

**LOAN AGREEMENT  
(HOME PROGRAM)**

**PART I**

**THIS LOAN AGREEMENT**, in two parts, PART I and Part II, is made between the **CITY AND COUNTY OF DENVER**, a municipal corporation organized pursuant to the Constitution of the State of Colorado (“City”), and **COMMUNITY OUTREACH SERVICE CENTER, INC**, a Colorado nonprofit corporation, whose address is 2515 California Street, Denver, CO 80205 (“Borrower” or “Contractor”).

**WITNESSETH:**

**WHEREAS**, the City is acting pursuant to federal grant conditions with respect to rental housing assistance pursuant to the Home Investment Partnership Program (“HOME Program”); and

**WHEREAS**, the Borrower is eligible to receive HOME Program funds pursuant to the National Affordable Housing Act of 1990, and implementing regulations under 24 C.F.R. Part 92, and is ready, willing, and able to meet the conditions associated therewith; and

**WHEREAS**, the purpose of this Loan Agreement is for the City to provide for financing costs related to the development and construction of 36 affordable multi-family dwelling units located on the Property to be known as Charity’s House (the “Project”);

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

**WHEREAS**, the Borrower is a member of the general partner of Charity’s House Apartments, LLLP (the “Partnership”); and

**WHEREAS**, the Partnership will lease the Property (as defined in Paragraph 2) in the City and County of Denver and develop and operate the Project;

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

**1. LOAN TO BORROWER:**

A. **Loan to Borrower.** Subject to the terms of this Loan Agreement, the City agrees to lend Borrower the sum of \$1,800,000.00 (the “Loan”). In addition to this Loan Agreement, the Borrower will execute a promissory note in a form satisfactory to the City evidencing this Loan (the “Promissory Note”). The Loan will mature and be due and payable on the 99<sup>th</sup> anniversary of the Promissory Note (“Maturity Date”), if not paid sooner. The outstanding

principal balance of the Loan shall bear simple interest at a rate of 0% per annum until paid in full or forgiven in accordance with the terms hereof. Repayment shall be forgiven by the City on Maturity Date so long as Borrower is in compliance with the terms and conditions of this Loan Agreement.

B. **Borrower's Use of Funds:** The Borrower will lend the entirety of the Loan proceeds to the Partnership for the development of the Project in accordance with Exhibit A. Borrower's loan to the Partnership will be evidenced by a loan agreement and promissory note ("Partnership Note") and secured by a leasehold deed of trust on the Property ("Partnership Deed of Trust"). The Borrower must collaterally assign the Partnership Deed of Trust to the City as security for the Loan. Borrower must cause the Partnership to execute and record a covenant securing the Property for use as affordable housing as required by Section 6 hereof (the "Covenant"). The Covenant must be in a form approved by the City."

2. **SECURITY:** Repayment of the Promissory Note will be secured by a collateral assignment of the Partnership Deed of Trust, in a form satisfactory to the City, granted by the Partnership and encumbering the real property known and numbered as 3020-3026 Welton Street, Denver, Colorado 80205 and legally described as set forth in Exhibit D (the "Property").

3. **SUBORDINATION:** Borrower may not subordinate the lien of the Partnership Deed of Trust or any of its other security interests, liens, or any other encumbrance granted in connection with its loan to the Partnership without the express written approval of the Executive Director (the "Executive Director") of the Department of Housing Stability ("HOST"), or the Executive Director's designee. The Executive Director, or the Executive Director's designee, is authorized to consent to the Borrower subordinating the lien of the Partnership Deed of Trust to other financing for the Property so long as (i) subordination agreement, if any is required, for other such financing is substantially in the form attached hereto as **Exhibit D**; (ii) encumbrances prior to the Partnership Deed of Trust do not exceed \$10,000,000.00 under a construction loan or \$6,000,000.00 under a permanent loan; (iii) Borrower is not then in default of its obligations pursuant to this Loan Agreement, the Promissory Note, or the Partnership Deed of Trust; and (iv) the Partnership is not then in default of its obligations pursuant to the Covenant

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

A. Loan proceeds will be used to finance costs associated with development of the Property for use as affordable housing, in accordance with **Exhibit A**, attached hereto and incorporated herein. The Borrower shall submit to the City requisitions with documentation of

incurred costs on HOST approved forms, and otherwise comply with the financial administration requirements set forth in **Exhibit B** attached hereto and incorporated herein.

