

**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 **MORRISON ROAD, LLC** a Wisconsin limited liability company, doing business in Colorado as **GORMAN MORRISON ROAD, LLC**, whose address is 200 N. Main St., Oregon, WI 53575 (“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 79 affordable multi-family dwelling units, together with one unit for an employee, located on the Property (the “Project”);

WHEREAS, the City is making certain monies available to ensure the development the Project to be known as Avenida del Sol; 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: Subject to the terms of this Loan Agreement, the City agrees to lend Borrower the sum of One Million Four Hundred Fifteen Thousand and No/100 (\$1,415,000.00) (the “Loan”). In addition to this Loan Agreement, the City and Borrower will enter into a promissory note in a form satisfactory to the City evidencing this Loan (the “Promissory Note”) and a covenant securing the Property for use as affordable housing as required by Section 6 hereof (the “Covenant”). Simple interest at a rate of one percent (1%) per annum shall commence accruing on the outstanding principal balance of the Promissory Note on the date on which the first draw on the Loan is made. Principal and any interest accrued on the Loan shall be due and payable, at such place as may be designated by City, in annual installments of the annual Cash Flow amount, calculated in accordance with the order of priority and other provisions set forth in Exhibit F, attached hereto and incorporated herein. 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 the Cash Flow is

insufficient to pay in full any annual payment due hereunder, the unpaid balance thereof will be paid from the next available Cash Flow distribution and simple interest will continue to accrue on the unpaid principal. To the extent that the full amount of principal and accrued interest due and owing to the City has not been repaid, the entire unpaid balance of principal and accrued interest will be due and payable on the 50th anniversary of the date of the Promissory Note (the “Maturity Date”). The phrase “Cash Flow” as used herein shall have the meaning set forth in the Amended and Restated Operating Agreement of Morrison Road, LLC.

2. **SECURITY**: Repayment of the Promissory Note shall be secured by a Deed of Trust (the “Deed of Trust”), in form satisfactory to City, granted by Borrower and encumbering the real property known and numbered as 5048 Morrison Road, Denver, CO 80219 and legally described as set forth in **Exhibit D** (the “Property”).

3. **SUBORDINATION**:

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** (recognizing that senior lenders may request revisions to the form); (ii) encumbrances prior to the City’s Deed of Trust do not exceed \$19,000,000.00 under a construction loan or \$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 (“CHFA”), 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 \$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 \$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 10% of each disbursement of funds, which retainage shall be released upon (a) the submittal of an Affirmative Marketing Plan (as defined in Paragraph 16); (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 temporary or final certificate of occupancy.

C. In addition to the retainage specified in subparagraph B above, HOST shall retain \$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 as set forth in Section 17. Expenses incurred prior to December 12, 2019 are not eligible for reimbursement.

5. DEADLINE FOR DISBURSEMENT OF FUNDS; REQUIRED DOCUMENTATION:

A. Borrower must provide Evidence of Financing (as defined below) and the final draft of the partnership or operating agreement for the limited partnership or limited liability company owning the Project on or before December 1, 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 reasonable discretion, that the Borrower has secured all financing necessary to complete the Project, specifically limited to low-income housing tax credit equity, a construction loan, and a permanent loan commitment. The City acknowledges and agrees that the State of Colorado will provide a loan commitment but may not be closed; however, the City shall deem the State of Colorado's loan commitment (and the permanent financing loan commitment) to be "secured" in accordance with the previous sentence.

B. Borrower agrees that (a) documentation for all draw down requests will be submitted

no later than thirty (30) months after the date of the Promissory Note and (b) Borrower shall complete the Project within a thirty (30) 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.

i. Twenty of the units at the Property (the “80% Units”) shall have rents not exceeding 30% of the adjusted income of a family whose annual income equals 80% of the median income for the Denver area, as determined by CHFA, with adjustments for number of bedrooms in the unit.

ii. Thirty-Seven 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 established by the HUD, under 24 C.F.R. 888.113, 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 determined by CHFA, with adjustments for number of bedrooms in the unit.

iii. Eighteen of the units at the Property (the “40% Units”) shall have rents not exceeding the lesser of (i) fair market rent for comparable units in the area as established by the HUD, under 24 C.F.R. 888.113, or (ii) a rent that does not exceed 30% of the adjusted income of a family whose annual income equals 40% of the median income for the Denver area, as determined by CHFA, with adjustments for number of bedrooms in the unit.

iv. Four 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 established by the HUD, under 24 C.F.R. 888.113, 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 determined by CHFA, with adjustments for number of bedrooms in the unit.

v. The 80% Units, 60% Units, 40% Units, and 30% Units are referred to collectively in this Loan Agreement as the “City Units.” By executing this Loan Agreement, Borrower acknowledges receipt of CHFA’s current rent guidelines.

vi. 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 not paid for by the Borrower. The City shall review rents for compliance within ninety (90) days after Borrower provides rent information upon a request from HOST.

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 determined 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 determined by CHFA, with adjustments for family size. The 40% Units shall be occupied by tenants whose incomes are at or below 40% of the median income for the Denver area as determined 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 determined 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 or CHFA and comply with the current guidelines.

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

BEDROOMS	80% Units	60% Units	40% Units	30% Units
1 Bedroom	6	12	5	1
2 Bedroom	8	13	8	2
3 Bedroom	6	12	5	1
TOTAL	20	37	18	4

D. Accessibility Requirements. Borrower must design and construct 5% of the City Units, or at least one unit, whichever is greater, to be accessible for persons with mobility disabilities. An additional 2% of the City Units, or at least one, 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 60 years from the date of the Covenant. Violation of said Covenant shall be enforceable as an event of default pursuant hereto. The City acknowledges that the Covenant shall be subordinate to any use restriction executed by Borrower in favor of CHFA and any reasonable loan documents in favor of senior lenders to Borrower.

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, Borrower shall make good faith efforts to ensure 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.” Borrower shall make good faith efforts to ensure 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.

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 written 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 but in such case subject to applicable notice requirements in accordance with landlord/tenant laws. 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 the above shall be submitted to HOST prior to the disbursement of funds hereunder. Policies shall include a waiver of subrogation and rights of recovery as against the City. Insurance companies providing the above referenced coverage must be authorized to issue insurance in Colorado and be otherwise acceptable to the Director of Risk Management.

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 and continuation 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. Any warranty, representation, or statement made or furnished to the City by or on behalf of Borrower in connection with this Loan Agreement proves to have been false in any material respect when made or furnished;
3. Borrower becomes delinquent to the City on loan, contractual, or tax obligations as due.

