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**LOAN AGREEMENT**

by and between

**CITY AND COUNTY OF DENVER, COLORADO,**  
as Governmental Lender

and

**FORUM APARTMENTS LLLP,**  
a Colorado limited liability limited partnership,  
as Borrower

dated as of [\_\_\_\_\_] 1, 2021

relating to:

\$10,000,000  
City and County of Denver, Colorado  
Multifamily Housing Revenue Note  
(Forum Apartments)  
Series 2021

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## LOAN AGREEMENT

**THIS LOAN AGREEMENT**, dated as of [\_\_\_\_\_] 1, 2021 (this “Borrower Loan Agreement”), is by and between the **CITY AND COUNTY OF DENVER, COLORADO**, (together with any successors to its rights, duties and obligations, the “Governmental Lender”), a legally and regularly created, established, organized and validly existing home rule city, municipal corporation and political subdivision under the provisions of Article XX of the Constitution of the State of Colorado (the “State”) and the Home Rule Charter of the City (the “Charter”); and **FORUM APARTMENTS LLLP**, a Colorado limited liability limited partnership (the “Borrower”).

For and in consideration of the mutual agreements hereinafter contained, the parties hereto agree as follows:

### ARTICLE I

#### DEFINITIONS AND INTERPRETATION

Section 1.1. Definitions. The following words and terms as used in this Borrower Loan Agreement shall have the following meanings unless the context or use otherwise requires or if not defined herein as defined in the Bank Loan Agreement:

“Act” shall mean the County and Municipality Development Revenue Bond Act, constituting Article 3, Title 29, Colorado Revised Statutes, as amended, as now in effect and as it may be from time to time hereafter be amended or supplemented to apply to obligations incurred as of the Closing Date.

“Act of Bankruptcy” shall mean the filing of a petition in bankruptcy (or any other commencement of a bankruptcy or similar proceeding) by or against the Borrower, or any guarantor of the Borrower under any applicable bankruptcy, insolvency, reorganization, or similar law, now or hereafter in effect; provided that, in the case of an involuntary proceeding, such proceeding is not dismissed within ninety (90) days after the commencement thereof.

“Assignment Agreement” means that certain Assignment Agreement, dated as of [\_\_\_\_\_] 1, 2021, by and between the Bank and the Governmental Lender, as referenced in Section 6.6 of the Bank Loan Agreement and Section 6.8 of this Borrower Loan Agreement.

“Bank” means PNC Bank, National Association, a national banking association duly organized and validly existing under the laws of the United States of America, having a principal corporate trust office in Pittsburgh, Pennsylvania, including all successors or assigns, by merger, acquisition or otherwise under the Bank Loan Agreement.

“Bank Loan” means the mortgage loans originated under the Bank Loan Agreement by the Bank to the Governmental Lender in the maximum principal amount of \$10,000,000, evidenced by the Governmental Lender Note, for the purpose of enabling the Governmental Lender to make the Borrower Loan to the Borrower pursuant to the terms of this Borrower Loan Agreement.

“Bank Loan Agreement” means that certain Loan Agreement, dated as of [\_\_\_\_\_] 1, 2021, by and between the Bank and the Governmental Lender, as amended and supplemented from time to time, pursuant to which the Bank Loan is being made.

“Bank Loan Documents” shall have the meaning given to that term in the Bank Loan Agreement.

“Borrower” means Forum Apartments LLLP, a Colorado limited liability limited partnership, and its successors and assigns.

“Borrower Assignments” means, collectively, the Assignment of Architectural Agreement, made effective as of [\_\_\_\_\_] 1, 2021, by the Borrower in favor of the Bank; the Assignment of Construction Contracts, made effective as of [\_\_\_\_\_] 1, 2021, by the Borrower in favor of the Bank; the Assignment of Management Agreement made effective as of [\_\_\_\_\_] 1, 2021, by the Borrower in favor of the Bank; Assignment of Accounts, made effective as of [\_\_\_\_\_] 1, 2021, by the Borrower and the General Partner for the benefit of the Bank; the Assignment of Leases and Rents, made effective as of [\_\_\_\_\_] 1, 2021, by the Borrower in favor of the Bank.

“Borrower Loan” means the mortgage loans originated by the Governmental Lender to the Borrower in the maximum principal amount of \$10,000,000, evidenced by the Borrower Note, pursuant to the terms of this Borrower Loan Agreement.

“Borrower Loan Agreement” means this Loan Agreement, as amended and supplemented from time to time.

“Borrower Note” means that certain Multifamily Note dated the Closing Date in the original maximum principal amount of \$10,000,000 made by Borrower and payable to Governmental Lender, as endorsed and assigned to the Bank, as it may be amended, supplemented or replaced from time to time, in the form attached hereto as Exhibit A.

“Borrower Representative” means any officer of the Borrower designated by action of the Borrower to be a Borrower Representative for purposes of the Loan Documents.

“Business Day” means any day other than a Saturday, a Sunday, or a day on which the Bank is closed.

“Charter” means the Home Rule Charter of the Governmental Lender.

“City” means the City and County of Denver, Colorado.

“Closing Date” means [Closing Date], being the date of issuance of Governmental Lender Note for purposes of the Code.

“Code” shall mean the Internal Revenue Code of 1986 as in effect on the Closing Date or (except as otherwise referenced herein) as it may be amended to apply to obligations issued on the

Closing Date, together with applicable proposed, temporary and final regulations promulgated, and applicable official public guidance published, under the Code.

“Conversion Date” has the meaning given that term in the Loan Agreement.

“Costs of Issuance” means all fees, costs and expenses directly associated with the authorization, issuance, sale and delivery of the Governmental Lender Note, and the making of the Bank Loan and the Borrower Loan, including, but not limited to: (i) counsel fees (including but not limited to Tax Counsel, counsel to the Governmental Lender, Borrower’s counsel and Bank’s counsel); (ii) financial advisor fees, incurred in connection with the closing of the Borrower Loan and the Bank Loan; (iii) certifying and authenticating agent fees and expenses related to funding of the Bank Loan; (iv) any recording fees; (v) any additional fees charged by the Governmental Lender including the fees and expenses of the Governmental Lender’s financial advisor; (vi) costs incurred in connection with the required public notices generally and costs of the public hearing; and (vii) fees paid to the Bank in connection with the origination of the Bank Loan.

“County” means the City and County of Denver, Colorado.

“Deed of Trust” means the Construction Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing, dated as of [\_\_\_\_\_] 1, 2021, executed by the Borrower and granting a security interest in the Project, to [Title Insurance Company], as trustee, for the benefit of the Bank, in order to secure the Borrower’s obligations under the Borrower Note to repay the Borrower Loan, and all obligations related thereto under this Borrower Loan Agreement.

“Equity Contributions” shall mean the equity to be contributed by the Equity Investor in accordance with and subject to the terms of the Partnership Agreement.

“Equity Investor” means NHT Equity, LLC, an Ohio limited liability company, and its successors and assigns.

“Environmental Indemnity Agreement” means the Environmental Indemnity Agreement, dated as of [\_\_\_\_\_] 1, 2021, by the Borrower and the Guarantor in favor of the Bank.

“Event of Default” means any of the events described as an event of default in Section 7.1 hereof.

“Force Majeure” shall mean without limitation, the following: acts of God; strikes, lockouts or other industrial disturbances; acts of terrorism or of public enemies; orders or restraints of any kind of the government of the United States of America or of the State or any of their departments, agencies, political subdivisions or officials, or any civil or military authority; insurrections; civil disturbances; riots; pandemics; landslides; lightning; earthquakes; fires; hurricanes; tornados; storms; droughts; floods; arrests; restraint of government and people; explosions; breakage, malfunction or accident to facilities, machinery, transmission pipes or canals; partial or entire failure of utilities; shortages of labor, materials, supplies or transportation; or any cause, circumstance or event not reasonably within the control of the Borrower; provided Borrower shall notify the Bank of any such event within 10 calendar days after the occurrence thereof. Provided however, for purposes of this definition, “pandemic” shall only include a public

health crisis which results in stay-at-home, shelter-in-place or other business activity restrictions, orders or limitations imposed by, or recommended by, a governmental authority that directly impacts the Project and which cannot be mitigated or addressed in a commercially reasonable manner.

“General Partner” means (i) individually and collectively, Forum Housing Corporation II, a Colorado nonprofit corporation; and/or (ii) any other person that the partners of Borrower, with the prior consent of the Purchaser (or as otherwise permitted without the Purchaser’s approval pursuant to the Borrower Loan Documents), selected to be the general partner of the Borrower.

“Governmental Lender” means the City and County of Denver, Colorado (together with any successors to its rights, duties and obligations), a legally and regularly created, established, organized and validly existing home rule city, municipal corporation and political subdivision under the provisions of Article XX of the Constitution of the State and the Charter of the City.

“Governmental Lender Annual Fee” means the ongoing fee of the Governmental Lender in connection with any third-party contract or agreement for compliance monitoring of the Project initially in an amount not to exceed \$5,250, or such other amounts as may be paid, from time to time, by the Governmental Lender for compliance monitoring of the Project. The Governmental Lender Annual Fee is payable annually in advance to the Governmental Lender on each July 1, so long as any portion of the Governmental Lender Note is outstanding.

“Governmental Lender Issuance Fee” means [0.25% not to exceed \$25,000]. The Governmental Lender’s Issuance Fee is payable to the Governmental Lender on the Closing Date.

