors, and suppliers.
  - x. Updated title policy with date down endorsement or copy of date down endorsement for senior lender dated within 15 days of draw request.
  - xi. Copy of construction inspection report (if available)
  - xii. For loan agreements receiving federal funding and to which the Davis-Bacon Act applies, Borrower must be current in submissions of all paperwork and documentation requested by the City to demonstrate compliance with the requirements of the Davis-Bacon Act.
  - xiii. For Disbursement Requests being funded at loan closing, the following items will be required: a) Preliminary closing statement; b) wire instructions on bank letterhead including date wire is required; and c) final settlement statement and recorded documents after closing.
- 
- h. The Borrower must cooperate with HOST in obtaining or providing any additional documentation that may be required by HOST, DOF, or any other agency of the City.
  - i. The City will retain the first \$10,000.00 of Disbursements for the purposes of the Compliance Retainer as set forth in the Loan Agreement. The \$10,000.00 that is retained pursuant to this provision will be released under the terms described in Section II.

## EXHIBIT B

- j. The City will disburse to the Borrower 90% of hard expenses for each Disbursement and all of the soft expenses. The retained 10% of hard expense (the “Retainage”) shall be disbursed as all or part of the final Disbursement under the terms described in Section II.
- k. At all times during the construction of the Project, the City shall have the right, but not the obligation, to enter and inspect all work done, and all materials, equipment, and other matters relating to the Project.
- l. HOST reserves the right, in its sole and absolute discretion, to revise or modify the processes, procedures, and requirements related to the disbursement procedures. HOST will notify Borrower of any such changes to the disbursement procedures.
- m. The City will not make any Disbursements of Loan proceeds to the Borrower for costs or expenses that:
  - i. Are prohibited by Federal or City regulations related to the funding source.
  - ii. Are not requested or otherwise not in accordance with Loan Agreement or the procedures for a Disbursement Request set forth herein.
  - iii. Were requested or incurred, or both, after the termination of the Loan Agreement or outside the time periods set forth in the Loan Agreement.
  - iv. Were requested during the occurrence and continuation of an event of default specified in the Loan Agreement.

### II. **Disbursement of Compliance Retainer and Retainage**

- a. *Compliance Retainer.* For the City to release the Compliance Retainer, a Disbursement Request must be submitted along with the following information:
  - i. A completed HOST expense certification form.
  - ii. For loans funded with federal funds, an Integrated Disbursement and Information System (“IDIS”) set up form. The City must review and approve any completed IDIS set up form for any federally funded loan agreement.
  - iii. All documents or items required to be submitted to the City pursuant to the Loan Agreement not previously provided.
  - iv. A certificate of occupancy or a temporary certificate of occupancy.
  - v. Updated certificates of insurance at least 30 days prior to expiration
  - vi. Updated title policy with date down endorsement or copy of date down endorsement for senior lender dated within 15 days of draw request.
  - vii. The Project must pass a Housing Quality Standards (“HQS”) inspection performed by the City. In the event the City cannot perform the inspection, the Borrower will provide a signed authorization providing the City with the right to inspect the Project and a sample of the fully constructed dwelling units in the future.

## EXHIBIT B

- viii. Lease-up information on the City Units or HOME Units, as applicable. The information must include number of bedrooms in the unit, household size, tenant household incomes, date of income certification, tenant paid portion of rent, total lease rent, voucher amounts, voucher type (project based or tenant based), utility allowance amount, lease start and end dates, and demographic data. HOST will review this information to confirm the Project's lease-up is in compliance with the affordability restrictions contained in the Loan Agreement and Rental & Occupancy Covenant.
  