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 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:

Morrison Road, LLC
c/o Gorman & Company, LLC
Attn: Kimball Crangle
200 N. Main Street
Oregon, Wisconsin 53575

With a copy to:

Reinhart Boerner Van Deuren s.c.
Attn: William R. Cummings
1000 North Water Street, Suite 1700
Milwaukee, WI 53202

If written notice of a default, 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 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: HOST-202054179-00
Contractor Name: MORRISON ROAD 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-202054179-00
MORRISON ROAD LLC

By: 

Name: Brian Swanton
(please print)

Title: President & CEO
(please print)

ATTEST: [if required]

By: 

Name: Cassandra Bishop
(please print)

Title: Development Coordinator
(please print)

EXHIBIT A

Project Timeline – Avenida del Sol (Gorman & Company, LLC)
5048 Morrison Road, Denver, CO 80219

Construction financing closes	August 7, 2020
General Contractor notice to proceed	August 7, 2020
Construction completion	February 3, 2022
Lease-up completion date of restricted units	September 30, 2022
OED Payments begin – Estimated	December 1, 2030

PERMANENT SOURCES		USES	
First Mortgage	\$11,200,000	Acquisition	\$1,750,000
Federal LIHTC Equity	\$9,585,756	Hard Costs	\$17,126,814
State LIHTC Equity	\$3,407,318	Soft Costs	\$5,479,442
City of Denver	\$1,415,000	Reserves	\$580,862
CDOH	\$885,000	Developer Fee	\$2,680,000
Deferred Developer Fee	\$1,123,944		
General Partner Contribution	\$100	TOTAL	\$27,617,118
TOTAL	\$27,617,118		

PROJECT ACTIVITIES			
ACTIVITY	TOTAL COST	CITY FUNDS	OTHER FUNDS
Acquisition	\$1,750,000		\$1,750,000
Hard Costs	\$17,126,814	\$1,415,000	\$15,711,814
Soft Costs	\$5,479,442	Either Category	\$5,479,442
Reserves	\$580,862		\$580,862
Developer Fee	\$2,680,000		\$2,680,000
TOTAL	\$27,617,118	\$1,415,000	\$26,202,118

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

Parcel A:

Lots 31, 32 and 33, Block 1, Kentucky Gardens, EXCEPT the South 15 feet of Lots 31 and 33 and that part of the S $\frac{1}{2}$ of the SW $\frac{1}{4}$ of Section 18, Township 4 South, Range 68 West of the 6th Principal Meridian previously conveyed to the City and County of Denver in Warranty Deed recorded October 1, 1958 in Book 7942 Page 6, being further described as follows:

Beginning at the Southeast corner of Lot 33;
Thence 15 feet North along East line of said Lot 33;
Thence 50 feet East to West line of Lot 31;
Thence 15 feet South along the West line of Lot 31;
Thence 50 feet West to the Point of Beginning, City and County of Denver, State of Colorado.

Parcel B:

Those easement rights as described in Quit Claim Deed recorded June 21, 1977 in Book 1460 Page 684, Denver County Records.

EXHIBIT E

RECORDING REQUESTED BY:
AND WHEN RECORDED MAIL TO:

Freddie Mac Loan Number: _____
Property Name: Avenida del Sol

SUBORDINATION AGREEMENT

GOVERNMENTAL ENTITY

(Direct Purchase of Tax-Exempt Loans)
(Revised 9/1/2014)

THIS SUBORDINATION AGREEMENT ("**Agreement**") is entered into this ___ day of _____, 20___, by and between [**LENDER**], a national banking association organized and existing under the laws of the United States of America ("**Senior Mortgagee**"), and the **CITY AND COUNTY OF DENVER**, a municipal corporation of the State of Colorado ("**Subordinate Mortgagee**").

RECITALS

- A. **MORRISON ROAD, LLC**, a limited liability company organized under the laws of the State of Wisconsin, doing business in Colorado as **GORMAN MORRISON ROAD, LLC** ("**Borrower**") is the owner of certain land located in the City and County of Denver, Colorado, described in Exhibit A ("**Land**"). The Land is to be improved with a multifamily rental housing project ("**Improvements**").
- B. **CITY AND COUNTY OF DENVER** ("**Governmental Lender**"), the original holder of the Senior Note, has made a loan to Borrower in the original principal amount of [AMOUNT] ("**Senior Loan**") upon the terms and conditions of a Project Loan Agreement dated as of _____, 2020 ("**Senior Loan Agreement**") by and among Governmental Lender, Senior Mortgagee (in its capacity as Fiscal Agent under the Funding Loan Agreement (defined below)) and Borrower in connection with the Mortgaged Property. The Senior Loan is secured by a Leasehold Deed of Trust, Fixture Filing, Assignment of Rents and Security Agreement dated as of _____, 2020 (collectively, the "**Senior Mortgage**") encumbering the Land, the Improvements and related personal and other property described and defined in the Senior Mortgage as the "**Mortgaged Property**."

EXHIBIT E

- C. Pursuant to a Loan Agreement dated _____, 2020, between Subordinate Mortgagee and Borrower ("**Subordinate Loan Agreement**"), Subordinate Mortgagee has made or is making a loan to Borrower in the original principal amount of \$1,415,000.00 ("**Subordinate Loan**"). The Subordinate Loan is or will be secured by a Deed of Trust dated _____, 2020 granted by Borrower for the benefit of Subordinate Mortgagee ("**Subordinate Mortgage**") encumbering all or a portion of the Mortgaged Property and recorded in the Official Records of the City and County of Denver Clerk and Recorder ("**Recording Office**").
- D. The Senior Note was assigned by the Governmental Lender to Senior Mortgagee (in its capacity as Fiscal Agent under the Funding Loan Agreement (defined below)) as security for the loan made by the Initial Funding Lender to the Governmental Lender pursuant to the Funding Loan Agreement (the "**Funding Loan**"). The Senior Mortgage was granted to Senior Mortgagee as security for the Funding Loan.
- E. Subject to the terms and conditions of that certain Construction Phase Financing Agreement (the "**Construction Phase Financing Agreement**") dated as of _____, between Borrower, [INITIAL FUNDING LENDER] ("**Initial Funding Lender**") and [PERMANENT FUNDING LENDER] ("**Permanent Funding Lender**"), Initial Funding Lender shall subsequently assign (without recourse) and deliver the documents comprising the Funding Loan to the Permanent Funding Lender and, in connection therewith, the Senior Note (as defined herein) and the Senior Mortgage will be amended and restated, and thereafter assigned to the Fiscal Agent ("**Conversion**").
- F. Pursuant to the Senior Mortgage and the Funding Loan Agreement dated as of _____, among Initial Funding Lender, Governmental Lender and Senior Mortgagee (the "**Funding Loan Agreement**"), the Funding Lender has the right to direct all actions of the Senior Mortgagee with respect to the Senior Mortgage, the Mortgaged Property and the Senior Loan Agreement and upon Conversion, shall have the right to amend and restate the Senior Note and the Senior Mortgage, as well as the right to amend, waive, postpone, extend, renew, replace, reduce or otherwise modify any provision of any of the Senior Loan Documents (as defined herein), without notice to or the consent or joinder of the Subordinate Mortgagee.
- G. The execution and delivery of this Agreement is a condition of Funding Lender's consenting to Subordinate Mortgagee's making of the Subordinate Loan and Borrower's granting of the Subordinate Mortgage.

