

**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 **PANCRATIA HALL PARTNERS LLC**, a Colorado limited liability company, whose address is 2120 Bluebell Ave, Boulder, CO 80302 (“Borrower” or “Contractor”).

**WITNESSETH:**

**WHEREAS**, the Borrower is the owner of Property (as defined in Paragraph 2) in the City and County of Denver;

**WHEREAS**, the purpose of this Loan Agreement is for the City to provide for financing costs related to the development and construction of seventy (72) affordable multi-family dwelling units located on the Property to be known as Pancratia Hall Lofts (the “Project”);

**WHEREAS**, the City is making certain monies available to ensure the development 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;

**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 Three Hundred Thousand and No/100 (\$3,300,000.00) (the “Loan”). In addition to this Loan Agreement, the Borrower will execute 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 Loan beginning on the date that the first draw on the Loan is made.

B. Principal and any interest accrued on the Loan shall be due and payable, at such place as may be designated by City, in annual installment amounts that are calculated in accordance with the order of priority and other provisions set forth in **Exhibit F**, attached hereto (the “Cash Flow”). Such annual installments shall commence and be due on the first June 1<sup>st</sup> following the date that is twenty-four (24) calendar months after the effective date of the Promissory Note and each June 1<sup>st</sup> thereafter and shall be based on Cash Flow for the prior calendar year, with the entire

unpaid balance and accrued interest due and payable on the fortieth (40<sup>th</sup>) anniversary of the date of the Promissory Note (the “Maturity Date”), if not sooner paid. Each year after loan closing, Borrower shall deliver to the City a properly audited financial statement, which the City will use to verify Borrower’s Cash Flow calculation.

C. It is the intent of the Parties that Section 4.2 of the Amended and Restated Operating Agreement of Pancratia Hall Partners LLC (the “Operating Agreement”), which describes the priority and distribution of Cash Flow (as that term is defined in the Operating Agreement), and Exhibit F, as attached hereto, shall under all circumstances materially match. In the event that the Operating Agreement is amended so that the provisions of the Operating Agreement regarding priority and calculation of payment to the City change the priority and calculation of payments to the City in Exhibit F of this Agreement, then: (i) Borrower shall promptly provide any such amendment or amended Operating Agreement to the City; and (ii) this Agreement shall be further amended to ensure that the definition of Cash Flow as described herein matches with the priority and calculation of Cash Flow described in Section 4.2 of the Operating Agreement.

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 presently known and numbered as 3001 South Federal Boulevard, Denver, Colorado 80236 and legally described as set forth in Exhibit D (the “Property”). City acknowledges that the Property’s legal description will change based on a subdivision of the land of which the Property is a part.

3. **SUBORDINATION; DEADLINES**:

A. The Executive Director (the “Executive Director”) of the City’s Department of Housing Stability (“HOST”), or his or her 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 E**; (ii) encumbrances prior to the City’s Deed of Trust do not exceed Nineteen Million and 00/100 Dollars (\$19,000,000.00) under the construction loan or Fifteen Million and 00/100 Dollars (\$15,000,000.00) under the permanent loan; (iii) Borrower is not then in default of its obligations pursuant to this Loan Agreement, the Promissory Note, the Deed of Trust or the Covenant; and (iv) all additional financing for the Project is committed.

B. The Executive Director, or his or her designee, is authorized to execute documents necessary to subordinate the City’s Deed of Trust and Covenant to land use restriction agreements

("LURAs"), such as the LURA required by the Colorado Housing and Finance Authority, so long as (i) the subordination agreement is in the form acceptable to the City Attorney; (ii) encumbrances prior to the City's Deed of Trust do not exceed Fifteen Million and 00/100 Dollars (\$15,000,000.00) under the permanent loan; and (iii) Borrower is not in default of its obligations pursuant to this Loan Agreement, the Deed of Trust, or the Covenant.

C. The Executive Director, or his or her designee, is authorized to execute documents necessary to accomplish the Loan, as set forth herein, so long as (i) such documents are in a form satisfactory to the City Attorney; (ii) encumbrances prior to the City's Deed of Trust do not exceed Nineteen Million and 00/100 Dollars (\$19,000,000.00) under the construction loan or Fifteen Million and 00/100 Dollars (\$15,000,000.00) under the permanent loan; and (iii) Borrower is not in default of its obligations pursuant to this Loan Agreement, the Deed of Trust, or the Covenant.