B. Where the City's funds are disbursed for construction, (i) the City shall monitor the construction activities for the purpose of verifying eligible costs, and (ii) the City shall retain ten percent (10%) of each disbursement of funds, which retainage shall be released upon (a) the submittal of an Affirmative Marketing Plan (as defined in Paragraph 15); (b) final inspection and approval of the Project by the City; (c) receipt of proof of release of liens from all applicable contractors, subcontractors, and suppliers; and (d) the issuance of a certificate of occupancy.

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

D. Expenses incurred prior to February 20, 2020 are not eligible for reimbursement.

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

A. Borrower must provide Evidence of Financing (as defined below) on or before March 31, 2021. Failure to meet this deadline shall result in the termination of this Loan Agreement. No funds shall be disbursed under this Loan Agreement until such time as these conditions are met. "Evidence of Financing" shall mean such information and documentation sufficient to satisfy the City, in the City's sole discretion, that the Borrower has secured all financing necessary to complete the Project.

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

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

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

A. Affordability Limitations. Eleven of the units at the Property (the "HOME

Units”) shall have rents not exceeding the lesser of (i) fair market rent for comparable units in the area as established by the U.S. Department of Housing and Urban Development (“HUD”), 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 HUD, with adjustments for number of bedrooms in the unit. Twenty-five of the units at the Property (the “City Units”) shall have rents not exceeding the lesser of (i) fair market rent for comparable units in the area as established by HUD, 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 HUD, with adjustments for number of bedrooms in the unit. By executing this Loan Agreement, Borrower acknowledges receipt of HUD’s current rent guidelines from the HOST. It shall be Borrower's responsibility to obtain updated guidelines from HOST to confirm the annual calculation of the maximum rents for the Denver area.

The City shall determine maximum monthly allowances for utilities and services annually in accordance with 24 C.F.R. 92.252(d)(1) or another method acceptable to the City. Rents shall not exceed the maximum rents as determined above minus the monthly allowance for utilities and services.

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

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

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

<b>BEDROOMS</b>	<b>HOME</b>
1 Bedroom	11
<b>TOTAL</b>	<b>11</b>

<b>BEDROOMS</b>	<b>City Units</b>
1 Bedroom	25
<b>TOTAL</b>	<b>25</b>

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

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

E. Covenant Running with the Land. At closing, Borrower shall cause the Partnership to execute a covenant covering the HOME Units and the City Units each in a form satisfactory to the City (the “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 Borrower’s leasehold interest in the land. The Covenant shall encumber the Property for a period of not less than 99 years from the date of project completion as defined in 24 C.F.R. § 92.2. With respect to the HOME Units, the 99-year term consists of: 20 years as required by HUD, and an additional 79 years as required by the City. After the first 20 years from the effective date of the Covenant, Borrower will have satisfied the HUD requirements, but the rental and occupancy limitations described in subparagraphs A and B shall remain in effect for the remainder of the term of the Covenant. Violation of the Covenant shall be enforceable as an event of default pursuant hereto.

7. **HOUSING ASSISTANCE PAYMENTS CONTRACT:** Borrower has or will enter into a housing assistance payments (“HAP”) contract with the Denver Housing Authority, State Division of Housing, or another entity that administers HAP contracts so that rental units at the Project may receive project-based voucher payments in accordance with the provisions of 24 C.F.R. Part 983. The City acknowledges that the HAP contract is vital for the financial viability of the Project. If the HAP contract applicable to the Project expires, is terminated, is not renewed, or the financial terms otherwise change, the City agrees that HOST will, in good faith, engage in discussions to renegotiate the affordability provisions contained in this Loan Agreement. Any changes or amendments to the affordability provisions will not be effective or binding on the City until an amendment to this Loan Agreement has been fully executed by all required signatories of

the City, and if required by Charter, approved by the City Council.