NOW, THEREFORE, for valuable consideration, the receipt and sufficiency of which are acknowledged, the parties agree as follows:

EXHIBIT E

1. **Definitions.** The following terms, when used in this Agreement (including, as appropriate, when used in the above recitals), will have the following meanings.
 - (a) The terms "**Condemnation**," "**Imposition Reserve Deposits**," "**Impositions**," "**Leases**," "**Rents**" and "**Restoration**," as well as any term used in this Agreement and not otherwise defined in this Agreement, will have the meanings given to those terms in the Continuing Covenant Agreement attached as Exhibit J to the Construction Phase Financing Agreement ("**Continuing Covenant Agreement**").
 - (b) "**Bankruptcy Proceeding**" means any bankruptcy, reorganization, insolvency, composition, restructuring, dissolution, liquidation, receivership, assignment for the benefit of creditors, or custodianship action or proceeding under any federal or state law with respect to Borrower, any guarantor of any of the Senior Indebtedness, any of their respective properties, or any of their respective partners, members, officers, directors, or shareholders.
 - (c) "**Borrower**" means all persons or entities identified as "Borrower" in the first Recital of this Agreement, together with their successors and assigns, and any other person or entity who acquires title to the Mortgaged Property after the date of this Agreement; provided that the term "Borrower" will not include Senior Mortgagee or Funding Lender if Senior Mortgagee or Funding Lender acquires title to the Mortgaged Property.
 - (d) "**Casualty**" means the occurrence of damage to or loss of all or any portion of the Mortgaged Property by fire or other casualty.
 - (e) "**Enforcement Action**" means any of the following actions taken by or at the direction of Subordinate Mortgagee solely pursuant to the Subordinate Mortgagee's rights under the Subordinate Loan Agreement: the acceleration of all or any part of the Subordinate Indebtedness, the advertising of or commencement of any foreclosure or trustee's sale proceedings, the exercise of any power of sale, the acceptance of a deed or assignment in lieu of foreclosure or sale, the collecting of Rents, the obtaining of or seeking of the appointment of a receiver, the seeking of default interest, the taking of possession or control of any of the Mortgaged Property, the commencement of any suit or other legal, administrative, or arbitration proceeding based upon the Subordinate Note or any other of the Subordinate Loan Documents, the exercising of any lien created under the Subordinate Loan Documents or rights of set-off or recoupment or the exercise of any other remedial action against Borrower, any other party liable for any of the Subordinate Indebtedness or obligated under any of the Subordinate Loan Documents, or the Mortgaged Property.
 - (f) "**Enforcement Action Notice**" means a written Notice from Subordinate Mortgagee to Funding Lender, given following one or more Subordinate Mortgage

EXHIBIT E

Default(s) and the expiration of any Notice or cure periods provided for such Subordinate Mortgage Default(s) in the Subordinate Loan Documents, setting forth in reasonable detail the Subordinate Mortgage Default(s) and the Enforcement Actions proposed to be taken by Subordinate Mortgagee.

- (g) "**Funding Lender**" shall mean Initial Funding Lender prior to Conversion and Permanent Funding Lender from and after Conversion, together with their respective successors and assigns.
- (h) "**Governmental Note**" means the Governmental Notes (as defined in the Funding Loan Agreement), delivered by the Governmental Lender evidencing the Funding Loan.
- (i) "**Loss Proceeds**" means all monies received or to be received under any insurance policy, from any condemning authority, or from any other source, as a result or any Condemnation or Casualty.
- (j) "**Notice**" is defined in Section 6(d).
- (k) "**Rental and Occupancy Covenant**" means that certain Rental and Occupancy Covenant dated as of _____, 2020, made by Borrower for the benefit of the Subordinate Mortgagee, as the same may from time to time be extended, consolidated, substituted for, modified, amended or supplemented.
- (l) "**Senior Indebtedness**" means the "Indebtedness" of Borrower as evidenced by the Senior Loan Documents.
- (m) "**Senior Loan Documents**" means the "Project Loan Documents" as defined in the Funding Loan Agreement.
- (n) "**Senior Mortgage Default**" means any act, failure to act, event, condition, or occurrence which constitutes, or which with the giving of Notice or the passage of time, or both, would constitute, an "Event of Default" as defined in the Senior Loan Documents.
- (o) "**Senior Mortgagee**" means the person or entity named as such in the first paragraph of this Agreement. When any other person or entity becomes the legal holder of the Senior Note, such other person or entity automatically will become Senior Mortgagee.
- (p) "**Senior Note**" means the Project Note as defined in the Funding Loan Agreement.
- (q) "**Subordinate Indebtedness**" means all sums evidenced or secured or guaranteed by, or otherwise due and payable to Subordinate Mortgagee pursuant to, the Subordinate Loan Documents.

EXHIBIT E

- (f) "**Subordinate Loan Documents**" means the Subordinate Mortgage, the Subordinate Note, the Subordinate Loan Agreement, the Rental and Occupancy Covenant and all other documents at any time evidencing, securing, guaranteeing, or otherwise delivered in connection with the Subordinate Indebtedness, as the same may be amended.
- (s) "**Subordinate Mortgage Default**" means any act, failure to act, event, condition, or occurrence which allows (but for any contrary provision of this Agreement), or which with the giving of Notice or the passage of time, or both, would allow (but for any contrary provision of this Agreement), Subordinate Mortgagee to take an Enforcement Action.
- (t) "**Subordinate Mortgagee**" means the entity named as such in the first paragraph of this Agreement and any other person or entity who becomes the legal holder of the Subordinate Note after the date of this Agreement.
- (u) "**Subordinate Note**" means the promissory note or other evidence of the Subordinate Indebtedness referred to in the Subordinate Mortgage and any replacement of the Subordinate Note.
- (v) "**Surplus Cash Flow**" shall have the same meaning as set forth in the Subordinate Loan Agreement for "Cash Flow."

