

**LOAN AGREEMENT  
GENERAL FUND**

**THIS LOAN AGREEMENT** is made between the **CITY AND COUNTY OF DENVER**, a municipal corporation organized pursuant to the Constitution of the State of Colorado (“City”), and **DENVER LEASED HOUSING ASSOCIATES VI, LLLP**, a Minnesota limited liability limited partnership, whose address is 2905 Northwest Boulevard, Suite 150, Plymouth, MN 55441 (“Borrower” or “Contractor”).

**WITNESSETH:**

**WHEREAS**, the City is making certain monies available to ensure the development of an affordable housing project (the “Project”); and

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

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

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

**1. LOAN TO BORROWER:** Subject to the terms of this Loan Agreement, the City agrees to lend Borrower the sum of Three Million and No/100 Dollars (\$3,000,000.00) (the “Loan”). In addition to this Loan Agreement, the City and Borrower will enter into a promissory note in a form satisfactory to the City evidencing this Loan (the “Promissory Note”) and a covenant securing the Property for use as affordable housing as required by Section 6 hereof (the “Covenant”). Simple interest at a rate of one percent (1%) per annum shall commence accruing on the outstanding principal balance of the Promissory Note on the date on which the first draw on the Loan is made. Principal and interest shall be due and payable, at such place as may be designated by City, in annual installments equal to the lesser of (a) annual Surplus Cash Flow amount, calculated as set forth on **Exhibit E** attached hereto, or (b) \$115,790. Such annual installments shall commence and be due on the first June 1<sup>st</sup> following the date that is thirty (30) calendar months after the effective date of the Promissory Note and each June 1<sup>st</sup> thereafter, with the entire unpaid balance of principal and accrued interest due and payable on or before the thirtieth (30th) anniversary of the date of the Promissory Note (“Maturity Date”), if not sooner paid.

2. **SECURITY**: Repayment of the Promissory Note shall be secured by a Deed of Trust (the “Deed of Trust”), in form satisfactory to City, granted by Borrower and encumbering the real property known informally as East Range Crossings and numbered as 5810 Argonne Street, Denver, CO 80249 (the “Property”) subject to prior encumbrances not exceeding Sixty Million and No/100Dollars (\$60,000,000.00) in principal amount.

3. **SUBORDINATION**: The Executive Director (the “Executive Director”) of the City’s Office of Economic Development (“OED”), or permitted designee, is authorized to execute documents necessary to subordinate the lien of the City’s Deed of Trust and Covenant so long as (i) the subordination agreement is substantially in the form attached hereto as **Exhibit D**; (ii) encumbrances prior to the City’s Deed of Trust do not exceed Sixty Million and No/100 Dollars (\$60,000,000.00); (iii) Borrower is not then in default of its obligations pursuant to this Loan Agreement, the Promissory Note, the Covenant, or the Deed of Trust; and (iv) all additional financing for the Project is committed.

4. **USE AND DISBURSEMENT OF FUNDS**: Loan proceeds will be used to finance costs associated with development of the Property for use as affordable housing, in accordance with **Exhibit A**, attached hereto and incorporated herein. The Borrower shall submit to the City requisitions with documentation of incurred costs on OED approved forms, and otherwise comply with the financial administration requirements set forth in **Exhibit B** attached hereto and incorporated herein. Where the City’s funds are disbursed for construction, (i) the City shall monitor the construction activities for the purpose of verifying eligible costs, and (ii) the City shall retain ten percent (10%) of each disbursement of funds, which retainage shall be released upon final inspection and approval of the City and receipt of proof of release of liens from all applicable contractors, subcontractors, and suppliers. Acquisition funds, if any, shall be disbursed at a scheduled closing, and the City’s warrant shall be payable jointly to Borrower and the seller of the Property. In addition, OED shall retain Ten Thousand and No/100 Dollars (\$10,000.00) of the total funds to be disbursed under this Loan Agreement, which retainage shall be released upon receipt from Borrower of all information necessary for the City’s reporting requirements. These budget items may be revised with the written approval of OED, provided the revised budget does not exceed the amount of the loan. Expenses incurred prior to May 1, 2017 are not eligible for reimbursement.

5. **DEADLINE FOR DISBURSEMENT OF FUNDS**: Borrower must provide

evidence of private funding commitments necessary to develop the affordable housing project on the Property and the final executed partnership agreement for the Project on or before November 15, 2017. Failure to meet this deadline shall result in the termination of this Loan Agreement. No funds shall be disbursed under this Loan Agreement until such time as these conditions are met. Further, all cost overruns and/or funding shortfalls shall be the sole responsibility of the Borrower.

Borrower further agrees that (a) documentation for all draw down requests will be submitted no later than twenty-four (24) months after the date of the Promissory Note and (b) Borrower shall complete the Project within a nineteen (19) month period after the date of the Promissory Note. This timeline includes requests for disbursement of the Ten Thousand and No/100 Dollars (\$10,000.00) retainage set forth in Section 4, above. These deadlines may be extended with the written approval of OED.