“Governmental Lender Note” means the tax-exempt promissory note evidencing the Bank Loan in the maximum principal amount of \$10,000,000, executed by the Governmental Lender, in the form attached to the Bank Loan Agreement as Exhibit A thereto.

“Guarantor” jointly and severally means the General Partner and The Colorado Coalition for the Homeless, a Colorado nonprofit corporation.

“Guaranty” means the Payment and Performance Guaranty, dated as of [\_\_\_\_\_] 1, 2021, by the Guarantor in favor of the Bank.

“Hazardous Substance Laws” collectively means and includes any present and future local, state, federal or international law or treaty relating to public health, safety or the environment including without limitation, the Resource Conservation and Recovery Act, as amended (“RCRA”), 42 U.S.C. § 6901 *et seq.*, the Comprehensive Environmental Response, Compensation, and Liability Act (“CERCLA”), 42 U.S.C. § 9601 *et seq.*, as amended by the Superfund Amendments and Reauthorization Act of 1986 (“SARA”), the Hazardous Materials Transportation Act, 49 U.S.C. § 1801 *et seq.*, the Clean Water Act, 33 U.S.C. § 1251 *et seq.*, the Clean Air Act, as amended 42 U.S.C. § 7401 *et seq.*, the Toxic Substances Control Act, 15 U.S.C. § 2601 *et seq.*, the Safe Drinking Water Act, 42 U.S.C. § 300f *et seq.*, the Uranium Mill Tailings Radiation Control Act, 42 U.S.C. § 7901 *et seq.*, the Occupational Safety and Health Act, 29 U.S.C. § 655 *et seq.*, the Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. § 136 *et seq.*, the National Environmental Policy Act, 42 U.S.C. § 4321 *et seq.*, the Noise Control Act, 42 U.S.C. § 4901 *et*



*seq.*, and the Emergency Planning and Community Right-to-Know Act, 42 U.S.C. § 11001 *et seq.*, and the amendments, regulations, orders, decrees, permits, licenses or deed restrictions now or hereafter promulgated thereunder, and any similar law, regulation, order, decree, permit, license or deed restriction of the State.

“Inducement Date” means March 30, 2021, being the date of adoption of Resolution No. CR21-0280 Series 2021 by the Governmental Lender.

“Initial Disbursement” means the initial advance of the principal of the Borrower Loan on the Closing Date in the amount of the Initial Disbursement (as defined in the Bank Loan Agreement) of the Governmental Lender Note.

“Loan Agreement” means the Loan Agreement dated as of [\_\_\_\_\_] 1, 2021, between the Bank and the Borrower, as amended and supplemented from time to time in accordance with its terms.

“Loan Documents” means this Borrower Loan Agreement, the Bank Loan Agreement, the Regulatory Agreement, the Borrower Note, the Governmental Lender Note, the Borrower Assignments, the Bank Loan Documents, the Deed of Trust, and the Loan Agreement.

“Low Income Tenants” has the meaning ascribed to such term in the Regulatory Agreement.

“Partnership Agreement” means the Amended and Restated Agreement of Limited Liability Limited Partnership of the Borrower, as executed by the parties thereto or as thereafter amended or restated in accordance with its terms.

“Project” shall mean the Property (as defined in the Deed of Trust) and improvements thereon owned by the Borrower and encumbered by the Deed of Trust, together with all rights pertaining to such real property and improvements, as more particularly described in the Granting Clauses of the Deed of Trust and referred to therein as the “Property.”

“Project Costs” means, to the extent authorized by the Act, any and all costs and expenses incurred by the Borrower with respect to the acquisition, financing, construction and/or operation of the Project, whether paid or incurred prior to or after the Closing Date, including, without limitation, costs for the acquisition of property, the cost of consultant, accounting and legal services, appraisal costs, other expenses necessary or incident to the acquisition of the Project, and administrative expenses, and interest on the Borrower Loan.

“Property” means, the site on which the Project is located.

“Purchase Option” means any option of a partner of the Borrower or an affiliate of a partner to purchase the Project and a fee interest, in the Property contemplated by the Partnership Agreement or documents related to the Partnership Agreement.

“Qualified Project Period” has the meaning given to such term in the Regulatory Agreement.

“Regulations” means the final and temporary income tax regulations promulgated by the United States Department of the Treasury from time to time pursuant to the Code.

“Regulatory Agreement” shall mean that certain Tax Regulatory Agreement, dated as of [ ] 1, 2021, by and among the Governmental Lender, the Bank and the Borrower, as in effect on the Closing Date and as it may thereafter be amended or modified in accordance with its terms.

“State” means the State of Colorado.

“Supplemental Act” means the Supplemental Public Securities Act, constituting Part 2, Article 57, Title 11, Colorado Revised Statutes, as amended.

“Tax Certificate” shall mean the Federal Tax Exemption Certificate, dated the Closing Date, executed and delivered by the Governmental Lender and the Borrower.

“Tax Counsel” shall have the meaning set forth in the Bank Loan Agreement.

“Taxes” shall mean all real estate and personal property taxes, assessments, water rates or sewer rents, now or hereafter levied or assessed or imposed against all or part of the Project.

Section 1.2. Interpretation. Unless the context clearly requires otherwise, words of masculine gender shall be construed to include correlative words of the feminine and neuter genders and vice versa, and words of the singular number shall be construed to include correlative words of the plural number and vice versa. This Borrower Loan Agreement and all the terms and provisions hereof shall be construed to effectuate the purpose set forth herein and to sustain the validity hereof.

Section 1.3. Recitals, Titles and Headings. The terms and phrases used in the recitals of this Borrower Loan Agreement have been included for convenience of reference only, and the meaning, construction and interpretation of all such terms and phrases for purposes of this Borrower Loan Agreement shall be determined by references to Section 1.1 hereof. The titles and headings of the articles and sections of this Borrower Loan Agreement have been inserted for convenience of reference only and are not to be considered a part hereof, and shall not in any way modify or restrict any of the terms or provisions hereof and shall never be considered or given any effect in construing this Borrower Loan Agreement or any provision hereof or in ascertaining intent, if any question of intent should arise.

## ARTICLE II

### REPRESENTATIONS AND WARRANTIES

Section 2.1. Representations and Covenants of the Governmental Lender. The Governmental Lender represents and covenants that:

(a) The Governmental Lender is a legally and regularly created, established, organized and validly existing home rule city, municipal corporation and political subdivision

under the provisions of Article XX of the Constitution of the State and the Charter of the City; and is duly authorized to execute and deliver the Governmental Lender Note and to perform its obligations under this Borrower Loan Agreement.

(b) All requirements have been met and procedures have occurred in order to authorize the execution and delivery of this Borrower Loan Agreement. The Governmental Lender has taken all necessary action and has complied with all provisions of the law required to make this Borrower Loan Agreement a valid and binding limited obligation of the Governmental Lender, except to the extent limited by bankruptcy, insolvency or other laws affecting the enforcement of creditors' rights generally, by the application of equitable principles regardless of whether enforcement is sought in a proceeding at law or in equity, or by public policy.

(c) The Loan Documents to which the Governmental Lender is a party have been duly executed and delivered by the Governmental Lender, and the Governmental Lender has taken such actions as are necessary to cause the Loan Documents to which it is a party, when duly authorized, executed and delivered by the other respective parties thereto, to be valid and binding obligations of the Governmental Lender, enforceable against the Governmental Lender in accordance with their respective terms, except as limited by bankruptcy, insolvency, reorganization, moratorium and other similar laws affecting the rights of creditors generally.

(d) To the best knowledge of the Governmental Lender, the execution and delivery of this Borrower Loan Agreement and the Regulatory Agreement, the performance by the Governmental Lender of its obligations hereunder and thereunder and the consummation of the transactions on its part contemplated hereby and thereby, including, without limitation, the loaning of the amounts herein set forth to the Borrower, do not violate any law, rule, regulation or ordinance or any order, judgement or decree of any federal state or local court, and do not conflict with, or constitute a breach of, or a default under the terms and conditions of any agreement, instrument or commitment to which the Governmental Lender is a party or by which the Governmental Lender or any of its property is bound.

(e) To the best knowledge of the Governmental Lender, there is no action, suit, proceeding, inquiry or investigation by or before any court, governmental agency or public board or body pending or threatened against the Governmental Lender that (i) affects or questions the existence or the territorial jurisdiction of the Governmental Lender or the title to office of any members of the Board of Directors of the Governmental Lender; (ii) affects or questions the validity or enforceability of this Borrower Loan Agreement or the Regulatory Agreement; or (iii) questions the tax-exempt status of interest on the Governmental Lender Note.