2. Subordination of Subordinate Indebtedness.

- (a) The Subordinate Indebtedness is and will at all times continue to be subject and subordinate in right of payment to the prior payment in full of the Senior Indebtedness.
- (b) Until the occurrence of a Senior Mortgage Default, Subordinate Mortgagee will be entitled to retain for its own account all payments made on account of the principal of and interest on the Subordinate Indebtedness in accordance with the requirements of the Subordinate Loan Documents, provided no such payment exceeds 75% of available Surplus Cash Flow; until the Senior Indebtedness is paid in full, the Subordinate Mortgagee shall not increase required payments of the Subordinate Indebtedness in such a manner that would cause bankruptcy of the Borrower or default on the Subordinate Indebtedness. Subordinate Mortgagee acknowledges that a Subordinate Mortgage Default constitutes a Senior Mortgage Default. Accordingly, upon the occurrence of a Subordinate Mortgage Default, Subordinate Mortgagee will be deemed to have actual knowledge of a Senior Mortgage Default.
- (c) Reserved.
- (d) Reserved.

EXHIBIT E

- (e) The subordination of the Subordinate Indebtedness will continue if any payment under the Senior Loan Documents (whether by or on behalf of Borrower, as proceeds of security or enforcement of any right of set-off or otherwise) is for any reason repaid or returned to Borrower or its insolvent estate, or avoided, set aside or required to be paid to Borrower, a trustee, receiver or other similar party under any bankruptcy, insolvency, receivership or similar law.
- (f) Reserved.

3. Subordination of Subordinate Loan Documents.

- (a) Each of the Subordinate Loan Documents is, and will at all times remain, subject and subordinate in all respects to the liens, terms, covenants, conditions, operations, and effects of each of the Senior Loan Documents.
- (b) The subordination of the Subordinate Loan Documents and of the Subordinate Indebtedness will apply and continue notwithstanding (i) the actual date and time of execution, delivery, recording, filing or perfection of each of the Senior Loan Documents and of each of the Subordinate Loan Documents, (ii) the availability of any collateral to Senior Mortgagee or Funding Lender, including the availability of any collateral other than the Mortgaged Property and (iii) the amendment and restatement of the Senior Note and the Senior Mortgage at Conversion, so long as such amounts do not exceed \$30,000,000.00.
- (c) By reason of, and without in any way limiting, the full subordination of the Subordinate Indebtedness and the Subordinate Loan Documents provided for in this Agreement, all rights and claims of Subordinate Mortgagee arising under the Subordinate Loan Documents in or to all or any portion of the Mortgaged Property are expressly subject and subordinate in all respects to the rights and claims of Senior Mortgagee or Funding Lender under the Senior Loan Documents in or to the Mortgaged Property.
- (d) If Subordinate Mortgagee exercising its rights arising solely under the Subordinate Loan Documents, by indemnification, subrogation or otherwise acquires any lien, estate, right or other interest in any of the Mortgaged Property, then that lien, estate, right or other interest will be fully subject and subordinate to the receipt by Senior Mortgagee or Funding Lender of payment in full of the Senior Indebtedness, and to the Senior Loan Documents, to the same extent as the Subordinate Indebtedness and the Subordinate Loan Documents are subordinate pursuant to this Agreement.
- (e) Nothing in this Agreement is intended, nor will it be construed, to in any way limit the exercise by Subordinate Mortgagee of its governmental powers (including police, regulatory and taxing powers) with respect to Borrower or the Mortgaged

EXHIBIT E

Property to the same extent as if it were not a party to this Agreement or the transactions contemplated by this Agreement.

4. Additional Representations and Covenants.

- (a) Subordinate Mortgagee represents and warrants that each of the following is true:
- i. Subordinate Mortgagee is now the owner and holder of the Subordinate Loan Documents.
 - ii. The Subordinate Loan Documents are now in full force and effect.
 - iii. The Subordinate Loan Documents have not been modified or amended.
 - iv. No Subordinate Mortgage Default has occurred.
 - v. The current unpaid principal balance of the Subordinate Indebtedness is \$1,415,000.00.
 - vi. No scheduled annual payments under the Subordinate Note have been prepaid.
 - vii. None of the rights of Subordinate Mortgagee under any of the Subordinate Loan Documents are subject to the rights of any third parties, by way of subrogation, indemnification or otherwise.
- (b) Without the prior written consent of Funding Lender in each instance, Borrower will not do any of the following:
- i. Amend, modify, waive, extend, renew, or replace any provision of any of the Subordinate Loan Documents to the extent such modification would have a material adverse effect on Senior Lender or the Senior Indebtedness.
 - ii. Request that the Subordinate Mortgagee take any action which has the effect of increasing the Subordinate Indebtedness.
 - iii. Take any action concerning environmental matters affecting the Mortgaged Property.
- (c) Subordinate Mortgagee will deliver to Funding Lender a copy of each Notice received or delivered by Subordinate Mortgagee pursuant to the Subordinate Loan Documents or in connection with the Subordinate Indebtedness, simultaneously with Subordinate Mortgagee's delivery or receipt of such Notice. Funding Lender

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- will deliver to Subordinate Mortgagee in the manner required in Section 5(b) a copy of each Notice of a Senior Mortgage Default delivered to Borrower by Funding Lender. Neither giving nor failing to give a Notice to Funding Lender or Subordinate Mortgagee pursuant to this Section 4(c) will affect the validity of any Notice given by Funding Lender or Subordinate Mortgagee to Borrower, as between Borrower and such of Funding Lender or Subordinate Mortgagee as provided the Notice to Borrower.
- (d) Without the prior written consent of Funding Lender in each instance, Subordinate Mortgagee will not commence, or join with any other creditor in commencing, any Bankruptcy Proceeding.
 - (e) Reserved.
 - (f) All original policies of insurance required pursuant to the Senior Loan Documents will be held by Funding Lender. Nothing in this Section 4(f) will preclude Subordinate Mortgagee from requiring that (a) it be named as a mortgagee and loss payee, as its interest may appear, under all policies of property damage insurance maintained by Borrower with respect to the Mortgaged Property, provided such action does not affect the priority of payment of Loss Proceeds, or (b) that Subordinate Mortgagee be named as an additional insured under all policies of liability insurance maintained by Borrower with respect to the Mortgaged Property.
 - (g) In the event of a Condemnation or a Casualty, all of the following provisions will apply:
 - i. The rights of Subordinate Mortgagee (solely under the Subordinate Loan Documents) to participate in any proceeding or action relating to a Condemnation or a Casualty, or to participate or join in any settlement of, or to adjust any claims resulting from a Condemnation or a Casualty, will be and remain subordinate in all respects to Senior Mortgagee's and Funding Lender's rights under the Senior Loan Documents with respect thereto.
 - ii. All Loss Proceeds will be applied either to payment of the costs and expenses of Restoration or to payment on account of the Senior Indebtedness, as and in the manner determined by Funding Lender in its sole discretion, up to the amount of the outstanding Senior Indebtedness. Subordinate Mortgagee may apply remaining Loss Proceeds in the manner determined by Subordinate Mortgagee, in its sole discretion.
 - iii. If Funding Lender applies or releases Loss Proceeds for the purposes of Restoration of the Mortgaged Property, then Subordinate Mortgagee will release for such purpose all of its right, title and