**8. SUPPORTIVE HOUSING CONTRACT:** Borrower has or will enter into a supportive housing contract with the City (the “SH Contract”). Borrower acknowledges and agrees that compliance with the terms and conditions of the SH Contract shall be a condition of this Loan Agreement. Any breach or default under the terms and conditions of the SH Contract shall constitute a breach of this Loan Agreement and may be treated as a default of this Loan Agreement.

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

**10. 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.

**11. 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.

**12. 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.

**13. 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.

**14. TENANT SELECTION:** Borrower must cause the Partnership to 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.

E. Do not exclude a tenant with a certificate or voucher under the Section 8 Tenant-

Based Assistance: Housing Choice Voucher Program (24 C.F.R. Part 982) or an applicant participating in a HOME tenant-based rental assistance program because of the status of the prospective tenant as a holder of such certificate, voucher, or comparable HOME tenant-based assistance document.

**15. LEAD-BASED PAINT HAZARDS:** Housing assisted with HOME funds constitutes HUD-associated housing for the purpose of 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.

**16. AFFIRMATIVE MARKETING:** Borrower shall cause the Partnership to 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.

**17. 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, Partnership 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.

**18. PUBLICATIONS/ANNOUNCEMENTS:** If the Borrower or the Partnership uses radio or television announcements, newspaper advertisements, press releases, pamphlets, mail campaigns, or any other marketing methods funded by HOST, or publicizes activities or projects funded by HOST, Borrower shall first receive approval from HOST. In any event, all such publicizing activities must include the following statement: “The funding source for this activity is the City and County of Denver, Department of Housing Stability.” HOST shall be acknowledged in any events regarding the project being funded, including groundbreakings and openings.

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

A. Examination of Records: The Borrower agrees that the Comptroller of the United



States, HUD, the City, or any of their duly authorized representatives shall, until the expiration of five (5) years after the expiration of the affordability period set forth in Paragraph 6, have access to and the right to examine any directly pertinent books, documents, papers, and records of the Borrower or the Partnership involving transactions related to this Loan Agreement. Borrower must also require its contractors and subcontractors and the Partnership to allow access to such records when requested. The records maintained by Borrower or the Partnership, as applicable, shall include, without limitation, (i) records evidencing the income of each family occupying a HOME Unit or a City Unit, and (ii) a copy of the lease pursuant to which each HOME Unit or 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 HOME Units and City Units to verify compliance with affordability requirements in Paragraph 6 and other requirements of this Loan Agreement; (3) data on evictions, terminations of tenancies, or tenancies not renewed for individuals residing in City Units; (4) reports (including financial reports) that enable the City to determine the financial condition and continued financial viability of the rental project; (5) for floating units, reports on unit substitution and filling vacancies to ensure that the Property maintains the required unit mix; and (6) template lease agreements for City Units. The report required by subparagraph (2) of this Paragraph shall include, but not be limited to, information related to monthly rent amount, lease term, household size, total annual household income, and race and other demographic information. The reports and information required by this Paragraph shall be due within thirty (30) days of the City making a request for such reports and information. The failure to submit the reports and information requested by the City within ninety (90) days of the City's request shall be considered a default of this Loan Agreement.

C. Access and Inspections. For the purposes of assuring compliance with the Loan Agreement, the City shall have the reasonable right of access to the Property with 24 hour written notice to residents, without charges or fees, (i) during the period of construction and (ii) during the period of affordability set forth in Paragraph 6. During the period of affordability, the City shall be entitled to conduct annual physical inspections of the Property. Borrower shall fully cooperate with the City in an annual monitoring of Borrower's performance and site inspection to verify compliance with the requirements of this Loan Agreement.

**20. CONDITIONS:**

A. This Loan Agreement is subject to the Home Investments Partnership Program

Grant Agreement entered into between the City and HUD, the National Affordable Housing Act of 1990, and HUD regulations at 24 C.F.R. Part 92. This Loan Agreement is also subject to the terms and conditions set forth in Part II.