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

A. Affordability limitations. All two hundred fifty two (252) of the units at the Property (the “City Units”) shall have rents not exceeding the lesser of (i) fair market rent for comparable units in the area as published by the Colorado Housing and Finance Authority (“CHFA”), or (ii) a rent that does not exceed 30% of the adjusted income of a family whose annual income equals 60% of the median income for the Denver area, as published by CHFA, with adjustments for number of bedrooms in the unit. By executing this Loan Agreement, Borrower acknowledges receipt of CHFA's current rent guidelines from the OED. It shall be Borrower's responsibility to obtain updated guidelines from OED or CHFA to confirm the annual calculation of the maximum rents for the Denver area.

The City shall determine maximum monthly allowances for utilities and services annually using the CHFA model or other methods approved by CHFA. Rents shall not exceed the maximum rents as determined above minus the monthly allowance for utilities and services.

The City shall review rents for compliance within ninety (90) days after OED requests rent information from the Borrower.

B. Occupancy/Income Limitations. The City Units shall be occupied by tenants whose incomes are at or below sixty percent (60%) of the median income for the Denver area as published by CHFA. By executing this Loan Agreement, Borrower acknowledges receipt of CHFA’s current income guidelines from OED. It shall be Borrower’s responsibility to obtain

updated guidelines from OED or CHFA, and comply with same.

C. Unit Mix. The breakdown of City Units by number of bedrooms shall be as follows:

<b>BEDROOMS</b>	<b>City Units</b>
1 Bedroom	12
2 Bedroom	120
3 Bedroom	120
<b>TOTAL</b>	<b>252</b>

Borrower shall provide the addresses of the City Units to the City by the time of Project completion.

D. Covenant Running with the Land. At closing, Borrower shall execute a covenant in form satisfactory to the City (“Covenant”), setting forth the rental and occupancy limitations described in subparagraphs A and B above, which shall be recorded in the real estate records of the City and County of Denver and which shall constitute a covenant running with the land. The Covenant shall encumber the Property for a period not less than thirty (30) years from the date of the Covenant. Violation of said Covenant shall be enforceable as an event of default pursuant hereto. Notwithstanding anything to the contrary contained herein, this Agreement and the Covenant will terminate upon foreclosure or deed in lieu of foreclosure by holders of any deed of trust senior to the City’s Deed of Trust.

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

8. **PROHIBITED LEASE TERMS:** Leases or other instruments pursuant to which City Units are occupied may not contain any of the following provisions:

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

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

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

intentional or negligent.

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

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

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

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

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

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

**9. PROHIBITION OF CERTAIN FEES:** Borrower is prohibited from charging fees that are not customarily charged in rental housing (e.g. laundry room access fees), except that Borrower may charge the following: reasonable application fees to prospective tenants; parking fees to tenants only if such fees are customary for rental housing projects in the neighborhood; and fees for services such as bus transportation or meals, as long as the services are voluntary and fees are charged for services provided or are otherwise permissible under Section 42 of the Internal Revenue Code.

**10. TERMINATION OF TENANCY:** Borrower may not terminate the tenancy or refuse to renew the lease of a tenant of any of the City Units except for serious or repeated violations of the terms and conditions of the lease; for violation of applicable Federal, State, or local laws; or for other good cause or as otherwise allowed under Section 42 of the Internal Revenue Code. Any termination or refusal to renew must be preceded by not less than thirty (30) days by Borrower's service upon the tenant of a written notice specifying the grounds for the action.

**11. MAINTENANCE AND REPLACEMENT:** Borrower shall maintain the

Property in compliance with all applicable housing quality standards and local code requirements. Newly constructed or substantially rehabilitated housing must meet applicable requirements referenced at 24 C.F.R. 92.251.

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

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

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

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

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

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

**14. AFFIRMATIVE MARKETING:** Borrower shall comply with the affirmative marketing procedures outlined in the marketing plan, attached hereto as **Exhibit C** and incorporated herein, to provide information and otherwise attract eligible tenants from all racial, ethnic, and gender groups in the Property's housing market area in accordance with 24 CFR 92.351. Except Borrower may limit eligibility or give preference to a particular segment of the population in accordance with 24 CFR 92.253(d).

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

**16. PUBLICATIONS/ANNOUNCEMENTS:** Contractors using radio or television announcements, newspaper advertisements, press releases, pamphlets, mail campaigns, or any

other marketing methods funded by OED, or publicizing activities or projects funded by OED shall first receive approval from OED. In any event, all such publicizing activities must include the following statement: “The funding source for this activity is the City and County of Denver, Office of Economic Development.” OED shall be acknowledged in any events regarding the project being funded, including groundbreakings and openings.

**17. EXAMINATION OF RECORDS/ANNUAL MONITORING:** The Borrower agrees that the City, or any of its duly authorized representatives shall, until the expiration of five (5) years after the expiration of the affordability period set forth in the section above entitled “**RESTRICTIONS ON USE OF PROPERTY,**” have access to and the right to examine any directly pertinent books, documents, papers, and records of the Borrower involving transactions related to this Loan Agreement. Borrower must also require its contractors and subcontractors to allow access to such records when requested. Borrower shall fully cooperate with City in an annual monitoring of Borrower’s performance and site inspection to verify compliance with the requirements of this Loan Agreement. The records maintained by Borrower shall include, without limitation, (i) records evidencing the income of each family occupying a City Unit, and (ii) a copy of the lease pursuant to which each City Unit is occupied.

Borrower shall submit to the City the following reports: (1) annual report on rents and occupancy of City Units to verify compliance with affordability requirements in Paragraph 6; and (2) Reports (including financial reports) that enable the City to determine the financial condition and continued financial viability of the rental project.