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

A. Loan proceeds will be used to finance costs associated with development of the Property for use as affordable housing, in accordance with **Exhibit A**, attached hereto and incorporated herein. The Borrower shall submit to the City requisitions with documentation of incurred costs on HOST approved forms, and otherwise comply with the financial administration requirements set forth in **Exhibit B** attached hereto and incorporated herein.

B. 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 for hard costs, which retainage shall be released upon (a) the submittal of an Affirmative Marketing Plan (as defined in Paragraph 14); (b) final inspection and approval of the Project by the City; (c) receipt of proof of release of liens from all applicable contractors, subcontractors, and suppliers; and (d) the issuance of a certificate of occupancy.

C. In addition to the retainage specified in subparagraph B above, HOST shall retain Ten Thousand Dollars and No/100 Dollars (\$10,000.00) of the total funds to be disbursed under this Loan Agreement, which retainage shall be released upon receipt from Borrower of all information necessary for the City's reporting requirements.

D. Expenses incurred prior to April 30, 2020 are not eligible for reimbursement.

**5. DEADLINE FOR DISBURSEMENT OF FUNDS; REQUIRED DOCUMENTATION:**

A. Borrower must provide Evidence of Financing (as defined below) and Borrower's Operating Agreement on or before November 30, 2020. 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. “Evidence of Financing” shall mean such information and documentation sufficient to satisfy the City, in the City’s sole discretion, that the Borrower has secured all financing necessary to complete the Project.

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

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

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

A. Affordability Limitations. Twenty-five (25) of the units at the Property (the “80% 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 80% of the median income for the Denver area, as published by CHFA, with adjustments for number of bedrooms in the unit. Four (4) of the units at the Property (the “70% Units”) shall have rents not exceeding the lesser of (i) fair market rent for comparable units in the area as published by CHFA, or (ii) a rent that does not exceed 30% of the adjusted income of a family whose annual income equals 70% of the median income for the Denver area, as published by CHFA, with adjustments for number of bedrooms in the unit. Twenty-five (25) of the units at the Property (the “60% Units”) shall have rents not exceeding the lesser of (i) fair market rent for comparable units in the area as published by 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. Eighteen (18) of the units at the Property (the “30% Units”) shall have rents not exceeding the lesser of (i) fair market rent for comparable units in the area as published by CHFA, or (ii) a rent that does not exceed 30% of the adjusted income of a family whose annual income equals 30% of the median income for the Denver area, as published by CHFA, with adjustments for number

of bedrooms in the unit. The 80% Units, 70% Units, 60% Units, and the 30% Units are referred to collectively herein as the “City Units.” By executing this Loan Agreement, Borrower acknowledges receipt of CHFA's current rent guidelines from the HOST. It shall be Borrower's responsibility to obtain updated guidelines from HOST 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 in accordance with CHFA requirements. 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 HOST requests rent information from the Borrower.

B. Occupancy/Income Limitations. The 80% Units shall be occupied by tenants whose incomes are at or below 80% of the median income for the Denver area as published by CHFA, with adjustments for family size. The 70% Units shall be occupied by tenants whose incomes are at or below 70% of the median income for the Denver area as published by CHFA, with adjustments for family size. The 60% Units shall be occupied by tenants whose incomes are at or below 60% of the median income for the Denver area as published by CHFA, with adjustments for family size. The 30% Units shall be occupied by tenants whose incomes are at or below 30% of the median income for the Denver area as published by CHFA, with adjustments for family size. By executing this Loan Agreement, Borrower acknowledges receipt of CHFA’s current income guidelines from HOST. It shall be Borrower’s responsibility to obtain updated guidelines from HOST and comply with the current guidelines.

C. Designation of Units. All of the City Units are floating, and are designated as follows:

<b>BEDROOMS</b>	<b>80% Units</b>	<b>70% Units</b>	<b>60% Units</b>	<b>30% Units</b>
Studio	0	1	2	1
1 Bedroom	8	3	12	8
2 Bedroom	8	0	7	5
3 Bedroom	8	0	4	3
4 Bedroom	1	0	0	1
<b>TOTAL</b>	<b>25</b>	<b>4</b>	<b>25</b>	<b>18</b>

D. Accessibility Requirements. Borrower must design and construct five percent (5%) of the City Units, or at least one (1) unit, whichever is greater, to be accessible for persons with mobility disabilities. An additional two percent (2%) of the City Units, or at least one (1) unit, whichever is greater, must be accessible for persons with hearing or visual disabilities. Collectively, these units are referred to as the “Accessible Units.” The Accessible Units must be designed and constructed in accordance with American National Standards Institute (“ANSI”) Standard A117.1. Public and common areas must be readily accessible for persons with mobility disabilities and be designed and constructed in accordance with ANSI Standard A117.1.

