

**PROJECT-BASED VOUCHER PROGRAM  
AGREEMENT  
(HOMELESSNESS RESOLUTION FUND)**

**THIS PROJECT-BASED VOUCHER PROGRAM AGREEMENT (HOMELESSNESS RESOLUTION FUND) (“Agreement”)** is made between the **CITY AND COUNTY OF DENVER**, a municipal corporation of the State of Colorado (the “City”), by and through the Department of Housing Stability (“HOST”), and **MHMP 21 NAVAJO LLLP**, a Colorado limited liability limited partnership, whose address is 1600 Broadway, Suite 200, Denver, Colorado 80202 (the “Owner”), individually a “Party” and jointly the “Parties.”

**WHEREAS**, in November 2021, voters for the City and County of Denver approved measure 2B, thereby establishing the Homelessness Resolution Fund (the “Fund”);

**WHEREAS**, a purpose of the Fund is to address housing, shelter, and services for those experiencing homelessness or having exited from homelessness;

**WHEREAS**, the City has established the City Homelessness Resolution Project Based Voucher Program (“HR-PBV Program”) to provide housing subsidies to selected residential housing developments for individuals experiencing homelessness or having exited from homelessness;

**WHEREAS**, the Owner is the owner of the real property located at 1347 W. 9<sup>th</sup> Ave., Denver, Colorado 80204 (which was formerly known or referred to as 901 Navajo St.) (the “Project” or the “Property”) that will provide ninety-four (94) dwelling units for individuals experiencing homelessness or having exited from homelessness for which the City will provide rental subsidies under the City HR-PBV Program (the “City HR-PBV Units”);

**WHEREAS**, this Agreement sets forth the Owner’s responsibilities under the program as well as the City’s obligations and is intended to act as both an “Agreement to Enter Into Housing Assistance Payment Contract” and a “Housing Assistance Payments (HAP) Contract”;

**WHEREAS**, Part I of this Agreement is intended to act similarly to an Agreement to Enter Into Housing Assistance Payment Contract and Part II is intended to act similarly to a HAP Contract.

**NOW, THEREFORE**, in consideration of the mutual covenants and agreements hereinafter set forth and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties incorporate the recitals set forth above and agree as follows:

## **GENERAL TERMS**

### **1. PURPOSE; CONTENTS OF AGREEMENT:**

- 1.1.** The Owner agrees to develop the Project and provide the City HR-PBV Units. Upon compliance with the terms of Part I, including, but not limited to, obtaining from the City a HUD-standards based housing quality compliance approval (the “Housing Quality Requirements” or “HQR”) for all City HR-PBV Units, the City will make housing assistance payments for the City HR-PBV Units so long as Owner complies with its obligations under Part II.
- 1.2.** Part I of this Agreement establishes terms and conditions related to the development, construction, and City approval of the City HR-PBV Units.
- 1.3.** Part II of this Agreement establishes the terms and conditions for (i) the Owner to receive housing assistance payments for the City HR-PBV Units; and (ii) the City to make housing assistance payments to Owner on behalf of eligible families who lease City HR-PBV Units.
- 1.4.** This Agreement consists of the General Terms, Part I, Part II, and the following Exhibits:
  - 1.4.1.** Exhibit A – Description of the work to be performed pursuant to Part I.
  - 1.4.2.** Exhibit B – Description of Housing, including:
    - 1.4.2.1.** Project site;
    - 1.4.2.2.** Total number of units in project covered by this Agreement;
    - 1.4.2.3.** Location of City HR-PBV Units on site;
    - 1.4.2.4.** Number of City HR-PBV Units by area (size) and number of bedrooms and bathrooms;
    - 1.4.2.5.** Services, maintenance, or equipment to be supplied by the Owner with charges in addition to the rent to Owner;
    - 1.4.2.6.** Utilities available to the City HR-PBV Units, including a specification of utility services to be paid by Owner (without charges in addition to rent) and utility services to be paid by the tenant; and
    - 1.4.2.7.** Estimated initial rent to Owner for the City HR-PBV Units.
  - 1.4.3.** Exhibit C – Tenant Rent Calculation Methodology
  - 1.4.4.** Exhibit D – Tenant Income, Asset, and Expense Verification Process
  - 1.4.5.** Exhibit E – Approved Tenant Selection Plan
  - 1.4.6.** Exhibit F – Form Consent to Assignment of Project-Based Voucher Program Agreement
  - 1.4.7.** Exhibit F-1 – Form Consent to Assignment of Project-Based Voucher Program Agreement (FirstBank)

2. **TERM**: This Agreement will become effective upon the final execution by all Parties and will expire twenty years after the commencement of Part II, unless sooner terminated (the “Term”). The General Terms will remain in effect for the duration of the Agreement. Part I will be in effect from final execution until the conditions in Part I are satisfied and Owner receives written notice from the City that Part II will go into effect. Part II will remain in effect from the City’s notice pursuant to Part I, Section 10 until the expiration of the Term.

3. **COMPENSATION AND PAYMENT**

3.1. **Maximum Contract Amount**

3.1.1. Notwithstanding any other provision of this Agreement, the City’s maximum payment obligation will not exceed **Seventy-Three Million Six Hundred Ninety-Four Thousand Five Hundred Ninety-Five Dollars and NO/100 (\$73,694,595.00)** (the “Maximum Contract Amount”). The City is not obligated to execute an agreement or any amendments for any further payments.

3.1.2. The City’s payment obligation, whether direct or contingent, extends only to funds appropriated annually by the Denver City Council, paid into the Treasury of the City, and encumbered for the purpose of this Agreement. The City does not by this Agreement irrevocably pledge present cash reserves for payment or performance in future fiscal years. This Agreement does not and is not intended to create a multiple-fiscal year direct or indirect debt or financial obligation of the City.

3.1.3. The Executive Director, or the Executive Director’s designee (the “Director”) of the Department of Housing Stability (“HOST”) or other officer of HOST charged with the responsibility of formulating budget proposals for HOST is hereby requested to include in the annual budget proposals submitted to the City Council for any fiscal year in which this Agreement is in effect a request that funds be appropriated for this Agreement.

3.1.4. In the event that City Council does not appropriate funds or if funds are appropriated in an amount lesser than anticipated or requested for a particular year when this Agreement is in effect, the City agrees to work in good faith with Owner to modify the occupancy restrictions or increase rent and income limits to the minimum extent necessary to maintain breakeven operations, provided that the City determines, in its sole and absolute discretion, that Owner will not be able to achieve breakeven operation through alternative means. Prior to any modification, Owner will be required to submit a plan outlining the proposed modifications necessary to maintain financial feasibility for the City’s review and approval. Any changes

or amendments to the terms of this Agreement will not be effective or binding on the City until an amendment to this Agreement has been fully executed by all required signatories of the City, and if required by Charter, approved by the City Council. If the Parties cannot come to an agreement to modify the Agreement as discussed in this section, either Party may terminate the Agreement upon notice to the other Party. If the City fails to appropriate funding for this Agreement, the City may terminate this Agreement effective immediately upon written notice to the Owner.

**3.1.5.** If, as a result of any audit or program review relating to the performance of Owner or its officers, agents or employees under this Agreement, there are any irregularities or deficiencies in any audit or review, then the Owner will, upon notice from the City, correct all identified irregularities or deficiencies within the time frames designated in the City's written notice.

**3.2. Reimbursable Expenses:** There are no reimbursable expenses allowed under this Agreement. The City will not be obligated to pay the Owner for any other fees, costs, expenses, or charges of any nature that may be incurred by the Owner in performing any obligations under this Agreement including but not limited to personnel, benefits, contract labor, overhead, administrative costs, operating costs, supplies, equipment, and out-of-pocket expenses.

**4. PERFORMANCE MONITORING/INSPECTION:** Owner shall permit the Director to monitor and review Owner's performance under this Agreement. Owner shall make available to the City for inspection all files, records, reports, policies, minutes, materials, books, documents, papers, invoices, accounts, and other data, whether in hard copy or electronic format, used in the performance of any of the obligations required hereunder or relating to any matter covered by this Agreement. All such monitoring and inspection shall be performed in a manner that will not unduly interfere with Owner's operations.

**5. OWNER BREACH; CITY REMEDIES; TERMINATION OF AGREEMENT:**

**5.1. Owner Breach.** Any of the following is a breach by Owner under the Agreement:

**5.1.1.** Owner fails comply with or violates any of the Owner's obligations contained in this Agreement, including, but not limited to, the obligation to maintain the City HR-PBV Units in accordance with the HQR.

**5.1.2.** Owner, including any affiliate of Owner, has failed to comply with, violated, or breached any obligation under any supportive housing services agreement or other agreement with the City applicable to the Project or Property.



- 5.1.3. Owner has committed any fraud or made any false statements to the City in connection with this Agreement.
- 5.1.4. Owner or any of its officers or employees are convicted, plead nolo contendere, enter into a formal agreement in which they admit guilt, enter a plea of guilty or otherwise admit culpability to criminal offenses of bribery, kickbacks, collusive bidding, bid-rigging, antitrust, fraud, undue influence, theft, racketeering, extortion or any offense of a similar nature in connection with the Owner's business.
- 5.1.5. If the Property is subject to a lien or security interest securing a City loan and Owner has failed to comply with, violates, breaches, or defaults under the loan agreement, promissory note, deed of trust, covenant, or any other loan documents; or
- 5.1.6. Owner has engaged in any drug-related criminal activity or any violent criminal activity.

## **5.2. City Remedies.**

- 5.2.1. If the City determines that a breach has occurred, the City may exercise any of its rights or remedies under this Agreement after first providing the Owner notice and cure set forth in Section 5.2.2 and Section 5.2.3.
- 5.2.2. The City must notify Owner in writing of a determination of a breach. After Owner's receipt of the written notice, Owner shall have thirty (30) calendar days to cure any breach or default identified in the notice (the "Cure Period"). If a breach or default is not a type which can be cured within the Cure Period, the Director of HOST, at their reasonable discretion, may extend the cure period if Owner provides HOST with a reasonably detailed written plan of how Owner will cure the breach or default and Owner, at all times within such additional time period, actively and diligently pursues such plan (the "Extended Cure Period").
- 5.2.3. Upon receiving a written notice pursuant to Section 5.2.2., Owner must provide any lender, secured party, or investor partner in Owner a copy of such written notice. Any such party shall have the right, but not the obligation, to cure the breach or default within the Cure Period or Extended Cure Period. If an Owner's breach or default is not a type which can be cured within the Cure Period, the Director of HOST, at their reasonable discretion, may extend the cure period if a lender, secured party, or investor partner provides HOST with a reasonably detailed written plan of how the breach or default will be cured and the lender, secured party, or investor partner, at all times within such additional time period, actively and diligently

pursues such plan. Any cure tendered by a third party shall be accepted by the City as if tendered by Owner.

**5.2.4.** The City's rights and remedies under this Agreement include, but are not limited to: (i) modifying or terminating this Agreement; (ii) declining to allow the commencement of Part II of this Agreement for all or some of the City HR-PBV Units; (iii) recovery of overpayments; and (iv) termination or reduction of housing assistance payments. Termination of this Agreement for the reasons stated in Section 5.1.4 is effective upon Owner's receipt of the notice from the City.

**5.2.5.** Upon termination of this Agreement Owner shall have no claim against the City by reason of, or arising out of, incidental or relating to termination, except for compensation for any amount of housing assistance payments that may be due prior to termination of the Agreement.

**5.3. City Remedies Not Waived.** The City's exercise or non-exercise of any remedy for Owner breach of this Agreement is not a waiver of the right to exercise that remedy or any other right or remedy at any time. In no event will any payment or other action by the City constitute or be construed to be a waiver by the City of any breach of covenant or default that may then exist on the part of the Owner. No payment, other action, or inaction by the City when any breach or default exists will impair or prejudice any right or remedy available to it with respect to any breach or default. No assent, expressed or implied, to any breach of any term of this Agreement constitutes a waiver of any other breach.

**6. EXAMINATION OF RECORDS AND AUDITS:** Any authorized agent of the City, including the City Auditor or his or her representative, has the right to access, and the right to examine, copy and retain copies, at City's election in paper or electronic form, any pertinent books, documents, papers and records related to the Owner's performance pursuant to this Agreement, provision of any goods or services to the City, and any other transactions related to this Agreement. The Owner shall cooperate with City representatives and City representatives shall be granted access to the foregoing documents and information during reasonable business hours and until the latter of three (3) years after the final payment under this Agreement or expiration of the applicable statute of limitations. When conducting an audit of this Agreement, the City Auditor shall be subject to government auditing standards issued by the United States Government Accountability Office by the Comptroller General of the United States, including with respect to disclosure of information acquired during the course of an audit. No examination of records and audits pursuant to this paragraph shall require the Owner to make

disclosures in violation of state or federal privacy laws. The Owner shall at all times comply with D.R.M.C § 20-276.

7. **ACCESS TO PROPERTY**: Owner shall provide the City with the reasonable right of access to the Property during the term of this Agreement for the purposes of reviewing compliance with this Agreement. The City shall be entitled to conduct annual physical inspections of the Property. Owner shall fully cooperate with the City in an annual monitoring of Owner's performance and site inspection to verify compliance with the requirements of this Agreement.

8. **INSURANCE**

8.1. **General Conditions**. Owner agrees to secure, on or before the effective date of Part II of this Agreement, the following insurance covering all operations, goods or services provided pursuant to Part II of this Agreement. Owner shall keep the required insurance coverage in force at all times during the term of Part II of this Agreement, including any extension thereof. The required insurance shall be underwritten by an insurer licensed or authorized to do business in Colorado and rated by A.M. Best Company as "A-VIII" or better. Each policy shall require notification to the City in the event any of the required policies be canceled or non-renewed before the expiration date thereof. Such written notice shall be sent to the parties identified in the Notices section of this Agreement. Such notice shall reference the City contract number listed on the signature page of this Agreement. Said notice shall be sent thirty (30) days prior to such cancellation or non-renewal unless due to non-payment of premiums for which notice shall be sent ten (10) days prior. If such written notice is unavailable from the insurer, Owner shall provide written notice of cancellation, non-renewal and any reduction in coverage to the parties identified in the Notices section by certified mail, return receipt requested within three (3) business days of such notice by its insurer(s) and referencing the City's contract number. Owner shall be responsible for the payment of any deductible or self-insured retention. The insurance coverages specified in this Agreement are the minimum requirements, and these requirements do not lessen or limit the liability of Owner. Owner shall maintain, at its own expense, any additional kinds or amounts of insurance that it may deem necessary to cover its obligations and liabilities under this Agreement.

8.2. **Proof of Insurance**. Owner may not commence services or work relating to Part II of this Agreement prior to placement of coverages required under this Agreement. Owner must provide a certificate of insurance, preferably an ACORD form, as proof that the insurance held by Owner complies with all insurance requirements of this Agreement. The City requests that the City's contract number be referenced on the certificate of insurance. The City's acceptance of a

certificate of insurance or other proof of insurance that does not comply with all insurance requirements set forth in this Agreement shall not act as a waiver of Owner's breach of this Agreement or of any of the City's rights or remedies under this Agreement. The City's Risk Management Office may require additional proof of insurance, including but not limited to policies and endorsements.

**8.3. Additional Insureds.** For Commercial General Liability, and Auto Liability, Owner and subcontractor's insurer(s) shall include the City and County of Denver, its elected and appointed officials, employees and volunteers as additional insured.

**8.4. Waiver of Subrogation.** For all coverages required under this Agreement, Owner's insurer shall waive subrogation rights against the City.

**8.5. Subcontractors and Subconsultants.** Owner shall confirm and document that all subcontractors and subconsultants (including independent contractors, suppliers or other entities providing goods or services required by this Agreement) procure and maintain coverage as approved by Owner and appropriate to their respective primary business risks considering the nature and scope of services provided.

**8.6. Workers' Compensation and Employer's Liability Insurance.** Owner shall maintain the coverage as required by statute for each work location and shall maintain Employer's Liability insurance with limits of \$100,000 per occurrence for each bodily injury claim, \$100,000 per occurrence for each bodily injury caused by disease claim, and \$500,000 aggregate for all bodily injuries caused by disease claims.