B. 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.

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

**21. 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.

**22. INSURANCE:** Borrower and the Partnership or their respective 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 and the Partnership and their respective contractors 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 Partnership 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.

**23. 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.

**24. DEFAULT AND ACCELERATION:**

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

the Borrower:

1. Any breach of this Loan Agreement, the Promissory Note, the Partnership Deed of Trust, the Covenant, or the SH Contract if not cured within any applicable notice and cure period;
2. The City determines that any warranty, representation, or statement made or furnished to the City by or on behalf of Borrower in connection with this Loan Agreement proves to have been knowingly false in any material respect when made or furnished;
3. Borrower becomes delinquent to the City on loan, contractual, or tax obligations as due, or with any material rule, regulation or provision referred to in the Loan Agreement.

B. Cure Period. Upon a default, the City shall give written notice of the default to Borrower and other persons entitled to notice of a default pursuant to Paragraph 35. After Borrower's receipt of the written notice, Borrower or a person on behalf of Borrower (including those persons entitled to notice) shall have thirty (30) calendar days to cure any monetary default and sixty (60) 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 (including those persons entitled to notice) 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, Partnership 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, after advance written notice 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 Partnership 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.

25. **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.

26. **ACKNOWLEDGEMENT OF FUNDING:** Borrower will cause the Partnership to 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.

27. **AUDIT REQUIREMENT:** Non-profit organizations that expend Seven Hundred Fifty Thousand Dollars and 00/100 (\$750,000.00) or more in a year in federal awards shall have a single or program-specific audit conducted for that year in accordance with the provisions of 2 C.F.R. Chapter I, Chapter II, Parts 200, 215, 220, 225, and 230, "Uniform Administrative Requirements, Costs Principles, and Audit Requirements for Federal Awards" (the "OMB Omni Circular") and applicable federal regulations.

28. **SECTION 3 COMPLIANCE:** This Loan Agreement is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968 and implementing regulations thereunder, as more fully described in Part II attached hereto.

29. **CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY, AND VOLUNTARY EXCLUSION:**

A. The Contractor represents and warrants that it and its principals are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency.

B. The Contractor will not enter into any lower tier transaction with a person who is debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded

from participation in a covered transaction unless authorized by the federal agency from which the transaction originated.

C. The Contractor shall include the certification contained in subparagraph A of this Section in any and all subcontracts hereunder and shall require any subcontractors or sub-consultants to comply with any and all applicable federal laws, rules and regulations, policies and procedures or guidance concerning the federal debarment, suspension, and exclusion program.

D. The Contractor will immediately notify HOST in writing if at any time it learns that it failed to disclose that it or any of its principals were excluded at the time the parties executed this contract if due to changed circumstances the Contractor or any of its principals have subsequently been excluded by a federal agency.

E. The representation made in subparagraph A of this Section is a material representation of fact upon which reliance was placed when this transaction was entered into.

**30. PROPERTY STANDARDS:** Borrower shall ensure that the property standards set forth in 24 C.F.R. § 92.251 are complied with.

**31. 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.

**32. 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.

**33. 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.

**34. 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.

**35. 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:

Charity's House Apartments  
Community Outreach Service Center  
Eddie Woolfolk

2515 California Street  
Denver, CO 80205

With a copy to:

Kelly Gill  
BlueLine Development, Inc.  
1004 South Avenue West  
Missoula, MT 59801

If written notice of a default, with a copy to:

Boston Capital Direct Placement, A Limited Partnership  
c/o Boston Capital Partners, Inc.  
One Boston Place, 21<sup>st</sup> Floor  
Boston, MA 02108  
Attn: Asset Management (Charity's House)

With a copy to:

Holland & Knight LLP  
10 St. James Avenue, 11<sup>th</sup> Floor  
Boston MA, 02116  
Attn: Jennifer C. Whalen Esq.

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.