E. 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 the Covenant, and shall be terminated upon foreclosure or deed in lieu of foreclosure of any deed of trust, mortgage, lien, or encumbrance senior to the City’s Deed of Trust with respect to the Property. Violation of said Covenant shall be enforceable as an event of default pursuant hereto

7. **LEASES:** Borrower shall enter into a written lease with tenants 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.

**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. 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; and

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 procedures outlined in the affirmative marketing program, attached hereto as **Exhibit C** and incorporated herein (the "Affirmative Marketing Program"), 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). Within six (6) months of the effective date of the Promissory Note, Borrower shall provide the plan required by the Affirmative Marketing Program (the "Affirmative Marketing Plan") to HOST. The Affirmative Marketing Plan must be approved by HOST prior to Borrower adopting it or engaging in any affirmative marketing of the Project.

**15. EXPENSES:** 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 HOST, or publicizing activities or projects funded by HOST shall first receive approval from HOST. In any event, all such publicizing activities must include the following statement: "The funding source for this activity is the City and County of Denver,



Department of Housing Stability.” HOST shall be acknowledged in any events regarding the project being funded, including groundbreakings and openings.

**17. EXAMINATION OF RECORDS/REPORTING REQUIREMENTS/ ANNUAL MONITORING; INSPECTIONS:**

A. Examination of Records: The Borrower agrees that the City, or any of its duly authorized representatives shall, until the expiration of five (5) years after the expiration of the affordability period set forth in Paragraph 6, 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. 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, each for a period of 10 years.

B. Required Information and Reports. Borrower shall submit to the City the following information and reports on HOST approved forms: (1) annual compliance statement; (2) report on rents and occupancy of City Units to verify compliance with affordability requirements in Paragraph 6 and other requirements of this Loan Agreement; (3) data on evictions, terminations of tenancies, or tenancies not renewed for individuals residing in City Units; (4) reports (including financial reports) that enable the City to determine the financial condition and continued financial viability of the rental project; (5) for floating units, reports on unit substitution and filling vacancies to ensure that the Property maintains the required unit mix; and (6) template lease agreements for City Units. The report required by subparagraph (2) of this Paragraph shall include, but not be limited to, information related to monthly rent amount, lease term, household size, total annual household income, and race and other demographic information. The reports and information required by this Paragraph shall be due within thirty (30) days of the City making a request for such reports and information. The failure to submit the reports and information requested by the City within ninety (90) days of the City’s request shall be considered a default of this Loan Agreement.

C. Access and Inspections. For the purposes of assuring compliance with the Loan Agreement, the City shall have the reasonable right of access to the Property, without charges or fees, (i) during the period of construction and (ii) during the period of affordability set forth in Paragraph 6. During the period of affordability, the City shall be entitled to conduct annual physical inspections of the Property. Borrower shall fully cooperate with the City in an annual monitoring of Borrower’s

performance and site inspection to verify compliance with the requirements of this Loan Agreement.

**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 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 A, B and C above shall be submitted to HOST prior to the disbursement of funds hereunder. A Certificate of Insurance evidencing D above shall be submitted to HOST at such time as the Property is turned over to Borrower upon

completion. 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:**

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

1. Any breach of this Loan Agreement, the Promissory Note, the Deed of Trust, or the Covenant;
2. If the City determines that any warranty, representation, or statement made or furnished to the City by or on behalf of Borrower in connection with this Loan Agreement proves to have been false in any material respect when made or furnished;
3. If the Borrower becomes delinquent to the City on loan, contractual, or tax obligations as due, or with any rule, regulation or provision referred to in the Loan Agreement.