**8.7. Commercial General Liability.** Owner shall maintain a Commercial General Liability insurance policy with minimum limits of \$1,000,000 for each bodily injury and property damage occurrence, \$2,000,000 products and completed operations aggregate (if applicable), and \$2,000,000 policy aggregate.

**8.8. Automobile Liability.** Owner 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.

## **9. DEFENSE AND INDEMNIFICATION**

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

determined by the trier of fact to be 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 the Owner 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.

**9.2.** Owner'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. Owner'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.

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

**9.4.** Insurance coverage requirements specified in this Agreement in no way lessen or limit the liability of the Owner under the terms of this indemnification obligation. Owner is responsible to obtain, at its own expense, any additional insurance that it deems necessary for the City's protection.

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

**10. COLORADO GOVERNMENTAL IMMUNITY ACT:** In relation to this Agreement, the City is relying upon and has not waived the monetary limitations and all other rights, immunities and protection provided by the Colorado Governmental Act, C.R.S. § 24-10-101, *et seq.*

**11. TAXES, CHARGES AND PENALTIES:** The City is not liable for the payment of taxes, late charges or penalties of any nature, except for any additional amounts that the City may be required to pay under the City's prompt payment ordinance D.R.M.C. § 20-107, *et seq.*

**12. TRANSFER OF THE AGREEMENT OR PROPERTY:**

**12.1. City Consent to Transfer.**

**12.1.1.** Except as provided in 12.1.2, Owner has not made and will not make any transfer in any form, including any sale or assignment, of this Agreement or the Property without the prior written consent of the City or except as otherwise permitted by the loan agreement with City applicable to the Project. Any sale or assignment without such consent will be ineffective

and void and will be cause for termination of this Agreement by the City. A change in ownership in Owner, such as a stock or partnership transfer of the interest of a minority shareholder or limited partner (including, without limitation, the transfer of limited partner interests within a limited partner), is not subject to the provisions of this section; provided, however, the transfer of the interest of a general partner or person with a controlling interest in Owner is subject to the provisions of this section, unless such transfer is (i) a result of any secured lender exercising its rights and remedies under a collateral assignment of such general partner's interests as security of its loan, or (ii) the removal and replacement of Owner's general partner by a limited partner in accordance with the terms and conditions of Owner's Amended and Restated Limited Liability Limited Partnership Agreement (the "Partnership Agreement"); but any subsequent replacement general partner shall be subject to approval of the City, not to be unreasonably withheld.

**12.1.2.** Notwithstanding Section 12.1.1., Owner may assign this Agreement as security for financing of the Project with the written consent of the Director of HOST. Owner must submit a written request to HOST requesting the City's consent to assign this Agreement as security for financing. The Director of HOST is authorized to execute a Consent to Assignment as Security of Financing that is substantially in the form as Exhibit F, attached hereto. As of the date hereof, the City agrees to consent to that certain Consent to Assignment of Project-Based Voucher Program Agreement (FirstBank) attached hereto as Exhibit F-1. The consent of assignment of this Agreement as security for financing does not change the terms of this Agreement in any way and does not change the rights or obligations of the City or Owner under this Agreement, except pursuant to the terms in Exhibit F-1. The City is not and will not be a party to any loan or any loan documents, nor to any assignment of this Agreement as security. Any assignment of this Agreement other than an assignment as security for financing is subject to the requirements of Sections 12.1.1., 12.2., and 12.3.

**12.2.** **Procedure for City Acceptance of Transferee:** Where Owner requests the consent of the City for any transfer in any form, including the sale or assignment of this Agreement or the Property, the City may consent to the transfer of the Agreement or Property if the transferee agrees in writing (in a form acceptable to the City Attorney) to comply with all the terms of this Agreement and, if the transferee is acceptable to the City. The Executive Director of the City's Department of Housing Stability has sole and absolute discretion whether to consent to any assignment, or to terminate this Agreement because of unauthorized assignment.

**12.3. Transferee Assumption of Agreement; Effect of Transfer.** Except pursuant to the terms in Exhibit F-1, no transferee (including the holder of a security interest, the security interest's transferee or successor in interest, or the transferee upon exercise of a security interest) shall have any right to receive payment of housing assistance payments under this Agreement or exercise any rights under this Agreement unless the City has consented in writing to such transfer, and the transferee has agreed in writing, in a form acceptable to the City Attorney, to assume the obligations of the Owner under this Agreement and comply with all terms of this Agreement. Except pursuant to the terms in Exhibit F-1, the City's consent to a transfer of this Agreement or the Property does not change the terms of this Agreement in any way and does not change the rights or obligations of the City or Owner under this Agreement.

**13. INUREMENT:** The rights and obligations of the Parties to this Agreement inure to the benefit of and shall be binding upon the Parties and their respective successors and assigns, provided assignments are consented to in accordance with the terms of this Agreement.

**14. CITY AND OWNER STATUS; RELATION TO THIRD PARTIES:**

**14.1. Selection and Performance of Contractor:**

**14.1.1.** The City has not assumed any responsibility or liability to Owner, or any other party for the performance of any contractor, subcontractor, or supplier. Owner must select a competent contractor to undertake rehabilitation or construction specified in Part I. The selection of a contractor, subcontractor, or supplier is the sole responsibility of Owner, and the City is not involved in any relationship between Owner and any contractor, subcontractor, or supplier.

**14.2. Injury Resulting from Work Under the Agreement.** The City has not assumed any responsibility for or liability to any person, including a worker or resident of the unit undergoing work pursuant to this Agreement, injured as a result of the work or as a result of any other action or failure to act by Owner, or any contractor, subcontractor, or supplier.

**14.3. Legal Relationship:** Owner is not the agent of the City and this Agreement does not create or affect any relationship between the City and any lender to Owner or any suppliers, employees, contractor, or subcontractor used by Owner in the implementation of this Agreement. Owner is not an agent of the City. Neither Owner nor any of its employees are employees or officers of the City under Chapter 18 of the Denver Revised Municipal Code, or for any purpose whatsoever.

**14.4. Exclusion of Third-Party Claims:** Nothing in this Agreement shall be construed as creating any right of any third party to enforce any provision of this Agreement or to assert a claim against the City or Owner under this Agreement. Enforcement of the terms of this Agreement

and all rights of action relating to enforcement are strictly reserved to the Parties. Any person or entity other than the City or Owner receiving services or benefits pursuant to this Agreement is an incidental beneficiary only.

**15. NO AUTHORITY TO BIND CITY TO CONTRACTS:** Owner lacks any authority to bind the City on any contractual matters. Final approval of all contractual matters that purport to obligate the City must be executed by the City in accordance with the City's Charter and the Denver Revised Municipal Code.

**16. CITY RELIANCE ON OWNER CERTIFICATIONS:** Any certification or warranty by Owner pursuant to this Agreement shall be deemed a material representation of fact upon which reliance was placed when this transition was entered into.

**17. SEVERABILITY:** Except for the provisions of this Agreement requiring appropriation of funds and limiting the total amount payable by the City, if a court of competent jurisdiction finds any provision of this Agreement or any portion of it to be invalid, illegal, or unenforceable, the validity of the remaining portions or provisions will not be affected, if the intent of the Parties can be fulfilled.

**18. CONFLICT OF INTEREST**

**18.1.** No employee of the City shall have any personal or beneficial interest in the services or Property described in this Agreement. Owner shall not hire, or contract for services with, any employee or officer of the City that would be in violation of the City's Code of Ethics, D.R.M.C. § 2-51, et seq., or the Charter §§ 1.2.8, 1.2.9, and 1.2.12.

**18.2.** Owner shall not engage in any transaction, activity or conduct that would result in a conflict of interest under this Agreement. Owner represents that it has disclosed any and all current or potential conflicts of interest. A conflict of interest shall include transactions, activities or conduct that would affect the judgment, actions or work of Owner by placing the Owner's own interests, or the interests of any party with whom the Owner has a contractual arrangement, in conflict with those of the City. The City, in its sole discretion, will determine the existence of a conflict of interest and may terminate this Agreement if it determines a conflict exists, after it has given the Owner written notice describing the conflict.

**19. NOTICES:** All notices required by the terms of this Agreement must be hand delivered, sent by overnight courier service, or mailed by certified mail, return receipt requested, if to the Owner at the address aforementioned and to the City at the addresses below:



Executive Director, Department of Housing Stability  
201 W. Colfax Ave., 6th Floor  
Denver, CO 80202

With a copy to:

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

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

- 21. DISPUTES:** All disputes between the City and the Owner arising out of or regarding this 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 Director of HOST.
- 22. GOVERNING LAW; VENUE:** This Agreement will be construed and enforced in accordance with applicable federal law, the laws of the State of Colorado, and the Charter, Revised Municipal Code, ordinances, regulations and Executive Orders of the City and County of Denver, which are expressly incorporated into this Agreement. Unless otherwise specified, any reference to statutes, laws, regulations, charter or code provisions, ordinances, executive orders, or related memoranda, includes amendments or supplements to same. Venue for any legal action relating to this Agreement will be in the District Court of the State of Colorado, Second Judicial District (Denver District Court).
- 24. NO DISCRIMINATION IN EMPLOYMENT:** In connection with the performance of work under this Agreement, the Owner 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. Owner shall insert the foregoing provision in all subcontracts.
- 25. NO DISCRIMINATION IN PROGRAM ASSISTANCE:** In connection with the performance of work under this Agreement, including the leasing of City HR-PBV Units, Owner may not discriminate against a program beneficiary or prospective program beneficiary on the basis 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. Owner shall insert the foregoing provision in all subcontracts.

26. **COMPLIANCE WITH ALL LAWS**: Owner shall perform or cause to be performed all obligations under this Agreement in full compliance with all applicable laws, rules, regulations and codes of the United States, the State of Colorado; and with the Charter, ordinances, rules, regulations and Executive Orders of the City and County of Denver. These laws, regulations, and other authorities are incorporated by reference herein to the extent that they are applicable and required by law to be so incorporated.
27. **LEGAL AUTHORITY**: Owner represents and warrants that it possesses the legal authority, pursuant to any proper, appropriate, and official motion, resolution or action passed or taken, to enter into this Agreement. Each person signing and executing this Agreement on behalf of Owner represents and warrants that he has been fully authorized by Owner to execute this Agreement on behalf of Owner and to validly and legally bind Owner to all the terms, performances and provisions of this Agreement. The City shall have the right, in its sole discretion, to either temporarily suspend or permanently terminate this Agreement if there is a dispute as to the legal authority of either Owner or the person signing this Agreement to enter into this Agreement.
28. **NO CONSTRUCTION AGAINST DRAFTING PARTY**: The Parties and their respective counsel have had the opportunity to review this Agreement, and this Agreement will not be construed against any Party merely because any provisions of this Agreement were prepared by a particular Party.
29. **ORDER OF PRECEDENCE**: In the event of any conflicts between the language of this Agreement and the exhibits, the language of this Agreement controls.
30. **ADVERTISING AND PUBLIC DISCLOSURE**: Owner shall not include any reference to this Agreement without first obtaining the written approval of the Director. Any oral presentation or written materials related to services performed under this Agreement will be limited to services that have been accepted by the City. Owner shall notify the Director in advance of the date and time of any presentation. Nothing in this provision precludes the transmittal of any information to City officials.
31. **SURVIVAL OF CERTAIN PROVISIONS**: The terms of this Agreement and any exhibits and attachments that by reasonable implication contemplate continued performance, rights, or compliance beyond expiration or termination of this Agreement survive this Agreement and will continue to be enforceable. Without limiting the generality of this provision, Owner's obligations to provide insurance and to indemnify the City will survive for a period equal to any and all relevant statutes of

limitation, plus the time necessary to fully resolve any claims, matters, or actions begun within that period.

## **32. CONFIDENTIAL INFORMATION**

**32.1.** “Confidential Information” means all information or data disclosed in written or machine recognizable form and is marked or identified at the time of disclosure as being confidential, proprietary, or its equivalent. Each of the Parties may disclose (a “Disclosing Party”) or permit the other Party (the “Receiving Party”) access to the Disclosing Party’s Confidential Information in accordance with the following terms. Except as specifically permitted in this Agreement or with the prior express written permission of the Disclosing Party, the Receiving Party shall not: (i) disclose, allow access to, transmit, transfer or otherwise make available any Confidential Information of the Disclosing Party to any third party other than its employees, subcontractors, agents and consultants that need to know such information to fulfil the purposes of this Agreement, and in the case of non-employees, with whom it has executed a non-disclosure or other agreement which limits the use, reproduction and disclosure of the Confidential Information on terms that afford at least as much protection to the Confidential Information as the provisions of this Agreement; or (ii) use or reproduce the Confidential Information of the Disclosing Party for any reason other than as reasonably necessary to fulfil the purposes of this Agreement. This Agreement does not transfer ownership of Confidential Information or grant a license thereto. The City will retain all right, title, and interest in its Confidential Information.

**32.2.** Owner shall provide for the security of Confidential Information and information which may not be marked, but constitutes personally identifiable information, HIPAA, CJIS, or other federally or state regulated information (“Regulated Data”) in accordance with all applicable laws, rules, policies, publications, and guidelines. If the Owner receives Regulated Data outside the scope of this Agreement, it shall promptly notify the City.

**32.3.** Confidential Information that the Receiving Party can establish: (i) was lawfully in the Receiving Party’s possession before receipt from the Disclosing Party; or (ii) is or becomes a matter of public knowledge through no fault of the Receiving Party; or (iii) was independently developed or discovered by the Receiving Party; or (iv) was received from a third party that was not under an obligation of confidentiality, shall not be considered Confidential Information under this Agreement. The Receiving Party will inform necessary employees, officials, subcontractors, agents, and officers of the confidentiality obligations under this Agreement, and all requirements

and obligations of the Receiving Party under this Agreement shall survive the expiration or earlier termination of this Agreement.

**32.4.** Nothing in this Agreement shall in any way limit the ability of the City to comply with any laws or legal process concerning disclosures by public entities. The Parties understand that all materials exchanged under this Agreement, including Confidential Information, may be subject to the Colorado Open Records Act., § 24-72-201, *et seq.*, C.R.S., (the “Act”). In the event of a request to the City for disclosure of confidential materials, the City shall advise the Owner of such request in order to give the Owner the opportunity to object to the disclosure of any of its materials which it marked as, or otherwise asserts is, proprietary or confidential. If the Owner objects to disclosure of any of its material, the Owner shall identify to the City the legal basis under the Act for any right to withhold. In the event of any action or the filing of a lawsuit to compel disclosure, the Owner agrees to intervene in such action or lawsuit to protect and assert its claims of privilege against disclosure of such material or waive the same. If the matter is not resolved, the City will tender all material to the court for judicial determination of the issue of disclosure. The Owner further agrees to defend, indemnify and save and hold harmless the City, its officers, agents and employees, from any claim, damages, expense, loss or costs arising out of the Owner’s intervention to protect and assert its claim of privilege against disclosure under this Article, including but not limited to, prompt reimbursement to the City of all reasonable attorney fees, costs, and damages that the City may incur directly or may be ordered to pay.

### **33. PROTECTED INFORMATION AND DATA PROTECTION**

**33.1.** **Compliance with Data Protection Laws:** Owner shall comply with all applicable international, federal, state, local laws, rules, regulations, directives, and policies relating to data protection, use, collection, disclosures, processing, and privacy as they apply to the Owner under this Agreement, including, without limitation, applicable industry standards or guidelines based on the data’s classification relevant to the Owner’s performance hereunder and, when applicable, the most recent iterations of § 24-73-101, *et seq.*, C.R.S., IRS Publication 1075, the Health Information Portability and Accountability Act (HIPAA), the U.S. Department of Justice, Federal Bureau of Investigation, Criminal Justice Information Services Security Policy for all Criminal Justice Information, the Colorado Consumer Protection Act, and the Payment Card Industry Data Security Standard (PCI-DSS), (collectively, “Data Protection Laws”). If the Owner becomes aware that it cannot reasonably comply with the terms or conditions contained herein due to a conflicting law or policy, the Owner shall promptly notify the City.