**36. 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.

**37. NONRECOURSE:** Notwithstanding any other provision contained herein, or the Promissory Note, the Partnership Deed of Trust, or the Covenant, it is agreed that the execution of this Loan Agreement, the Promissory Note, the Partnership 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.

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

**39. 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

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



**Contract Control Number:**

HOST-202055236-00

**Contractor Name:**

COMMUNITY OUTREACH SERVICE CENTER

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:

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**APPROVED AS TO FORM:**

**REGISTERED AND COUNTERSIGNED:**

Attorney for the City and County of Denver

By:

By:

---

---

By:

---

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

HOST-202055236-00  
COMMUNITY OUTREACH SERVICE CENTER

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

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

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

ATTEST: [if required]

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

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

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

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

HOST-202055236-00  
COMMUNITY OUTREACH SERVICE CENTER

By: Eddie M. Woolfolk

Name: Eddie M. Woolfolk  
(please print)

Title: Executive Director  
(please print)

ATTEST: [if required]

By: Robert E. Woolfolk

Name: Robert E. Woolfolk  
(please print)

Title: President  
(please print)

# EXHIBIT A

## Project Timeline – Charity's House 3022 Welton Street, Denver CO 80205

Construction financing closes	December 15, 2020
General Contractor notice to proceed	January 1, 2020
Construction completion	May 1, 2022
Lease-up completion date of restricted units	October 1, 2022

SOURCES		USES	
Permanent Loan	\$ 4,899,137	Land	\$ 950,000
LIHTC - 4%	\$ 4,310,091	Hard Costs	\$ 8,798,826
City of Denver	\$ 1,800,000	Developer Fees	\$ 1,411,000
CDOH	\$ 1,080,000	Soft Costs & Professional Fees	\$ 1,049,510
Deferred Developer Fee	\$ 284,423	Supportive Housing Reserve	\$ 470,333
		Financing	\$ 497,441
		Syndication Costs	\$ 58,341
		Reserves	\$ 88,200
<b>TOTAL</b>	<b>\$13,323,651</b>	<b>TOTAL</b>	<b>\$13,323,651</b>

## PROJECT ACTIVITIES

Uses	Total		%
Land	\$ 950,000		7.1%
Hard Costs	\$ 8,798,826	Costs covered in these categories may be reimbursed using HOME funds.	66.0%
Soft Costs & Professional Fees	\$ 1,049,510		7.9%
Developer Fees	\$ 1,411,000		10.6%
Supportive Housing Reserve	\$ 470,333		3.5%
Financing	\$ 497,441		3.7%
Syndication Costs	\$ 58,341		0.4%
Reserves	\$ 88,200		0.7%
<b>Total</b>	<b>\$13,323,651</b>		<b>100.0%</b>

## **EXHIBIT B**

### **FINANCIAL ADMINISTRATION:**

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

- 1.1.1 Disbursements shall be processed through the Department of Housing Stability (HOST) and the City and County of Denver's Department of Finance.
- 1.1.2 The method of payment to the Contractor by HOST shall be in accordance with established HOST procedures for line-item reimbursements. The Contractor must submit expenses to HOST on or before the last day of each month for the previous month's activity. Voucher requests for reimbursement of costs should be submitted on a regular and timely basis in accordance with HOST policies. Vouchers should be submitted within thirty (30) days of the actual service, expenditure or payment of expense.
- 1.1.3 The Contractor shall be reimbursed for services provided under this Agreement according to the approved line-item reimbursement budget attached to and made a part of this Agreement (Exhibit A).