B. Cure Period. Upon a default, the City shall give written notice of the default to Borrower and other persons entitled to notice of a default pursuant to Paragraph 29. After Borrower's receipt of the written notice, Borrower or a person on behalf of Borrower, including Borrower's members, shall have ten (10) calendar days to cure any monetary default and thirty (30) calendar days to cure any nonmonetary default (collectively, the "Cure Period"). If a nonmonetary default is not a type which can be cured within the Cure Period and Borrower or a person on behalf of Borrower gives written notice that a cure is actively and diligently being pursued, the City shall allow a reasonable period of time given the nature of the default following the end of the Cure Period, provided that at all times within such additional time period a cure is actively and diligently being pursued. For purposes of this Loan Agreement, the term "monetary default" means a failure by Borrower to make any payment required of it pursuant to the applicable Promissory Note or any other Loan document, and the term "nonmonetary default" means a failure by Borrower or any other person to perform any obligation contained in the Loan Agreement, Covenant, Deed of Trust, or Promissory Note, other than the obligation to make payments provided for in the Promissory note or Loan documents.

C. Acceleration; Interest Upon Default; and Withholding Disbursements. Upon the existence of a default and the failure to cure within the Cure Period, and without necessity of further notice, presentment, demand, protest, or notice of protest of any kind, all of which are expressly waived by the Borrower, the City shall have the right to accelerate any outstanding obligations of the Borrower, which shall be immediately due and payable, including payments under the

Promissory Note, to foreclose upon the Property, and to enforce or assign its rights under the Deed of Trust. Upon default and if the default remains after the Cure Period, the principal shall draw interest at the rate of fifteen percent (15%) per annum. If any of the Loan funds have not been disbursed to Borrower, the City may suspend or terminate the Loan Agreement, in whole or in part, and withhold one hundred percent (100%) of any undisbursed funds.

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

**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 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(E) 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:

Pancratia Hall Partners LLC

2120 Bluebell Avenue  
Boulder, Colorado 80302  
Attn: Jim Hartman

With a copy to:

Grant Bennett  
Proximity Green, LLC  
217 E. 7<sup>th</sup> Avenue  
Denver, Colorado 80203

and

J. William Callison  
Faegre Drinker  
1144 15<sup>th</sup> Street, Suite 3400  
Denver, Colorado 80202

With a copy to:

PNC Real Estate Tax Credit Capital Institutional Fund 47 Limited Partnership  
121 S.W. Morrison Street, Suite 1300  
Portland, Oregon 97204-3143  
Attn: Asset Manager

and

Kutak Rock LLP  
1650 Farnam Street  
Omaha, Nebraska 68102  
Attn: Shane Deaver

and if to the City at:

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

With a copy 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.

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

**33. 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.

List of Exhibits to Loan Agreement

Exhibit A – Project Timeline and Costs

Exhibit B – HOST Financial Administration Requirements

Exhibit C – Affirmative Marketing Program

Exhibit D – Legal Description of Property

Exhibit E – Form of Subordination Agreement

Exhibit F – Cash Flow Calculation

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

HOST-202054928-00  
PANCRATIA HALL PARTNERS LLC

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

**SEAL**

**CITY AND COUNTY OF DENVER:**

**ATTEST:**

By:

\_\_\_\_\_

\_\_\_\_\_

**APPROVED AS TO FORM:**

**REGISTERED AND COUNTERSIGNED:**

Attorney for the City and County of Denver

By:

By:

\_\_\_\_\_

\_\_\_\_\_

By:

\_\_\_\_\_



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

HOST-202054928-00  
PANCRATIA HALL PARTNERS LLC

By: PANCRATIA MM, LLC  
a Colorado limited liability company  
Its: Managing Member

By: James Hartman

Name: JAMES HARTMAN  
(please print)

Title: MANAGER  
(please print)

ATTEST: [if required]

By: Susan Ely

Name: Susan Ely  
(please print)

Title: member  
(please print)

EXHIBIT A

**Project Timeline - Pancratia Hall Lofts**  
Pancratia Hall Partners, LLC

Construction financing closes	November 31 2020
General Contractor notice to proceed 2020	November 31
Construction completion	October 1 2021
Full lease-up	April 1 2022

Sources	Total	%
Construction Loan	\$12,950,000	62.2%
Construction Bridge Loan	\$436,674	2.1%
Denver HOST	\$3,300,000	15.8%
CHFA Magnet Loan	\$600,000	2.9%
CHFA Magnet Grant	\$150,000	0.7%
Federal HTC Equity	\$247,066	1.2%
LIHTC Equity	\$608,809	2.9%
CDOH Loan	\$680,000	3.3%
Seller Carry-back Note	\$1,437,508	6.9%
Dev Fee at Close	\$418,466	2.0%
<b>Total</b>	<b>\$20,828,523</b>	<b>100.0%</b>