**33.2. Safeguarding Protected Information:** “Protected Information” means data, regardless of form, that has been designated as private, proprietary, protected, or confidential by law, policy, or the City. Protected Information includes, but is not limited to, employment records, protected health information, student records, education records, criminal justice information, personal financial records, research data, trade secrets, classified government information, other regulated data, and personally identifiable information as defined by §§ 24-73-101(4)(b) and 6-1-716(1)(g)(I)(A), C.R.S., as amended. Protected Information shall not include public records that by law must be made available to the public pursuant to the Colorado Open Records Act § 24-72-201, *et seq.*, C.R.S. To the extent there is any uncertainty as to whether data constitutes Protected Information, the data in question shall be treated as Protected Information until a determination is made by the City or an appropriate legal authority. Unless the City provides security protection for the information it discloses to the Owner, the Owner shall implement and maintain reasonable security procedures and practices that are both appropriate to the nature of the Protected Information disclosed and that are reasonably designed to help safeguard Protected Information from unauthorized access, use, modification, disclosure, or destruction. Disclosure of Protected Information does not include disclosure to a third party under circumstances where the City retains primary responsibility for implementing and maintaining reasonable security procedures and practices appropriate to the nature of the Protected Information, and the City implements and maintains technical controls reasonably designed to safeguard Protected Information from unauthorized access, modification, disclosure, or destruction or effectively eliminate the third party's ability to access Protected Information, notwithstanding the third party's physical possession of Protected Information. If the Owner has been contracted to maintain, store, or process personal information on the City's behalf, the Owner is a “Third-Party Service Provider” as defined by § 24-73-103(1)(i), C.R.S.

**33.3. Data Access and Integrity:** The Owner shall implement and maintain all appropriate administrative, physical, technical, and procedural safeguards necessary and appropriate to ensure compliance with the standards, guidelines, and Data Protection Laws applicable to the Owner's performance hereunder to ensure the security and confidentiality of all data. The Owner shall protect against threats or hazards to the security or integrity of data; protect against unauthorized disclosure, access to, or use of any data; restrict access to data as necessary; and ensure the proper use of data. The Owner shall not engage in “data mining” except as specifically and expressly required by law or authorized in writing by the City. All data and Protected Information shall be

maintained and securely transferred in accordance with industry standards. Unless otherwise required by law, the City has exclusive ownership of all data it discloses under this Agreement, and the Owner shall have no right, title, or interest in data obtained in connection with the services provided herein.

**33.4. Data Retention, Transfer, Litigation Holds, and Destruction:** Using appropriate and reliable storage media, the Owner shall regularly backup data used in connection with this Agreement and retain such backup copies consistent with the Owner's data retention policies. Upon termination of this Agreement, the Owner shall securely delete or securely transfer all data, including Protected Information, to the City in an industry standard format as directed by the City; however, this requirement shall not apply to the extent the Owner is required by law to retain data, including Protected Information. Upon the City's request, the Owner shall confirm the data disposed of, the date disposed of, and the method of disposal. With respect to any data in the Owner's exclusive custody, the City may request that the Owner preserve such data outside of its usual record retention policies. The City will promptly coordinate with the Owner regarding the preservation and disposition of any data and records relevant to any current or anticipated litigation, and the Owner shall continue to preserve the records until further notice by the City. Unless otherwise required by law or regulation, when paper or electronic documents are no longer needed, the Owner shall destroy or arrange for the destruction of such documents within its custody or control that contain Protected Information by shredding, erasing, or otherwise modifying the Protected Information in the paper or electronic documents to make it unreadable or indecipherable.

**33.5. Software and Computing Systems:** At its reasonable discretion, the City may prohibit the Owner from the use of certain software programs, databases, and computing systems with known vulnerabilities to collect, use, process, store, or generate data and information, with Protected Information, received as a result of the Owner's services under this Agreement. The Owner shall fully comply with all requirements and conditions, if any, associated with the use of software programs, databases, and computing systems as reasonably directed by the City. The Owner shall not use funds paid by the City for the acquisition, operation, or maintenance of software in violation of any copyright laws or licensing restrictions. The Owner shall maintain commercially reasonable network security that, at a minimum, includes network firewalls, intrusion detection/prevention, enhancements, or updates consistent with evolving industry standards, and periodic penetration testing.

**33.6. Background Checks:** Owner will ensure that, prior to being granted access to Protected Information, the Owner’s agents, employees, subcontractors, volunteers, or assigns who perform work under this Agreement have all undergone and passed all necessary criminal background screenings, have successfully completed annual instruction of a nature sufficient to enable them to effectively comply with all data protection provisions of this Agreement and Data Protection Laws, and possess all qualifications appropriate to the nature of the employees’ duties and the sensitivity of the data.

**33.7. Subcontractors and Employees:** If Owner engages a subcontractor under this Agreement, the Owner shall impose data protection terms that provide at least the same level of data protection as in this Agreement and to the extent appropriate to the nature of the services provided. The Owner shall monitor the compliance with such obligations and remain responsible for its subcontractor’s compliance with the obligations of this Agreement and for any of its subcontractors acts or omissions that cause the Owner to breach any of its obligations under this Agreement. Unless the Owner provides its own security protection for the information it discloses to a third party, the Owner shall require the third party to implement and maintain reasonable security procedures and practices that are appropriate to the nature of the Protected Information disclosed and that are reasonably designed to protect it from unauthorized access, use, modification, disclosure, or destruction. Any term or condition within this Agreement relating to the protection and confidentiality of any disclosed data shall apply equally to both the Owner and any of its subcontractors, agents, assigns, employees, or volunteers. Upon request, the Owner shall provide the City copies of its record retention, data privacy, and information security policies.

**33.8. Security Breach:** If the Owner becomes aware of an unauthorized acquisition or disclosure of unencrypted data, in any form, that compromises the security, access, confidentiality, or integrity of Protected Information or data maintained or provided by the City (“Security Breach”), the Owner shall notify the City in the most expedient time and without unreasonable delay. The Owner shall fully cooperate with the City regarding recovery, lawful notices, investigations, remediation, and the necessity to involve law enforcement, as determined by the City and Data Protection Laws. The Owner shall preserve and provide all information relevant to the Security Breach to the City; provided, however, the Owner shall not be obligated to disclose confidential business information or trade secrets. The Owner shall indemnify, defend, and hold harmless the City for any and all claims, including reasonable attorneys’ fees, costs, and expenses incidental

thereto, which may be suffered by, accrued against, charged to, or recoverable from the City in connection with a Security Breach or lawful notices.

**33.9. Request for Additional Protections and Survival:** In addition to the terms contained herein, the City may reasonably request that the Owner protect the confidentiality of certain Protected Information or other data in specific ways to ensure compliance with Data Protection Laws and any changes thereto. Unless a request for additional protections is mandated by a change in law, the Owner may reasonably decline the City's request to provide additional protections. If such a request requires the Owner to take steps beyond those contained herein, the Owner shall notify the City with the anticipated cost of compliance, and the City may thereafter, in its sole discretion, direct the Owner to comply with the request at the City's expense; provided, however, that any increase in costs that would increase the Maximum Contract Amount must first be memorialized in a written amendment complying with City procedures. Obligations contained in this Agreement relating to the protection and confidentiality of any disclosed data shall survive termination of this Agreement, and the Owner shall continue to safeguard all data for so long as the data remains confidential or protected and in the Owner's possession or control.

**34. COMPLIANCE WITH DENVER WAGE LAWS:** To the extent applicable to the Owner's provision of Services hereunder, the Owner shall comply with, and agrees to be bound by, all rules, regulations, requirements, conditions, and City determinations regarding the City's Minimum Wage and Civil Wage Theft Ordinances, Sections 58-1 through 58-26 D.R.M.C., including, but not limited to, the requirement that every covered worker shall be paid all earned wages under applicable state, federal, and city law in accordance with the foregoing D.R.M.C. Sections. By executing this Agreement, the Owner expressly acknowledges that the Owner is aware of the requirements of the City's Minimum Wage and Civil Wage Theft Ordinances and that any failure by the Owner, or any other individual or entity acting subject to this Agreement, to strictly comply with the foregoing D.R.M.C. Sections shall result in the penalties and other remedies authorized therein.

**35. TIME IS OF THE ESSENCE:** The Parties agree that in the performance of the terms, conditions, and requirements of this Agreement, time is of the essence.

**36. PARAGRAPH HEADINGS:** The captions and headings set forth herein are for convenience of reference only and shall not be construed to define or limit the terms and provisions hereof.

**37. CITY EXECUTION OF AGREEMENT:** This Agreement will not be effective or binding on the City until it has been fully executed by all required signatories of the City and County of Denver, and if required by Charter, approved by the City Council.



**38. AGREEMENT AS COMPLETE INTEGRATION; AMENDMENTS:** This Agreement is the complete integration of all understandings between the Parties as to the subject matter of this Agreement. No prior, contemporaneous, or subsequent addition, deletion, or other modification has any force or effect, unless embodied in this Agreement in writing. No oral representation by any officer or employee of the City at variance with the terms of this Agreement or any written amendment to this Agreement will have any force or effect or bind the City.

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

**REMAINDER OF PAGE INTENTIONALLY LEFT BLANK**

## **PART I**

1. **NATURE OF THE PROJECT**: This Agreement is for new construction of units to be assisted by the City's HR-PBV Program.
2. **SIGNIFICANT DATES**:
  - 2.1. The date for the commencement of the construction of the Project is no later than thirty (30) calendar days after the effective date of this Agreement.
  - 2.2. The date for completion of the construction of the Project is no later than thirty (30) months after the effective date of the Agreement.
  - 2.3. The Director is authorized to extend or modify any dates or deadlines set forth in this section, provided that Owner also consents to such change and that such changes are made in writing.
3. **SCHEDULE OF COMPLETION**:
  - 3.1. **Timely Performance of Work**. Owner agrees to begin work no later than the date for commencement stated in Section 2.1. of this Part I. In the event the work is not commenced, diligently continued, and completed as required under this Agreement, the City may terminate this Agreement or take other appropriate action. Owner agrees to report promptly to the City the date the work is commenced and furnish the City with progress reports as required by the City.
  - 3.2. **Time for Completion**. All work must be completed no later than the end of the period stated in Section 2.2. of this Part I. If there is a delay the completion of the Project due to unforeseen factors beyond the Owner's control as determined by the City, the City agrees to extend the time for completion for an appropriate period as determined by the City.
  - 3.3. **Inspection of Work**. The City may inspect the work during rehabilitation or construction to ensure that the work is proceeding on schedule, is being accomplished in accordance with the Agreement, meets the level of material described in Exhibit B, and meets typical levels of workmanship for the area.
4. **CHANGES IN WORK**:
  - 4.1. Owner must obtain prior City approval for any material change from the work specified in Exhibit B which would alter the design or quality of the construction or that would otherwise impact City HR-PBV Units. The City is not required to approve any changes requested by Owner. The City approval of any change may be conditioned on establishment of a lower initial rent to Owner as determined by the City. If the City has not responded to a change in work request within fourteen (14) business days, such change shall be deemed approved.

4.2. If Owner makes any changes in the work without prior City approval, the City may establish lower initial rent to Owner as determined by the City.

5. **WORK COMPLETION:**

5.1. The work must be completed in accordance with Exhibit B. Owner is solely responsible for the completion of the work.

5.2. When the work is completed, Owner must provide the City with:

5.2.1. A certification by Owner that the work has been completed in accordance with HQR and all requirements of this Agreement.

5.2.2. A certification by Owner that Owner has complied with labor standards and equal opportunity requirements in the development of the housing.

5.2.3. A certificate of occupancy or temporary certificate of occupancy.

5.2.4. An architect's or developer's certification that the housing complies with:

5.2.4.1. The HQR;

5.2.4.2. State, local, or other building codes;

5.2.4.3. Zoning; and

5.2.4.4. Any additional design or quality requirements pursuant to the Agreement.

6. **INSPECTION AND ACCEPTANCE OF COMPLETED UNITS:**

6.1. **Completion of City HR-PBV Units.** Upon receipt of the information required by Section 5, the City will:

6.1.1. Review all evidence of completion by Owner; and

6.1.2. Inspect the City HR-PBV Units to determine if the housing has been completed in accordance with this Agreement, including compliance with the HQR and any additional requirements by the City under this Agreement.

6.2. **Non-Acceptance.** If the City determines the work has not been completed in accordance with this Agreement, including non-compliance with the HQR, the City shall promptly notify the Owner of the decision and the reasons for the non-compliance. Part II of this Agreement will not become effective until the work deficiencies are corrected pursuant to Section 7 of this Part I.

6.3. **Acceptance.**

6.3.1. **Acceptance where no work deficiencies exist.** If the City determines that the work has been completed in accordance with this Agreement and that Owner has submitted all required evidence of completion, the City will provide written notice to Owner documenting acceptance of the City HR-PBV Units and that Part II of this Agreement may commence.

6.3.2. Acceptance where work deficiencies exist. If the City determines that work deficiencies exist, the City shall determine whether and to what extent the deficiencies are correctable, whether the City HR-PBV Units will be accepted after correction of the deficiencies, and the requirements and procedures for such correction and acceptance of the City HR-PBV Units.

7. **INITIAL DETERMINATION OF RENTS:**

7.1. The estimated initial rent to Owner is established in Exhibit B of this Agreement.

7.2. The initial rent to Owner will be established upon the commencement of Part II of this Agreement.

8. **PROTECTION OF IN-PLACE FAMILIES:**

8.1. In order to minimize displacement of in-place families, if a unit to be placed under this Agreement is occupied by an eligible household on the proposal selection date, the in-place family must be placed on Owner's waiting list (if it is not already on the list) and, once its continued eligibility is determined, given an absolute selection preference for an appropriately sized unit in the Project.

8.2. This protection does not apply to families that are not eligible to participate in the program on the proposal selection date.

8.3. The term "in-place family" means an eligible family residing in a proposed City HR-PBV Units on the proposal selection date.

9. **TENANT SELECTION PLAN:**

9.1. Tenant Selection Plan Requirements. As a condition to the commencement of Part II, Owner must have a tenant selection plan (the "Tenant Selection Plan") approved by HOST. A copy of the Tenant Selection Plan for the Project approved by HOST is attached as Exhibit E. Any revisions to the Tenant Selection Plan will require the written approval of the Director of HOST.

9.2. Good Neighbor Agreements. If Owner enters into a "good neighbor agreement" or similar type of agreement, any such agreement is prohibited from including any tenant selection policies.

10. **COMMENCEMENT OF PART II:**

10.1. Upon final acceptance of the City HR-PBV Units pursuant to Section 6 of this Part I, the City will send written notice to Owner that the conditions of this Part I have been satisfied and that Part II of this Agreement may go into effect. The effective date for Part II of this Agreement shall be considered the date of issuance that is specified on the temporary certificate of occupancy for the Property.

10.2. Part II of this Agreement may not commence until the City has determined that the City HR-PBV Units comply with all the HQR.