EXHIBIT E

interest, if any, in and to such Loss Proceeds. If Funding Lender holds Loss Proceeds, or monitors the disbursement thereof, Subordinate Mortgagee will not do so. Nothing contained in this Agreement will be deemed to require Funding Lender to act for or on behalf of Subordinate Mortgagee in connection with any Restoration or to hold or monitor any Loss Proceeds in trust for or otherwise on behalf of Subordinate Mortgagee, and all or any Loss Proceeds up to the total amount of the outstanding Senior Indebtedness may be commingled with any funds of Funding Lender.

- iv. If Funding Lender elects to apply Loss Proceeds to payment on account of the Senior Indebtedness, and if the application of such Loss Proceeds results in the payment in full of the entire Senior Indebtedness, any remaining Loss Proceeds held by Funding Lender will be paid to Subordinate Mortgagee unless another party has asserted a claim to the remaining Loss Proceeds.

(h) Reserved.

- (i) Except as provided in this Section 4(i), and regardless of any contrary provision in the Subordinate Loan Documents, Subordinate Mortgagee will not collect payments made under the Subordinate Loan Documents for the purpose of escrowing for any cost or expense related to the Mortgaged Property or for any portion of the Subordinate Indebtedness or arising under the Subordinate Loan Documents. However, if Funding Lender is not collecting escrow payments for one or more Impositions, Subordinate Mortgagee may collect escrow payments for such Impositions; provided that all payments so collected by Subordinate Mortgagee will be held in trust by Subordinate Mortgagee to be applied only to the payment of such Impositions.
- (j) Within 10 days after request by Funding Lender, Subordinate Mortgagee will furnish Funding Lender with a statement, duly acknowledged and certified setting forth the then-current amount and terms of the Subordinate Indebtedness, confirming that there exists no default under the Subordinate Loan Documents (or describing any default that does exist), and certifying to such other information with respect to the Subordinate Indebtedness as Funding Lender may request.
- (k) Senior Mortgagee or Funding Lender may amend, waive, postpone, extend, renew, replace, reduce or otherwise modify any provision of any of the Senior Loan Documents without the necessity of obtaining the consent of or providing Notice to Subordinate Mortgagee, and without affecting any of the provisions of this Agreement. Notwithstanding the foregoing, neither Senior Mortgagee nor Funding Lender may modify any provision of the Senior Loan Documents that increases the

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Senior Indebtedness, except for increases in the Senior Indebtedness that result from advances made by Senior Mortgagee or Funding Lender to protect the security or lien priority of Senior Mortgagee or Funding Lender under the Senior Loan Documents or to cure defaults under the Subordinate Loan Documents so long as such amounts do not exceed \$18,000,000.00.

5. Default Under Loan Documents.

- (a) For a period of 90 days following delivery to Funding Lender of an Enforcement Action Notice, Funding Lender will have the right, but not the obligation, to cure any Subordinate Mortgage Default, provided that if such Subordinate Mortgage Default is a non-monetary default and is not capable of being cured within such 90-day period and Funding Lender has commenced and is diligently pursuing such cure to completion, Funding Lender will have such additional period of time as may be required to cure such Subordinate Mortgage Default or until such time, if ever, as Funding Lender (i) discontinues its pursuit of any cure and/or (ii) delivers to Subordinate Mortgagee Funding Lender's written consent to the Enforcement Action described in the Enforcement Action Notice. Neither Senior Mortgagee nor Funding Lender will be subrogated to the rights of Subordinate Mortgagee under the Subordinate Loan Documents by reason of Funding Lender having cured any Subordinate Mortgage Default. However, Subordinate Mortgagee acknowledges that all amounts advanced or expended by Funding Lender in accordance with the Senior Loan Documents or to cure a Subordinate Mortgage Default will be added to and become a part of the Senior Indebtedness and will be secured by the lien of the Senior Mortgage, so long as such amounts do not exceed \$18,000,000.00.
- (b) Funding Lender will deliver to Subordinate Mortgagee a copy of any Notice sent by Funding Lender to Borrower of a Senior Mortgage Default within 15 Business Days of sending such Notice to Borrower. Failure of Funding Lender to send Notice to Subordinate Mortgagee will not prevent the exercise of Funding Lender's rights and remedies under the Senior Loan Documents. Subordinate Mortgagee will have the right, but not the obligation, to cure any monetary Senior Mortgage Default within 30 days following the date of such Notice; provided, however, that Funding Lender will be entitled during such 30-day period to continue to pursue its remedies under the Senior Loan Documents.

Subordinate Mortgagee may, within 90 days after the date of the Notice, cure a non-monetary Senior Mortgage Default if during such 90-day period, Subordinate Mortgagee keeps current all payments required by the Senior Loan Documents. If such a non-monetary Senior Mortgage Default creates an unacceptable level of risk relative to the Mortgaged Property, or Senior Mortgagee's or Funding Lender's secured position relative to the Mortgaged Property, as determined by Funding Lender in its sole discretion, then during such 90-day period Funding Lender may exercise all available rights and remedies to