#### **1.2 Vouchering Requirements**

- 1.2.1 In order to meet Government requirements for current, auditable books at all times, it is required that all vouchers be submitted monthly to HOST in order to be paid. Expenses cannot be reimbursed until the funds under this contract have been encumbered.
- 1.2.2 No more than four (4) vouchers may be submitted per contract per month, without prior approval from HOST.
- 1.2.3 All vouchers for all Agreements must be correctly submitted within thirty (30) days of the Agreement end date to allow for correct and prompt closeout.
- 1.2.4 City and County of Denver Forms shall be used in back-up documents whenever required in the Voucher Processing Policy.
- 1.2.5 For contracts subject to Federal Agreements, only allowable costs determined in accordance with 2 CFR Chapter I, Chapter II, Parts 200, 215, 220, 225 and 230, "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards" (the "OMB Omni Circular") applicable to the organization incurring the cost will be reimbursed.
- 1.2.6 The reimbursement request, or draw request, for personnel and non-personnel expenses should be submitted to the City on a monthly basis, no later than the last day of the following month for expenses incurred in the prior month. The request for reimbursement should include:

- a. Amount of the request in total and by line item;
  - b. Period of services for current reimbursement;
  - c. Budget balance in total and by line item;
  - d. Authorization for reimbursement by the contract signatory (i.e., executive director or assistant director).
- 1.2.7 If another person has been authorized by the Contractor to request reimbursement for services provided by this contract, then the authorization should be forwarded in writing to HOST prior to the draw request.
- 1.2.8 The standardized HOST “Expense Certification Form” should be included with each payment request to provide the summary and authorization required for reimbursement.

### **1.3 Payroll**

- 1.3.1 A summary sheet should be included to detail the gross salary of the employee, amount of the salary to be reimbursed, the name of the employee, and the position of the employee. If the employee is reimbursed only partially by this contract, the amount of salary billed under other contracts with the City or other organizations should be shown on the timesheet as described below. Two items are needed for verification of payroll: (1) the amount of time worked by the employee for this pay period; and (2) the amount of salary paid to the employee, including information on payroll deductions.
- 1.3.2 The amount of time worked will be verified with timesheets. The timesheets must include the actual hours worked under the terms of this contract, and the actual amount of time worked under other programs. The total hours worked during the period must reflect all actual hours worked under all programs including leave time. The employee’s name, position, and signature, as well as a signature by an appropriate supervisor, or executive director, must be included on the timesheets. If an electronic time system is used, signatures are not required. If the timesheet submitted indicates that the employee provided services payable under this contract for a portion of the total time worked, then the amount of reimbursement requested must be calculated and documented in the monthly reimbursement request.
- 1.3.3 A payroll register or payroll ledger from the accounting system will verify the amount of salary. Copies of paychecks are acceptable if they include the gross pay and deductions.

### **1.4 Fringe Benefits**

- 1.4.1 Fringe benefits paid by the employer can be requested by applying the FICA match of 7.65 percent to the gross salary -less pre-tax deductions, if applicable,

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

## **1.5 General Reimbursement Requirements**

- 1.5.1 **Invoices:** All non-personnel expenses need dated and readable invoices. The invoices must be from a vendor separate from the Contractor, and must state what goods or services were provided and the delivery address. Verification that the goods or services were received should also be submitted, this may take the form of a receiving document or packing slips, signed and dated by the individual receiving the good or service. Copies of checks written by the Contractor, or documentation of payment such as an accounts payable ledger which includes the check number shall be submitted to verify that the goods or services are on a reimbursement basis.
- 1.5.2 **Mileage:** A detailed mileage log with destinations and starting and ending mileage must accompany mileage reimbursement. The total miles reimbursed and per mile rate must be stated. Documentation of mileage reimbursement to the respective employee must be included with the voucher request.
- 1.5.3 **Cell Phone:** If the monthly usage charge is exceeded in any month, an approval from the Executive Director or designee will be required.
- 1.5.4 **Administration and Overhead Cost:** Other non-personnel line items, such as administration, or overhead need invoices, and an allocation to this program documented in the draw request. An indirect cost rate can be applied if the Contractor has an approved indirect cost allocation plan. The approved indirect cost rate must be submitted to and approved by HOST.
- 1.5.5 **Service Period and Closeout:** All reimbursed expenses must be incurred during the time period within the contract. The final payment request must be received by HOST within thirty (30) days after the end of the service period stated in the contract.