**18. CONDITIONS:**

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

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

**19. NO DISCRIMINATION IN EMPLOYMENT:** In connection with the performance of work under this Loan Agreement, the Borrower agrees not to refuse to hire, discharge, promote or demote, or to discriminate in matters of compensation against any person otherwise qualified, solely because of race, color, religion, national origin, gender, age, military status, sexual orientation, marital status, or physical or mental disability; and further agrees to insert the foregoing provision in all subcontracts hereunder.

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

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

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

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

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

E. Certificates of Insurance evidencing the above shall be submitted to OED prior to the disbursement of funds hereunder. Policies shall include a waiver of subrogation and rights of recovery as against the City. Insurance companies providing the above referenced coverage must be authorized to issue insurance in Colorado and be otherwise acceptable to the Director of Risk Management.

**21. DEFENSE & INDEMNIFICATION:**

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



the sole negligence or willful misconduct of City.

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

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

D. Insurance coverage requirements specified in this Loan Agreement shall in no way lessen or limit the liability of the Contractor under the terms of this indemnification obligation. The Contractor shall obtain, at its own expense, any additional insurance that it deems necessary for the City's protection.

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

**22. DEFAULT AND ACCELERATION:** Borrower expressly agrees that the refusal or inability of the Borrower to make the payments to the City called for under, and any other breach of, this Loan Agreement, the Promissory Note, the Deed of Trust, or the Covenant shall constitute a default. The City also may declare a default if any warranty, representation or statement made or furnished to the City by or on behalf of Borrower in connection with this Loan Agreement proves to have been false in any material respect when made or furnished. Upon the existence of a monetary default, and without necessity of notice, presentment, demand, protest, or notice of protest of any kind, all of which are expressly waived by the Borrower, the City shall have the right to accelerate any outstanding obligations of the Borrower, which shall be immediately due and payable, including payments under the Promissory Note, to foreclose upon the Property, and to enforce or assign its rights under the Deed of Trust. Upon the existence of any non-monetary default, the City shall provide Borrower written notice of such default and Borrower shall have thirty (30) days after receipt of notice to cure the default. If Borrower fails

to cure the default within such thirty (30) day period, then the City shall have the right to accelerate payments, foreclose upon the Property, and to enforce or assign its rights under the Deed of Trust, as set forth above. Upon default, the principal shall draw interest at the rate of fifteen percent (15%) per annum.

The City may also suspend or terminate this Loan Agreement in whole or in part, if Borrower materially fails to comply with any term of this Loan Agreement, including if Borrower becomes delinquent to the City on loan, contractual, or tax obligations as due, or with any rule, regulation or provision referred to herein; and the City may declare the Borrower ineligible for any further participation in City funding, in addition to other remedies as provided by law. In the event there is probable cause to believe the Borrower is non-compliant with any applicable rules, laws, regulations, or Loan Agreement terms, and only after the City provides a 30 day notice to cure that remains uncured by the Borrower, the City may withhold up to one hundred (100%) percent of said Loan Agreement funds until such time as the Borrower is found to be in compliance, or to exercise the City's rights under any security interest arising hereunder. The City and Borrower hereby agree with respect to any default hereunder or under the Promissory Note, Covenant, or Deed of Trust, for which there is a cure period, any limited partner of the Borrower shall have the same period of time available to the Borrower to cure such default, and the City is authorized to accept such cure from a limited partner during such period otherwise available to Borrower to effect such cure.

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

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

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

**26. CITY NOT PARTY TO CONSTRUCTION CONTRACT:** The City is not,

and nothing in this Loan Agreement shall be construed to constitute the City, a party to any construction contract pursuant to which the loan or grant proceeds hereof are expended.

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

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

**29. NOTICES:** All notices required by the terms of this Loan Agreement may be sent by email to the Executive Director of OED and to Borrower, attention Mark Moorhouse and Ron Mehl at [mmhourhouse@Dominiuminc.com](mailto:mmhourhouse@Dominiuminc.com) and [rmehl@Dominiuminc.com](mailto:rmehl@Dominiuminc.com), provided that the original must also be hand delivered, sent by overnight courier service, mailed by certified mail, return receipt requested, or mailed via United States mail, postage prepaid, if to Borrower at the address first above written, and if to the City at:

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

With a copy of any such notice to:

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

With a copy of any such notice to Borrower (which shall not constitute notice to Borrower) to:

Winthrop & Weinstine, P.A.  
225 South 6<sup>th</sup> Street, Suite 3500  
Minneapolis, MN 55402  
Attention: John D. Nolde  
Email: [jnolde@winthrop.com](mailto:jnolde@winthrop.com)

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

sent by certified mail are effective upon receipt. Notices sent by mail are effective upon deposit with the U.S. Postal Service. Notices sent by email are effective when the electronic transmission is completed. 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.

A copy of any notice provided to the Borrower under this Agreement, the Promissory Note, the Covenant, and the Deed of Trust should be given to the investor limited partner of the Borrower at the following address:

Bank of America, N.A.  
MA 1-225-02-02  
225 Franklin Street  
Boston, MA 02110  
Attention: Asset Manager – East Range Crossings

With a copy to:

Holland & Knight LLP  
10 St. James Avenue  
Boston, MA 02110  
Attention: James E. McDermott, Esq.

