

**LOAN AGREEMENT
CITY AND RENTAL REHABILITATION FUNDS**

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 **COLBURN LLC**, a Wisconsin limited liability company, whose address is 200 N. Main Street, Oregon, WI 53575 (“Borrower” or “Contractor”).

WITNESSETH:

WHEREAS, the City is making certain monies that originated from a historic HUD-funded program known as the Rental Rehabilitation program available to Borrower for use in the renovation and 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 renovating the building located on the real property known and numbered as 980 Grant Street, Denver, Colorado 80203 (the “Property”);

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

1. LOAN TO BORROWER:

A. Subject to the terms of this Loan Agreement, the City agrees to lend Borrower the sum of Three Million Four Hundred Fifty Thousand and No/Dollars (\$3,450,000.00), of which Two Million One Hundred and No/Dollars (\$2,100,000.00) will be drawn from Rental Rehabilitation program funds and One Million Three Hundred Fifty Thousand and No/Dollars (\$1,350,000.00) will be drawn from City general funds. 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.

B. Principal and interest shall be due and payable out of available Surplus Cash Flow, at such place as may be designated by City, in annual installments equal to the lesser

of (a) 77.8% of the annual Surplus Cash Flow amount, calculated as set forth on **Exhibit D**, attached hereto, or \$133,159. Such annual installments shall commence and be due on the first June 1st following the date that is thirty (30) calendar months after the effective date of the Promissory Note and each June 1st thereafter. In the event that Surplus Cash Flow is insufficient to pay in full any annual payment due hereunder, the unpaid balance of such annual payment will be paid from the next available Surplus Cash Flow and simple interest will continue to accrue on unpaid principal. To the extent that the full amount of principal and interest due and owing to the City has not been repaid, the entire unpaid balance of principal and accrued interest due and payable on or before the thirtieth (30th) anniversary of the date of the Promissory Note (“Maturity Date”), if not sooner paid.

C. If, after the date of this Loan Agreement, Borrower obtains additional funding for the rehabilitation of the Property from a source not listed on **Exhibit A** (“New Funding”) including, without limitation, funding provided in connection with Historic Tax Credits, then within fifteen (15) days of the closing on such New Funding, the City and Borrower shall calculate a New Permitted Draw Amount. The provision of debt or equity by the Borrower or Sponsor in an amount above that detailed in **Exhibit A** to address an increase in Project Costs above \$18,670,597 shall not constitute New Funding. The “New Permitted Draw Amount” shall mean the Loan Amount less the amount of the New Funding, plus costs and expenses paid by Borrower in connection with the New Funding, plus any decreases in funds committed or received from sources listed on **Exhibit A**, plus any increase in the Project Costs in excess of \$18,670,597, plus any required payment to the seller of the property pursuant to the purchase agreement, provided that the New Permitted Draw Amount shall in no event exceed the original Loan Amount. Thereafter, Borrower’s right to draw Loan funds from the City shall be limited to the New Permitted Draw Amount. If at the time of calculation of the New Permitted Draw Amount, the New Permitted Draw Amount is less than the amount of the Loan that Borrower has drawn down, then within thirty (30) days of the closing on the New Funding, Borrower shall make a one-time repayment to the City in the amount of the difference between the amount drawn and the New Permitted Draw Amount.

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 Property, subject to prior encumbrances not exceeding Fourteen Million Eight Hundred

Thousand and No/100 Dollars (\$14,800,000.00) in principal amount. In order to meet this requirement, the Loan proceeds that are drawn from the City's general fund may be used to repay in whole, or in part, acquisition financing from Mile High Community Loan Fund, Inc. or Enterprise Community Loan Fund, Inc.

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 accomplish the loan, as set forth herein, and anticipates that it may be required to subordinate the lien of the City's Deed of Trust. The Executive Director to subordinate the lien of the City's Deed of Trust so long as (i) the subordination agreement is in a form approved by the City Attorney's Office; (ii) encumbrances prior to the City's Deed of Trust do not exceed Fourteen Million Eight Hundred Thousand and No/100 Dollars (\$14,800,000); (iii) Borrower is not then in default of its obligations pursuant to this Loan Agreement, the Promissory Note, or the Deed of Trust; and (iv) all additional financing for the Project is committed.