## PART II

1. **TERM OF PART II:** Upon the satisfaction of the conditions in and issuance or written notice required by Part I, this Part II shall become effective. This Part II shall terminate and expire twenty years (20) from the date of issuance that is specified on the temporary certificate of occupancy for the Property, unless terminated sooner.
2. **OCCUPANCY AND PAYMENT:** During the term of Part II of this Agreement, the City shall make housing assistance payments to the Owner for the months during which a City HR-PBV Unit is leased to, and occupied by, an eligible tenant. For the purposes of this Agreement, an eligible tenant is a tenant whose annual income at the time of initial move-in to the City HR-PBV Unit is at or below thirty percent (30%) of the annual median income, as determined by the U.S. Department of Housing and Urban Development (“HUD”). If an assisted tenant moves out of a City HR-PBV Unit, Owner may keep the housing assistance payment for the calendar month when the tenant moves out. However, Owner may not keep the payment if the City determines that the vacancy is the Owner’s fault.
3. **NO VACANCY PAYMENTS:** If a City HR-PBV Unit is not leased or is leased but unoccupied by the tenant for more than sixty (60) days, the City will not be obligated to make a housing assistance payment for such City HR-PBV Unit. In cases where a tenant is out of the City HR-PBV Unit for more than sixty (60) days, the City will coordinate with Owner to determine if there are any extenuating circumstances of the tenant related to their health and wellbeing.
4. **CITY NOT RESPONSIBLE FOR FAMILY DAMAGE OR DEBT TO OWNER:** Except to the extent that a security deposit is provided by the City on behalf of a tenant, the City will not make any payment to Owner for any damages to a unit or the Property or for any other amounts owned by a tenant under the family’s lease.
5. **OWNER RESPONSIBILITIES:** Owner’s responsibilities include, but are not limited to:
  - 5.1. Determining in accordance with Exhibit D the eligibility of each prospective tenant and certifying and recertifying the income eligibility of all tenant households occupying City HR-PBV Units.
  - 5.2. Determining in accordance with Exhibit C the amount of tenant rent to be paid by a tenant of a City HR-PBV Unit.
  - 5.3. Performing all management and rental functions for the City HR-PBV Units.
  - 5.4. Briefing tenants orally and in writing of City HR-PBV Program requirements. The briefing must include, but not be limited to:
    - 5.4.1. A description of the of the HR-PBV Program works;

- 5.4.2. Responsibilities and obligations of the tenant and Owner;
  - 5.4.3. How the tenant rent is calculated;
  - 5.4.4. The review process to dispute the calculation of tenant rent;
  - 5.4.5. A summary of lease terms; and
  - 5.4.6. A review of applicable fair housing information.
- 5.5. Maintaining the units in accordance with the HQR.
- 5.6. Enforcing tenant obligations under the lease.
- 5.7. Paying for utilities and housing services (unless paid by the tenant under the lease).
- 5.8. Collecting from the tenant:
- 5.8.1. The tenant rent; and
  - 5.8.2. Any charge for unit damage by the tenant.
- 5.9. Invoicing the City for housing assistance payments for City HR-PBV Units.
6. **RENT TO OWNER:**
- 6.1. **Amount of Initial Rent to Owner.** It is the City’s intent to index rental amounts for City HR-PBV Units under this Agreement to the Colorado Department of Local Affairs, Division of Housing (“CDOH”) Voucher Payment Standard for Denver. The initial rent to Owner for each City HR-PBV Unit shall be based on the unit size and in an amount equal to the Voucher Payment Standard for Denver, as determined and published by CDOH, at the time this Part II commences.
- 6.2. **City Rent Requirements.** Notwithstanding any other provision of this Agreement, the rent to Owner may in no event exceed the payment standards of CDOH. The City has the right to reduce the rent to Owner, at any time, to correct any errors in the rent or adjust the rent in accordance with the terms of this Agreement or City requirements. The City may elect to recover any overpayments from Owner.
- 6.3. **Tenant Rent.**
- 6.3.1. The portion of monthly rent to Owner payable by the tenant rent will be determined by Owner in accordance with the requirements in Exhibit C. The amount of tenant rent is subject to change during the term of this Agreement.
  - 6.3.2. The amount of tenant rent as determined by Owner in accordance with Exhibit C is the maximum amount Owner may charge the tenant for rent of a City HR-PBV Unit, including all housing services, maintenance and utilities to be provided by Owner in accordance with this Agreement and the lease.

- 6.3.3. If a City HR-PBV Unit is subject to rental and occupancy covenant, land use restriction agreement, or other similar agreement that limits the amount of rent that a tenant must pay, the maximum obligation of the amount of tenant rent will be capped pursuant to the terms of the rental and occupancy covenant, land use restriction agreement, or other similar agreement.
- 6.3.4. Owner may not demand or accept any rent payment from the tenant in excess of the tenant rent as determined by Owner in accordance with Exhibit C. Owner must immediately return any excess rent payment to the tenant.
- 6.3.5. The tenant is not responsible for payment of the portion of the contract rent covered by the housing assistance payment under this Agreement. Owner may not terminate the tenancy of a tenant of a City HR-PBV Unit for nonpayment of the City housing assistance payment.
- 6.3.6. The City is only responsible for making the housing assistance payments to Owner on behalf of the tenant in accordance with this Agreement. The City is not responsible for paying the tenant rent, or any other claim by Owner.

**6.4. City Payment to Owner.**

- 6.4.1. The City must make a housing assistance payment to Owner for a City HR-PBV Unit under lease to, and occupied by, an eligible tenant in accordance with this Part II.
- 6.4.2. The monthly housing assistance payment to Owner for a City HR-PBV Unit is equal to the amount by which the rent due Owner exceeds the tenant rent. If a tenant moves into an HR-PBV Unit after the first day of a month, the rent payable by the tenant and the City must be prorated based upon the number of days of the month the tenant resides in the HR-PBV Unit. Owner must submit the request for housing assistance payment for each new move in that includes any prorated rent from the month of initial occupancy, the current month and the upcoming month.
- 6.4.3. Payment of the tenant rent is the responsibility of the tenant occupying a City HR-PBV Unit. The City is not responsible for paying any other claim by Owner against a tenant. The City is only responsible for making housing assistance payments to Owner on behalf of as tenant in accordance with this Part II.
- 6.4.4. The first invoice submitted by Owner to HOST after the commencement of this Part II may request housing assistance payments for (i) the month that the invoice is submitted, (ii) previous months in which an eligible tenant occupied an HR-PBV Unit, and (iii) the

immediately subsequent month. The invoice must be in a format and with a level of detail acceptable to HOST and include all supporting documentation required by HOST.

6.4.5. For all invoices other than the initial submission, Owner must provide HOST with a monthly invoice, including all supporting documentation required by HOST, by the fifth (5<sup>th</sup>) day of the month in a format and with a level of detail acceptable to HOST.

6.4.6. The supporting documentation required by Sections 6.4.4 and 6.4.5 must include the tenant lease start date, the amount of tenant rent, and the tenant's most recent certification pursuant to Section 8 of this Part II.

6.4.7. The City's Prompt Payment Ordinance, D.R.M.C. §§ 20-107 to 20-118., applies to invoicing and payment under this Agreement.

6.4.8. In a case where a tenant of an HR-PBV Unit has passed away, Owner must notate in the monthly submission the date of death of such tenant. Owner may submit a request for housing assistance payment for one (1) additional month past the date the resident passed. If the death is reported more than thirty (30) days past the date of death, the City has the right to reclaim any amount paid subsequent to the tenant's death. If the HR-PBV Unit is reoccupied within the same month that the tenant died, Owner must note the new resident and death of the previous resident.

6.4.9. To receive housing assistance payments in accordance with this Part II, Owner must comply with all provisions of this Agreement. Unless Owner complies with all provisions of this Agreement, Owner does not have a right to receive housing assistance payments.

6.4.10. If HOST determines that Owner is not entitled to the requested payment or any part of it, the City, in addition to other remedies, may deduct the amount of overpayment from any amounts due to Owner.

6.4.11. Owner will notify HOST promptly, but in no event later than seven (7) calendar days, of any change of circumstances that would affect the amount of a housing assistance payment and will return any payment that does not conform to the changed circumstances. If any overpayment is not returned, the City may offset any subsequent payments by the overpayment amount not returned.

6.5. **Utilities.** If all or part of the cost of utilities must be paid by a tenant, Owner must calculate a tenant utility allowance using the CDOH utility allowance schedule and must be based on the unit size and type. The tenant rent must be reduced by an amount equal to the utility allowance.

6.6. **Suspension of Housing Assistance Payments for Particular City HR-PBV Units.**



- 6.6.1. The City's payment of housing assistance for a particular City HR-PBV Unit will be temporarily suspended if:
- 6.6.1.1. A household occupying a City HR-PBV Unit fails to provide or submit the required information and all required consent and verification forms at the time of certification or recertification;
  - 6.6.1.2. An annual or interim recertification determines the household has a change in circumstances which reduces the City's rent to zero; provided, however, the tenant may continue to occupy the City HR-PBV Unit;
  - 6.6.1.3. The tenant resides outside of the City HR-PBV Unit for sixty (60) or more consecutive days;
  - 6.6.1.4. The tenant commits or attempts to commit a violent act toward the Property or Project staff, vendors, or other residents of the Project; or
  - 6.6.1.5. The tenant, after their initial occupancy, is convicted of selling, possession with the intent to distribute or sell, or manufacturing drugs, or any other criminal act identified in the tenant selection plan.
- 6.6.2. If and when Owner becomes aware of a circumstance specified in Subsection 6.6.1 of this Section, Owner must promptly inform HOST in writing of such circumstance. Owner must also provide notice in writing to the tenant, with a copy of such notice to HOST, that the housing assistance payment for the City HR-PBV Unit will be suspended due to a violation of a circumstance specified in this Section. If a housing assistance payment for a City HR-PBV is suspended pursuant to this Section, the City's housing assistance payments will be suspended sixty (60) days after the notice is provided to the tenant. At such time, Owner may charge the tenant the full amount of rent due to Owner under the then current CDOH Payment Standards.
- 6.6.3. The City's housing assistance payment for the City HR-PBV Unit for which payment is suspended will resume upon (i) for circumstances specified in Subsections 6.6.1.1 – 6.6.1.3, tenant's compliance with the requirements set forth in the respective subsections; and (ii) for circumstances specified in Subsections 6.6.1.4 and 6.6.1.5, when a new eligible tenant moves into the City HR-PBV Unit.

7. **ADJUSTMENT OF RENT TO OWNER:**

7.1. **Adjustment of Rent to Owner.**

7.1.1. Owner may not increase or adjust the rental amount of a City HR-PBV Unit during the term of a tenant's lease. At the time of lease renewal, rent for a City HR-PBV Unit may be increased to the then current CDOH Voucher Payment Standard. Within at least sixty (60) calendar days prior to any lease expiration, Owner must notify the City of the approaching lease expiration and whether Owner knows if the tenant will be renewing the lease.

7.1.2. The adjustment of rent to Owner shall be in accordance with any updated CDOH Voucher Payment Standard. The amount of rent to Owner may be adjusted up or down, in the amount specified in the CDOH Voucher Payment Standard. The City, in addition to other remedies herein, has the right to reduce the rent to Owner, at any time, if any City HR-PBV Unit does not meet the HQS or other City standards.

7.2. **Reasonable Rent.** The rent to Owner for each City HR-PBV Unit may at no time exceed the reasonable rent charged for comparable units in the private unassisted market. The reasonable rent shall be determined by the City in accordance with CDOH and HUD requirements.

7.3. **No Special Adjustments.** The City will not make any special adjustments of the rent to Owner.

7.4. **Owner Compliance with Agreement.** The City shall not approve, and Owner shall not receive, any increase in rent to Owner unless all City HR-PBV Units are in accordance with the HQS, and Owner has complied with the terms of assisted leases and this Agreement.

8. **CERTIFICATION & RECERTIFICATION OF TENANTS; ADJUSTMENT OF TENANT RENT:**

8.1. The determination of eligibility and all certifications and recertifications of income, asset, and expense verifications shall be performed in accordance with the provisions of Exhibit D.

8.1.1. **Initial Certification; Establishment of Tenant Rent.** An initial move-in certification to verify a tenant's household composition, income, assets, expenses, and deductions must be completed within one hundred twenty (120) calendar days of a lease start date. Owner must provide HOST with supporting documentation of the initial move-in certification. Owner must provide the tenant written notice of the amount of tenant rent that must be paid by the tenant. Any such notice must also be provided to HOST. The tenant's obligation to pay the tenant rent will become effective the first month after the notice required by this Section is provided.

8.1.2. **Annual Recertification; Adjustment of Tenant Rent.** An annual recertification must be completed to reverify the household composition, income, assets, expenses, and deductions at least once every twelve (12) months. Owner must establish reasonable procedures for conducting recertifications that allow for proper and timely verification of all information and advance notification to the family of any rent change. All notifications sent to the tenant to start the recertification process must be a part of the recertification documentation in the tenant file. The tenant must be notified of any changes to the tenant rent calculation. If there is an increase to the amount of tenant rent, the increase in tenant rent shall become effective the first month that is thirty (30) calendar days following the day the written notice is sent to tenant. If there is a decrease to the amount of tenant rent, the decrease in tenant rent shall become effective beginning with the first month following the date the notice is sent to tenant.

8.1.3. **Interim Certification; Adjustment to Tenant Rent.** At the request of household occupying a City HR-PBV Unit or if Owner becomes aware of change in the household's composition or income, Owner must process an interim certification to reverify the household composition, income, assets, expenses, and deductions. The tenant must be notified of any changes to the tenant rent calculation. If there is an increase to the amount of tenant rent, the increase in tenant rent shall become effective the first month that is thirty (30) calendar days following the day the written notice is sent to tenant. If there is a decrease to the amount of tenant rent, the decrease in tenant rent shall become effective beginning with the first month following the date the notice is sent to tenant.

8.2. If the household income of a tenant increases and the amount of the City's assistance payment reduces to zero, the household is responsible for the full unit rent. The household may remain in the City HR-PBV Unit and pay the full rent; provided, however, the amount that a tenant must pay is capped pursuant to the terms of any rental and occupancy covenant, land use restriction agreement, or other similar agreement that is applicable to the City HR-PBV Unit.

9. **OWNER'S CERTIFICATION:** Owner certifies that all times during the term of this Part II:

9.1. All City HR-PBV Units are in good and tenantable condition. Owner is maintaining the premises and all City HR-PBV Units in accordance with the HQR.

9.2. Owner is providing all the services, maintenance, and utilities as agreed to under this Agreement and the leases with assisted families.

- 9.3. Each City HR-PBV Unit for which Owner is receiving housing assistance payment contracts is leased to an eligible tenant, and the lease is in accordance with this Agreement and other applicable federal, state, and local requirements.
- 9.4. To the best of Owner's knowledge, only the members of the tenant's family reside in each City HR-PBV Unit for which Owner is receiving housing assistance payments, and the unit is the tenant's family's only residence.
- 9.5. Owner (including a principal or other interested party) is not the parent, child, grandparent, sister, or brother of any member of a family residing in a City HR-PBV Unit.
- 9.6. The amount of housing assistance payment is the correct amount due under this Agreement.
- 9.7. The rent to Owner for each City HR-PBV Unit does not exceed rents charged by Owner for other comparable unassisted units.
- 9.8. Except for the housing assistance payment and the tenant rent as provided under this Agreement, Owner has not received, and will not receive, any payments or other consideration (from the family, the City, HUD, State, or any other public or private source) for rental of the City HR-PBV Unit.
- 9.9. The tenant or tenant's family does not own or have any financial interest in the City HR-PBV Unit. If the Owner is a cooperative, the family may be a member of the cooperative.

10. **CONDITION OF CITY HR-PBV UNITS:**

10.1. **Owner Maintenance and Operation.** Owner must maintain and operate the City HR-PBV Units and premises to provide decent, safe, and sanitary housing in accordance with the HQR, including performance of ordinary and extraordinary maintenance.

10.2. **City Inspections.**

10.2.1. During the term of this Part II, the City shall have the right to conduct a physical inspection of the Property and City HR-PBV Units. The City may inspect City HR-PBV Units whenever needed (subject to seventy-two (72) hours' notice to Owner to minimize disruption to tenants) to determine that the City HR-PBV Units comply with the HQR and that Owner is providing maintenance, utilities, and other services in accordance with this Agreement. The City must take into account complaints and any other information that comes to its attention in scheduling inspections

10.2.2. If more than twenty percent (20%) of an annual sample of inspected City HR-PBV Units in a building fail the initial inspection, the City may, at its sole discretion, re-inspect one hundred percent (100%) of the City HR-PBV Units in the building.

10.3. **Violation of the Housing Quality Requirements.**

10.3.1. If the City determines that a City HR-PBV Units is not in accordance with the HQR, the City may exercise any of its remedies under this Agreement for all or any of the City HR-PBV Units. Subject to applicable notice and cure periods, such remedies include termination, suspension, or reduction of housing assistance payments, and termination of this Agreement.