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

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

**32. ELECTRONIC SIGNATURES AND ELECTRONIC RECORDS:** Contractor consents to the use of electronic signatures by the City. This Loan Agreement, and any other documents requiring a signature hereunder, may be signed electronically by the City in the

manner specified by the City. The Parties agree not to deny the legal effect or enforceability of this Loan Agreement solely because it is in electronic form or because an electronic record was used in its formation. The Parties agree not to object to the admissibility of this Loan Agreement in the form of an electronic record, or a paper copy of an electronic document, or a paper copy of a document bearing an electronic signature, on the ground that it is an electronic record or electronic signature or that it is not in its original form or is not an original.

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

**Contract Control Number:**

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

SEAL

**CITY AND COUNTY OF DENVER**

ATTEST:

By \_\_\_\_\_

\_\_\_\_\_

APPROVED AS TO FORM:

REGISTERED AND COUNTERSIGNED:

By \_\_\_\_\_

By \_\_\_\_\_

By \_\_\_\_\_



**Contract Control Number:** OEDEV-201735583-00

**Contractor Name:** DENVER LEASED HOUSING ASSOCIATES VI  
LLLP

By: Ronald G Mehl

Name: RONALD G. MEHL  
(please print)

Title: AUTHORIZED REPRESENTATIVE  
(please print)

**ATTEST: [if required]**

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

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

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



**BORROWER:**

DENVER LEASED HOUSING ASSOCIATES VI, LLLP,  
a Minnesota limited liability limited partnership

By: Denver Leased Housing Associates VI, LLC,  
a Minnesota limited liability company.  
its General Partner

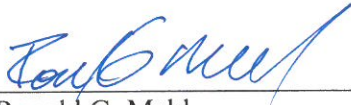
By:   
Name: Ronald G. Mehl  
Its: Authorized Representative





EXHIBIT A

**Project Timeline – East Range Crossings**  
5810 Argonne Street, Denver, CO 80205

Construction financing closes	November 15, 2017
General Contractor notice to proceed	November 15, 2017
Certificate of Occupancy	June 1, 2019
Lease-up completion date of restricted units	August 1, 2019
Conversion to permanent financing	October 1, 2020

SOURCES (CONSTRUCTION)	
Construction Loan – PAB	\$51,115,408
City of Denver	\$3,000,000
LIHTC Equity – 4%	\$3,891,983
<b>TOTAL</b>	<b>\$58,007,391</b>

USES (CONSTRUCTION)	
Land Acquisition	\$2,600,000
Hard Costs	\$50,331,813
Soft Costs	\$5,075,578
<b>TOTAL</b>	<b>\$58,007,391</b>

SOURCES (PERMANENT)	
Permanent Loan	\$32,250,000
City of Denver	\$3,000,000
Deferred Developer Fee	\$4,437,718
LIHTC Equity – 4%	\$25,946,552
<b>TOTAL</b>	<b>\$65,634,270</b>

USES (PERMANENT)	
Land Acquisition	\$2,600,000
Hard Costs	\$50,331,813
Soft Costs	\$5,075,578
Developer Fee	\$6,625,657
Reserves	\$1,001,222
<b>TOTAL</b>	<b>\$65,634,270</b>

PROJECT ACTIVITIES			
ACTIVITY	TOTAL COST	CITY FUNDS	OTHER FUNDS
Land Acquisition	\$2,600,000		\$2,600,000
Hard Costs	\$50,331,813	\$3,000,000	\$47,331,813
Soft Costs	\$5,075,578		\$5,075,578
Developer Fee	\$6,625,657		\$6,625,657
Reserves	\$1,001,222		\$1,001,222
<b>TOTAL</b>	<b>\$65,634,270</b>	<b>\$3,000,000</b>	<b>\$62,634,270</b>

## **EXHIBIT B**

### **FINANCIAL ADMINISTRATION:**

#### **1.1 Compensation and Methods of Payment**

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

#### **1.2 Vouchering Requirements**

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

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

### **1.3 Payroll**

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

reimbursement requested must be calculated and documented in the monthly reimbursement request.

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

#### **1.4 Fringe Benefits**

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

#### **1.5 General Reimbursement Requirements**

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

1.5.5 Service Period and Closeout: All reimbursed expenses must be incurred during the time period within the contract. The final payment request must be received by OED within forty-five (45) days after the end of the service period stated in the contract.

## **2.1 Intentionally Omitted**

### **3.1 Financial Management Systems**

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

- 3.1.1 Financial reporting must be accurate, current, and provide a complete disclosure of the financial results of financially assisted activities and be made in accordance with federal financial reporting requirements.
- 3.1.2 Accounting records must be maintained which adequately identify the source and application of the funds provided for financially assisted activities. The records must contain information pertaining to contracts and authorizations, obligations, unobligated balances, assets, liabilities, outlays or expenditures, and income. Accounting records shall provide accurate, separate, and complete disclosure of fund status.
- 3.1.3 Effective internal controls and accountability must be maintained for all contract cash, real and personal property, and other assets. Adequate safeguards must be provided on all property and it must be assured that it is used solely for authorized purposes.
- 3.1.4 Actual expenditures or outlays must be compared with budgeted amounts and financial information must be related to performance or productivity data, including the development of cost information whenever appropriate or specifically required.
- 3.1.5 Applicable OMB Omni Circular cost principles, agency program regulations, and the terms of the agreement will be followed in determining the reasonableness, allowability and allocability of costs.
- 3.1.6 Source documents such as cancelled checks, paid bills, payrolls, time and attendance records, contract documents, etc., shall be provided for all disbursements. The Contractor will maintain auditable records, i.e., records must be current and traceable to the source documentation of transactions.
- 3.1.7 The Contractor shall maintain separate accountability for OED funds as referenced in 24 C.F.R. 85.20 and the OMB Omni Circular.
- 3.1.8 The Contractor must properly report to Federal, State, and local taxing authorities for the collection, payment, and depositing of taxes withheld. At a minimum,

this includes Federal and State withholding, State Unemployment, Worker's Compensation (staff only), City Occupational Privilege Tax, and FICA.