## **2.1 Program Income**

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

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

### **3.1 Financial Management Systems**

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

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



- 3.1.7 For contracts subject to Federal Agreements, the Contractor shall maintain separate accountability for HOST funds as referenced in 24 C.F.R. 85.20 and the OMB Omni Circular.
- 3.1.8 The Contractor must properly report to Federal, State, and local taxing authorities for the collection, payment, and depositing of taxes withheld. At a minimum, this includes Federal and State withholding, State Unemployment, Worker's Compensation (staff only), City Occupational Privilege Tax, and FICA.
- 3.1.9 A proper filing of unemployment and worker's compensation (for staff only) insurance shall be made to appropriate organizational units.
- 3.1.10 The Contractor shall participate, when applicable, in HOST provided staff training sessions in the following financial areas including, but not limited to (1) Budgeting and Cost Allocation Plans; (2) Vouchering Process.

#### **4.1 Audit Requirements**

- 4.1.1 For contracts subject to Federal Agreements, if the Contractor expends seven hundred and fifty thousand dollars (\$750,000) or more of federal awards in the Contractor's fiscal year, the Contractor shall ensure that it, and its sub recipients(s), if any, comply with all provisions of the OMB Omni Circular.
- 4.1.2 A copy of the final audit report must be submitted to the HOST Financial Manager within the earliest of thirty (30) calendar days after receipt of the auditor's report; or nine (9) months after the end of the period audited.
- 4.1.3 A management letter, if issued, shall be submitted to HOST along with the reporting package prepared in accordance with the Single Audit Act Amendments and the OMB Omni Circular. If the management letter is not received by the subrecipient at the same time as the Reporting Package, the Management Letter is also due to HOST within thirty (30) days after receipt of the Management Letter, or nine (9) months after the end of the audit period, whichever is earlier. If the Management Letter has matters related to HOST funding, the Contractor 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 ONE:**

Lot 4, Block 75,

Case & Ebert's Addition to the City of Denver, and that portion of Outlot 1 adjoining and adjacent to Downing Street and Block 4 of A. B. Case Addition to Denver, City and County of Denver, State of Colorado.

#### **PARCEL TWO:**

Lot 5, Block 75,

Case & Ebert's Addition to the City of Denver, and the Northwesterly ½ of Vacated Alley, adjacent and that portion of Outlot adjoining and adjacent to Downing Street, Block 4, A. B. Case Addition to Denver, City and County of Denver, State of Colorado.

#### **PARCEL THREE:**

Lot 6, Block 75,

Case & Ebert's Addition to the City of Denver, and the Northwesterly ½ of Vacated Alley, adjacent, City and County of Denver, State of Colorado.

Purported address (for information purposes only): 3020-3026 Welton Street, Denver, CO  
80205-3024

## **SUBORDINATION AGREEMENT**

THIS SUBORDINATION AGREEMENT (this “Agreement”) dated [INSERT DATE], is made between the **COMMUNITY OUTREACH SERVICE CENTER**, a Colorado nonprofit corporation, the present holder of a certain deed of trust, whose address is Department of Housing Stability, 201 W. Colfax Ave., Dept. 615, Denver, Colorado 80202 (the “Junior Lender”) and **THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A.**, as Trustee, a national banking association, whose address is 100 Pine Street, Suite 3200, San Francisco, California 94111(the “Senior Lender”).

### **PRELIMINARY STATEMENTS**

A. The Junior Lender is the recipient of funds in the amount of \$1,800,000.00 from the City and County of Denver, whose address is Department of Housing Stability, 201 W. Colfax, Dept. 615, Denver, Colorado 80202 (the “City”) pursuant to that certain loan agreement between the City and Junior Lender dated \_\_\_\_\_.