Uses	Total	%
Acquisition	\$3,400,000	16.3%
Site Work	\$138,337	0.7%
Hard Costs	\$13,719,637	65.9%
Soft Costs	\$212,942	1.0%
Developer Fee	\$1,707,949	8.2%
Interim Costs	\$1,127,978	5.4%
Professional Fees	\$521,680	2.5%
<b>Total</b>	<b>\$20,828,523</b>	<b>100.0%</b>

Project Activities	Cost	City Funds	Other Funds
Acquisition	\$3,450,000		\$3,450,000
Hard Costs	\$14,705,165	\$3,300,000	\$11,405,165
Soft Costs	\$2,414,816	In either category	\$2,414,816
Developer Fee	\$2,239,541		\$2,239,541
Reserve	\$1,750,000		\$1,750,000
<b>Totals</b>	<b>\$24,559,522</b>	<b>\$3,300,000</b>	<b>\$21,259,522</b>

## **EXHIBIT B**

### **FINANCIAL ADMINISTRATION:**

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

- 1.1.1 Disbursements shall be processed through the Department of Housing Stability (HOST) and the City and County of Denver's Department of Finance.
- 1.1.2 The method of payment to the Contractor by HOST shall be in accordance with established HOST procedures for line-item reimbursements. The Contractor must submit expenses to HOST 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 HOST policies. Vouchers should be submitted within thirty (30) days of the actual service, expenditure or payment of expense.
- 1.1.3 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 Government requirements for current, auditable books at all times, it is required that all vouchers be submitted monthly to HOST in order to be paid. Expenses cannot be reimbursed until the funds under this contract have been encumbered.
- 1.2.2 No more than four (4) vouchers may be submitted per contract per month, without prior approval from HOST.
- 1.2.3 All vouchers for all Agreements must be correctly submitted within thirty (30) 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 For contracts subject to Federal Agreements, 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 HOST prior to the draw request.
- 1.2.8 The standardized HOST “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 an electronic time system is used, signatures are not required. 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 -less pre-tax deductions, if applicable,

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 **Cell Phone**: If the monthly usage charge is exceeded in any month, an approval from the Executive Director or designee will be required.
- 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 HOST.
- 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 HOST within thirty (30) days after the end of the service period stated in the contract.

## **2.1 Program Income**

- 2.1.1 For contracts subject to Federal Agreements, program income includes, without limitation, income from fees for services performed, from the use or rental of real or personal property acquired with contract funds, from the sale of commodities or items fabricated under a contract agreement, and from payments of principal and interest on loans made with contract funds.

- 2.1.2 Program income may be deducted from total allowable costs to determine net allowable costs and may be used for current reimbursable costs under the terms of this contract. Program income which was not anticipated at the time of the award may be used to reduce the award contribution rather than to increase the funds committed to the project. ALL PROGRAM INCOME GENERATED DURING ANY GIVEN PERIOD SUBMITTED FOR PAYMENT SHALL BE DOCUMENTED ON THE VOUCHER REQUEST.
- 2.1.3 The Contractor, at the end of the program, may be required to remit to the City all or a part of any program income balances (including investments thereof) held by the Contractor (except AS PRE-APPROVED IN WRITING BY HOST, INCLUDING those needed for immediate cash needs).

### **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 and/or city 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 For contracts subject to Federal Agreements, 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 For contracts subject to Federal Agreements, the Contractor shall maintain separate accountability for HOST 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 HOST 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 For contracts subject to Federal Agreements, 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 HOST Financial Manager within the earliest of thirty (30) calendar days after receipt of the auditor's report; or nine (9) months after the end of the period audited.
- 4.1.3 A management letter, if issued, shall be submitted to HOST along with the reporting package prepared in accordance with the Single Audit Act Amendments and the OMB Omni Circular. If the management letter is not received by the subrecipient at the same time as the Reporting Package, the Management Letter is also due to HOST within thirty (30) days after receipt of the Management Letter, or nine (9) months after the end of the audit period, whichever is earlier. If the Management Letter has matters related to HOST funding, the Contactor shall prepare and submit a Corrective Action Plan to HOST in accordance with the Single Audit Act Amendments and the 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 **HOST Financial Services Team**.
- 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 HOST may, at its option, restrict the transfer of funds among cost categories, programs, functions or activities at its discretion as deemed appropriate by program staff, HOST executive management or its designee.
- 5.1.2 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 notification to HOST program staff and upon approval may be submitted 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 HOST program staff. 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.
- 5.1.3 The Contractor understands that any budget modification requests under this Agreement must be submitted to HOST prior to the last Quarter of the Contract Period, unless waived in writing by the HOST 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 ten thousand dollars (\$10,000) 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 For contracts subject to federal agreements, 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 For contracts subject to federal agreements, HOST may require adequate fidelity bond coverage, in accordance with 24 C.F.R. 84.21 (d), where the subrecipient lacks sufficient coverage to protect the Federal Government's interest.