3.1.9 A proper filing of unemployment and worker's compensation (for staff only) insurance shall be made to appropriate organizational units.

3.1.10 The Contractor shall participate, when applicable, in OED provided staff training sessions in the following financial areas including, but not limited to (1) Budgeting and Cost Allocation Plans; (2) Vouchering Process.

#### **4.1 Audit Requirements**

4.1.1 If the Contractor expends seven hundred and fifty thousand dollars (\$750,000) or more of federal awards in the Contractor's fiscal year, the Contractor shall ensure that it, and its sub recipients(s), if any, comply with all provisions of the OMB Omni Circular.

4.1.2 A copy of the final audit report must be submitted to the OED Financial Manager within the earliest of thirty (30) calendar days after receipt of the auditor's report; or nine (9) months after the end of the period audited.

4.1.3 A management letter, if issued, shall be submitted to OED along with the reporting package prepared in accordance with the Single Audit Act Amendments and the OMB Omni Circular. If the management letter is not received by the Contractor at the same time as the Reporting Package, the Management Letter is also due to OED within thirty (30) days after receipt of the Management Letter, or nine (9) months after the end of the audit period, whichever is earlier. If the Management Letter has matters related to OED

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

4.1.4 All audit related material and information, including reports, packages, management letters, correspondence, etc., shall be submitted to **OED Financial Management Unit**.

4.1.5 The Contractor will be responsible for all Questioned and Disallowed Costs.

4.1.6 The Contractor may be required to engage an audit committee to determine the services to be performed, review the progress of the audit and the final audit findings, and intervene in any disputes between management and the independent auditors. The Contractor shall also institute policy and procedures for its sub recipients that comply with these audit provisions, if applicable.

## **5.1 Budget Modification Requests**

5.1.1 Minor modifications to the services provided by the Contractor or changes to each line item budget equal to or less than a ten percent (10%) threshold, which do not increase the total funding to the Contractor, will require only notification to OED with the next monthly draw. Minor modifications to the services provided by Contractor, or changes to each line item budget in excess of the ten percent (10%) threshold, which do not increase the total funding to Contractor, may be made only with prior written approval by OED. Such budget and service modifications will require submittal by Contractor of written justification and new budget documents. All other contract modifications will require an amendment to this Agreement executed in the same manner as the original Agreement.

5.1.2 The Contractor understands that any budget modification requests under this Agreement must be submitted to OED prior to the last Quarter of the Contract Period, unless waived in writing by the OED Director.

## **6.1 Procurement**

6.1.1 The Contractor shall follow the City Procurement Policy to the extent that it requires that at least three (3) documented quotations be secured for all purchases or services (including insurance) supplies, or other property that costs more than five thousand dollars (\$5,000) in the aggregate.

6.1.2 The Contractor will maintain records sufficient to detail the significant history of procurement. These records will include, but are not limited to the following: rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price.

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

## **7.1 Bonding**

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

## **8.1 Records Retention**

8.1.1 The Contractor must retain for five (5) years financial records pertaining to the contract award. The retention period for the records of each fund will start on the day the single or last expenditure report for the period, except as otherwise noted, was submitted to the awarding agency.

8.1.2 The awarding agency shall have the right of access, upon reasonable notice, to any pertinent books, documents, papers, or other records which are pertinent to the contract, in order to make audits, examinations, excerpts, and transcripts.

### **9.1 Contract Close-Out**

9.1.1 All Contractors are responsible for completing required OED contract close-out forms and submitting these forms to their appropriate OED Contract Specialist within sixty (60) days after the Agreement end date, or sooner if required by OED in writing.

9.1.2 Contract close out forms will be provided to the Contractor by OED within thirty (30) days prior to end of contract.

9.1.3 OED will close out the award when it determines that all applicable administrative actions and all required work of the contract have been completed, and that any repayment required according to the terms of this Agreement has been received or forgiven. If Contractor fails to perform in accordance with this Agreement, OED reserves the right to unilaterally close out a contract, “unilaterally close” means that no additional money may be expended against the contract.

### **10.1 Collection of amounts due**

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



**EXHIBIT C**  
**(Affirmative Marketing)**

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

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

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

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

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

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

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

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

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

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

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

## EXHIBIT D

### SUBORDINATION AGREEMENT

THIS SUBORDINATION AGREEMENT (this "Agreement") dated [INSERT DATE], is made between the **CITY AND COUNTY OF DENVER**, a municipal corporation of the State of Colorado, the present holder of a certain deed of trust, whose address is Office of Economic Development, 201 W. Colfax Ave., Dept. 204, Denver, Colorado 80202 (the "Junior Lender") and [INSERT LENDER NAME], a [INSERT STATE] [INSERT ENTITY TYPE], whose address is [INSERT LENDER'S ADDRESS] (the "Senior Lender").