10.3.2. The City may exercise any such contractual remedy respecting a City HR-PBV Unit even if the tenant continues to occupy the City HR-PBV Unit.

10.3.3. The City shall not make any housing assistance for a dwelling unit that fails to meet the HQS, unless Owner corrects the defect within the period specified by the City and the City verifies the correction. If a defect is life threatening, Owner must correct the defect (or provide alternative, safe housing until such defect is corrected) within no more than twenty-four (24) hours. For other defects, Owner must correct the defecation within no more than thirty (30) calendar days, plus any City-approved extension.

11. **LEASING CITY HR-PBV UNITS:**

11.1. **Selection of Tenants:**

11.1.1. During the term of this Part II, Owner must lease all City HR-PBV Units to eligible tenants selected in accordance with an approved Tenant Selection Plan.

11.1.2. Consistent with Program requirements and the approved Tenant Selection Plan, Owner may apply its own admission procedures in determining whether to admit a tenant for occupancy of a City HR-PBV Unit.

11.1.3. Owner must promptly notify in writing any rejected applicant on the grounds for rejection. The City should be provided with a copy of such notification as well.

11.1.4. The City HR-PBV Unit leased to each tenant must be appropriate for the size of the family of the tenant under the approved Tenant Selection Plan.

11.1.5. If a City HR-PBV Unit was occupied by an eligible tenant at the time the unit was selected by the City, or is so occupied on the effective date of this Part II, Owner must offer the tenant the opportunity to lease the same or another appropriately sized City HR-PBV Unit with assistance under this Agreement.

11.1.6. Owner is responsible for screening and selecting tenants from its waiting list.

11.2. **Vacancies:**

11.2.1. Owner must inform the City of any vacancy in a City HR-PBV Unit when an invoice pursuant to Section 6 of this Part II is submitted.

11.2.2. Owner must make a reasonable, good faith effort to minimize the likelihood and length of any vacancy.

11.2.3. If any City HR-PBV Units have been vacant for a period of one hundred twenty (120) calendar or more days, the City may give notice to Owner indicating a requirement to amend this Agreement to reduce the number of City HR-PBV Units by subtracting the number of City HR-PBV Units that have been vacant for such period.

## 12. **TENANCY:**

12.1. **Lease.** The lease between Owner and each tenant must be in accordance with Federal, State, and City requirements. The initial lease must be for a minimum of six (6) months.

### 12.2. **Termination of Tenancy.**

12.2.1. Owner may not terminate the tenancy or refuse to renew the lease of a tenant of any of the City HR-PBV Units except for serious or repeated violations of the terms and conditions of the lease; for violation of applicable Federal, State, or local laws; for completion of the tenancy period for transitional housing or failure to follow any required transitional supportive services plan; or for other good cause. Any termination or refusal to renew must be preceded by service of written notice upon the tenant specifying the grounds for the action at least thirty (30) calendar days before the termination of tenancy. Notwithstanding the foregoing, nothing in this Agreement shall prevent the Owner from terminating a tenancy in accordance with Colorado Revised Statutes § 13-40-107.5(4)(a) for a substantial violation as defined in that statute.

12.2.2. Owner must comply with the notice requirements of DRMC § 27-240(b).

12.2.3. Owner must inform HOST of the commencement of any eviction action and the status of any eviction action once commenced when submitting monthly documentation pursuant to Section 6.4.4. of this Part II.

### 12.3. **Other Owner Charges.**

12.3.1. Owner may not require the tenant or household members to pay charges for meals or supportive services. Nonpayment of such charges is not grounds for termination of tenancy.

12.3.2. Owner may not charge the tenant or household members extra amounts for items customarily include in rent in the locality or provided at no additional cost to the unsubsidized units.

### 12.4. **Security Deposit.**

12.4.1. Owner may collect a security deposit from the City or from another entity on behalf of the tenant.

12.4.2. Owner must comply with State law and City requirements, which may change from time to time, regarding security deposits from a tenant.

12.4.3. Security deposits may not exceed one (1) month's rent of a City HR-PBV Unit at the time of a tenant's initial lease or be in excess of amounts charged by Owner to unassisted tenants. The security deposit must be held in an interest-bearing, FDIC-insured account.

12.4.4. When the tenant moves out of the City HR-PBV Unit, Owner, subject to State law, may use the security deposit, including any interest on the deposit, in accordance with the lease, as reimbursement for any unpaid tenant rent, damages to the unit, or other amounts which the family owed under the lease. Owner must give the tenant and HOST a written list of all items charged against the security deposit and the amount of each item. Owner must promptly refund the full amount of the balance to the tenant in accordance with applicable law and the terms of the lease.

12.4.5. If the security deposit is not sufficient to cover amounts the tenant owes under the lease, Owner may seek to collect the balance from the tenant. However, the City has no liability or responsibility for payment of any amount owned by the tenant to Owner.

13. **TENANT RIGHT TO MOVE**: The tenant may terminate its lease at any time after the initial lease term.

14. **DOUBLE SUBSIDY**: City HR-PBV Units may not receive a subsidy in addition to the City's housing assistance payment made pursuant to this Agreement. Owner is prohibited from receiving payments from a tenant-based voucher or other rental subsidy for City HR-PBV Units.

15. **TERMINATION OF AGREEMENT FOR WRONGFUL SELECTION OF CITY HR-PBV UNITS**: This Agreement may be terminated upon 30 days' written notice to Owner by the City if the City determines that the City HR-PBV Units were not eligible for selection in conformity with City requirements.

**REMAINDER OF PAGE INTENTIONALLY LEFT BLANK**

**Contract Control Number:** HOST-202475888-00  
**Contractor Name:** MHMP 21 NAVAJO LLLP

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-202475888-00  
MHMP 21 NAVAJO LLLP

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-202475888-00  
MHMP 21 NAVAJO LLLP  
By: MHMP 21 Navajo GP LLC, general partner  
By: Mercy Housing Mountain Plains, Manager and  
sole member

DocuSigned by:  
By: Kuhl Brown  
7D7C4533FE914D9...

Name: Kuhl Brown  
(please print)

Title: Vice President  
(please print)

ATTEST: [if required]

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

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

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

## EXHIBIT A - Description of Work

### 9<sup>TH</sup> & Navajo Street

#### Description of work to be performed under this Agreement:

Description of construction including working drawings and specifications is as follows:

- 9<sup>th</sup> & Navajo Street will be a 190-unit affordable rental housing development including 94 Supportive Housing Units for individuals and families experiencing or exiting homelessness and is located at 901 Navajo St., Denver, CO 80202.
- The development as it pertains to this Agreement will consist of 94 City HR-PBV Units fixed to the following units allocation:

Unit Type	30% AMI
1 BR	79
2BR	7
3BR	6
4BR	2
<b>TOTAL</b>	<b>94</b>

- This development will consist of a mixed-use, multi-family, 7-story, C-shaped building with brick and stucco exterior finishes, constructed on a concrete podium using a combination of Type I and Type III construction. The building will surround outdoor terraces, be served by 4 elevators, and will have one (1) level of below-grade parking with approximately 85 EV-ready spaces. The building will have all-electric systems, cold-climate heat pumps, a rooftop solar array, and will earn the Enterprise Green Communities certification. Along with affordable units, the building will include Supportive Services offices on the first floor and an adjacent Federally Qualified Health Center that is owned and operated separate from the residential component.
- A complete copy of the construction documents for the work to be performed under this Agreement is attached.
- The plans have been developed in accordance with the requirements of the Fair Housing Act and implementing regulations at 24 CFR 100.205 and the accessibility requirements under section 504 of the Rehabilitation Act of 1973 and implementing regulations at 24 CFR 8.22 and 8.23





UNIT MATRIX	S-01		S-02		S-03		S-04		S-05		S-06		S-07		S-08		S-09		S-10		S-11		S-12		S-13		S-14		S-15		S-16		S-17		S-18		S-19		S-20		S-21		S-22					
	TYPE	SF	TYPE	SF	TYPE	SF	TYPE	SF	TYPE	SF	TYPE	SF	TYPE	SF	TYPE	SF	TYPE	SF	TYPE	SF	TYPE	SF	TYPE	SF	TYPE	SF	TYPE	SF	TYPE	SF	TYPE	SF	TYPE	SF	TYPE	SF	TYPE	SF	TYPE	SF	TYPE	SF	TYPE	SF				
LEVEL 1	PH1.1A	411	PH1.1A	411	PH1.1A	411	PH1.1A	411	PH1.1A	411	PH1.1A	411	PH1.1A	411	PH1.1A	411	PH1.1A	411	PH1.1A	411	PH1.1A	411	PH1.1A	411	PH1.1A	411	PH1.1A	411	PH1.1A	411	PH1.1A	411	PH1.1A	411	PH1.1A	411	PH1.1A	411	PH1.1A	411	PH1.1A	411	PH1.1A	411	PH1.1A	411	PH1.1A	411

PSH LEVEL 2H	S-23		S-24		S-25		S-26		S-27		S-28		S-29		S-30		S-31		S-32		S-33		S-34		S-35		S-36		S-37		S-38		S-39		S-40		S-41		S-42							
	TYPE	SF	TYPE	SF	TYPE	SF	TYPE	SF	TYPE	SF	TYPE	SF	TYPE	SF	TYPE	SF	TYPE	SF	TYPE	SF	TYPE	SF	TYPE	SF	TYPE	SF	TYPE	SF	TYPE	SF	TYPE	SF	TYPE	SF	TYPE	SF	TYPE	SF	TYPE	SF	TYPE	SF				
LEVEL 1	PH1.1A	411	PH1.1A	411	PH1.1A	411	PH1.1A	411	PH1.1A	411	PH1.1A	411	PH1.1A	411	PH1.1A	411	PH1.1A	411	PH1.1A	411	PH1.1A	411	PH1.1A	411	PH1.1A	411	PH1.1A	411	PH1.1A	411	PH1.1A	411	PH1.1A	411	PH1.1A	411	PH1.1A	411	PH1.1A	411	PH1.1A	411	PH1.1A	411	PH1.1A	411



AH UNITS				PSH UNITS			
UNIT TYPE	COUNT	% OF AH TOTAL	% OF TOTAL UNITS	UNIT TYPE	COUNT	% OF PSH TOTAL	% OF TOTAL UNITS
AH 1.1A	1	1%	1%	PSH 1.1	0	0%	0%
AH 1.1P	2	2%	2%	PSH 1.2	1	1%	1%
AH 1.2P	1	1%	1%	PSH 1.3A	4	4%	4%
AH 1.2PA	1	1%	1%	PSH 1.4	64	81%	81%
AH 1.3	1	1%	1%	TOTAL	70	100%	42%

PARKING SUMMARY				GROSS SQUARE FOOTAGE			
STANDARD	RESIDENTIAL	CLINIC	TOTAL	LEVEL	GSF	NOTES	
COMPACT (10% MAX)	45	0	60	PARKING	29556	INCLUDING ELEVATOR PIT, SPEED RAMP AND STAIR WELLS	
ACCESSIBLE VAN TANDEN*	8	1	9	LEVEL 1 RESIDENTIAL	20380	INCLUDING ELEVATOR SHAFTS AND STAIRS	
EVSE INSTALLED (10%)	4	1	5	CLINIC	9376	INCLUDING ELEVATOR SHAFTS AND STAIRS	
EV CAPABLE (5%)	67	2	69	LANDSCAPE OVER PARKING	6991	OUTDOOR SPACE ON GROUND LEVEL OVER COVERED PARKING GARAGE INCLUDING LANDSCAPE AREAS AT SOUTH, LOADING AREA AT NORTH AND INTERIOR COURTYARD, NOT INCLUDING SPEED RAMP	

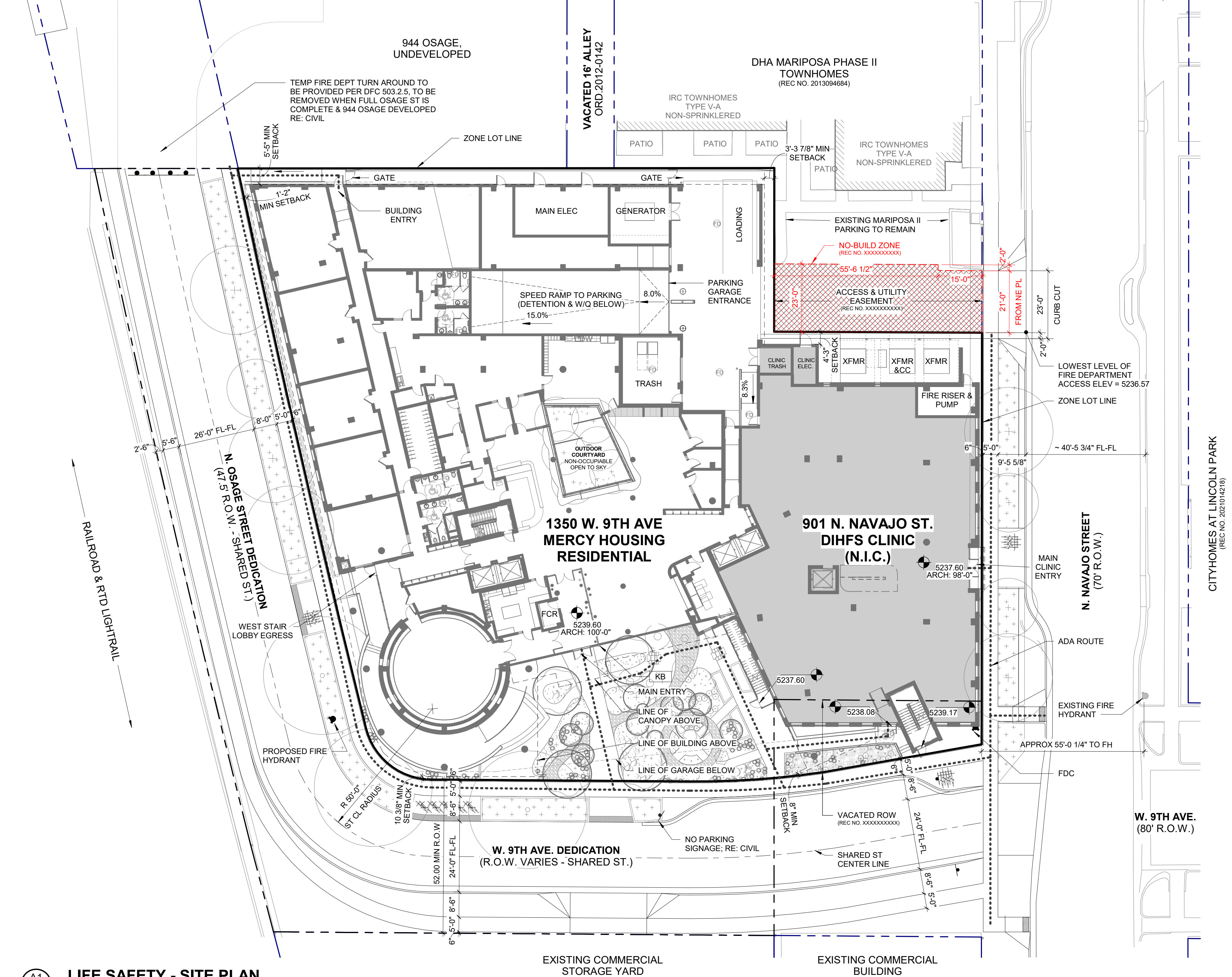
EV CHARGER COUNTS			
EVSE INSTALLED	EV CAPABLE	EVSE INSTALLED AND EV CAPABLE	TOTAL
6	2	8	8

SEE LEGEND 1(SITE PLAN FOR LOADING			
LOADING	BICYCLE ENCLOSED	BICYCLE FIXED	TOTAL
67	76	22	89

\* ALL PARKING SERVING RESIDENTIAL USE (R-2) TO BE EV READY SPACES. NO EVSE INSTALLED OR CAPABLE SPACES REQUIRED PER DFC 503.2.5, TO BE REMOVED WHEN FULL OSAGE IS COMPLETE & 944 OSAGE DEVELOPED RE: CIVIL.