THE GOVERNMENTAL LENDER MAKES NO REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, (I) WITH RESPECT TO THE PROJECT FACILITIES OR ANY PORTION THEREOF, INCLUDING, WITHOUT LIMITATION, THEIR VALUE, DESIGN, CONDITION, HABITABILITY, WORKMANSHIP, QUALITY, CAPACITY, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, COMPLIANCE WITH ANY LEGAL REQUIREMENTS, LATENT DEFECTS OR THAT THE PROJECT FACILITIES WILL BE ADEQUATE OR SUFFICIENT FOR THE PURPOSES OF THE BORROWER; (II) WITH RESPECT TO THE FINANCIAL POSITION OR BUSINESS CONDITION OF THE

BORROWER OR ANY STATEMENTS, MATERIALS, REPRESENTATIONS OR CERTIFICATIONS FURNISHED BY THE BORROWER IN CONNECTION WITH THE SALE OF WITH THE BANK LOAN OR THE BORROWER LOAN, OR AS TO THE CORRECTNESS, COMPLETENESS OR ACCURACY THEREOF; OR (III) WITH RESPECT TO THE PLANS AND SPECIFICATIONS TO CONSTRUCT THE PROJECT FACILITIES OR THE ADEQUACY OR SUFFICIENCY OF THE FINANCING. NOTHING IN THIS AGREEMENT SHALL BE CONSTRUED AS REQUIRING THE GOVERNMENTAL LENDER TO PROVIDE ANY FINANCING FOR THE PROJECT FACILITIES OTHER THAN THE PROCEEDS OF THE LOAN OR TO PROVIDE SUFFICIENT MONEYS FOR ALL OF THE COSTS OF THE PROJECT.

Section 2.2. Representations, Warranties and Covenants of the Borrower. The Borrower represents, warrants and covenants that:

(a) The Borrower is a limited liability limited partnership, duly organized and in good standing under the laws of the State of Colorado and has full legal right, power and authority (i) to enter into this Borrower Loan Agreement and the other Loan Documents to which it is a party; (ii) to perform its obligations hereunder and thereunder; and (iii) to consummate the transactions on its part contemplated by the Loan Documents.

(b) The Loan Documents to which it is a party have been duly authorized, executed and delivered by the Borrower and, upon the execution thereof by the other respective parties thereto, constitute valid and binding obligations of the Borrower, enforceable in accordance with their respective terms, except as limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws or judicial decisions affecting the rights of creditors generally.

(c) The execution and delivery of the Loan Documents to which it is a party, the performance by the Borrower of its obligations hereunder and thereunder and the consummation of the transactions contemplated hereby and thereby do not require the consent or approval of any other person, regulatory agency or governmental body (other than the other parties to the Loan Documents) and will not violate the Borrower's Partnership Agreement, or any law, regulation, rule or ordinance or any order, judgment or decree of any federal, state or local court and do not conflict with, or constitute a breach of, or a default under, any document, instrument or commitment to which the Borrower is a party or by which the Borrower or any of its property is bound.

(d) There is no action, suit, proceeding, inquiry or investigation by or before any court, governmental agency or public board or body pending or to the knowledge of Borrower, threatened against the Borrower which (i) affects or seeks to prohibit, restrain or enjoin the loaning of the amounts set forth herein to the Borrower or the execution and delivery of this Borrower Loan Agreement or the other Loan Documents; (ii) affects or questions the validity or enforceability of this Borrower Loan Agreement or the other Loan Documents; or (iii) questions the power or authority of the Borrower to carry out the transactions contemplated by, or to perform its obligations under, this Borrower Loan Agreement or the other Loan Documents to which it is a party, or the powers of the Borrower to own, acquire, construct or operate the Project; and no

other event has occurred which may materially adversely affect the Borrower's financial condition or its properties.

(e) The Borrower is not in default (and no event has occurred and is continuing which with the giving of notice or the passage of time or both could constitute a default) under any document, instrument or commitment to which the Borrower is a party or to which it or any of its property is subject which default would or could affect the ability of the Borrower to carry out its obligations under this Borrower Loan Agreement or the other Loan Documents.

(f) Any certificate signed by a Borrower Representative and delivered pursuant to this Borrower Loan Agreement or the other Loan Documents shall be deemed a representation and warranty by the Borrower as to the statements made therein.

(g) The Project is located wholly within the County.

(h) The Borrower will timely obtain all necessary certificates, approvals, permits and authorizations with respect to the acquisition, construction and operation of the Project from applicable local governmental agencies and agencies of the State of Colorado and the federal government.

(i) The Borrower shall make no changes to the Project or to the operation thereof which would affect the qualification of the Project under the Act or the Code, or impair the exclusion from gross income for federal income tax purposes of the interest on the Governmental Lender Note. The Borrower intends to utilize the Project as multifamily rental housing for a period ending on or after the Qualified Project Period.

(j) Not in excess of two percent (2.00%) of the proceeds of the Borrower Note will be used to pay Costs of Issuance.

(k) The acquisition, construction and operation of the Project in the manner presently contemplated and as described herein and in the Regulatory Agreement will not conflict with any zoning, water or air pollution or other ordinance, order, law or regulation applicable thereto. The Borrower will cause the Project to be operated in all material respects in accordance with all applicable federal, state and local laws or ordinances (including rules and regulations) relating to zoning, building, safety and environmental quality.

(l) The Borrower acknowledges, represents and warrants that it understands the nature and structure of the Project; that it is familiar with the provisions of all of the documents and instruments relating to the financing of the Project to which it or the Governmental Lender is a party or of which it is a beneficiary; and that it understands the risks inherent in such transactions, including without limitation the risk of loss of the Project; and that it has not relied on the Governmental Lender for any guidance or expertise in analyzing the financial or other consequences of the transactions contemplated by the Loan Documents or otherwise relied on the Governmental Lender for advice.

(m) The Borrower intends to hold the Project for its own account, has no current plans to sell and has not entered into any agreement to sell the Project, except in accordance with

the terms of the Regulatory Agreement, the Deed of Trust, the Loan Agreement, and a possible sale to the general partner of the Borrower or an affiliate thereof as reflected in the Partnership Agreement or the exhibits thereto.

(n) Neither the Borrower nor any related person thereto will purchase the Governmental Lender Note or any interest in the Bank Loan.

(o) In the event the Borrower Loan proceeds are not sufficient to complete the acquisition, renovation, construction and equipping of the Project, the Borrower will furnish any additional moneys necessary to complete the acquisition, renovation, construction and equipping of the Project.

(p) All of the proceeds from the Governmental Lender Note plus any income from the investment of the proceeds of the Governmental Lender Note will be used to pay or reimburse the Borrower for Project Costs, and at least 97% of the proceeds of the Governmental Lender Note will be used to pay or reimburse the Borrower for good costs as provided in the Tax Certificate and less than 25% of the proceeds of the Governmental Lender Note will be used to pay or reimburse the Borrower for the cost of land or any interest therein. The Borrower shall assure that the proceeds of the Governmental Lender Note are expended so as to cause the Governmental Lender Note to constitute a “qualified residential rental bond” within the meaning of Section 142(d) of the Code.

(q) The estimated total cost of the financing of the acquisition, renovation, construction and equipping of the Project is equal to or in excess of the maximum principal amount of the Governmental Lender Note.

(r) The Borrower has not knowingly taken or permitted to be taken and will not knowingly take or permit to be taken any action which would have the effect, directly or indirectly, of causing interest on the Governmental Lender Note to be included in the gross income of the owner thereof for purposes of federal income taxation. (excluding holders of the Governmental Lender Note that constitute a “substantial user” as such term is used in Section 147(a) of the Internal Revenue Code of 1986, as amended).

(s) The Borrower covenants that it shall not take, or permit or suffer to be taken by the Bank or otherwise, any action with respect to the proceeds of the Governmental Lender Note which, if such action had been reasonably expected to have been taken, or had been deliberately and intentionally taken on the Closing Date, would have caused the Governmental Lender Note to be an “arbitrage bond” within the meaning of Section 148(a) of the Code.

(t) The Borrower has examined and is familiar with all the easements, covenants, conditions, restrictions, reservations, building laws, regulations, zoning ordinances, and federal, state, and local requirements affecting the Project. The Project will at all times and in all respects conform to and comply with the requirements of such easements, covenants, conditions, restrictions and reservations.

(u) Each financial statement of Borrower supplied to the Governmental Lender or the Bank truly and completely disclosed Borrower’s financial condition as of the date of the

statement, and there has been no material adverse change in Borrower's financial condition subsequent to the date of the most recent financial statement supplied to the Governmental Lender or the Bank except as disclosed on a subsequent financial statement. Borrower has no material contingent obligations except as disclosed in such financial statements.

(v) The Project Costs as set forth by the Borrower to the Governmental Lender and the Bank in writing prior to the date of the first disbursement of the Borrower Loan truly and accurately reflect the Borrower's reasonable estimate of the costs necessary to complete the acquisition, renovation, construction and equipping of the Project.

(w) All utility services appropriate to the use of the Project are being or upon completion of construction will be provided to the Project.

(x) The Project is contiguous to publicly dedicated streets, roads, or highways providing access to the Project.

(y) The Borrower shall take all actions required under the Partnership Agreement to cause the funding of all capital contributions to the Borrower at the times and in the amounts set forth in the Partnership Agreement.

(z) The acquisition, renovation, construction and equipping of the Project were not commenced (within the meaning of Treasury Regulation Section 1.150-2) prior to the 60th day preceding the adoption of the resolution of the Governmental Lender with respect to the Project on March 30, 2021, and no obligation for which reimbursement will be sought from proceeds of the Governmental Lender Note relating to the acquisition, renovation, construction and equipping of the Project was paid or incurred 60 days prior to such date, except for permissible "preliminary expenditures", which include architectural, engineering surveying, soil testing, reimbursement bond issuance and similar costs incurred prior to the commencement of acquisition, renovation, construction or equipping of the Project.