### PRELIMINARY STATEMENTS

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

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

B. Pursuant to the terms of that certain Permanent Loan Agreement by and between the Senior Lender and the Borrower dated on or about the date hereof (the "Senior Loan Agreement"), the Senior Lender shall make a loan in the original principal amount of up to \$ \_\_\_\_\_ (the "Senior Loan"). The Senior Loan will be evidenced by a Promissory Note executed by the Borrower for the benefit of the Senior Lender (the "Senior Note") which Senior Note will be secured by a deed of trust ("Senior Deed of Trust") which will cover and encumber the Property and securing a note in like amount, and the Senior Deed of Trust is to be recorded in the records of the office of the Clerk and Recorder of [INSERT COUNTY] County, State of Colorado.

C. If Borrower satisfies the "Conversion Conditions" contained in that certain Forward Bond Purchase Agreement of even date herewith (the "Bond Purchase Agreement") by and among Borrower, Senior Lender and \_\_\_\_\_ (the "Permanent Lender"), the Permanent Lender will take an assignment of a portion of the Senior Loan, and the Senior Loan will convert to a term loan on the Conversion Date (as defined in the Bond Purchase Agreement)

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

## AGREEMENT

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

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

“**Senior Loan Documents**” means the Senior Loan Agreement, the Senior Note, the Senior Deed of Trust and all other documents evidencing, securing or otherwise executed and delivered in connection with the Senior Loan.

“**Senior Obligations**” means each and every debt, liability and obligation of every type and description that the Borrower may now or at any time hereafter owe to the Senior Lender in connection with the Senior Deed of Trust and all amendments, modifications, extensions and renewals thereof, except those that would result in an increase in (i) payments under the Senior Loan, (ii) the term of the Senior Loan, or (iii) the Senior Loan amount, whether such debt, liability or obligation now exists or is hereafter assumed, created or incurred and whether it is or may be direct or indirect, due or to become due, or absolute or contingent.

“**Junior Obligations**” means any deed of trust or other mortgage, lien or encumbrance made by the Borrower to and for the benefit of the Junior Lender, including, without limitation, the Junior Deed of Trust and any and all security interests, liens or other encumbrances granted in connection with the loan by the Borrower and in favor of the Junior Lender.

2. Subordination. All Junior Obligations are hereby expressly subordinated to the extent and in the manner hereinafter set forth to the payment in full of the Senior Obligations. The Junior Lender hereby agrees that (regardless of any priority otherwise available to the Junior Lender by law or by agreement) any security interest that the Junior Lender might now hold in the Mortgaged Property, is fully subordinate to any security interest that the Senior Lender may now or hereafter hold in the Mortgaged Property.

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

4. Payments Before Default Under Senior Loan Documents. Until the Junior Lender receives notice from the Senior Lender that a default has occurred in connection with the Senior Loan Documents as set forth in Section 8 herein, the Junior Lender shall be entitled to retain for its own account all payments made in connection with the Junior Obligations. Junior Lender agrees that from and after such time as it has received notice from the Senior Lender that a default has occurred and then exists (and has not been expressly waived in writing by Senior Lender), Senior Lender shall be entitled to receive payment in full of the principal of and interest

on the Senior Loan and all fees and any other payments due pursuant to the terms of the Senior Loan Documents, before the Junior Lender is entitled to receive any payment on account of the Junior Obligations.

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

6. No Action. Except to the extent that Junior Lender obtains Senior Lender's permission pursuant to the following sentence, the Junior Lender will not commence any action or proceeding with respect to the Mortgaged Property or against the Borrower, will not take possession of, sell or dispose of, or otherwise deal with, the Mortgaged Property, and will not exercise or enforce any other right or remedy that may be available to the Junior Lender against the Borrower or with respect to the Mortgaged Property upon Borrower's default with respect to the Junior Obligations, without the Senior Lender's prior written consent, which shall not be unreasonably withheld or delayed. In addition, and without limiting the generality of the foregoing, if the Borrower is in default under the Senior Loan Documents and the Senior Lender or Borrower intends to sell any part of the Mortgaged Property to an unrelated third party, the Junior Lender shall, upon the Senior Lender's request, promptly execute and deliver to such purchaser such instruments as may reasonably be necessary to terminate and release any security interest or lien the Junior Lender might have in the Mortgaged Property to be sold.

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

SENIOR LENDER (Prior to the Conversion Date):

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attention: \_\_\_\_\_

SENIOR LENDER (As of the Conversion Date):

[Massachusetts Mutual Life Insurance Company][CPMF]  
c/o Barings Real Estate Advisers Inc.