## **8.1 Records Retention**

- 8.1.1 The Contractor must retain for seven (7) years financial records pertaining to the contract award. The retention period for the records of each fund will start on the day the single or last expenditure report for the period, except as otherwise noted, was submitted to the awarding agency.
- 8.1.2 The awarding agency and the Comptroller General of the United States, or any of their authorized representatives, shall have the right of access, upon reasonable notice, to any pertinent books, documents, papers, or other records which are pertinent to the contract, in order to make audits, examinations, excerpts, and transcripts.

## **9.1 Contract Close-Out**

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

## **10.1 Collection of amounts due**

- 10.1.1 Any funds paid to a Contractor in excess of the amount to which the Contractor is finally determined to be entitled under the terms of the award constitute a debt to the Federal Government and the City. If not paid within a reasonable period after demand, HOST 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**  
**LEGAL DESCRIPTION**

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

A PARCEL OF LAND SITUATED IN THE NORTHWEST QUARTER OF SECTION 32, TOWNSHIP 4 SOUTH, RANGE 68 WEST OF THE SIXTH PRINCIPAL MERIDIAN, CITY AND COUNTY OF DENVER, STATE OF COLORADO, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE CENTER QUARTER CORNER OF SAID SECTION 32; THENCE NORTH 52°05'06" WEST, A DISTANCE OF 1,001.07 FEET TO THE POINT OF BEGINNING;

THENCE SOUTH 90°00'00" WEST, A DISTANCE OF 167.35 FEET;

THENCE NORTH 40°36'51" WEST, A DISTANCE OF 79.99 FEET;

THENCE NORTH 00°01'10" EAST, A DISTANCE OF 163.62 FEET;

THENCE SOUTH 89°58'50" EAST, A DISTANCE OF 219.18 FEET;

THENCE SOUTH 00°02'49" EAST, A DISTANCE 224.47 FEET TO THE POINT OF BEGINNING.

PARCEL CONTAINS 47,611 SQUARE FEET OR 1.09 ACRES, MORE OR LESS.

Purported address (for information only): 3001 South Federal Boulevard  
Denver, Colorado 80236

## EXHIBIT E

### SUBORDINATION AGREEMENT

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

### PRELIMINARY STATEMENTS

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

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

B. The Senior Lender plans to grant Borrower a [construction] [permanent] loan of \$[INSERT NUMERIC AMOUNT] (the "Senior Loan"), and Borrower will execute a deed of trust ("Senior Deed of Trust"), in favor of the Senior Lender, which will cover and encumber all or part of the Mortgaged Property and securing a note in like amount (the "Senior Note"), 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. [ALTERNATIVE - The Senior Lender has made a [construction] [permanent] loan to the Borrower in the principal amount \$[INSERT NUMERIC AMOUNT] (the "Senior Loan"), and Borrower has executed a deed of trust ("Senior Deed of Trust"), in favor of the Senior Lender, which covers and encumbers all or part of the Mortgaged Property and secured a note in like amount (the "Senior Note"), and the Senior Deed of Trust has been recorded in the records of the office of the Clerk and Recorder of [INSERT COUNTY] County, State of Colorado at Reception No. \_\_\_\_\_.]

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

### AGREEMENT

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

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

“Senior Obligations” means each and every debt, liability and obligation of every type and description that the Borrower may now or at any time hereafter owe to the Senior Lender in connection with the Senior Loan Documents, 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.

“Senior Loan Documents” means the: Senior Deed of Trust, Senior Note, and [OTHER DOCUMENTS TO BE LISTED].

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

2. Subordination. 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, deed of trust lien or other encumbrance 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. Payments received in violation of this paragraph will be held for the benefit of the Senior Lender.