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- protect and preserve the Mortgaged Property and the Rents, revenues and other proceeds from the Mortgaged Property. Subordinate Mortgagee will not be subrogated to the rights of Senior Mortgagee or Funding Lender under the Senior Loan Documents by reason of Subordinate Mortgagee having cured any Senior Mortgage Default. However, Senior Mortgagee and Funding Lender acknowledge that all amounts paid by Subordinate Mortgagee to Senior Mortgagee or Funding Lender to cure a Senior Mortgage Default will be deemed to have been advanced by Subordinate Mortgagee pursuant to, and will be secured by the lien of, the Subordinate Mortgage. Notwithstanding anything in this Section 5(b) to the contrary, Subordinate Mortgagee's right to cure any Senior Mortgage Default will terminate immediately upon the occurrence of any Bankruptcy Proceeding.
- (c) In the event of a Subordinate Mortgage Default, Subordinate Mortgagee will not commence any Enforcement Action until 90 days after Subordinate Mortgagee has delivered to Funding Lender an Enforcement Action Notice with respect to such Enforcement Action, provided that during such 90-day period or such longer period as provided in Section 5(a), Subordinate Mortgagee will be entitled to seek specific performance to enforce covenants and agreements of Borrower relating to income, rent, or affordability restrictions contained in the Rental and Occupancy Covenant, subject to Funding Lender's right to cure a Subordinate Mortgage Default set forth in Section 5(a). Subordinate Mortgagee may not commence any other Enforcement Action, including any foreclosure action under the Subordinate Loan Documents, until the earlier of (i) the expiration of such 90-day period or such longer period as provided in Section 5(a), or (ii) the delivery by Funding Lender to Subordinate Mortgagee of Funding Lender's written consent to such Enforcement Action by Subordinate Mortgagee. Subordinate Mortgagee acknowledges that Funding Lender may grant or refuse consent to Subordinate Mortgagee's Enforcement Action in Funding Lender's sole and absolute discretion. At the expiration of such 90-day period or such longer period as provided in Section 5(a) and, subject to Funding Lender's right to cure set forth in Section 5(a), Subordinate Mortgagee may commence any Enforcement Action. Any Enforcement Action on the part of Subordinate Mortgagee will be subject to the provisions of this Agreement. Subordinate Mortgagee acknowledges that the provisions of this Section 5(c) are fair and reasonable under the circumstances, that Subordinate Mortgagee has received a substantial benefit from Funding Lender having granted its consent to the Subordinate Mortgage, and that Funding Lender would not have granted such consent without the inclusion of these provisions in this Agreement.
- (d) Senior Mortgagee or Funding Lender may pursue all rights and remedies available to it under the Senior Loan Documents, at law, or in equity, regardless of any Enforcement Action Notice or Enforcement Action by Subordinate Mortgagee. No action or failure to act on the part of Senior Mortgagee or Funding Lender in the event of a Subordinate Mortgage Default or commencement of an Enforcement

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Action will constitute a waiver on the part of Senior Mortgagee or Funding Lender of any provision of the Senior Loan Documents or this Agreement.

- (e) If the Enforcement Action taken by Subordinate Mortgagee is the appointment of a receiver for any of the Mortgaged Property, all of the Rents, issues, profits and proceeds collected by the receiver will be paid and applied by the receiver solely to and for the benefit of Senior Mortgagee or Funding Lender until the Senior Indebtedness will have been paid in full.
- (f) Subordinate Mortgagee consents to and authorizes the release by Senior Mortgagee or Funding Lender of all or any portion of the Mortgaged Property from the lien, operation, and effect of the Senior Loan Documents. Subordinate Mortgagee acknowledges that without Notice to Subordinate Mortgagee and without affecting any of the provisions of this Agreement, and so long as the prior encumbrances on the Mortgaged Property do not exceed \$18,000,000.00, Senior Mortgagee or Funding Lender may (i) extend the time for or waive any payment or performance under the Senior Loan Documents; (ii) modify or amend in any respect any provision of the Senior Loan Documents; and (iii) modify, exchange, surrender, release, and otherwise deal with any additional collateral for the Senior Indebtedness.
- (g) Reserved.

6. **Miscellaneous Provisions.**

- (a) If there is any conflict or inconsistency between the terms of the Subordinate Loan Documents and the terms of this Agreement, then the terms of this Agreement will control.
- (b) This Agreement will be binding upon and will inure to the benefit of the respective legal successors and permitted assigns of the parties hereto. No other party will be entitled to any benefits hereunder, whether as a third-party beneficiary or otherwise.
- (c) This Agreement does not constitute an approval by Senior Mortgagee or Funding Lender of the terms of the Subordinate Loan Documents.
- (d) Each Notice, request, demand, consent, approval or other communication (collectively, "**Notices**," and singly, a "**Notice**") which is required or permitted to be given pursuant to this Agreement will be in writing and will be deemed to have been duly and sufficiently given if (i) personally delivered with proof of delivery (any Notice so delivered will be deemed to have been received at the time so delivered), or (ii) sent by a national overnight courier service (such as FedEx) designating earliest available delivery (any Notice so delivered will be deemed to have been received on the next Business Day following receipt by the courier), or (iii) sent by United States registered or certified mail, return receipt requested,

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postage prepaid, at a post office regularly maintained by the United States Postal Service (any Notice so sent will be deemed to have been received on the date of delivery as confirmed by the return receipt), addressed to the respective parties as follows:

- i. Notices intended for Senior Mortgagee will be addressed to:

ADDRESS
ADDRESS
ADDRESS
Attention: NAME

- ii. Notices intended for Subordinate Mortgagee will be addressed to:

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

With a copy of any such notice to:

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

- iii. Notices intended for Initial Funding Lender will be addressed to:

ADDRESS
ADDRESS
ADDRESS
Attention: NAME

With copy to:

ADDRESS

ADDRESS
ADDRESS
Attention: NAME

- iv. Notices intended for Permanent Funding Lender will be addressed to:

ADDRESS
ADDRESS
ADDRESS

EXHIBIT E

Attention: NAME

Any party, by Notice given pursuant to this Section, may change the person or persons and/or address or addresses, or designate an additional person or persons or an additional address or addresses, for its Notices, but Notice of a change of address will only be effective upon receipt. Neither party will refuse or reject delivery of any Notice given in accordance with this Section.

- (e) Nothing in this Agreement or in any of the Senior Loan Documents or Subordinate Loan Documents will be deemed to constitute Senior Mortgagee or Funding Lender as a joint venturer or partner of Subordinate Mortgagee.
- (f) This Agreement will be governed by the laws of the State in which the Land is located.
- (g) If any one or more of the provisions contained in this Agreement, or any application of any such provisions, is invalid, illegal, or unenforceable in any respect, the validity, legality, enforceability, and application of the remaining provisions contained in this Agreement will not in any way be affected or impaired.
- (h) The term of this Agreement will commence on the date of this Agreement and will continue until the earliest to occur of the following events: (i) the payment of all of the Senior Indebtedness; provided that this Agreement will be reinstated in the event any payment on account of the Senior Indebtedness is avoided, set aside, rescinded or repaid by Senior Mortgagee or Funding Lender as described in Section 2(e) of this Agreement, (ii) the payment of all of the Subordinate Indebtedness, (iii) the acquisition by Senior Mortgagee or Funding Lender or by a third party purchaser of title to the Mortgaged Property pursuant to a foreclosure of, deed in lieu of foreclosure, or trustee's sale or other exercise of a power of sale or similar disposition under the Senior Mortgage; or (iv) without limiting the provisions of Section 5(d), the acquisition by Subordinate Mortgagee of title to the Mortgaged Property subject to the Senior Mortgage pursuant to a foreclosure, or a deed in lieu of foreclosure, of (or the exercise of a power of sale under) the Subordinate Mortgage. Upon the final acquisition by Senior Mortgagee or Funding Lender or by a third party of title vesting to the Mortgaged Property pursuant to subclause (iii) by a deed in lieu of foreclosure, wherein the Subordinate Mortgagee has not gained title through the foreclosure or redemption processes under Title 38 of the Colorado Revised Statutes, the Subordinate Loan Documents will terminate as provided in Title 38 of the Colorado Revised Statutes without any act on the part of the Subordinate Mortgagee, however, upon request, Subordinate Mortgagee will record terminations in the records in a form sufficient to cause the title company insuring the grantee pursuant to such deed in lieu of foreclosure to remove all Subordinate Loan Documents from the exceptions on the title policy of the grantee.