One Financial Plaza  
Hartford, CT 06103  
Attention: Affordable Housing Loan Servicing  
Loan No.: \_\_\_\_\_  
With copies to:

Massachusetts Mutual Life Insurance Company  
c/o Barings Real Estate Advisers Inc.  
One Financial Plaza  
Hartford, CT 06103  
Attention: Legal Department  
Loan No.: \_\_\_\_\_

And

Holland & Knight LLP  
10 St. James Avenue  
Boston, MA 02116  
Attention: Suanne C. St. Charles, Esq.  
Loan No.: \_\_\_\_\_ (Massachusetts Mutual Life Insurance Company)

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

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

10. Obligations of Junior Lender relating to Proceedings. Subject to any court order, upon any distribution of the assets or properties of Borrower or upon any dissolution, winding up, liquidation, bankruptcy or reorganization involving Borrower (whether in bankruptcy, insolvency or receivership proceedings or upon an assignment for the benefit of creditors or otherwise, herein referred to as a "**Proceeding**"):

(i) Junior Lender, by its execution of this Agreement, authorizes Senior Lender to take such action as may be necessary or appropriate, in Senior Lender's sole discretion, from time to time to effectuate the subordination provided herein. Junior Lender further agrees that it will not file any motions or take any other actions

inconsistent with the provisions of this Agreement, and that it will not oppose any motion filed by the Senior Lender insofar as it is in furtherance of and consistent with the terms of this Agreement, including without limitation any motion by Senior Lender for relief from the automatic stay; and

(ii) Junior Lender agrees that during the term of this Agreement, it will not commence, or join with any other creditor in commencing any Proceeding with respect to the Borrower. Upon any distribution of the assets or properties of Borrower or upon any dissolution, winding up, liquidation, bankruptcy or reorganization involving Borrower, Junior Lender and Senior Lender are entitled to pursue available remedies in the bankruptcy court and will abide by final judicial or administrative orders. “**Final**” with respect to an order shall mean an order on which appeals, if any, have been exhausted.

11. Binding Effect; Miscellaneous. This Agreement cannot be waived or changed or ended, except by a writing signed by the party to be bound thereby. This Agreement shall be governed by and construed in accordance with the substantive laws of the State of Colorado. Each party consents to the personal jurisdiction of the state and federal courts located in the State of Colorado in connection with any controversy related to this Agreement, waives any argument that venue in any such forum is not convenient, and agrees that any litigation initiated by either of them in connection with this Agreement shall be venued in the City and County of Denver. This Agreement may be executed in any number of counterparts, each of which shall be an original, but all of which together shall constitute one instrument. The Junior Lender waives notice of the Senior Lender’s acceptance hereof.

12. Successors and Assigns. This Agreement shall be binding upon the Junior Lender and its respective successors and assigns and shall inure to the benefit of the Senior Lender and its participants, successors and assigns, but neither the Borrower nor any other secured party (other than Junior Lender) shall be entitled to rely on or enforce this Agreement. The parties hereto acknowledge and agree that pursuant to the terms of the Bond Purchase Agreement, the Permanent Lender has agreed to purchase tax exempt bonds from the Senior Lender and to make a permanent loan in the anticipated amount of up to \$\_\_\_\_\_ (the “**Permanent Loan**”). Upon Conversion, (i) Borrower shall execute a promissory note to evidence its obligation to repay the Permanent Loan (the “**Permanent Loan Promissory Note**”), (ii) the Senior Lender shall assign to the Permanent Lender the Senior Deed of Trust and (iii) the Senior Deed of Trust shall be amended and restated pursuant to the terms of the Forward Bond Purchase Agreement and that such amended and restated Senior Deed of Trust will secured the Borrower’s obligations under the Permanent Loan Promissory Note. The parties hereto acknowledge and agree that once amended and restated, the Junior Obligations will remain subordinate to the Senior Deed of Trust and the parties hereto need not take any further action to effectuate or evidence such subordination. For purposes of this Agreement, upon Conversion, “Senior Loan” shall mean the Permanent Loan, “Senior Loan Documents” shall mean and include all “**Permanent Loan Documents**” as such term is defined in that certain Permanent Loan Agreement dated as of substantially even date herewith by and between Borrower and Permanent Lender and “Senior Lender” shall mean Permanent Lender. This Agreement shall survive Conversion.

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

14. Subrogation. If Junior Lender, by subrogation or otherwise, shall acquire any lien, estate, right or other interest in any of the Property, that lien, estate, right or other interest shall be subject and subordinate to the receipt by Senior Lender of payment in full of all amounts owed under the Senior Loan Documents and to the Senior Deed of Trust and the other Senior Loan Documents to the same extent as the Junior Obligations are subordinate to the Senior Obligations hereunder, provided, however, that nothing in this Agreement is intended, nor will it be construed, to in any way limit the exercise by the City and County of Denver (because of its status as the Junior Lender) of its governmental powers (including police, regulatory and taxing powers) with respect to Borrower or the Property to the same extent as if it were not a party to this Agreement or the transactions contemplated by this Agreement.

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



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

“JUNIOR LENDER”

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

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

Title: \_\_\_\_\_, Office of Economic  
Development

State of Colorado     )  
                                  ) ss.  
County of                )

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

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

\_\_\_\_\_

Notary Public

“SENIOR LENDER”

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

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

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

State of Colorado     )  
  ) ss.  
County of                    )

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

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

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

Acknowledged by BORROWER:

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

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

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

ATTACHMENT A

[INSERT LEGAL DESCRIPTION]

## EXHIBIT E

Surplus Cash Flow – “Surplus Cash Flow” shall mean: **Cash Flow** less **Asset Management Fees** less **Repayment of Investor Limited Partner Contributions** less **Deferred Development Fees** less **Tax Credit Shortfall Payments** less **Deferred Management Fees** less **Compliance Management Fees** less **Partnership Management Fees**.