Section 2.3. Hazardous Waste Covenant. In addition to and without limitation of any other representations, warranties and covenants made by the Borrower under this Borrower Loan Agreement and under the Regulatory Agreement, the Loan Agreement and the Deed of Trust, the Borrower further represents, warrants and covenants that (a) the Borrower will not use Hazardous Materials (as defined herein) on, from, or affecting the Project (i) in any manner which violates federal, state or local laws, ordinances, rules, or regulations governing the use, storage, treatment, transportation, manufacture, refinement, handling, production or disposal of Hazardous Materials; or (ii) in a manner that would create a material adverse effect on the Project, and that; and (b) to the best of the Borrower's knowledge, no prior owner of the Project or any tenant, subtenant, prior tenant or prior subtenant has used Hazardous Materials on, from, or affecting the Project (i) in any manner which violates Federal, state or local laws, ordinances, rules, or regulations governing the use, storage, treatment, transportation, manufacture, refinement, handling, production or disposal of Hazardous Materials; or (ii) in a manner that would create a material adverse effect on the Project. Without limiting the foregoing, the Borrower shall not cause or knowingly permit the Project or any part thereof to be used to generate, manufacture, refine, transport, treat, store, handle, dispose, transfer, produce or process Hazardous Materials, except in compliance with all

applicable Federal, state and local laws or regulations, nor shall the Borrower cause or knowingly permit, as a result of any intentional or unintentional act or omission on the part of the Borrower or any tenant or subtenant, a release of Hazardous Materials on to the Project or on to any other property in a manner which violates Federal, State, or local laws, ordinances, rules or regulations or in a manner that would create a material adverse effect on the Project. The Borrower shall comply with and require compliance by all tenants and subtenants with all applicable Federal, state and local laws, ordinances, rules and regulations, and shall obtain and comply with, and require that all tenants and subtenants obtain and comply with, any and all approvals, registrations or permits required thereunder. The Borrower shall conduct and complete all investigations, studies, sampling, and testing, and all remedial, removal, and other action required by a governmental authority under an applicable statute or regulation to clean up and remove all Hazardous Materials, on, from, or affecting the Project in accordance with all applicable Federal, state, and local laws, ordinances, rules and regulations. The Borrower shall defend, indemnify, and hold harmless the Governmental Lender from and against any claims, demands, penalties, fines, liabilities, settlements, damages, costs, or expenses of whatever kind or nature, known or unknown, contingent or otherwise, arising out of, or in any way related to, (a) the presence, disposal, release, or threatened release of any Hazardous Materials which are on or from the Project which affect, the soil, water, vegetation, buildings, personal property, persons, animals, or otherwise; (b) any personal injury (including wrongful death) or property damage (real or personal) arising out of or related to such Hazardous Materials on or from the Project; and/or (c) any violation of laws, orders, regulations, requirements or demands of government authorities, or written requirements of the Governmental Lender, which are based upon or in any way related to such Hazardous Materials including, without limitation, reasonable attorney and consultant fees, investigation and laboratory fees, court costs, and litigation expenses. In the event the Project is foreclosed upon, or a deed in lieu of foreclosure is tendered, or this Borrower Loan Agreement is terminated, the Borrower shall deliver the Project in a manner and condition that shall conform with all applicable Federal, state and local laws, ordinances, rules or regulations affecting the Project. For the purposes of this paragraph, "Hazardous Materials" includes, without limit, any flammable explosives, radioactive materials, hazardous materials, hazardous wastes, hazardous or toxic substances, or related materials defined in the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. Sections 9601, *et seq.*), the Hazardous Materials Transportation Act, as amended (49 U.S.C. Sections 1801 *et seq.*), the Resource Conservation and Recovery Act, as amended (42 U.S.C. Sections 9601 *et seq.*), and in the regulations promulgated pursuant thereto, or any other federal, state or local environmental laws, ordinance, rule or regulation. Notwithstanding the foregoing, "Hazardous Materials" shall not include substances typically used in the ordinary course of developing, operating and maintaining apartment complexes, provided that such substances are used in accordance with applicable laws and regulations. The provisions of this paragraph: (a) shall be in addition to any and all other obligations and liabilities the Borrower may have to the Governmental Lender at common law; and (b) with respect to any liability or cost arising as a result of acts or omissions of the Borrower during the term of this Borrower Loan Agreement, shall survive the termination of this Borrower Loan Agreement. This paragraph shall not obligate the Borrower in any way with respect to any acts or omissions of any entity to which the Project is sold or transferred in accordance with the provisions of Section 13 of the Regulatory Agreement or which are attributable solely to the willful misconduct of the Governmental Lender or the Bank or their agents or assigns.



The indemnifications and protections set forth in this Section 2.3 (i) shall be extended, with respect to the Governmental Lender, to its members, officials, directors, officers, employees, agents and servants and persons under the Governmental Lender's control or supervision; and (ii) shall be for the full and equal benefit of the Bank, as assignee of the Governmental Lender under the Assignment Agreement.

Anything to the contrary in this Borrower Loan Agreement notwithstanding, the covenants of the Borrower contained in this Section 2.3 shall remain in full force and effect after the termination of this Borrower Loan Agreement until the later of (i) the expiration of the period stated in the applicable statute of limitations during which a claim or cause of action may be brought; and (ii) payment in full or the satisfaction of such claim or cause of action and of all expenses and charges incurred by the Governmental Lender relating to the enforcement of the provisions herein specified.

For the purposes of this Section 2.3, the Borrower shall not be deemed an employee, agent or servant of the Governmental Lender or person under the Governmental Lender's control or supervision.

Section 2.4. Additional Environmental Matters. (a) The Borrower shall require in any management agreement for the Project that the management company shall operate and maintain the Project in material compliance with all applicable federal, state, regional, county or local laws, statutes, rules, regulations or ordinances, concerning the environment, including, but not limited to, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986, 42 U.S.C. Section 9601 *et seq.*, the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended by the Hazardous and Solid Waste Amendments of 1984, 42 U.S.C. Section 6901 *et seq.*, the Emergency Planning and Community Right-to-Know Act of 1986, 42 U.S.C. Section 11001 *et seq.*, and the Clean Air Act of 1975, 42 U.S.C. Section 4321, and all rules, regulations and guidance documents promulgated or published thereunder, and any state, regional, county or local statute, law, rule, regulation or ordinance relating (i) to releases, discharges, emissions or disposal to air, water, land or ground water; (ii) to the withdrawal or use of ground water; (iii) to the use, handling or disposal of polychlorinated biphenyls ("PCBs"), asbestos or urea formaldehyde; (iv) to the treatment, storage, disposal or management of hazardous substances (including, without limitation, petroleum, its derivatives, crude oil or any fraction thereof) and any other solid, liquid or gaseous substance, exposure to which is prohibited, limited or regulated, or may or could pose a hazard to the health and safety of the occupants of the Project or the property adjacent to or surrounding the Project; (v) to the exposure of persons to toxic, hazardous or other controlled, prohibited or regulated substances; or (vi) to the transportation, storage, disposal, management or release of gaseous or liquid substances and any regulation, order, injunction, judgment, declaration, notice or demand issued thereunder.

(b) The Borrower shall make best efforts to prevent the imposition of any liens or encumbrances against the Project for the costs of any response, removal or remedial action or cleanup of Hazardous Materials.

(c) The Borrower covenants and agrees that it will not knowingly conduct or allow to be conducted any business, operations or activity on the Project, or employ or use the Project to manufacture, treat, store (except with respect to storage in the ordinary operation of the Project), or dispose of any Hazardous Materials (including, without limitation, petroleum, its derivatives, crude oil or any fraction thereof), or any other substance the disposal of which is prohibited, controlled or regulated under applicable law, or which poses a threat or nuisance to safety, health or the environment, including, without limitation, any business, operation or activity which would bring the Project within the ambit of, or otherwise violate, the Resource Conservation and Recovery Act of 1976, as amended by the Hazardous and Solid Waste Amendments of 1984, 42 U.S.C. Section 6901 *et seq.*, or cause or knowingly allow to be caused, a release or threat of release, of a non-de-minimis quantity of hazardous substances on the Project as defined by, and within the ambit of, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986, 42 U.S.C. Section 9601 *et seq.*, or any similar state, county, regional or local statute providing for financial responsibility for cleanup for the release or threatened release of substances provided for thereunder.

(d) The Borrower covenants and agrees that it shall take all appropriate response action, including any removal and remedial action, in the event of a release, emission, discharge or disposal of Hazardous Materials in, on, under or about the Project for which the Borrower is liable under state, federal or local environmental rules or regulations.

(e) The Borrower shall, as soon as practical and in any event within 15 days, notify the Governmental Lender and the Bank of any notice, letter, citation, order, warning, complaint, claim or demand that (i) the Borrower or any tenant has violated, or is about to violate, any federal, state, regional, county or local environmental, health or safety statute, law, rule, regulation, ordinance, judgment or order; (ii) there has been a release, or there is a threat of release, of Hazardous Materials (including, without limitation, petroleum, its derivatives, crude oil or any fraction thereof) from the Project; (iii) the Borrower or any tenant may be or is liable, in whole or in part, for the costs of cleaning up, remediating, removing or responding to a release of Hazardous Materials (including, without limitation, petroleum, its derivatives, crude oil or any fraction thereof); or (iv) the Project is subject to a lien in favor of any governmental entity in respect of any environmental law, rule or regulation arising from or costs incurred by such governmental entity in response to a release of Hazardous Materials (including, without limitation, petroleum, its derivatives, crude oil or any fraction thereof).