B. The Junior Lender has made a loan to Charity’s House Apartments, LLLP, a Colorado limited liability limited partnership (the “Borrower”) in the principal amount of \$1,800,000 evidenced by that certain Promissory Note, dated as of [INSERT DATE OF PROMISSORY NOTE], made by the Borrower and payable to the Junior Lender and secured by that certain Deed of Trust [the “Junior Deed of Trust”) made as of [INSERT DATE OF DEED OF TRUST] and recorded on [INSERT RECORDATION DATE] at Reception No. [INSERT RECEPTION NUMBER] of the real property records in the office of the Clerk and Recorder of Denver County, State of Colorado (the Junior Deed of Trust, Promissory Note, and all other documents evidencing, securing, or executed in connection with the Junior Obligations (defined below), are collectively the “Junior Loan Documents”), encumbering the following described property (the “Property”):

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

C. The Senior Lender is the trustee for the holders of the Colorado Housing and Finance Authority Multifamily Housing Revenue Bonds (Charity’s House Apartments), Series 2020A and Series 2020B in the aggregate amount of \$\_\_\_\_\_, the proceeds of which have been loaned to the Borrower, and will execute a deed of trust (“Senior Deed of Trust”) which will cover and encumber the Property and securing a note in like amount, and the Senior Deed of Trust is to be recorded in the records of the office of the Clerk and Recorder of Denver County, State of Colorado.

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

### **AGREEMENT**

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

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

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

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

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

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

4. Payments Before Default Under Senior Loan Documents. Until the Junior Lender receives notice from the Senior Lender that a default has occurred in connection with the Senior Loan Documents as set forth in Section 8 herein, the Junior Lender shall be entitled to retain for its own account all regularly scheduled payments made in connection with the Junior Obligations.

5. Waiver and Consent. The Senior Lender shall have no obligation to the Junior Lender with respect to the Mortgaged Property or the Senior Obligations. The Senior Lender may in accordance with the Senior Deed of Trust (a) exercise collection rights, (b) take possession of, sell or dispose of, and otherwise deal with, the Mortgaged Property, (c) in the Senior Lender's name, the Junior Lender's name or in the Borrower's name, demand, sue for, collect or receive any money or property at any time payable or receivable on account of, the Mortgaged Property; (d) prosecute, settle and receive proceeds on any insurance claims relating to the Mortgaged Property, and (e) exercise and enforce any right or remedy available to the Senior Lender with respect to the Mortgaged Property, whether available before or after the



occurrence of any default; all without notice to or consent by anyone except as specifically required by law. The Senior Lender may apply the proceeds of the Mortgaged Property in any order the Senior Lender deems appropriate in its sole discretion, except as required by law.

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

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

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

9. Amendments of Junior Loan Documents and Senior Loan Documents. No consent of the Senior Lender shall be required for any amendment, modification or supplement to any of the Junior Loan Documents, provided that no amendment, modification or supplement to any of the Junior Loan Documents shall increase the amount of indebtedness from the Borrower to the Junior Lender. No consent of the Junior Lender shall be required for any amendment, modification or supplement to any of the Senior Loan Documents, provided that no amendment, modification or supplement to any of the Senior Loan Documents shall increase the amount of indebtedness to which the Junior Loan Documents are subordinate other than increases resulting from protective advances or costs of Senior Lender.

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

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

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

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

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

“JUNIOR LENDER”

**COMMUNITY OUTREACH SERVICE CENTER**, a  
Colorado nonprofit corporation

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

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

State of Colorado        )  
                                      ) ss.  
County of                )

The foregoing instrument was subscribed to and acknowledged before me this \_\_\_\_ day of \_\_\_\_, 20\_\_\_\_, by \_\_\_\_\_ as \_\_\_\_\_ of Community Outreach Service Center, , a Colorado nonprofit corporation.

Witness my hand and official seal.

My commission expires: \_\_\_\_\_.

\_\_\_\_\_

Notary Public

“SENIOR LENDER”

**THE BANK OF NEW YORK MELLON TRUST  
COMPANY, N.A.,** as Trustee

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

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

\

State of Colorado            )  
  ) ss.  
County of                    )

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

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

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

Acknowledged by BORROWER:

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

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

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

CONSENTED TO BY THE CITY:

THE CITY AND COUNTY OF DENVER, a Colorado municipal corporation

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

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

ATTACHMENT A

[INSERT LEGAL DESCRIPTION]