- b. *Retainage*. For the City to release the Retainage, a Disbursement Request must be submitted along with the following information:
  - i. A completed HOST expense certification form.
  - ii. Final lien waivers or proof of release of liens in form and substance satisfactory to the City from all applicable contractors, subcontractors, and suppliers, as applicable.
  - iii. A copy of the completed AIA G704 Form for the senior lender, signed by the architect, general contractor, and Borrower that shows -\$0.00- as the cost estimate of work that is incomplete or defective.
  - iv. A copy of the completed AIA G706 Form for the senior lender, signed by the general contractor and notarized, verifying that all debts and claims have been settled.
  - v. A copy of the completed AIA G706A Form for the senior lender, signed by the general contractor and notarized, stating that all releases or waivers of liens have been received.
  - vi. All documents or items required to be submitted to the City pursuant to the Loan Agreement not previously provided.
  - vii. A certificate of occupancy or a temporary certificate of occupancy.
  - viii. Updated certificates of insurance at least 30 days prior to expiration
  - ix. Updated title policy with date down endorsement or copy of date down endorsement for senior lender dated within 15 days of draw request.
  - x. The Project must also pass a Housing Quality Standards ("HQS") inspection performed by the City. In the event the City cannot perform the inspection, the Borrower will provide a signed authorization providing the City with the right to inspect the Project and a sample of the fully constructed dwelling units in the future.
  - xi. Uniform Relocation Assistance and Real Property Acquisition Policies Act ("URA") Determination, as applicable.
  - xii. Final approved OPMR, as applicable.
  - xiii. Environmental mitigation memorandum of understanding, as applicable.
  - xiv. Any other documents required by HOST.

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

- a. The making of each Disbursement shall be subject to the satisfaction of each of the following additional conditions precedent, and a waiver of any condition to any Disbursement shall not constitute a waiver as to any subsequent

## EXHIBIT B

Disbursement. The City may, in its sole discretion, withhold all or a portion of a Disbursement if any of the following conditions have not been satisfied or if the Borrower has not submitted the required documentation and information required by the Loan Agreement, including the documentation and information required by these terms and conditions.

- i. *No Default.* The Borrower must be in full compliance with, and must not be in default under the Promissory Note, the Deed of Trust, or the Covenant or any other document executed by the Borrower in connection with the Loan.
- ii. *Time to Complete the Project.* In the sole opinion of the City, there must be sufficient time remaining to complete the construction of the Project in accordance with Exhibit A, and in conformance with federal regulations and requirements for federally funded loans.
- iii. *Sufficient Funds Available to Complete the Project.* If requested by the City, the Borrower shall furnish evidence satisfactory to the City, in its sole discretion, that the amount of the Loan yet to be disbursed, together with any other sources of funds available to the Borrower and not yet disbursed, will be sufficient to complete the Project in compliance with the Loan Agreement and to pay all costs therefore, and all other direct or indirect costs relating to the Loan and the Project.
- iv. *Lien waivers.* If requested by the City, the Borrower shall furnish data in a form satisfactory to the City with respect to prior Disbursements and expenditures relating to the Project, and shall furnish lien waivers from the contractor and all subcontractors for work done and materials supplied to the Project to the date of the Disbursement Request.
- v. *Use of Funds.* Subject to the terms of the Loan Agreement, the Borrower shall use the proceeds of the Loan exclusively for the costs of the Project.
- vi. *Compliance with Federal Requirements.* As applicable, Borrower must be compliant with all federal requirements, including, but not limited to, compliance with the Davis-Bacon Act and Section 3 of the Housing and Urban Development Act of 1968, and all reporting obligations under any such federal requirements.
- vii. *Pass-Through Loans.* If the Loan Agreement is structured as a “pass-through” loan, Borrower must demonstrate that Borrower has the authority to submit disbursement requests on behalf of the Project owner, which may be done by providing HOST with an operating agreement or partnership agreement establishing such authority. A “pass-through” loan is defined as a loan made by the City to the Borrower where Loan proceeds will be granted or loaned by the Borrower to the developer or owner of the Project for construction and development costs.