(f) During the period in which the Borrower Loan Agreement is in effect, the Borrower hereby grants, and will cause any tenants to grant, to the Governmental Lender and the Bank, their respective agents, attorneys, employees, consultants and contractors an irrevocable license and authorization upon reasonable notice of not less than 24 hours and at all reasonable times to enter upon and inspect the Project and perform such tests, including, without limitation, subsurface testing, soils and ground water testing, and other tests which may physically invade the Project, as the Governmental Lender or the Bank, in its respective reasonable discretion, determines are necessary to protect the lien created by the Deed of Trust. The Governmental Lender and the Bank and their officers, employees and agents shall indemnify and hold harmless the Borrower, its partners, employees and agents from any and all claims for damages to persons

or property arising from any activity of the Governmental Lender, the Bank, their employees, officers, agents, representatives, contractors, subcontractors or consultants on the Property. The provisions of this Section 2.4 shall be for the full and equal benefit of the Governmental Lender, and of the Bank as assignee of the Governmental Lender under the Assignment Agreement.

(g) The Borrower agrees to protect, defend, hold harmless and indemnify the Governmental Lender and the Bank for, from, against and in respect of any and all claims, losses, liabilities, damages (whether special, consequential or otherwise), settlements, penalties, interest and expenses (including any professional fees and expenses) which may be suffered or incurred by it relating to, arising out of or resulting from or by reason of any and all present or future liabilities or obligations under any current federal, state or local law (including common law), and regulations, orders and decrees relating to pollution control, environmental protection, health, welfare, public safety, personal injury, property damage or any other type of claim relating to the Project, with respect to: (i) the handling, storage, use, transportation or disposal of any Hazardous Materials by the Borrower in or from the Project; (ii) the handling, storage, use, transportation or disposal (whether or not known to the Borrower) of any Hazardous Materials, which Hazardous Materials were products, byproducts or otherwise resulted from operations conducted on the Project; or (iii) any intentional or unintentional emission, discharge or release (whether or not known to the Borrower) of any Hazardous Materials into or upon the air, surface water, ground water or land or any manufacturing, processing, distribution, use, treatment, disposal, transport or handling of such Hazardous Materials. This paragraph shall not obligate the Borrower with respect to any acts or omissions of any entity to whom the Project or any portion thereof is sold or transferred in accordance with the provisions of Section 13 of the Regulatory Agreement, or which are attributable to the willful misconduct of the Governmental Lender or the Bank or their agents or assigns.

### ARTICLE III

#### THE BORROWER LOAN

Section 3.1. Closing of the Borrower Loan. The closing of the Borrower Loan shall not occur until the following conditions are met:

(a) the Governmental Lender shall have received an original executed counterpart of this Borrower Loan Agreement, the Regulatory Agreement, the Borrower Assignments, the Loan Agreement and the Deed of Trust, and a copy of the Borrower Note (the originals of the Borrower Note to be endorsed by the Governmental Lender to the Bank without recourse, and are to be delivered to the Bank), as well as evidence satisfactory to the Governmental Lender and the Bank of (i) the recordation of the Regulatory Agreement, the Assignment Agreement and the Deed of Trust (the "Recording Documents") in the official records of the Clerk and Recorder of the County, which may be by telephonic notice from a title company; or (ii) an insured lien in the form of gap coverage from a title company, together with escrow instructions providing for the recording of the Recording Documents in the official records of the Clerk and Recorder of the County after the Closing Date;

(b) no Event of Default nor any event which with the passage of time and/or the giving of notice would constitute an Event of Default under this Borrower Loan Agreement shall have occurred as evidenced by a certificate received from the Borrower;

(c) the conditions to the initial advance set forth in the Loan Agreement have been satisfied in full;

(d) the Bank shall have received the original Governmental Lender Note, executed by the Governmental Lender;

(e) the Bank shall have received a certified copy of the ordinance of the Governmental Lender authorizing the issuance of the Governmental Lender Note;

(f) the Bank shall have received an opinion of Tax Counsel in a form reasonably acceptable to the Bank with respect to the enforceability against the Governmental Lender of the Loan Documents to which the Governmental Lender is a party and as to the tax-exempt nature of the interest on the Governmental Lender Note;

(g) the delivery to escrow of all amounts required to be paid in connection with the Bank Loan and the Borrower Loan on the Closing Date, including amounts related to the underlying real estate transaction to be paid on the Closing Date;

(h) the receipt by the Governmental Lender of the Required Transferee Representations executed by the Bank in the form set forth in Exhibit B to the Bank Loan Agreement;

(i) all legal matters incident to the transactions contemplated by this Borrower Loan Agreement shall be concluded to the reasonable satisfaction of the counsel to the Governmental Lender and counsel to the Bank;

(j) the Governmental Lender and the Bank shall have received an opinion of counsel to the Borrower, General Partner and Guarantor, addressed to the Governmental Lender and the Bank to the effect that the Loan Documents to which the Borrower, General Partner and/or Guarantor are a party are valid and binding obligations of the Borrower, General Partner and Guarantor, as applicable, enforceable against the Borrower, General Partner and Guarantor, as applicable, in accordance with their terms, subject to such exceptions and qualifications as are acceptable to the Governmental Lender and the Bank; and

(k) the Bank and the Governmental Lender shall have received such other documents or opinions as the Bank or the Governmental Lender may reasonably require.

Section 3.2. Commitment To Execute the Borrower Note. The Borrower agrees to execute and deliver the Borrower Note and the Deed of Trust simultaneously with the execution of this Borrower Loan Agreement.

Section 3.3. Amount and Source of Loan. The Governmental Lender hereby makes to the Borrower and agrees to fund, and the Borrower hereby accepts from the Governmental Lender,

upon the terms and conditions set forth herein, the Borrower Loan and agrees to have the proceeds of the Borrower Loan applied and disbursed in accordance with the provisions of this Borrower Loan Agreement.

Section 3.4. Disbursement of Borrower Loan Proceeds. (a) The Governmental Lender hereby authorizes and directs the funding and disbursement of the initial principal amount of the Borrower Loan on the Closing Date in the amount set forth in the Bank's Receipt of the Governmental Lender Note and Borrower Note and Acknowledgement of Funding of Loan, as executed and delivered by the Bank on the Closing Date, subject to the condition that (i) the Regulatory Agreement and the Deed of Trust shall have been executed and signed by the Borrower and duly recorded in the official records of the Clerk and Recorder of the County, and (ii) the Borrower has complied with the conditions to the initial funding set forth in the Loan Agreement. The Borrower hereby authorizes the Governmental Lender to disburse on the date of execution and delivery of the Borrower Note the amount representing the Initial Disbursement to Title Insurance Company, to be used to pay costs identified in the instructions to Title Insurance Company delivered in connection with the recordation of the Deed of Trust and the Regulatory Agreement. The Governmental Lender hereby authorizes and directs the funding and disbursement of the remaining principal amount of the Borrower Loan (not referenced in Section 3.4(a) above), subject to the conditions set forth in the Loan Agreement. Any disbursement of the remaining principal amount of the Borrower Loan shall be used to pay Project Costs. No further disbursements of the Borrower Loan shall be made after the date which is three (3) years after the Closing Date.

(c) The Borrower has advised the Governmental Lender of the Borrower's intent that the proceeds of the Governmental Lender Note be used exclusively to pay the Project Costs which are includable in the aggregate basis of the buildings and related land constituting the Project (the "Allowable Costs"), in order to comply with Section 42(h)(4)(B) of the Internal Revenue Code of 1986, as amended. The Borrower, in submitting requests for disbursement of the Borrower Loan under the Disbursement Agreement, shall maintain such accounting and other records as shall be necessary to carry out the Borrower's intent with respect to tracing the use of the proceeds of the Governmental Lender Note, and the Governmental Lender shall have no responsibility whatsoever with respect thereto. The Borrower hereby covenants that each request for a disbursement of the Borrower Loan will identify the respective amounts of proceeds of the Governmental Lender Note and the other sources of funds comprising each respective disbursement, and shall represent that proceeds of the amount requested will only be expended for Allowable Costs or will be deposited in a specially designated account which can be used only to pay Allowable Costs, and that the proceeds of any other sources of funds will be deposited into another, separate account.