4. USE AND DISBURSEMENT OF FUNDS: Loan proceeds will be used to finance costs associated with development of the Property for use as affordable housing, in accordance with **Exhibit A**, attached hereto and incorporated herein. 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. 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 April 19, 2018 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 on or before July 1, 2019. 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 this condition is met. Further, all cost overruns and/or funding shortfalls shall be the sole responsibility of the Borrower.

Borrower further agrees that documentation for all draw down requests will be submitted no later than twenty-four (24) months 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. Sixty-eight (68) of the units at the Property (the “60% Units”) shall have rents not exceeding the lesser of (i) 30% of the adjusted income of a family whose annual income equals 60% of the median income for the Denver area (“AMI”), as published by the Colorado Housing and Finance Authority (“CHFA”), or (ii) fair market rent for comparable units in the area as published by CHFA. Twenty-three (23) of the units at the Property (the “30% Units”) shall have rents not exceeding the lesser of (i) 30% of the annual income of a family whose income equals 30% of AMI, or (ii) fair market rent for comparable units in the area as published by CHFA. 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 Utility Allowance Payment Standards published by the Denver Housing Authority. 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 60% 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. The 30% Units shall be occupied by tenants whose incomes are at or below fifty percent (30%) of the AMI, with adjustments for family size. 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. Designation of Units. All of the Restricted Units will be studio units and the level of AMI restriction attached to particular units, as set forth above, will be floating, provided that the required unit mix must be maintained at all times.

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 sixty (60) years from the date of execution of the Covenant. Violation of said Covenant shall be enforceable as an event of default pursuant hereto.

E. Loss of Project-Based Section 8 Subsidy. Notwithstanding any other provisions of this Agreement to the contrary, in the event of a decrease or termination of the Project-Based Section 8 rental subsidy for the Project, except if such reduction or termination arises from an uncured default by Borrower or other material failure to comply with agreements, laws and regulations applicable to the Project, the City agrees that it will work in good faith with the Borrower to address the Borrower's request to seek alternative sources of funding, and/or modify the occupancy restrictions, and/or modify the rent and income limits otherwise required by this Agreement to the minimum extent necessary to maintain breakeven operations, provided that such adjustments are in compliance with Section 42 of the Internal Revenue Tax Code. Prior to any modification, the Borrower shall be required to submit a plan outlining the proposed modifications necessary to maintain financial feasibility, which shall be reviewed and approved by the City for compliance with Section 42.

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 60% Units and 30% Units are occupied may not contain any of the following provisions:

A. Agreement to Be Sued. Agreement by the tenant to be sued, admit guilt, or to

a judgment in favor of the owner in a lawsuit brought in connection with the lease.

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

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

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

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

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

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

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

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

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

10. TERMINATION OF TENANCY: Borrower may not terminate the tenancy or refuse to renew the lease of a tenant of any of the 60% Units or 30% Units except for serious or

repeated violations of the terms and conditions of the lease; for violation of applicable Federal, State, or local laws; or for other good cause. Any termination or refusal to renew must be preceded by not less than thirty (30) days by Borrower's service upon the tenant of a written notice specifying the grounds for the action.

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

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

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

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

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

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

13. LEAD-BASED PAINT HAZARDS: Housing 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: “One of 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 60% Unit or 30% Unit, and (ii) a copy of the lease pursuant to which each 60% Unit or 30% Unit is occupied.

Borrower shall submit to the City the following reports: (1) annual report on rents and occupancy of the 60% Units and 30% Units to verify compliance with affordability requirements in Paragraph 6; (2) Reports (including financial reports) that enable the City to determine the financial condition and continued financial viability of the rental project; and (3) for floating units, information on unit substitution and filling vacancies to ensure that the Property maintains the required unit mix.

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, gender identity or gender expression, marital status, or physical or mental disability; and further agrees to insert the foregoing provision in all subcontracts hereunder.