#### IV. Financial Management Systems

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



## **EXHIBIT B**

- a. Financial reporting must be accurate, current, and provide a complete disclosure of the financial results of financially assisted activities and be made in accordance with federal financial reporting requirements.
- b. Accounting records must be maintained which adequately identify the source and application of the funds provided for financially assisted activities. The records must contain information pertaining to contracts and authorizations, obligations, unobligated balances, assets, liabilities, outlays or expenditures, and income. Accounting records shall provide accurate, separate, and complete disclosure of fund status.
- c. Effective internal controls and accountability must be maintained for all contract cash, real and personal property, and other assets. Adequate safeguards must be provided on all property and it must be assured that it is used solely for authorized purposes.
- d. Actual expenditures or outlays must be compared with budgeted amounts and financial information must be related to performance or productivity data, including the development of cost information whenever appropriate or specifically required.
- e. For contracts subject to Federal Agreements, applicable 2 C.F.R. Part 200 cost principles, agency program regulations, and the terms of the agreement will be followed in determining the reasonableness, allowability and allocability of costs.
- f. Source documents such as cancelled checks, paid bills, payrolls, time and attendance records, contract documents, etc., shall be provided for all disbursements. The Borrower will maintain auditable records, i.e., records must be current and traceable to the source documentation of transactions.
- g. For contracts subject to Federal Agreements, the Borrower shall maintain separate accountability for HOST funds as referenced in 2 C.F.R. Part 200.
- h. The Borrower must properly report to Federal, State, and local taxing authorities for the collection, payment, and depositing of taxes withheld. At a minimum, this includes Federal and State withholding, State Unemployment, Worker's Compensation (staff only), City Occupational Privilege Tax, and FICA.
- i. A proper filing of unemployment and worker's compensation (for staff only) insurance shall be made to appropriate organizational units.
- j. The Borrower shall participate, when applicable, in HOST provided staff training sessions in the following financial areas including, but not limited to (1) Budgeting and Cost Allocation Plans; (2) Vouchering Process.

### **V. Audit Requirements**

## **EXHIBIT B**

- a. For contracts subject to Federal Agreements, if the Borrower expends seven hundred and fifty thousand dollars (\$750,000) or more of federal awards in the Borrower's fiscal year, the Borrower shall ensure that it, and its sub recipients(s), if any, comply with all provisions of the 2 C.F.R. Part 200.
- b. A copy of the final audit report must be submitted to the HOST Financial Manager within the earliest of thirty (30) calendar days after receipt of the auditor's report; or nine (9) months after the end of the period audited.
- c. A management letter, if issued, shall be submitted to HOST along with the reporting package prepared in accordance with the Single Audit Act Amendments and the 2 C.F.R. Part 200. If the management letter is not received by the subrecipient at the same time as the Reporting Package, the Management Letter is also due to HOST within thirty (30) days after receipt of the Management Letter, or nine (9) months after the end of the audit period, whichever is earlier. If the Management Letter has matters related to HOST funding, the Contactor shall prepare and submit a Corrective Action Plan to HOST in accordance with the Single Audit Act Amendments and the 2 C.F.R. Part 200, as set forth in 2 C.F.R. 200.511(c) for each applicable management letter matter.
- d. All audit related material and information, including reports, packages, management letters, correspondence, etc., shall be submitted to **HOST Financial Services Team**.
- e. The Borrower will be responsible for all Questioned and Disallowed Costs.
- f. The Borrower may be required to engage an audit committee to determine the services to be performed, review the progress of the audit and the final audit findings, and intervene in any disputes between management and the independent auditors. The Borrower shall also institute policy and procedures for its sub recipients that comply with these audit provisions, if applicable.

### **VI. Procurement**

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

## **EXHIBIT B**

supplies are not needed for any other federally sponsored programs or projects the Borrower will compensate the awarding agency for its share.

### **VII. Bonding**

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

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

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

Exhibit C  
INTENTIONALLY OMITTED

## **Exhibit D**

### **LEGAL DESCRIPTION**

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

Lot 11, Block 32, Stapleton Filing No. 49,  
City and County of Denver,  
State of Colorado.

Purported address (for information only): 5702 N. Central Park Blvd, Denver, CO 80238

# Exhibit E

## SUBORDINATION AGREEMENT

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

### PRELIMINARY STATEMENTS

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

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

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

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

### AGREEMENT

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

“JUNIOR LENDER”

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

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

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

State of Colorado        )  
  ) ss.  
County of                    )

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

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

\_\_\_\_\_

Notary Public

“SENIOR LENDER”

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

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

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

\

State of Colorado            )  
  ) ss.  
County of                    )

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

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

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

Acknowledged by BORROWER:

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

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

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

ATTACHMENT A

[INSERT LEGAL DESCRIPTION]