## ARTICLE IV

### LIMITED LIABILITY

Section 4.1. Limited Liability. All obligations and any liability of the Governmental Lender incurred hereunder shall be limited, special obligations of the Governmental Lender payable solely and only from amounts received from the Bank pursuant to the Bank Loan

Agreement. All obligations and any liability of the Governmental Lender shall be further limited as provided in Section 4.1 and 5.2 of the Bank Loan Agreement. The Governmental Lender shall not be obligated to pay the principal (or prepayment premium) of or interest on the Governmental Lender Note, except from the Security and other money and assets on behalf of the Governmental Lender pursuant to this Borrower Loan Agreement. The Governmental Lender Note shall not be a debt or indebtedness of the Governmental Lender, the State or any political subdivision of either the Governmental Lender or the State, and neither the Governmental Lender, the State nor any political subdivision of either the Governmental Lender or the State shall be liable for payment of the Governmental Lender Note or for the performance of any pledge, obligation or agreement of any kind whatsoever with respect thereto except as set forth in the Bank Loan Agreement, nor in any event shall principal of, premium, if any, and interest on the Governmental Lender Note be payable out of any funds or assets other than those pledged to that purpose by the Governmental Lender in the Bank Loan Agreement. The Governmental Lender Note shall not constitute an indebtedness or a multiple fiscal-year financial obligation within the meaning of any constitutional or statutory debt limitation or restriction. The Governmental Lender Note does not constitute a debt, loan, credit or pledge of the faith and credit or taxing power of the Governmental Lender, the State or any political subdivision of either the Governmental Lender or the State, and neither the Governmental Lender Note or any of the Governmental Lender's agreements or obligations with respect to the Bank Loan, the Governmental Lender Note, hereunder or under the Bank Loan Agreement, shall be construed to constitute an indebtedness of or a pledge of the faith and credit of or a loan of the credit of or a moral obligation of any of the Governmental Lender, the State, or any political subdivision of either the Governmental Lender or the State within the meaning of any constitutional or statutory provision whatsoever. Neither the Governmental Lender nor its members, officials, officers, directors agents or employees shall be liable for any costs, expenses, losses, damages, claims or actions, of any conceivable kind on any conceivable theory, under or by reason of or in connection with this Borrower Loan Agreement, the Governmental Lender Note or the Bank Loan Agreement, except only to the extent amounts are received for the payment thereof from the Borrower under this Borrower Loan Agreement.

The Borrower hereby acknowledges that the Governmental Lender's sole source of money to repay the Bank Loan will be provided by the payments made by the Borrower pursuant to this Borrower Loan Agreement, together with investment income on certain funds and accounts held under the Bank Loan Agreement, and hereby agrees that if the payments to be made hereunder shall ever prove insufficient to pay all principal (or prepayment premium) and interest on the Governmental Lender Note as the same shall become due (whether by maturity, redemption, acceleration or otherwise), then upon notice from the Bank, the Borrower shall pay such amounts as are required from time to time to prevent any deficiency or default in the payment of such principal (or prepayment premium) or interest, including, but not limited to, any deficiency caused by acts, omissions, nonfeasance or malfeasance on the part of the Bank, the Borrower, the Governmental Lender or any third party, subject to any right of reimbursement from the Bank, the Governmental Lender or any such third party, as the case may be, therefor.

## ARTICLE V

### REPAYMENT OF THE BORROWER LOAN

Section 5.1. Borrower Loan Repayment. (a) The Borrower Loan shall be evidenced by the Borrower Note which shall be executed by the Borrower in the form attached hereto as Exhibit A. The Borrower agrees to pay to the Bank, as agent and assignee of the Governmental Lender under the Assignment Agreement, principal of and interest on the Borrower Loan at the times, in the manner, in the amount and at the rate of interest provided in the Borrower Note and this Borrower Loan Agreement.

(b) The Borrower further agrees to pay all taxes and assessments, general or special, including, without limitation, all ad valorem taxes, concerning or in any way related to the Project, or any part thereof, and any other governmental charges and impositions whatsoever, foreseen or unforeseen, and all utility and other charges and assessments with respect thereto; provided, however, that the Borrower reserves the right to contest in good faith the legality of any tax or governmental charge concerning or in any way related to the Project. In addition, the Borrower agrees to pay any loan fee, processing fee and all title, escrow, recording and closing costs and expenses (including legal fees), any appraisal costs and all other reasonable fees and costs associated with or required in connection with the Governmental Lender Note, the Regulatory Agreement and Bank Loan Agreement; including but not limited to any such amounts described in Section 5.1(c) of the Bank Loan Agreement.

(c) The Borrower hereby acknowledges and consents to the assignment by the Governmental Lender to the Bank of its rights under this Borrower Loan Agreement (excepting only the Governmental Lender's Unassigned Rights), and the appointment of the Bank as agent of the Governmental Lender to collect the payments on the Borrower Loan, all as set forth in the Assignment Agreement.

(d) The Borrower agrees to pay all fees of the Department of Local Affairs of the State of Colorado that relate to the Governmental Lender Note's private activity bond volume cap allocation, if any.

(e) In addition to such payments as provided in this Section 5.1, the Borrower shall also pay to the Governmental Lender or the Bank, as the case may be, "Additional Payments," as follows:

(i) All taxes and assessments of any type or character charged to the Governmental Lender or the Bank affecting the amount available to the Governmental Lender or the Bank from payments to be received hereunder or in any way arising due to the transactions contemplated hereby (including taxes and assessments assessed or levied by any public agency or governmental authority of whatsoever character having power to levy taxes or assessments) but excluding franchise taxes based upon the capital and/or income of the Bank and taxes based upon or measured by the net income of the Bank; provided, however, that the Borrower shall have the right to protest any such taxes or assessments and to require the Governmental Lender or the Bank, at the Borrower's

expense, to protest and contest any such taxes or assessments levied upon them and that the Borrower shall have the right to withhold payment of any such taxes or assessments pending disposition of any such protest or contest unless such withholding, protest or contest would adversely affect the rights or interests of the Governmental Lender or the Bank;

(ii) The reasonable fees and expenses of such accountants, consultants, attorneys and other experts as may be engaged by the Bank or the Governmental Lender to prepare audits, financial statements, reports, opinions or provide such other services required under the Bank Loan Documents; and

(iii) The Governmental Lender Issuance Fee, the Governmental Lender Annual Fee and the reasonable fees and expenses of the Governmental Lender or any agent or attorney selected by the Governmental Lender to act on its behalf in connection with the Bank Loan Documents, the Governmental Lender Note or the Bank Loan Agreement, including, without limitation, any and all reasonable expenses incurred in connection with the authorization, issuance, sale and delivery of any such Governmental Lender Note or in connection with any litigation, investigation or other proceeding which may at any time be instituted involving this Borrower Loan Agreement or the Bank Loan Documents or any of the other documents contemplated thereby, or in connection with the reasonable supervision or inspection of the Borrower, its properties, assets or operations or otherwise in connection with the administration of the Bank Loan Documents.

(iv) Any amounts due and payable by the Borrower as arbitrage rebate under Section 148 of the Code, pursuant to Borrower's covenants and agreements with respect thereto in this Borrower Loan Agreement and the Tax Certificate.

Such Additional Payments shall be billed to the Borrower by the Governmental Lender from time to time, together with a statement certifying that the amount billed has been incurred or paid by the Governmental Lender for one or more of the above items. After such a demand, amounts so billed shall be paid by the Borrower within thirty (30) days after the date of invoice. Notwithstanding the foregoing, the Governmental Lender shall not be required to submit a bill to the Borrower for payment of the Governmental Lender Annual Fee or any amounts due with respect to arbitrage rebate under Section 148 of the Code, the calculation and payment for which is the responsibility of the Borrower.

The Governmental Lender Issuance Fee and the initial Governmental Lender Annual Fee shall be paid to the Governmental Lender by the Borrower on the Closing Date. Thereafter, the Governmental Lender Annual Fee shall be due and payable by the Borrower in advance on [\_\_\_\_\_] 1 of each year commencing with the first such date following the Closing Date. The Borrower's obligation to pay the Governmental Lender Issuance Fee and the Governmental Lender Annual Fee shall in no way limit amounts payable by the Borrower to the Governmental Lender under the Bank Loan Documents, including for the enforcement thereof, but the Governmental Lender does agree to apply the Governmental Lender Annual Fee to the payment of any third party administrator appointed by it to administer the Regulatory Agreement to the extent of its fees for ordinary duties as administrator thereunder.



These obligations in this Section 5.1(d) and those in Section 6.7 shall remain valid and in effect notwithstanding repayment of the loan hereunder or termination of this Borrower Loan Agreement or the Bank Loan Agreement.

Section 5.2. Nature of the Borrower's Obligations. The Borrower shall repay the Borrower Loan pursuant to the terms of the Borrower Note irrespective of any rights of set-off, recoupment or counterclaim the Borrower might otherwise have against the Governmental Lender, the Bank or any other person. The Borrower will not suspend, discontinue or reduce any such payment or (except as expressly provided herein) terminate this Borrower Loan Agreement for any cause, including, without limiting the generality of the foregoing, (i) any delay or interruption in the construction and operation of the Project; (ii) the failure to obtain any permit, order or action of any kind from any governmental agency relating to the Borrower Loan or the Project; (iii) any event constituting Force Majeure; (iv) any acts or circumstances that may constitute commercial frustration of purpose; (v) any change in the laws of the United States of America, the State or any political subdivision thereof; or (vi) any failure of the Governmental Lender or the Borrower to perform or observe any covenant, whether expressed or implied, or to discharge any duty, liability or obligation arising out of or connected with the Borrower Note; it being the intention of the parties that, as long as the Borrower Note or any portion thereof remains outstanding and unpaid, the obligation of the Borrower to repay the Borrower Loan and provide such moneys shall continue in all events. This Section 5.2 shall not be construed to release the Borrower from any of its obligations hereunder, or, except as provided in this Section 5.2, to prevent or restrict the Borrower from asserting any rights which it may have against the Governmental Lender under the Borrower Note or the Deed of Trust or under any provision of law or to prevent or restrict the Borrower, at its own cost and expense, from prosecuting or defending any action or proceeding by or against the Governmental Lender or the Bank or taking any other action to protect or secure its rights.