\* PER DFC 10.4.6.6, TANDEN PARKING SPACES SERVE THE STRUCTURE'S RESIDENTIAL USE. BOTH SPACES WITHIN A TANDEN PARKING SPACE SHALL BE ASSIGNED TO THE SAME RESIDENTIAL UNIT.

LEGEND  
 --- ZONE LOT BOUNDARY  
 - - - - - ADA ACCESSIBLE ROUTE



### CODE SUMMARY REPORT

**PROJECT DESCRIPTION**  
 The Mercy Housing 1350 W. 9th Ave. project is a 4-story mixed-use building located in Denver, CO bordered by Navajo Street on the East, Osage Street on the West, and 9th Avenue on the South. The site is 1.4 Acres, located in C-M-A zoning which allows for mixed-use and height.

The building is composed of 1 story of below grade parking with 2 stories of Type I construction concrete podium on floors 1 and 2, and 3 stories of Type II construction wood framed structure on floors 3 through 7. The project includes 100 units of housing, with 81 units as Permanent Supportive Housing and the remaining 19 units as Affordable Housing, with a mix of studios, 1BR, 2BR, 3BR and 4BR units. Amenity spaces serving the residential units are provided primarily at the first floor, with some additional amenities scattered throughout the building. There is also a clinic, planned as part of the project for Denver Indian Health and Family Services, located on the first two stories at the East side of the property with frontage along Navajo Street. For pricing purposes, the clinic is assumed to be broken out into a separate code. There are also several occupiable outdoor terraces at levels 2, 3, and 7 and a non-occupiable rooftop level 7. The parking garage has approximately 89 parking spaces. The approximate Gross Square Footage for the building is 190,500 SF and 34,900 SF of garage area for a total of 225,400 SF.

The project is pursuing 2020 Enterprise Green Communities certification. Refer to sheet G-011

**APPLICABLE CODES AND STANDARDS**  
 2022 Denver Building and Fire Code  
 2021 International Building Code  
 2021 International Mechanical Code  
 2021 International Plumbing Code  
 2021 International Fuel Gas Code  
 2022 National Electrical Code  
 2021 International Fire Conservation Code  
 2021 International Fire Code  
 2022 Enterprise Green Code  
 2022 Enterprise Green Communities  
 Safe Harbor Fair Housing Act Design Manual  
 Section 504/Fair Housing Act 2010 ADA with Deeming Notice  
 Covers: Common Areas, Accessible Routes, 2% of Mobility/Type A Units, 2% of Sensory Units  
 2010 ADA Standards for Accessible Design (Common Areas)  
 2017 ANSI A117.1, Accessibility Requirements  
 ANSI/AIAA A17.1, Safety Code for Elevators 2013  
 Reference Standards per 2021 ICC Building Code  
 2024-ADMINMOD-000136 (AM1 & AM2)  
 2024-ADMINMOD-000143 (AM3: No-Build Zone)

**NFA STANDARDS**  
 NFPA 10 Portable Fire Extinguisher - 2021  
 NFPA 13 Installation of Sprinkler Systems - 2022  
 NFPA 13.1 Installation of Sprinkler Systems 2019  
 NFPA 13.6 Installation of Fire Pump - 2022  
 NFPA 24 Private Fire Service Mains, 2019  
 NFPA 2 National Fire Alarm Code, 2002

**DEFERRED SUBMITTALS**  
 1. Sprinkler and standpipe system (provide concealed sprinkler heads and units and where code allows in box)  
 A. Provide DFD Approved Knox Standpipe Lock Cover to secure standpipes outside. Keys kept in a box.  
 2. Fire alarm and detection system  
 3. Two-way communication system at elevator landings  
 4. Generator  
 5. Elevator  
 6. Stairs - Concrete Filled Steel and steel risers with steel rails  
 7. Ruston mitigation system (achieve 100% mitigation)  
 8. Light Gauge Cold Form Metal Framing  
 9. Shop drawings for the generator shall be submitted to DFD for review and approval prior to installation.  
 10. See Structural and MEP docs for additional deferred submittal indications

**SPECIAL INSPECTIONS (Refer to S-000 for the balance of other req'd special inspections)**  
 1. Spray Applied Fireproofing - test and inspect as required by IFCC 1705.14  
 2. Fireproofing - test and inspect as required by IFCC 1705.19  
 3. Intumescent Coatings - 1705.18

**DENVER GREEN BUILDING ORDINANCE COMPLIANCE**  
 Option 1 - Green Building Certification: 2020 Enterprise Green Communities.  
 See G-011 Checklist.

**IEC ENERGY COMPLIANCE**  
 Energy compliance documentation provided by the accompanying full building energy modeling submittal.

**USE, OCCUPANCY GROUPS AND AREAS**  
 Construction Type I-A III-A, NFPA 13 sprinkler system

Type I-A (Parking level)	Use	Occupancy Group	Area (GSF)
1	Parking	S-2	35,222

Type I-A (First Story)	Level	Use	Occupancy Group	Area (GSF)
1	Lobby, Leasing, Conference	B	-	-
1	Accessory (Fax, Bike)	S-2	-	-
1	Parking	R-2	20,180	
1	Residential (Apartment)	R-2	9,376	
1	Clinic	B	36,248	
Total (Type I-A)				65,784

Type I-A (Second story)	Level	Use	Occupancy Group	Area (GSF)
2	Residential (Apartment)	R-2	13,252	
2	Clinic	B	8,698	
Total (Type I-A)				21,950

Type I-A (Above concrete podium)	Level	Use	Occupancy Group	Area (GSF)
1	Residential (Apartment)	R-2	27,456	
1	Residential (Apartment)	R-2	27,456	
1	Residential (Apartment)	R-2	27,456	
1	Residential (Apartment)	R-2	27,456	
1	Residential (Apartment)	R-2	27,456	
1	Roof Deck	B	27,456	
Total (Type I-A)				137,184

Allowable area per foot (Type I-A) = unlimited  
 Allowable area per foot (Type III-A, SM = 72,000 SQ. FT.) = 216,000 SQ. FT.

**Allowable number of stories (IBC 504.4)**  
 • Unlimited height Type I-A, S  
 • 5 floors in Type III-A, S -85'-0"  
 • 3 Stories above average grade, 1 level of parking below grade.

**HEIGHT (IBC 504.2 AND TABLE 603)**  
 • Building height is 77'-0" (allowable height is 85'-0" per 504.3)  
 • Elevation of grade plane is 5237.79  
 • Lowest Level of Fire Dept Access is 5238.57  
 • Elevation of the highest occupied floor (Level 7) is 73'-9 3/8" above the lowest level FD access <75"

**ASSEMBLY OCCUPANCY (IBC SECTION 303.1)**  
 • Exceptions 1, 2, 3 & 4: A space used for assembly purposes with occupant loads less than 50 persons or accessory to another occupancy and less than 750 sq ft shall be classified as a Group B occupancy or as a part of that occupancy.

**NUMBER OF EXITS (IBC 1021.1)**  
 Refer to the code plans for exit widths, exit capacities, travel distances, and common path of travel.  
 • Occupants in the first floor have access to at least 2 exits.  
 • Occupants in 2nd floor through the 7th floor have access to two stairway enclosures

**EXIT WIDTHS (CBC 1003.3.1.2)**  
 Refer to the code plans for egress capacities and occupant loads.  
 • Stairways exit capacity 0.22/person  
 • Non-stairway exit capacity 0.175/person

**STARWAY LANDINGS**  
 Stairway landings are not less than the stairway width.  
**HANDRAILS (IBC 1011.1)**  
 • Handrails are provided on both sides with handrail extension as outlined in the referenced sections.  
 • Stairway doors shall be positioned such that handrails extensions are maintained.

**CORRIDOR WIDTH**  
 • Not less than 44 inches, refer to drawings.  
 • Doors in any position shall not reduce the required width by more than one-half (25%) or more than 7" ACCESS EXCEPT AS NOTED.

**CORRIDOR DEAD ENDS (IBC 1020.5 Exception 2)**  
 • Shall not exceed 20 feet in length for Group B and R-2 occupancies when building is NFPA 13.  
 • Shall not exceed 20 feet in length for Group A occupancies

**TRAVEL DISTANCE**  
 • Travel distance to an exit is limited to 250 ft. for residential occupancies, IBC Table 1017.2  
 • Travel distances are shown on the code plans and are less than the maximum allowable travel distances.

**COMMON PATH OF TRAVEL**  
 • Common path of travel shall not exceed 125 ft. for R-2 occupancy, IBC Table 1006.2.1, shall not exceed 100 ft. for Business occupancies and shall not exceed 75' for A occupancies.

**OCCUPANT LOAD FACTORS**  
 Refer to the code plans for fire separation distance specifics:  
 North: 5' x 5' min 5' 10"  
 West: 3' 0"  
 East: varies, re: plan  
 South: 25' x 27' min 32', varies, re: plan

**EXTERIOR WALLS (IBC SECTION 601 & 705.8)**  
 The first floor is concrete construction and has non-load bearing exterior walls. Concrete or masonry load bearing walls supporting the 3-HR FRR fire floor assembly shall have a 3-HR FRR.  
 • Load bearing exterior walls in Type I/A construction must comply with Table 601 which requires 2-HR FRR.  
 • The required fire resistance rating of the exterior load bearing non-load bearing walls with fire separation distance not exceeding 20 feet shall be rated for exposure to fire from both sides.  
 • Exterior walls shall be tested in accordance with and comply with the acceptance criteria of NFPA 285 (IBC Section 1002)

**EXTERIOR OPENINGS (IBC TABLE 705.8 Amendments)**  
 • Refer to the code plan for all fire separation distances.  
 • The percentages for exterior openings outlined in Table 705.8 are per story and are shown on the code plans.  
 • Refer to the code plans for fire separation distances and percentages of openings.

**PARAPETS (IBC SECTION 705.11)**  
 Exception 6: Parapets are not required where the wall is permitted to have at least 25% of the exterior wall area containing unprotected openings based on fire separation distance as determined in accordance with Section 705.  
 • Fire separation distances exceed 5 ft on all but the north and portion of the east wall. Parapets required.

**ACCESSIBLE UNITS**  
 COLORADO REVISED STATUTE TITLE 9, ARTICLE 5 (CRS 9-5)  
 UNIT TYPE POINT VALUE  
 TYPE A 6  
 TYPE B 6  
 TYPE C 6

**NUMBER OF UNITS**  
 TYPE A - 10  
 TYPE B - 180  
 TYPE C - 10  
 TOTALS: 190 UNITS 780 (84 REPAIRED)

**UNITS DESIGNED FOR VISUAL OR HEARING IMPAIRED PERSONS**  
 2% OF UNITS IN ADDITION TO TYPE A UNITS = 4 UNITS

**SHAFTS**  
 • Two hour fire resistance rated elevator hoistway and trash chute enclosures provided per IBC Section 713.4 with 30 minute protected openings.  
 • Mechanical shafts within Type III-A construction and not penetrating the 3-HR FRR podium assembly are to be 2-HR FRR fire barrier.  
 • **MECHANICAL EXHAUST:** Shaft enclosures for piping, ducts and vents may be of one hour fire-rated construction in buildings of four stories or more and of Construction Type I/A, II/A, III/A, IV/A, V/A and VI/A enclosures in buildings of three or more stories. The shaft shall be protected with type I-A construction 2-hr fire-rated wall with 90 minute protected openings.

**STARWAY ENCLOSURES**  
 • Stairway enclosures are equipped with 90 minute protected openings, IBC Section 1003.  
 • Stairway enclosures are supported with 2-hour fire rated assemblies and are not supported by 1-HR fire, re IBC Section 707.5.1.

**STARWAY ROOF ACCESS**  
 • Stairway S1 and S2 extends to the roof.  
 • A Standpipe roof manifold is provided within 20ft of stairway, IFC Section 1013.6

**ROOF HATCH**  
 • A 16 SF roof hatch is not required per 2021 DFC Section 1011.1.23 Exception 2.

**ELEVATOR STAIR (IBC 3002.4)**  
 • Four elevators are provided for fire department emergency access to all floors.  
 • The stretcher size elevator car shall be of a size and arrangement to accommodate an ambulance stretcher. The stretcher shall have approved handrails on the horizontal, horizontal position and shall be identified by the international symbol for emergency medical services (star of life).

**ELEVATOR LOBBY (IBC 3006.2, 3006.3)**  
 • Except lobbies are required at each floor except for the level of discharge per IBC Section 3006.2.5, 3006.2.1, & 3006.3.1. Enclosed lobby shall separate elevator hoistway shaft enclosures doors from each floor by fire partition per 708. Lobby doors shall be protected opening complying with 716.2.2.1 as required for corridor walls. Level 2 of the east elevator bank (Elevator 2) complies with item 3, utilizing a smoke curtain additional door or lobbies.

**TWO WAY COMMUNICATION (IFC SECTION 1007.8)**  
 • A controlled two-way communication system is provided at the elevator landings of all elevators as required by IFC 1007.8 and DFD. Please refer to the Amendments for the complete requirements.  
 • **1007.8 Two-way communication:** A two-way communication system shall be provided at the elevator landing on each accessible floor that is one or more stories above or below the story of exit discharge complying with Sections 1007.8.1 and 1007.8.2.

**GENERATOR**  
 • The generator is located within the building on the north side supported by a 2HR Fire Barrier.  
 • It is 200WVA with a hospital grade and 5000 running watts.  
 • The generator supports the elevators, re: IBC 1009.4, and the fire pump. Electrical configuration shall be such that power is transferable manually to all elevators in each bank as outlined in IBC Section 3003.1.1.  
 • Generator and diesel fuel are over 5ft from the property line and building overhangs per NFPA 37.  
 • Vent line terminates 12ft above grade and 5ft from operable opening. Chased terminates 10ft above grade and 10ft from operable openings, per IFC Ch. 34 & IMC 501.2.1.  
 • Shop drawings for the generator shall be submitted to DFD for review and approval prior to installation.

**TRASH/RECYCLE CHUTE (IBC 708.14)**  
 • 2-hour FRR trash chute enclosure (self-supporting fire barriers) shall be provided, 708.13.  
 • The trash chute access rooms have a 1-hour FRR fire barrier separation and shall be protected by 45 minute self-closing doors.  
 • Ruston mitigation system is permitted to have a 1-HR FRR enclosure per IBC Section 708.13.4, 2-HR FRR termination room with 90 minute protected openings are provided to allow the 2-HR FRR shafts to terminate in the room without fire stopping or special treatment where the shaft terminates in the termination room.  
 • Ventilation of the chute required per NFPA 82

**HOISTWAY ENCLOSURES**  
 • 2-hour fire-resistance rated enclosure with 90-minute protected openings provided, IBC Section 704.8.  
 • Hoistway enclosures are self-supporting with 2-hour fire rated assemblies as required by IBC Section 709.5.1.

**ELEVATOR MACHINE ROOMS**  
 • Elevators are machine-roomless with the control module located in the elevator door frame on level 3 and do not have any openings into the hoistway, re IBC 3006.4 exception 2 (permitted to be non-fire rated per 3006.4.1).

**HOISTWAY VENTILATION**  
 • Not Required

**ELEVATOR RECALL**  
 • Elevator recall and shut trip requirements shall comply with NFPA 13 and 77. Elevators are traction drive. The elevator control room will be protected by sprinkler system per NFPA 13.

**UNIT SEPARATION (WALLS)**  
 • Residential units will be separated by 1-hour fire resistance rated fire partitions per IBC Sections 420, 703.3  
 • Separation to other occupancies must comply with Table 606.

**UNIT SEPARATION (FLOORS)**  
 • Residential units will be separated by 1-hour fire resistance rated floor construction per IBC Section 420.3 and 711.2.4.3 and Table 601

**CORRIDORS**  
 • Corridor walls serving residential occupancies are 60-minute FRR fire partitions per IBC Table 1020.2 and Section 708.3.  
 • Door frames shall be fire rated assemblies per IBC Sections 716.4.3, 716.4.3.1, 716.4.3.2 and Table 716.1(2). (fire rating of corridor walls may be 30 minutes, however 1-hour FRR is provided to achieve STC rating of 50)

**NONBEARING WALLS**  
 • Non-bearing interior walls within residential dwelling units are fire resistance rated, IBC Table 601  
 • Non-bearing exterior walls are non-fire-resistance rated, however, fire-resistance rated exterior walls are required for walls such as fire barriers at passageways, fire pump room, chute termination rooms and similar.