EXHIBIT E

- (i) No failure or delay on the part of any party to this Agreement in exercising any right, power, or remedy under this Agreement will operate as a waiver of such right, power, or remedy, nor will any single or partial exercise of any such right, power or remedy preclude any other or further exercise of such right, power, or remedy or the exercise of any other right, power or remedy under this Agreement.
- (j) Each party to this Agreement acknowledges that if any party fails to comply with its obligations under this Agreement, the other parties will have all rights available at law and in equity, including the right to obtain specific performance of the obligations of such defaulting party and injunctive relief.
- (k) This Agreement shall inure to the benefit of any subsequent holder of the Senior Indebtedness.
- (l) This Agreement may be amended, changed, modified, altered or terminated only by a written instrument or written instruments signed by the parties to this Agreement.
- (m) This Agreement may be executed in two or more counterparts, each of which will be deemed an original but all of which together will constitute one and the same instrument.
- (n) Notwithstanding anything herein to the contrary, pursuant to the Senior Mortgage and the Funding Loan Agreement, all acts, consents, approvals and undertakings of Senior Mortgagee hereunder shall be solely at the written direction of the Funding Lender. The parties acknowledge and agree that Funding Lender is a third party beneficiary of this Agreement, with full rights as such.

[Signature and acknowledgment pages follow]

IN WITNESS WHEREOF, the parties have duly executed this Agreement as of the day and year first above written.

SENIOR MORTGAGEE:

LENDER NAME

By: _____

Name:

Title:

ACKNOWLEDGMENT

STATE OF _____

COUNTY OF _____

The foregoing Agreement was acknowledged before me this _____ day of _____, 20__ by _____ the _____ of LENDER NAME on behalf of said party.

Notary Public

Print Name: _____

SUBORDINATE MORTGAGEE:

THE CITY AND COUNTY OF DENVER

By: _____

Name:

Title:

ACKNOWLEDGMENT

STATE OF _____

COUNTY OF _____

The foregoing Agreement was acknowledged before me this _____ day of _____, 20__ by _____ the _____ of THE CITY AND COUNTY OF DENVER on behalf of said party.

Notary Public

Print Name: _____

CONSENT OF BORROWER

Borrower acknowledges receipt of a copy of this Subordination Agreement, dated _____, 2020, by and between [LENDER NAME] and **CITY AND COUNTY OF DENVER** and consents to the agreement of the parties set forth in this Agreement.

BORROWER:

MORRISON ROAD, LLC, a Wisconsin limited liability company

By: _____

Name:

Title:

ACKNOWLEDGEMENT

STATE OF WISCONSIN)

)

COUNTY OF _____)

The foregoing Agreement was acknowledged before me this _____ day of _____, 20__ by _____ the _____ of MORRISON ROAD, LLC on behalf of said party.

Notary Public

My

Commission

Expires: _____

EXHIBIT A

LEGAL DESCRIPTION

Parcel A:

Lots 31, 32 and 33, Block 1, Kentucky Gardens, EXCEPT the South 15 feet of Lots 31 and 33 and that part of the S $\frac{1}{2}$ of the SW $\frac{1}{4}$ of Section 18, Township 4 South, Range 68 West of the 6th Principal Meridian previously conveyed to the City and County of Denver in Warranty Deed recorded October 1, 1958 in Book 7942 Page 6, being further described as follows:

Beginning at the Southeast corner of Lot 33;
Thence 15 feet North along East line of said Lot 33;
Thence 50 feet East to West line of Lot 31;
Thence 15 feet South along the West line of Lot 31;
Thence 50 feet West to the Point of Beginning, City and County of Denver, State of Colorado.

Parcel B:

Those easement rights as described in Quit Claim Deed recorded June 21, 1977 in Book 1460 Page 684, Denver County Records.

Exhibit F

Cash Flow Calculation

The provisions of Exhibit F are found in the Amended and Restated Operating Agreement of Morrison Road, LLC (the “Operating Agreement”). A copy of the fully executed operating agreement will be provided to the City after execution.

Distribution of Cash Flow

First, to the Investor Member to the extent of any amount to which the Investor Member is entitled to receive Cash Flow to satisfy any payment required pursuant to §5.10 Operating Agreement;

Second, to repay (on a prorata basis) any unpaid loans made pursuant to §2.6 hereof;

Third, to pay accrued and unpaid Asset Management Fee, if any;

Fourth, to the Operating Reserve Account until such time as such account is equal to the Operating Reserve Amount;

Fifth, while the Permanent Loan is outstanding, to the City of Denver a \$5,250 annual private activity bond compliance monitoring fee;

Sixth, to pay accrued interest and then principal on the Development Note;

Seventh, to pay up to 50% of the DHDP Special Member Asset Management Fee pursuant to the terms of the DHDP Special Member Asset Management Agreement and all accrued and unpaid DHDP Special Member Asset Management Fee and interest thereon;

Eighth, 75% of the balance to be split (a) 75% to repay the Secondary Loan from the City of Denver as required or permitted under the Secondary Loan documents and (b) 25% to repay the Secondary Loan from the State of Colorado as required or permitted under the Secondary Loan documents; and

Ninth, as further set forth in the Operating Agreement.

After making the payments described in §4.1(a) hereof, the remaining Cash Flow, if any, shall be distributed to the Members in accordance with the following percentages:

Investor Member	99.98%
DHDP Special Member	0.01%
<u>Managing Member</u>	<u>0.01%</u>
 Total	 100%

DEFINED TERMS

“Act” means the Wisconsin Revised Uniform Limited Liability Company Act, as the same may be amended from time to time (or any corresponding provisions of any successor law).

“Affiliate” means, with respect to any Person: (a) any Person directly or indirectly controlling, controlled by or under common control with such Person; (b) any Person owning or controlling ten percent (10%) or more of the outstanding voting securities of such Person; (c) any officer, director, manager or general partner of such Person; or (d) any Person who is an officer, director, general partner, manager, trustee or holder of ten percent (10%) or more of the voting securities of any Person described in clauses (a) through (c) of this subparagraph.