Notwithstanding the foregoing, except for obligations under the Guaranty and the Environmental Indemnity Agreement with respect to the general partner, neither any general partner nor any limited partner of the Borrower shall be personally liable for the amounts owing under this Borrower Loan Agreement, the Borrower Note or the Deed of Trust; and the Governmental Lender's remedies in the event of a default under the Borrower Loan shall be limited to those remedies set forth in Section 7.3 hereof and the commencement of foreclosure under the Deed of Trust and the exercise of the power of sale or other rights granted thereunder. Notwithstanding the Assignment Agreement, no assignment by the Governmental Lender of its rights hereunder shall preclude the Governmental Lender from proceeding directly against the Borrower in connection with the obligation of the Borrower to indemnify the Governmental Lender under Section 6.7 hereof or Section 9 of the Regulatory Agreement or to make any payment to the Governmental Lender required to be paid by the Borrower pursuant to the provisions of Sections 2.3, 2.4, 5.1(b), 5.1(d), 7.4 or 8.12 hereof. Nothing in this Section 5.2 shall prohibit the Borrower from contesting in good faith any lien (other than the liens of the Deed of Trust).

Section 5.3. No Encumbrances. The Borrower shall not create, permit, file or record against the Project without the prior written consent of the Bank and the Governmental Lender any deed of trust lien or other lien, inferior or superior to the lien of the Deed of Trust, other than (i) the Permitted Encumbrances, as defined in the Disbursement Agreement, and grants and loans which

are being subordinated concurrently with the making of the Borrower Loan; (ii) the Purchase Option; and (iii) liens for taxes not yet due and payable.

Section 5.4. Exceptions to Non-Recourse Liability. Notwithstanding Section 5.2 or any other provision of this Borrower Loan Agreement, the Governmental Lender (and the Bank, as assignee of the Governmental Lender) shall have the right to recover from the Borrower the following:

(a) any loss, damage or cost (including, but not limited to, attorneys' fees) resulting from fraud or intentional misrepresentation by the Borrower or the Borrower's agents, partners or employees in connection with obtaining the Borrower Loan or in complying with any of Borrower's obligations under the Loan Documents;

(b) insurance proceeds, condemnation awards, security deposits from tenants or other sums or payments received by or on behalf of Borrower in its capacity as owner of the Project and not applied in accordance with the provisions of the Loan Agreement;

(c) all rents not applied, first, to the payment of the reasonable operating expenses as such operating expenses become due and payable, and then, to the payment of principal and interest then due and payable under this Borrower Loan Agreement, the Borrower Note and any other sums due under the Deed of Trust and all other Loan Documents (including but not limited to deposits or reserves payable under any Loan Document);

(d) transfer fees and charges due under the Deed of Trust;

(e) all rents and profits, and security deposits received by the Borrower after an Event of Default under this Borrower Loan Agreement;

(f) any loss, damage or cost (including, but not limited to attorneys' fees) resulting from the commission of material waste by the Borrower (or any officer, director or agent of the Borrower or any guarantor or owner of any collateral) or failure by the Borrower to perform its obligations to maintain the Project;

(g) any loss, damage or cost (including, but not limited to, attorneys' fees) resulting from the presence or release of any "Hazardous Materials" (as defined in Section 2.3) on, in or under the Project;

(h) all sums owing by the Borrower under all indemnities contained in this Borrower Loan Agreement or the Regulatory Agreement; and

(i) any loss, damage or cost (including, but not limited to attorneys' fees) resulting from the failure by the Borrower to pay taxes and charges that may become a lien on the Project, to maintain and pay premiums for insurance required pursuant to this Borrower Loan Agreement or the Deed of Trust, or to repay any sums advanced by the Governmental Lender or the Bank for any such purpose.

The exceptions to non-recourse liability contained in this Section 5.4 shall not limit the rights of the Governmental Lender (or the Bank, as assignee of the Governmental Lender) to:

- (i) name the Borrower as a party defendant in any action, proceeding or arbitration, subject to the limitations of this Section as to personal liability; or
- (ii) assert any unpaid amounts on the Borrower Loan as a defense or offset to or against any claim or cause of action made or alleged against the Governmental Lender or the Bank by the Borrower or any indemnitor with respect to the Borrower Loan; or
- (iii) exercise self-help remedies such as set-off or nonjudicial foreclosure against, or sale of, any real or personal property collateral security.

No provision of this Section shall (i) affect any guaranty or similar agreement executed in connection with the debt evidenced by the Borrower Note or this Borrower Loan Agreement, (ii) release or reduce the debt evidenced by the Borrower Note or this Borrower Loan Agreement, (iii) impair the right of the Bank to enforce any provisions of the Deed of Trust or any other collateral security for the repayment of the Borrower Loan, (iv) impair the lien of the Deed of Trust or any other collateral security for the repayment of the Borrower Loan, or (v) impair the right of the Bank to enforce the provisions of any Loan Document other than by collection of amounts owed on the Borrower Note. Nothing herein shall directly or indirectly limit the right of the Bank to collect or recover any collateral from Borrower or any person holding or receiving the same without the written consent of the Bank, including any affiliate who receives the rents and profits assigned to the Bank after the same become payable to the Bank or under circumstances where the same are recoverable by the Bank under applicable law or by contract. Furthermore, nothing in any other provision of the Borrower Note, this Borrower Loan Agreement or the other Loan Documents shall be deemed to limit the Bank's right to enforce collection from Borrower (or any other person liable therefor) of all reasonable attorneys' fees, costs, expenses, indemnity liabilities and other amounts payable to the Bank apart from principal or interest owing under the Borrower Note.

Nothing in this Section 5.4 shall be interpreted to subordinate any obligation or liability of Borrower to the Bank to any operating expenses, and upon an Event of Default the Bank may apply revenues derived from the Project to any secured or unsecured obligation owing to the Bank, in any order as the Bank determines.

## ARTICLE VI

### FURTHER AGREEMENTS

Section 6.1. Successor to the Governmental Lender. The Governmental Lender will at all times use its best efforts to maintain the powers, functions, duties and obligations now reposed in it pursuant to law or assure the assumptions of its obligations hereunder by any public trust or political subdivision succeeding to its powers.

Section 6.2. Borrower Not to Dispose of Assets; Conditions Under Which Exceptions Permitted. The Borrower agrees that during the term of this Borrower Loan Agreement it will not dispose of all or substantially all of its assets nor consolidate with nor merge into any entity unless (i) the Governmental Lender and the Bank shall consent to the disposition, consolidation or merger; (ii) the acquirer of its assets or the entity with which it shall consolidate or into which it shall merge shall be an individual or a corporation, partnership or other legal entity organized and existing under the laws of the United States of America or one of the states of the United States of America and shall be qualified and admitted to do business in the State; and (iii) such acquiring or remaining entity shall assume in writing all of the obligations of the Borrower under the Loan Documents. The consent of Bank and the Governmental Lender shall not be required for any transfers pursuant to the Partnership Agreement provided that the Borrower and any transferee comply with the requirements set forth in Section 13 of the Regulatory Agreement (other than any requirement in said Section 13 for the consent of the Governmental Lender or the Bank) and that they comply with any applicable requirements of the Loan Agreement.

Section 6.3. Cooperation in Enforcement of Regulatory Agreement. The Borrower hereby covenants and agrees as follows:

- (a) to comply with all provisions of the Regulatory Agreement;
- (b) to advise the Governmental Lender and the Bank in writing promptly upon learning of any default with respect to the covenants, obligations and agreements of the Borrower set forth in the Regulatory Agreement;
- (c) upon written direction by the Governmental Lender, to cooperate fully and promptly with the Governmental Lender in enforcing the terms and provisions of the Regulatory Agreement; and
- (d) to file in accordance with the time limits established by the Regulatory Agreement all reports and certificates required thereunder, and the Certification to the Secretary of the Treasury required by Section 4(f) of the Regulatory Agreement.

The Governmental Lender shall not incur any liability in the event of any breach or violation of the Regulatory Agreement by the Borrower, and the Borrower agrees to indemnify the Governmental Lender from any claim or liability for such breach pursuant to Section 6.7 hereof.

Section 6.4. Additional Instruments. The Borrower hereby covenants to execute and deliver such additional instruments and to perform such additional acts as may be necessary, in the opinion of the Governmental Lender, to carry out the intent of the Loan Documents or to perfect or give further assurances of any of the rights granted or provided for in the Borrower Loan, the Deed of Trust and the Borrower Note, provided, however, that no such additional instruments or acts shall change the economic terms of the transactions described herein or expand the liability of the parties hereunder.

Section 6.5. Books and Records. The Borrower hereby covenants to permit the Governmental Lender and the Bank or their duly authorized representatives access during normal business hours and upon reasonable notice to the books and records of the Borrower pertaining to

the Borrower Loan and the Project, and to make such books and records available for audit and inspection, at reasonable times and under reasonable conditions to the Governmental Lender, the Bank and their duly authorized representatives and at the sole expense of the Borrower.

Section 6.6. Notice of Certain Events. The Borrower hereby covenants to advise the Governmental Lender and the Bank promptly in writing of the occurrence of any Event of Default hereunder or any event which, with the passage of time or service of notice, or both, would constitute an Event of Default hereunder, specifying the nature and period of existence of such event and the actions being taken or proposed to be taken with respect thereto. In addition, the Borrower hereby covenants to advise the Governmental Lender and the Bank promptly in writing of the occurrence of any Act of Bankruptcy.