**TYPE III-A CONSTRUCTION (IBC TABLE 601)**  
 Building above the podium has a construction type of III-A

**EXTERIOR WALLS**  
 • Exterior walls required to be noncombustible or fire-retardant treated lumber or sheathing  
 • Exterior load bearing walls are 2-HR FRR and exterior non-load bearing walls are 1-HR FRR IBC Section 705.8 and 705.9.  
 • The west & south & portion of the east exterior load bearing and non-bearing walls in Type III-A have F50 > 10 ft. Per IBC Section 705.8 allows for the protection to be from the interior only for fire exposure. The north wall and portion of the east wall are rated for exposure from both sides.

**FLOOR-CEILING**  
 • 1-HR FRR construction per IBC Section 420 for separation of residential units from each other.  
 • Floor ceiling assemblies are constructed with TJI members.

**ROOF-CEILING**  
 • 1-HR FRR construction (TJI joist members) to separate the fire partitions at the membrane of the roof ceiling assembly (not extend the fire partitions thru the joist space to the deck), re IBC 709.4.  
 • Ruston insulation is provided on top of the roof sheathing creating a warm roof cavity. No venting is provided.

**STRUCTURAL FRAME**  
 • 1-HR FRR (individually protected) per Table 601 unless within a 2-HR FRR exterior load bearing wall, then individual FRR not less than that required for the wall per Section 704.10.

**COLUMNS**  
 • 1-HR FRR (individually protected) per Table 601 unless within a 2-HR FRR exterior load bearing wall, then individual FRR not less than that required for the wall per Section 704.10.

**STRUCTURAL MEMBERS**  
 • Individual fire protection of structural members supporting more than two floors or more than a floor and a roof and bearing wall shall be provided as required by IBC Section 704.3 This shall be coordinated with the structural engineer.

**SPRINKLER SYSTEM**  
 • Provided throughout per NFPA 13

**STANDPIPES**  
 • Provided per NFPA 14, one standpipe riser in each stairway enclosure. Hose connections shall be located at intermediate landings of each required stairway, IFC Section 905.4 (1).

**TEMPORARY STAND**











































## EXHIBIT B - Description of Housing

### 9<sup>TH</sup> & Navajo Street

Description of housing:

- The project will be developed at 1347 W. 9<sup>th</sup> Ave., Denver, CO 80202.
- This Agreement will cover 94 units within this 190-unit project.
- City HR-PBV Units by minimum area (square footage) and number of bedrooms:

Unit Type	30% AMI	MIN SF
1 BR	79	401
2BR	7	690
3BR	6	950
4BR	2	1,284
<b>TOTAL</b>	<b>94</b>	

- Services, maintenance, or equipment to be supplied by the owner without charges:
  - Maintenance of apartment units
  - Maintenance and cleaning of common areas
  - Maintenance of all utilities and mechanicals
  - Maintenance of parking garage
  - 24-hr staffed front desk/security presence
  - Maintenance of security cameras
  - Maintenance of limited-access entries with intercom buzzer system
  - Communal fitness facilities are provided on 1st level
  - Communal resident amenity facilities are provided on 1st and 2<sup>nd</sup> levels
  - Communal laundry facilities are provided on the 3rd level
- Utilities available to the City HR-PBV Units:
  - Owner will supply water, sewer, trash, and electric.
- Estimated Initial Rent to Owner for HR-PBV Units:

Unit Type	% AMI	Rent/Unit/Mo
1 BR/1 BA	30%	\$1,705
2 BR/1 BA	30%	\$2,025
3 BR/2 BA	30%	\$2,630
4 BR/2 BA	30%	\$2,955

**Note:** All rents for each City HR-PBV Unit may at no time exceed the reasonable rent charged for comparable units in the private unassisted market. The reasonable rent for each City HR-PBV Unit shall be determined by the City in accordance with Colorado Division of Housing requirements and prior to the commencement of Part II of this Agreement.



## **EXHIBIT C – Tenant Rent Calculation**

### **9<sup>th</sup> & Navajo Street**

The Tenant Rent will be determined using the total household income anticipated to be received in the immediately subsequent 12-month period. The Tenant Rent must not exceed 30% of the household's monthly adjusted income. The Tenant Rent is the Total Tenant Payment minus the Utility Allowance.

The Housing Assistance Payment is the City HR-PBV Unit Rent minus the Tenant Rent. The Housing Assistance Payment starts the date the household's eligibility is approved based upon the executed lease start date.

The Tenant Rent calculation for the household will be completed as follows:

1. Determine the annualized income and income from the assets to calculate the gross annual income.
2. Identify the applicable allowances for the household (elderly/disabled, dependent and childcare)
3. Calculate the allowable medical/disability expenses:
  - Add medical expenses and disability expenses and subtract 3% of the gross annual income = allowable medical/disability expenses
4. Determine the annual adjusted income
  - Gross annual income – allowances (dependent, elderly/disabled and childcare) – allowable medical/disability expenses = annual adjusted income
5. Calculate the adjusted monthly income
  - Annual adjusted income divided by 12 = monthly adjusted income
6. Calculate the Total Tenant Payment amount prior to the Utility Allowance
  - Monthly adjusted income x 30% = Total Tenant Payment prior to the Utility Allowance
7. Calculate the Tenant Rent
  - Total Tenant Payment – Utility Allowance = Tenant Rent
8. Calculate the Housing Assistance Payment
  - City HR-PBV Unit Rent – Tenant Rent = Housing Assistance Payment

## **EXHIBIT D – Tenant Eligibility Criteria & Income, Asset, and Expenses Verification**

### **9<sup>th</sup> & Navajo Street**

#### Tenant Eligibility:

At the time of initial tenancy, the tenant must:

- Be experiencing homelessness or exiting homelessness (as defined in Exhibit E Tenant Selection Plan); and
- Have an annual household income at or below thirty percent (30%) of the area median income for the Denver metro area, as determined by the U.S. Department of Housing and Urban Development.

#### Income, Asset, and Expense Verification:

Owner or the Project's property management company is responsible for completing tenant income and asset verifications on forms approved by the City.

The tenant must sign a consent form, provided by Owner or the Project's property manager, to allow for the verification of the income and assets of the tenant's household. A verification must be dated within one-hundred and twenty (120) days of the move-in date or one hundred twenty (120) days of the recertification effective date.

All attempts to verify income and assets of the household of a tenant must be documented on forms approved by the City.

Acceptable verification methods are 1) third-party written, 2) third-party verbal, and 3) documents provided by the household.

The acceptable income and asset verification list includes, but is not limited to:

#### Employment documentation:

- Direct verification from the employer
- Verbal employment verification from the employer
- 3-6 current, consecutive paystubs

#### Self-Employment/Business Income documentation:

- Self-Employment certification declaring anticipated annual income along with current tax return or transcript
- Notarized Profit and Loss statement from a tax accountant for the prior year and current year-to-date

#### Unemployment documentation:

- Current benefit notice showing current payment amount and frequency
- Statement of anticipated unemployment or possible employment

Social Security/SSI/SSDI/Pension documentation:

- Current\* Annual Award Letter

*\*Social Security will announce the Cost-of-Living Increase (COLA) increase towards the end of the year. If processing a move in or recertification effective January or later, use the COLA increase to anticipate this income source.*

TANF/OAP/AND/Child Support/Alimony documentation:

- Current printout from U.S. Department of Human Services (DHS)
- 12-month printout from Child Support Enforcement or the payment distribution agency
- Current Child Support agreement
- Notarized statement from the non-custodial parent showing current payment and frequency

Recurring Gifts/Contributions\* documentation:

- Notarized statement from the individual(s) gifting recurring money or household items to the family

*\*Does not include childcare expenses paid directly to the childcare provider, food or transportation purchased for the household.*

Regular payments or distributions received from annuities/insurance policies/retirement funds/disability compensation/worker's compensation/severance pay acceptable documentation:

- Current payment statement with payment amount and frequency

Zero Income documentation:

- Statement from the household documenting how the necessary monthly expenses are being paid and certifying that no income is being received, witnessed by management

Checking and Savings Accounts documentation:

- Current statement showing the interest rate and ending balance

401K/403B/Keough/IRA/Retirement Accounts/Pension/Whole Life Insurance/Money Market/Stocks/Bonds acceptable documentation:

- Current statement\* showing dividends and/or distribution amount and frequency

*\*The account balance is not counted as an asset, but the income and/or dividends will be counted as income.*

Real Estate ownership:

- Estimated current market value through assessor's department, current mortgage statement, current loan statement and current cost to convert the asset to cash such as broker/real estate fees/closing costs

Trusts documentation:

- Revocable Trust – current statement if the household has the right to withdraw the funds in the trust, this is considered an asset and any income earned is considered actual asset income

- Non-revocable Trust – If the trust not under the control of a household member, the account is not considered an asset. However, if anyone in the household is receiving regular distributions this is considered income.

Disability verification documentation:

- Social Security Disability benefit letter or Social Security Benefit letter with DI or DC after the social security number
- A verification from an individual identified by the tenant such as a medical professional, a peer support group, a non-medical service agency, or a reliable third party who knows the individual's disability
- Specific medical diagnosis, treatment or nature or severity of disability may not be used nor placed in the tenant file

Child Care expense documentation:

- Written third party verification from the childcare provider with the amount the household is responsible for paying that is unreimbursed by an individual outside of the household or an agency
- Copies or receipts indicating childcare payments
- If the childcare provider is an individual, the provider must provide a statement of the amount they are charging the household.

Medical Expense documentation:

- Written verification from the medical office with the out of pocket and anticipated medical expenses
- Pension statements that include medical insurance premiums
- Original receipts or statements from the medical provider showing paid and unreimbursed medical expenses
- Physician's prescriptions for over-the-counter products and accompanying receipts
- Insurance premium statements or insurance premium payments listed on other written third-party verifications documents such as paystubs

Disability Expense documentation:

- Written certification from a reliable\* source i.e., health care provider, medical professional, a peer support group, a non-medical service agency or third party that the person with a disability requires the services and/or equipment permitting a family member or the person with disability to work
- For attendant care: Attendant's written certification of amount received from the household, frequency of receipt and hours of care provided and copies of cancelled checks/payment receipts
- For auxiliary apparatus (ex. Hearing aid, wheelchair, etc.): Receipts for purchase or proof of monthly payments and maintenance expenses for auxiliary apparatus. In cases where the person with disabilities is employed, a statement from the employer that the apparatus is necessary for employment.

*\*A reliable source as a verifier is someone that has knowledge of the disability related needs and can verify that the expense is needed.*

**The City's Project Based Housing Voucher Program uses the HUD Handbook 4350.3 Appendix 3 Acceptable Forms of Verification for additional guidance on other verification documents.**

Income not counted includes, but is not limited to:

- Temporary, nonrecurring or sporadic income
- Earned income from a Minor under the age of 18 years old
- Income of a live-in aide
- Income earned from State and Local Employment Training Programs (see 4350.3 Appendix 3 for details)
- Earned Income Tax Credit (EITC)
- Lump sum payments that are not recurring and/or periodic payments
- Foster, adoption and/or kinship assistance payments for the care of foster children or foster adults
- Low Income Home Energy Assistance (LEAP) assistance payments
- Reimbursements for medical expenses

Adjusted Income (deductions from annual income)

There are 5 types of deductions to the determination of annual household income:

- 1) Dependent allowance:
  - a. A household shall receive a deduction of \$480 for each family member that is (i) under 18 years of age, (ii) a person with disabilities, or (iii) a full-time student of any age.
  - b. The head of household, co-head, and spouse may never qualify as a dependent.
- 2) Elderly/Disabled allowance:
  - a. A household shall receive a deduction of \$400 when the head of household, co-head, or spouse is a person with a disability.
- 3) Childcare expense allowance:
  - a. A household shall receive a deduction for anticipated childcare expenses for children under the age of 13 during the 12-month period of the recertification timeframe. The childcare deduction cannot exceed the employment income of the employed household member.
  - b. The childcare expense must enable a family member to work, seek employment or attend school.
  - c. The expenses may not include amounts paid to a family member living in the unit.
  - d. The amount deducted must be reasonable as per the customary and/or average cost of childcare for the area.
- 4) Medical expense deduction:
  - a. If the head of household or spouse is 62 years old or older or disabled, the household shall receive a deduction in an amount that equals the reasonable and unreimbursed medical or dental expenses to be subtracted from the gross income. The allowable expense deduction must exceed 3 percent of the household gross income.

5) Disability expense deduction

- a. This deduction is for unreimbursed, anticipated costs for attendant care and “auxiliary apparatus” for each family member who is a person with disabilities that allow a family member 18 years old or older to become employed. This deduction also applies if the disability assistance allows the disabled household member to be employed as well. The allowable expense must be reasonable and not reimbursed by any other agency and must exceed 3 percent of the household gross income.

**9<sup>TH</sup> & NAVAJO STREET**  
**SUPPORTIVE HOUSING TENANT SCREENING CRITERIA**  
**94 Project-Based Voucher Supportive Housing Units**

*Updated 07/11/23*

9<sup>th</sup> & Navajo Street's 94 Project-Based Voucher Supportive Housing Units use a Housing First Model as well as a Harm Reduction and Trauma-informed approach. This Tenant Screening Criteria applies only to those 94 housing units that receive direct monthly operating subsidy through the Housing Assistance Payments contract with the Colorado Division of Housing and/or the City and County of Denver Office of Housing Stability (HOST). Housing First embraces the idea that people participating in a Supportive Housing (SH) program should be given housing even if they are struggling with issues of chemical dependency, mental health, and/or other barriers to housing that might render them ineligible under more traditional models of housing.

**Core Elements of Housing First Include:**

- Acceptance of applicants regardless of their sobriety, any past or current use of substances, any completion of rehabilitation or treatment, or participation in any other supportive services.
- Applicants are seldom rejected solely on the basis of poor credit or financial history, employment readiness, poor or absent rental history, criminal convictions, or any other behaviors that are generally held to indicate a lack of "housing readiness."
- Supportive services emphasize engagement and problem-solving over therapeutic goals. Services plans are highly tenant-driven without standardized or predetermined goals, and client choice is key.
- Use of alcohol or drugs in and of itself (without other lease violations) is not considered a reason for eviction.

**1) 9th & Navajo Street Eligibility Criteria: *(Cannot be Modified)***

- Extremely low-income households (at or below 30% Area Median Income) where the head of household is 18 years of age or older with a history of homelessness (i.e., meets the HUD definition of homelessness and/or is leaving a group home, crisis center, or other institution and would otherwise be homeless upon exit) and a disabling condition.
- Student Eligibility - If a single applicant or all members of an applicant household are full time students, the application will be rejected unless one of the following criteria is met;
  - the applicant is married and files a joint tax return;
  - the applicant is receiving assistance under Title IV of the Social Security Act;

**9<sup>TH</sup> & NAVAJO STREET**  
**SUPPORTIVE HOUSING TENANT SCREENING CRITERIA**  
**94 Project-Based Voucher Supportive Housing Units**

- the applicant is enrolled in a job training program receiving assistance under the Job Training Partnership Act or under other similar Federal, State or local laws;
- the applicant is a single parent with children and such parent and children are not dependents of another individual.

**2) 9th & Navajo Street Referral Sources: *(Can be modified)***

- 50% of referrals (47 referrals) of eligible households through Regional Coordinated Entry System
- 25% of referrals (24 referrals) of eligible households through WellPower
- 25% of referrals (23 referrals) of eligible households through Native American Housing Circle

**3) 9th & Navajo Street Preferences: *(Can be modified)***

- Units designed specifically for individuals with a physical impairment:
  - a) For this development, "physical impairment" is defined as mobility impairment which necessitates the permanent use of a wheelchair. For all units designed specifically for wheelchair accessibility, priority will be given to those applicants needing such modifications;
  - b) Priority will be given to households where a member is required to use a wheelchair;
  - c) If there are not enough such households to fill all specially equipped units, owners may give preference to households with members whose physical or mobility impairment would be eased by the design of the accessible unit.