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.

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

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

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

each of which shall be an original, but all of which together shall constitute one instrument. The Junior Lender waives notice of the Senior Lender's acceptance hereof.

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

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



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

“JUNIOR LENDER”

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

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

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

State of Colorado        )  
  ) ss.  
County of                    )

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

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

\_\_\_\_\_

Notary Public

“SENIOR LENDER”

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

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

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

\

State of Colorado            )  
  ) ss.  
County of                    )

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

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

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

Acknowledged by BORROWER:

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

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

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

ATTACHMENT A

[INSERT LEGAL DESCRIPTION]

## Exhibit F

### Cash Flow Calculation

The provisions of Exhibit F are found in Section 4.2 of the Amended and Restate Operating Agreement of Morrison Road, LLC (the “Operating Agreement”). All capitalized terms used in this Exhibit F have the meanings assigned to them in the Operating Agreement. A copy of the fully executed Operating Agreement will be provided to the City after execution.

#### Distribution of Net Cash Flow

Net Cash Flow shall only be distributed in accordance with the Operating Agreement, the Project Documents and any applicable Lender or Agency requirement and only with the Consent of the SM (which Consent shall not be unreasonably withheld to the extent the proposed distribution is in accordance with the foregoing). Net Cash Flow shall not be distributed prior to Stabilized Occupancy. Commencing upon Stabilized Occupancy, Net Cash Flow shall be distributed annually in the order set forth below within forty-five (45) days after the end of each Fiscal Year, provided that there is no uncured Event of Default outstanding or other current or anticipated cash shortage. For each Fiscal Year following Stabilized Occupancy, Net Cash Flow (including Net Cash Flow accumulated from all Fiscal Years prior to Stabilized Occupancy) shall be distributed in the following order:

(a) First, to the IM as payment of the Investor Services Fee and then to any other amounts owed to the IM, the SM or any Affiliates thereof pursuant to the Operating Agreement;

(b) Second, if the balance in the Operating Reserve Account is below the Operating Reserve Amount, to the replenishment of such account until the balance is restored to the Operating Reserve Amount;

(c) Third, to the Developer as payment of the Deferred Development Fee until payment in full;

(d) Fourth, to the IM, an amount equal to any tax liability of the IM for taxable income allocated to the IM with respect to such year (calculated at an assumed tax rate of 5% plus the then highest marginal federal corporate tax rate) and any amount which would have been distributed under this subclause in any prior year calculated at an assumed tax rate of 5% plus the then highest marginal federal corporate tax rate) but for there being insufficient Net Cash Flow to do so;

(e) Fifth, 37.5% of the remaining Net Cash Flow to pay (i) the City of Denver Loan; (ii) the CDOH Loan and (iii) the Carryback Note, with such payments being made 33.33% to the Carryback Note until it is paid in full and with the remainder being paid pari passu to the City of Denver Loan and the CDOH Loan based on the initial principal amounts of such indebtedness;

(f) Sixth, to pay the payments in lieu of taxes due pursuant to the terms of the PILOT Agreement;

(g) Seventh, to the Managing Member for any debts or liabilities owed to it;

(h) Eighth, commencing the first calendar year following the expiration of the Historic Credit Period, 90% of the balance to the Managing Member as payment of the Incentive Management Fee; provided, however, the Incentive Management Fee payable pursuant to this clause (h) shall not exceed 12% of gross revenues of the Company for such Fiscal Year (less any property management fees paid to an affiliate of the Managing Member);

(i) Ninth, 25.0% of remaining Net Cash Flow to fund the Property Tax Escrow Account;

(j) Tenth, commencing the first calendar year following the expiration of the Historic Credit Period, to the extent that the Incentive Management Fee payable pursuant to clause (h) was capped at 12% of gross revenues of the Company for such Fiscal Year (less any property management fees paid to an affiliate of the Managing Member), the amount in excess of such cap shall be a distribution to the Managing Member as a preferred return ("Preferred Return") payable to the extent of Net Cash Flow available pursuant to this clause (j); provided however, there shall also be a gross income allocation to the Managing Member for that Fiscal Year in an amount equal to such Preferred Return;

(k) Eleventh, any remaining Net Cash Flow shall be distributed 99.99% to the IM, 0.005% to the DHDP Special Member and 0.005% to the Managing Member.