Cash Flow – “Cash Flow” shall mean the excess of Cash Receipts over Operating Expenses. Cash Flow shall be determined separately for each Fiscal Year or portion thereof.

Deferred Development Fee – “Deferred Development Fee” shall mean the portion of the **Development Fee** of which payment to the **Developer** is deferred and later paid based upon available **Cash Flow**.

Developer – “Developer” shall mean Denver Leased Housing Development VI, LLC, a Minnesota limited liability company.

Development Fee – “Development Fee” shall mean the fee to be paid to the Developer for development services.

Cash Receipts - “Cash Receipts” shall mean with respect to a Fiscal Year or other applicable period, all rental revenue, laundry income, parking revenue, and other incidental revenues which are received by the Partnership on a cash basis during such period and arise from normal operations of the Project but specifically excluding interest on Partnership reserves, proceeds from insurance (other than business or rental interruption insurance), loans, Capital Proceeds or Capital Contributions. In addition, any amount released without restriction from any escrow account in a Fiscal Year shall be considered a cash receipt of the Partnership for such Fiscal Year.

Operating Expenses – “Operating Expenses” shall mean (i) up to and including the Development Obligation Date, those expenses, properly accruable through such date which may be properly charged as operating expenses of the Project under standard accounting procedures and which are allocable, in accordance with generally accepted accounting principles, to Units for which all requisite approvals for occupancy have been obtained; such operating expenses may include real estate taxes and debt service and mortgage insurance premiums, if any, with respect to the Mortgage Loans (to the extent such operating expenses are not funded out of Designated Proceeds), but shall not include any costs required to be capitalized in accordance with generally accepted accounting principles; and (ii) after the Development Obligation Date, all the costs and expenses of any type incurred incidental to the ownership and operation of the Project, including, without limitation, taxes, capital improvements reasonably deemed necessary by the General Partners and not funded out of any reserves for such, mortgage and bond insurance premiums, if any, and the cost of operations, debt service, maintenance and repairs, and the funding of any reserves required to be maintained by any Lender or Governmental Agency or pursuant to this Agreement, but shall not include (i) repayments of Operating Expense Loans made pursuant to Section 6.8A or (ii) distributions or payments to Partners pursuant to Article X of the Limited Partnership Agreement.

Limited Partnership Agreement – “Limited Partnership Agreement” shall mean that agreement establishing the limited liability partnership between the General Partners, Class B Limited Partner, Investor Limited Partner, and Special Limited Partner.

General Partners – “General Partners” shall mean, initially, Denver Leased Housing Associates VI, LLC, a Minnesota limited liability company, and any Person who becomes a General Partner as provided per the Limited Partnership Agreement.

Investor Limited Partner – “Investor Limited Partner” shall mean, initially, Bank of America, N.A., and shall include any other Persons admitted as an Investor Limited Partner pursuant to Section 4.6 of the Limited Partnership Agreement or admitted as a Substitute Limited Partner pursuant to Section 8.2 of the Limited Partnership Agreement, and their respective successors in such capacity.

Special Limited Partner – “Special Limited Partner” shall mean Banc of America CDC Special Holding Company, Inc., a North Carolina corporation, and its successors.

Asset Management Fees – “Asset Management Fees” shall mean an annual fee payable to the Special Limited Partner equal to \$5,000 per year, earned on an annual basis, beginning on the first day of the first month following Permanent Mortgage Commencement (with a pro-rata share of such fee earned for any partial calendar year) and increasing annually at a rate of 3%.

Repayment of Investor Limited Partner Contributions – “Repayment of Investor Limited Partner Contributions” shall mean repayment of the additional amounts deemed necessary by the Investor Limited Partner to cover a deficit to rebuild or restore the Project in the case of casualty or condemnation as further detailed and defined under Section 6.4Q(iii) of the Limited Partnership Agreement. Such contributions may be provided when the amount of Insurance Proceeds or Condemnation Proceeds available are insufficient to accomplish the rebuilding or restoration of the Project.

Tax Credit Shortfall Payments – “Tax Credit Shortfall Payments” shall mean the amount paid to the Investor Limited Partner for a tax credit shortfall if, following an adjustment in the Capital Contribution of the Investor Limited Partner, the net reduction in the Capital Contribution exceeds the unpaid Installments of the Capital Contribution of the Investor Limited Partner or if all Installments have previously been contributed, as further detailed and defined in Section 5.2E(i) of the Limited Partnership Agreement.

Deferred Management Fees – “Deferred Management Fees” shall mean 0.50% of the Management Fee that is deferred and paid to the extent of available Cash Flow.

Compliance Management Fees – “Compliance Management Fees” shall mean the \$60 per unit per year fee payable by the Partnership to the Management Agent, that is deferred and paid to the extent of available cash flow, for the Management Agent’s tax credit compliance services in accordance with the Management Agreement.

Partnership Management Fees – “Partnership Management Fees” shall mean the fee payable from time to time by the Partnership to the Class B Limited Partner pursuant to which the Class B Limited Partner is to provide certain supervisory services to the Partnership pursuant to the Partnership Management Agreement.

**Notes (not part of definitions): The final executed partnership agreement will be provided to the City and County of Denver. Terms used herein and not otherwise defined shall have the meanings set forth in the Limited Partnership Agreement.**