**4) 9th & Navajo Street Criminal Screening Criteria: *(Can be modified)***

- a. **Mandatory Denial of Application:**
  - Any household member who is subject to a nationwide sex offender lifetime registration requirement will not be admitted under any circumstances.
  - Any household member that has ever been convicted of a drug-related criminal activity for the production or manufacture of methamphetamine in any location, not just federally assisted housing, will not be admitted under any circumstances.
- b. **Automatic Review of Application based on Criminal History:** The following criminal convictions will result in an automatic review by 9th & Navajo Street and requisite subsidy providers:
  - Any conviction of homicide or homicide related crimes, regardless of the age of the crime.



## 9<sup>TH</sup> & NAVAJO STREET

### **SUPPORTIVE HOUSING TENANT SCREENING CRITERIA**

### **94 Project-Based Voucher Supportive Housing Units**

- Any convictions of a violent *felony* nature within the last five years. This is defined as a physical crime against a person causing bodily injury, child abuse, arson, etc.
- Any felony convictions, other than those of a violent nature, within the last five years may result in denial, but will be reviewed to determine the circumstances of the crime before a final decision to deny is made.
- Any conviction of the unlawful manufacture and/or distribution or sale of a material, compound, mixture, or preparation that contains methamphetamine, regardless of the age of the crime.
- The unlawful possession of materials to make methamphetamine or amphetamine, regardless of the age of the crime.
- Any record of criminal sexual activity, regardless of the age of the crime.
- Any record of terrorist activity - domestic or foreign - regardless of the age of the crime.

#### **5. 9th & Navajo Street Application Procedure**

- a. Anyone who wishes to be considered for a Project-Based Voucher (PBV) unit at 9th & Navajo Street must complete the appropriate Division of Housing (DOH)-designated PBV application.
- b. An applicant must submit a completed DOH PBV application to be considered for residency. Incomplete applications will be returned to the applicant to complete.
- c. Once the completed application is received, it will be forwarded to the DOH Voucher Administrator agency that is providing voucher administration services for 9th & Navajo Street.
- d. All applications must be entered in DOH's Elite rental assistance database system by the DOH Voucher Administrator agency.
- e. Placement on the waiting list does not automatically guarantee eligibility for an apartment. Further screening as described in the eligibility criteria section will be completed at the time an apartment becomes available.
- f. Once the Property Manager is aware that a unit will be coming available, they will contact the DOH Voucher Administrator agency to let them know of the vacancy.
- g. The DOH Voucher Administrator agency will pull the next available applicant off of the waiting list, and arrange a time to meet, and verify the information provided on the application.
- h. Once verified, the DOH Voucher Administrator agency will notify 9th & Navajo Street that they may begin their screening process.
- i. If the applicant is deemed ineligible, 9th & Navajo Street must supply a copy of the written denial to the DOH Voucher Administrator agency.
- j. If the applicant is deemed eligible by both the property and DOH, the DOH Voucher Administrator agency will contact the applicant and conduct a PBV briefing.

**9<sup>TH</sup> & NAVAJO STREET**  
**SUPPORTIVE HOUSING TENANT SCREENING CRITERIA**  
**94 Project-Based Voucher Supportive Housing Units**

**6. Notification of Denial**

Once applicant screening has been completed and all materials have been verified and evaluated, any application not meeting the above criteria will be denied. 9th & Navajo Street must give an applicant prompt notice of a decision denying assistance. The notice must contain a brief statement of the reason for the denial and must also state that the applicant may request an informal review of the decision. A copy of this denial must also be sent to the DOH Voucher Administrator agency.

**7. Appeal Process**

The applicant shall have ten (10) business days from the date of the letter to request, in writing, an informal review of the decision for denial. 9th & Navajo Street must schedule and send written notice of the informal review within ten (10) business days of the family's request. The informal review must be conducted by a person other than the one who made or approved the decision under review, or a subordinate of this person. 9th & Navajo Street will notify the applicant of the final decision, including a statement explaining the reason(s) for the decision. The notice will be mailed within 10 business days of the informal review to the applicant and his or her representative, if any, along with proof of mailing.

If the decision to deny is overturned as a result of the informal review, processing for admission will resume.

If the family fails to appear for their informal review, the denial of admission will stand and the family will be notified.

**8. Consideration of Circumstances/Reasonable Accommodations**

9th & Navajo Street's decision concerning denial of admission is subject to consideration of circumstances and reasonable accommodations. The policy of 9th & Navajo Street is to consider all requests by individuals with a disability for reasonable accommodation both in policies and procedures that assist in providing an equal opportunity to use and enjoy the programs under which the project is funded.

9th & Navajo Street will consider all relevant circumstances when deciding whether to deny assistance based on a family's past history. Examples include: seriousness of the case, the extent of participation or culpability of individual family members, the length of time since the violation occurred, whether the culpable household member is participating in or has successfully completed rehabilitation program or has otherwise been rehabilitated

**9<sup>TH</sup> & NAVAJO STREET**  
**SUPPORTIVE HOUSING TENANT SCREENING CRITERIA**  
**94 Project-Based Voucher Supportive Housing Units**

successfully.

**9. Availability of Plan**

This Tenant Selection Plan is available to the public upon request. It can be requested at the rental office during normal office hours.

**10. Modification of Plan**

9th & Navajo Street will review this Tenant Selection Plan at least once annually to ensure that it reflects current operating practices and program priorities. If 9th & Navajo Street feels the plan needs to be modified in any way, a notice of such modification will be provided by mail to applicants on the waiting list. For this reason, the current Tenant Selection Plan in place at 9th & Navajo Street will always be dated.

**11. Pet Policy**

A Service or Companion Animal (Assistance Animal) will be approved with appropriate verification. Please review the Reasonable Accommodation and Modification Policy.

I certify that I have received a copy of the Supportive Housing Tenant Screening Criteria for housing at 9th & Navajo Street.

Applicant	Date
Applicant	Date
Applicant	Date
Manager/Leasing Agent Signature	Date



**EXHIBIT F**

**CONSENT TO ASSIGNMENT OF  
PROJECT-BASED  
VOUCHER PROGRAM AGREEMENT**

**THIS CONSENT TO ASSIGNMENT OF PROJECT-BASED VOUCHER PROGRAM AGREEMENT (“Consent”)** is made between the **CITY AND COUNTY OF DENVER**, a municipal corporation of the State of Colorado (the “City”), by and through the Department of Housing Stability (“HOST”), and [OWNER], a Colorado [entity type], whose address is [address, city, state zip] (the “Owner”), individually a “Party” and jointly the “Parties.”

WHEREAS, Owner will construct or has constructed a residential development located at [property address] that will provide [XX] dwelling units for individuals experiencing homelessness or having exited from homelessness;

WHEREAS, the City and Owner entered into that certain Project-Based Voucher Program Agreement dated \_\_\_\_\_, 202\_ (the “City HR-PBV Agreement”);

WHEREAS, the City, subject to the terms and conditions of the City HR-PBV Agreement, has agreed to make housing assistance payments to Owner for [number] (xx) of dwelling units;

WHEREAS, Owner desires to assign the City HR-PBV Agreement as security for financing, and pursuant to Section 12.1.2. of the City HR-PBV Agreement, has requested that the City consent to such assignment as collateral for financing.

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties incorporate the recitals set forth above and agree as follows:

**1. CONSENT TO ASSIGNMENT AS SECURITY.** By execution of this consent to assignment as security, the City consents to the assignment as security of the City HR-PBV Agreement by Owner to [Lender Name] (“Lender”) as security for a loan by Lender to Owner with respect to the Project. The City consents to transfer of Lender’s security interest to successor secured parties.

**2. EFFECT OF CONSENT TO ASSIGNMENT.**

**2.1.** The City is not a party to the loan or the loan documents, nor to any assignment of the City HR-PBV Agreement by Owner to Lender as security for the loan, nor to any transfer of the City HR-PBV Agreement by Lender. Issuance of this Consent does not signify that the City has reviewed, approved, or agreed to the terms of any financing or refinancing;

## EXHIBIT F

to any term of the loan documents; or to the terms of any assignment of the City HR-PBV Agreement by Owner to Lender as security for the loan, or by Lender to any transferee of the loan.

**2.2.** The consent of assignment of the City HR-PBV Agreement as security for the loan does not change the terms of the City HR-PBV Agreement in any way, and does not change the rights or obligations of the City or Owner under the City HR-PBV Agreement.

**2.3.** The creation or transfer of any security interest in the City HR-PBV Agreement is limited to amounts payable under the City HR-PBV Agreement in accordance with the terms of the City HR-PBV Agreement.

**2.4.** Notwithstanding the City's grant of consent to assignment of a security interest in the City HR-PBV Agreement by Owner to Lender as security for the loan, and to further transfer of such security interest to successor secured parties, the City's execution of this Consent does not constitute anything other than a limited assignment of the City HR-PBV Agreement as security for financing.

**3. EXERCISE OF SECURITY INTEREST.** A secured party may not exercise any rights or remedies against the City under the City HR-PBV Agreement, and shall not have any right to receive housing assistance payments that may be payable to Owner under the City HR-PBV Agreement, until and unless:

**3.1.** The City has approved the secured party as a successor to Owner pursuant to the terms of the City HR-PBV Agreement; and

**3.2.** The secured party seeking to exercise such rights or remedies, or to receive such payments, has executed, and delivered, in a form acceptable to the City Attorney, an agreement by the assignee to comply with all the terms of the City HR-PBV Agreement, and to assume all obligations of the owner under the City HR-PBV Agreement.

**4. PAYMENT TO SECURED PARTY.** When a secured party notifies HOST, in writing, that housing assistance payments payable pursuant to the City HR-PBV Agreement should be directed to the secured party (in accordance with Paragraph 3 above), HOST may make such payments to the secured party instead of Owner. In making such payments, HOST is not required to consider or make any inquiry as to the existence of a default under the loan documents, but may rely on notice by the secured party; and any payments by HOST to the

## EXHIBIT F

secured party shall be credited against amounts payable by HOST to Owner pursuant the City HR-PBV Agreement.

5. **OWNER'S AGREEMENT**. In consideration for the City's grant of consent to the assignment of the City HR-PBV Agreement as security for financing, Owner agrees to the terms of this Consent and agrees that any assignment by Owner is subject to all such terms.

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

**EXHIBIT F**

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

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

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

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

**EXHIBIT F**

OWNER

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

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

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



**CONSENT TO ASSIGNMENT OF  
PROJECT-BASED  
VOUCHER PROGRAM AGREEMENT  
(FIRSTBANK)**

**THIS CONSENT TO ASSIGNMENT OF PROJECT-BASED VOUCHER PROGRAM AGREEMENT (FIRSTBANK) (“Consent”)** is made between the **CITY AND COUNTY OF DENVER**, a municipal corporation of the State of Colorado (the “City”), by and through the Department of Housing Stability (“HOST”), and **MHMP 21 NAVAJO LLLP**, a Colorado limited liability limited partnership, whose address is 1600 Broadway, Suite 200, Denver, Colorado 80202 (the “Owner”), individually a “Party” and jointly the “Parties.”

WHEREAS, Owner will construct or has constructed a residential development located at 1347 W. 9<sup>th</sup> Ave., Denver, Colorado 80204 that will provide ninety-four (94) dwelling units for individuals experiencing homelessness or having exited from homelessness;

WHEREAS, the City and Owner entered into that certain Project-Based Voucher Program Agreement dated \_\_\_\_\_, 202\_ (the “City HR-PBV Agreement”);

WHEREAS, the City, subject to the terms and conditions of the City HR-PBV Agreement, has agreed to make housing assistance payments to Owner for the ninety-four (94) of dwelling units;

WHEREAS, Owner desires to assign the City HR-PBV Agreement as security for financing, and pursuant to Section 12.1.2. of the City HR-PBV Agreement, has requested that the City consent to such assignment as collateral for financing.

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties incorporate the recitals set forth above and agree as follows:

- 1. CONSENT TO ASSIGNMENT AS SECURITY.** By execution of this Consent, the City consents to the assignment of the City HR-PBV Agreement by Owner to FirstBank, a Colorado state banking corporation, and its successors and assigns (“Lender”) as security for Lender’s purchase of bonds relating to Project and for a loan (collectively, the “Loan”) by Lender to Owner with respect to the Project pursuant to those certain bond and loan documents between Lender and Owner (the “Loan Documents”). Additionally, the City consents to: (i) the lien on the Property (as defined in the City HR-PBV Agreement) created pursuant to the Loan Documents and Lender’s right to exercise any and all remedies set forth in the Loan

## EXHIBIT F-1

Documents, and (ii) the transfer of Lender's security interest to successor secured parties, including transfers of this Consent.

### **2. EFFECT OF CONSENT TO ASSIGNMENT.**

- 2.1.** The City is not a party to the Loan or the Loan Documents, nor to any assignment of the City HR-PBV Agreement by Owner to Lender as security for the Loan, nor to any transfer of the City HR-PBV Agreement by Lender. Issuance of this Consent does not signify that the City has reviewed the terms of any financing or refinancing, any term of the Loan Documents, or to the terms of any assignment of the City HR-PBV Agreement by Owner to Lender as security for the Loan, or by Lender to any transferee of the Loan.
- 2.2.** Except as otherwise set forth herein, the consent of assignment of the City HR-PBV Agreement as security for the Loan does not change the terms of the City HR-PBV Agreement in any way, and does not change the rights or obligations of the City or Owner under the City HR-PBV Agreement.
- 2.3.** The creation or transfer of any security interest in the City HR-PBV Agreement is limited to amounts payable under the City HR-PBV Agreement in accordance with the terms of the City HR-PBV Agreement.
- 2.4.** Notwithstanding the City's grant of consent to assignment of a security interest in the City HR-PBV Agreement by Owner to Lender as security for the Loan, and to further transfer of such security interest to successor secured parties, the City's execution of this Consent does not constitute anything other than a limited assignment of the City HR-PBV Agreement as security for financing.

### **3. EXERCISE OF SECURITY INTEREST.** A secured party may not exercise any rights or remedies against the City under the City HR-PBV Agreement, and shall not have any right to receive housing assistance payments that may be payable to Owner under the City HR-PBV Agreement, until and unless:

- 3.1.** The City has approved the secured party as a successor to Owner pursuant to the terms of the City HR-PBV Agreement; and
- 3.2.** The secured party seeking to exercise such rights or remedies, or to receive such payments, has executed, and delivered, in a form acceptable to the City Attorney, an agreement by the assignee to comply with all the terms of the City HR-PBV Agreement, and to assume all obligations of the owner under the City HR-PBV Agreement.

EXHIBIT F-1

4. **PAYMENT TO SECURED PARTY.** Upon an event of default under the respective Loan Documents, when such secured party has the right to exercise its rights and remedies thereunder, and when such secured party notifies HOST, in writing, that housing assistance payments payable pursuant to the City HR-PBV Agreement should be directed to the secured party, HOST shall make such payments to the secured party instead of Owner. In making such payments, HOST is not required to consider or make any inquiry as to the existence of a default under the Loan Documents, but may rely on notice by the secured party; and any payments by HOST to the secured party shall be credited against amounts payable by HOST to Owner pursuant the City HR-PBV Agreement.
5. **OWNER'S AGREEMENT.** In consideration for the City's grant of consent to the assignment of the City HR-PBV Agreement as security for financing, Owner agrees to the terms of this Consent and agrees that any assignment by Owner is subject to all such terms.

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

EXHIBIT F-1

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

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

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

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

EXHIBIT F-1

OWNER:  
**MHMP 21 Navajo LLLP,**  
a Colorado limited liability limited partnership

By: MHMP 21 Navajo GP LLC,  
a Colorado limited liability company  
Its: General Partner

By: Mercy Housing Mountain Plains,  
a Colorado nonprofit corporation  
Its: Manager and Sole Member

By: \_\_\_\_\_  
Name: Kuhl Brown  
Title: Vice President