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

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

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

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

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

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

21. DEFENSE & INDEMNIFICATION:

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

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

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

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

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

22. DEFAULT AND ACCELERATION: Borrower expressly agrees that any breach of this Loan Agreement, the Promissory Note, the Deed of Trust, or the Covenant shall constitute a default. The City also may declare a default if any warranty, representation or statement made or furnished to the City by or on behalf of Borrower in connection with this Loan Agreement proves to have been false in any material respect when made or furnished. If an

event of default occurs under this Agreement, the City shall provide Borrower written notice of such default. After the date of such notice, Borrower shall have thirty (30) days to cure any default unless the City agrees in writing to a specific longer period as is reasonably necessary to cure, provided that cure commenced within thirty (30) days after the notice and diligently prosecuted. Upon the existence of a default and passage of the cure period, and without necessity of further notice, presentment, demand, protest, or notice of protest of any kind, all of which are expressly waived by the Borrower, the City shall have the right to accelerate any outstanding obligations of the Borrower, which shall be immediately due and payable, including payments under the Promissory Note, to foreclose upon the Property, and to enforce or assign its rights under the Deed of Trust. Upon default, the principal shall draw interest at the rate of fifteen percent (15%) per annum. Notwithstanding any provision herein to the contrary, the City agrees that any cure of default made or tendered by the investor member of Borrower or a senior lender shall be deemed to be a cure by the Borrower and shall be accepted or rejected on the same basis as if made or tendered by Borrower.

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.

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 must be hand delivered, sent by overnight courier service, mailed by certified mail, return receipt requested, or mailed via United States mail, postage prepaid, if to Borrower at the address first above written, with a copy to:

Key Community Development Corporation
Mailcode: OH-01-27-0859
127 Public Square
Cleveland, Ohio 44114
Attn: Asset Management

And if to the City at:

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

With a copy of any such notice to:

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

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

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

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

[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-201842018-00

Contractor Name: COLBURN LLC

By: Brian Swanton

Name: Brian Swanton
(please print)

Title: President of Gorman & Company, LLC,
(please print)
the Manager of GEC Colburn, LLC,
the Managing Member of Colburn, LLC

ATTEST: [if required]

By: Cassandra Bishop

Name: Cassandra Bishop
(please print)

Title: Development Coordinator
(please print)



EXHIBIT A

Project Timeline – Colburn Hotel Apartments
 980 North Grant Street, Denver, CO 80203

Construction financing closes	May 1, 2019
General Contractor notice to proceed	May 2, 2019
Construction Completion	November 30, 2020
Lease-up completion date of restricted units	December 31, 2020
Conversion to permanent financing	March 31, 2021

SOURCES (PERMANENT)		USES (PERMANENT)	
Permanent Loan	\$8,000,000	Acquisition	\$9,020,000
CDOH	\$985,000	Hard Costs	\$7,713,044
City of Denver	\$3,450,000	Soft Costs	\$4,951,243
Deferred Developer Fee	577,005	Developer Fee	\$2,160,000
LIHTC - 4%	6,145,785	Reserves	\$548,950
LIHTC - State	\$2,452,772		
Federal Historic Tax Credits	\$1,813,168		
State Historic Tax Credits	\$919,816		
TOTAL	\$24,393,237	TOTAL	\$24,393,237

PROJECT ACTIVITIES			
ACTIVITY	TOTAL COST	CITY FUNDS	OTHER FUNDS
Property Acquisition	\$9,020,000	\$3,450,000	\$5,570,000
Hard Costs	\$7,713,044		\$7,713,044
Soft Costs	\$4,951,243		\$4,951,243
Developer Fee	\$2,160,000		\$2,160,000
Reserves	\$548,950		\$548,950
TOTAL	\$24,393,237	\$3,450,000	\$20,943,237

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

Definition of Surplus Cash Flow

- First, to Key CDC to the extent of any amount to which Key CDC is entitled as a result of a Permanent Reduction to Credit, Material Timing Difference or Material Credit Shortfall;
- Second, to repay (on a pro rata basis) unpaid loans made by KCDC, other than those specifically stated in this section;
- Third, to replenish the Operating Reserve Account until such time as such account is equal to the Operating Reserve Amount;
- Fourth, to pay any accrued interest, if applicable, and then principal on the Development Note, if any;
- Fifth, to the payment of fifty percent (50%) of the Special Member Asset Management Fee and all accrued and unpaid Special Member Asset Management Fee and interest thereon;
- Sixth, 75% of the amount of cash flow remaining shall be split seventy-eight percent (78%) of the balance remaining after the payment of the Fifth priority to pay the City Loan to be applied to accrued interest in any and then principal then due and payable pursuant to the Note for such Loan and twenty-two percent (22%) to pay the State Loan to be applied to accrued interest if any and then principal then due and payable pursuant to the note for such loan.