“Asset Management Fee” means a fee of \$136,000, to be funded out of the First Installment of the Investor Member Capital Contribution payment specified in § 2.2(a) of the Operating Agreement and as described in § 5.5(d) of the Operating Agreement.

“Capital Contribution” means, with respect to any Member, the amount of money and the fair market value of property contributed to the Company by such Member.

“Cash Flow” means, with respect to any fiscal year of the Company, the gross cash receipts of the Company, reduced by the sum of the following: (a) all principal and interest payments and other sums paid on or with respect to the Construction Loan, the Permanent Loan, or any other loan to the Company other than the Secondary Loan, the Development Note or loans to the Company from the Managing Member or the Developer or the Guarantor or any of their respective Affiliates, including pursuant to §2.6, §5.4(h), §5.4(j), §5.4(m) or §5.4(n) of the Operating Agreement or the Guaranty Agreement, or the Investor Member; (b) all cash expenditures incurred incident to the operation of the Company’s business, (including, without limitation, any capital expenditures in excess of funds withdrawn from the Replacement Reserve for such purpose); (c) the current Asset Management Fee; and (d) such cash as is necessary to (i) fund the Replacement Reserve, (ii) pay all accrued, outstanding trade payables, and (iii) establish any additional reserves as the Members shall from time to time agree to establish. Net Cash from Sales and Refinancing and the proceeds of the Capital Contributions shall be excluded from gross cash receipts and Cash Flow for this purpose.

“Commitment Letter” means that certain letter to Gorman & Company, LLC from Key Community Development Corporation dated April 28, 2020.

“Company” means Morrison Road, LLC, a Wisconsin limited liability company.

“Construction Lender” means KeyBank National Association.

“Construction Loan” means that certain loan to the Company from the Construction Lender in the original principal amount of \$15,000,000 made pursuant to loan documents dated after the date hereof.

“Developer” means Gorman & Company, LLC, a Wisconsin limited liability company.

“Development Agreement” means the development agreement entered into or to be entered into by the Company and the Developer pursuant to which the Developer shall assume primary responsibility for overseeing the development of the Project and bearing certain cost overruns.

“Development Fee” means \$2,665,000 (plus certain cost savings realized by the Company, as described in the Development Agreement) payable at the times and upon the conditions set forth in the Development Agreement

“Development Note” means the promissory note payable to the Developer by the Company in the original principal amount of \$1,369,155, which represents the unpaid balance of the Development Fee.

“DHDP Special Member” means Denver Housing Development Partners, Inc., a Colorado non-profit corporation.

“DHDP Special Member Asset Management Agreement” means that certain DHDP Special Member Asset Management Agreement by and between the Company and the DHDP Special Member.

“DHDP Special Member Asset Management Fee” means a fee set by DHDP Special Member, escalating 3% annually, as described in §5.5(f) of the Operating Agreement.

“First Installment” has the meaning set forth in §2.2(a)(1) of the Operating Agreement.

“Fourth Installment” has the meaning set forth in §2.2(a)(4) of the Operating Agreement.

“Guarantor” means, collectively, Gorman Holdings, Inc., a Wisconsin corporation, and Gorman & Company, LLC, a Wisconsin limited liability company.

“Guaranty Agreement” means the Guaranty Agreement between the Company and the Guarantor.

“Investor Member” means Key Community Development Corporation or any Person who becomes a Substituted Investor Member for any such Person pursuant to §8.1 or §8.2 of the Operating Agreement.

“Managing Member” means GEC Morrison Road, LLC, a Wisconsin limited liability company, or any other Person who becomes a successor managing member pursuant to §9.1 or §9.3 of the Operating Agreement.

“Member” means the Managing Member, DHDP Special Member, or the Investor Member.

“Net Cash from Sales and Refinancings” means, with respect to any fiscal year of the Company, the cash proceeds from Company sales or refinancings reduced by (a) all reasonable costs and expenses incurred by the Company in connection with such sale or refinancing, and (b) all principal and interest payments and other sums paid on or with respect to any indebtedness of

the Company other than (i) the Secondary Loan, (ii) the Development Note and (iii) amounts treated as loans pursuant to the Operating Agreement from the Managing Member, Developer or Guarantor or any of their respective Affiliates or the Investor Member. Net Cash from Sales and Refinancing shall include all principal and interest payments with respect to any note or other obligation received by the Company in connection with the sale or other disposition of Project.

“Operating Reserve” means the reserve in the aggregate amount of \$474,000 to be funded out of the First and Fourth Installment of the Investor Member Capital Contribution payment specified in §2.2(a) of the Operating Agreement or proceeds from the Permanent Loan, whichever is available first, which reserve shall be held for working capital and operating purposes and contingencies, excluding project repairs and replacements which are to be covered by the Replacement Reserve.

“Operating Reserve Account” means a segregated Company bank account established to hold the Operating Reserve, which account shall be maintained at KeyBank National Association unless the Permanent Lender requires that it hold such account.

“Operating Reserve Amount” means \$474,000.

“Permanent Lender” means KeyBank National Association.

“Permanent Loan” means that certain first-priority mortgage loan from the Permanent Lender to the Company in the original principal amount not to exceed \$11,000,000 pursuant to the Commitment Letter dated April 28, 2020.

“Person” means any individual, partnership, limited liability company, corporation, trust or other entity.

“Project” means one (1) building consisting of eighty (80) housing units [including one (1) manager’s unit] at a site located at 5048 Morrison Road, Denver, Colorado 80219.

“Replacement Reserve” means the amount required by the Permanent Loan and other loan documents to be reserved by the Company, equal an initial aggregate amount of \$24,000, to be funded from the First and Fourth Installment, and then funded in additional amounts of not less than \$300 per unit per year, escalating 3% annually, funded ratably on a monthly basis, with credit given for any amount funded into any lender controlled replacement reserve, as further described in §5.4(g)(2) of the Operating Agreement.

“Secondary Loan” means the subordinate mortgage financing provided by (i) the City of Denver in the aggregate amount of \$1,415,000; and (ii) the State of Colorado in the aggregate amount of \$885,000, which loans shall be payable only out of Cash Flow and Net Cash from Sales and Refinancings as provided in §4.1(a) and §4.2(a) of the Operating Agreement.

“Substituted Investor Member” means a Person who is admitted as the Investor Member to the Company pursuant to §8.1 or §8.2 of the Operating Agreement in place of and with all the rights of an investor member under the Operating Agreement and the Act.