Section 6.7. Indemnification of the Governmental Lender and Bank. (a) To the fullest extent permitted by law, the Borrower agrees to indemnify, hold harmless and defend (by counsel approved by the indemnitee in its reasonable discretion) the Governmental Lender and the Bank and each of their respective officers, governing members, directors, officials, employees, attorneys and agents (collectively, the “Indemnified Parties”), against any and all losses, damages (including but not limited to, consequential and punitive damages), claims, actions, liabilities, costs and expenses of any conceivable nature, kind or character (including, without limitation, reasonable attorneys’ fees, litigation and court costs, amounts paid in settlement and amounts paid to discharge judgments) to which the Indemnified Parties, or any of them, may become subject arising, directly or indirectly, out of or based upon or in any way relating to:

(i) the Loan Documents or the execution, amendment, restructuring or enforcement thereof or in connection with transactions contemplated thereby, including the issuance, sale transfer or resale of the Governmental Lender Note;

(ii) any act or omission of the Borrower or any of its agents, contractors, servants, employees or licensees in connection with the Borrower Loan or the Project, the construction and operation of the Project, or the condition, environmental or otherwise, occupancy, use, possession, conduct or management of work done in or about, or from the planning, design, acquisition, renovation, construction or equipping of the Project or any part thereof;

(iii) any accident, injury, or death of persons or loss of or damage to property occurring in, on or about the Project or any part thereof;

(iv) any lien or charge upon payments by the Borrower to the Governmental Lender and/or the Bank hereunder, or any taxes (including, without limitation, all ad valorem taxes and sales taxes), assessments, impositions and other charges imposed on the Governmental Lender or the Bank in respect of any portion of the Project;

(v) any violation of any environmental law, rule or regulation, including any Hazardous Substances Laws with respect to, or the release of any hazardous materials from, the Project or any part thereof;

(vi) the payment or prepayment, in whole or in part, of the Borrower Note;

(vii) any untrue statement or misleading statement or alleged untrue statement or alleged misleading statement of a material fact by the Borrower contained in any closing certificate or disclosure document for the Borrower Note or any of the documents relating to the Borrower Loan to which the Borrower is a party, or any omission or alleged omission from any disclosure document for the Borrower Loan of any material fact necessary to be stated therein in order to make the statements made therein by the Borrower, in the light of the circumstances under which they were made, not misleading;

(viii) any declaration of taxability of interest on the Governmental Lender Note, or allegations (or regulatory inquiry) that interest on the Governmental Lender Note is included in gross income for State or federal tax purposes (other than a holder of the Governmental Lender Note that constitutes a “substantial user” as such term is used in Section 147(a) of the Internal Revenue Code of 1986, as amended);

(ix) any failure (or alleged failure) by Borrower, the Bank or Governmental Lender to comply with applicable federal and state laws and regulations pertaining to the making of the Borrower Loan and the Bank Loan;

(x) the Project, or the condition, occupancy, use, possession, conduct or management of, or work done in or about, or from the planning, design, acquisition, installation, construction, improvement, equipping or rehabilitation of, the Project or any part thereof;

(xi) the use of the proceeds of the Borrower Loan and the Bank Loan;

(xii) any audit or inquiry by the Internal Revenue Service with respect to the Project and/or the tax-exempt status of the Governmental Lender Note; or

(xiii) the Bank’s acceptance of the assignment under the Assignment Agreement or administration of any of the Loan Documents, or the exercise or performance of any of its powers or duties thereunder or under any of the Loan Documents to which it is a party;

except (A) in the case of the foregoing indemnification of the Bank or any of its respective officers, governing members, directors, officials, employees, attorneys and agents, to the extent such damages are caused by the gross negligence or willful misconduct of such Indemnified Party; or (B) in the case of the foregoing indemnification of the Governmental Lender or any of its respective officers, governing members, directors, officials, employees, attorneys and agents, to the extent such damages are caused by the willful misconduct of such Indemnified Party; and provided that this Section 6.7(a) is not intended to give rise to a right of the Governmental Lender or the Bank to claim payment of the principal and accrued interest with respect to the Borrower Loan as a result of an indemnified third party claim. In the event that any action or proceeding is brought against any Indemnified Party with respect to which indemnity may be sought hereunder, the Borrower, upon written notice from the Indemnified Party, shall assume the investigation and

defense thereof, including the employment of counsel selected by the Indemnified Party, and shall assume the payment of all expenses related thereto, with full power to litigate, compromise or settle the same in its sole discretion; provided that the Indemnified Party shall have the right to review and approve or disapprove any such compromise or settlement. Each Indemnified Party shall have the right to employ separate counsel in any such action or proceeding and participate in the investigation and defense thereof, and the Borrower shall pay the reasonable fees and expenses of such separate counsel; provided, however, that such Indemnified Party may only employ separate counsel at the expense of the Borrower if in the judgment of such Indemnified Party a conflict of interest exists by reason of common representation or if all parties commonly represented do not agree as to the action (or inaction) of counsel.

Notwithstanding any transfer of the Project to another owner in accordance with the provisions of this Borrower Loan Agreement or the Regulatory Agreement, the Borrower shall remain obligated to indemnify each Indemnified Party pursuant to this Section if such subsequent owner fails to indemnify any party entitled to be indemnified hereunder, unless the Bank and the Governmental Lender have consented to such transfer and to the assignment of the rights and obligations of the Borrower hereunder.

(b) The rights of any persons to indemnity hereunder and rights to payment of fees and reimbursement of expenses pursuant to Sections 5.1 and 7.4 hereof shall survive the final payment or defeasance of the Governmental Lender Note and the Borrower Note. The provisions of this Section shall survive the termination of this Borrower Loan Agreement.

(c) In the event of any conflict between the provisions of this Section 6.7 and the provisions of Section 9 of the Regulatory Agreement, the provisions providing the most benefit and protection to the Indemnified Parties shall prevail. The provisions of this Section 6.7 shall in no way limit the indemnities set forth in the Deed of Trust and the Loan Agreement.

Section 6.8. Consent to Assignment. The Governmental Lender has made an assignment to the Bank of all rights and interest of the Governmental Lender in and to this Borrower Loan Agreement (except the Unassigned Rights), the Borrower Note and the Deed of Trust and has appointed the Bank as its agent to collect the payments by the Borrower on the Borrower Loan; and the Borrower hereby consents to all such assignments and such appointment.

Section 6.9. Compliance with Usury Laws. Notwithstanding any other provision of this Borrower Loan Agreement, it is agreed and understood that in no event shall this Borrower Loan Agreement, with respect to the Borrower Note or other instrument of indebtedness, be construed as requiring the Borrower or any other person to pay interest and other costs or considerations that constitute interest under any applicable law which are contracted for, charged or received pursuant to this Borrower Loan Agreement in an amount in excess of the maximum amount of interest allowed under any applicable law.

In the event of any acceleration of the payment of the principal amount of the Borrower Note or other evidence of indebtedness, that portion of any interest payment in excess of the maximum legal rate of interest, if any, provided for in this Borrower Loan Agreement or related

documents shall be cancelled automatically as of the date of such acceleration, or if theretofore paid, credited to the principal amount.

The provisions of this Section prevail over any other provision of this Borrower Loan Agreement.

Section 6.10. Title to the Project. The Borrower shall concurrently with the closing of the Borrower Loan have a fee simple interest in the site on which the Project is located free and clear of any lien or encumbrance except for (i) liens for nondelinquent assessments and taxes not yet due or which are being contested in good faith by appropriate proceedings; (ii) the Deed of Trust; (iii) Permitted Encumbrances (as defined in the Disbursement Agreement); and (iv) any other encumbrances approved by the Bank. Concurrently with the closing of the Borrower Loan, the Borrower shall cause to be delivered to the Bank one or more title policies, naming the Bank as the insured, as its interests may appear with endorsements specified in the Bank's escrow instructions, as required by the Bank.

Section 6.11. Payment of Taxes. The Borrower has filed or caused to be filed all federal, state and local tax returns or information returns which are required to be filed with respect to the Project and of which Borrower has knowledge, and has paid or caused to be paid all taxes as shown on said returns or on any assessment received by it, to the extent that such taxes have become due and payable other than those payable without penalty or interest.

Section 6.12. No Untrue Statements. Neither this Borrower Loan Agreement nor any other document, certificate or statement furnished to the Governmental Lender or the Bank by or on behalf of the Borrower, contains to the best of the Borrower's knowledge any untrue statement of a material fact or omits to state a material fact necessary in order to make the statements contained herein and therein not misleading or incomplete as of the date hereof. It is specifically understood by Borrower that all such statements, representations and warranties shall be deemed to have been relied upon by the Governmental Lender as an inducement to make the Borrower Loan, and by the Bank as an inducement to make the Bank Loan, and that if any such statements, representations and warranties were materially incorrect at the time they were made, the Governmental Lender may consider any such misrepresentation or breach an Event of Default.

Section 6.13. Insurance. The Borrower shall provide policies of property damage (fire, extended coverage, vandalism and malicious mischief), loss of rent, public liability and worker's compensation insurance with respect to the Project and the operation thereof as more fully described in the Loan Agreement and the Deed of Trust.

Section 6.14. Tax-Exempt Status of the Governmental Lender Note.

(a) It is the intention of the Governmental Lender and the Borrower that interest on the Governmental Lender Note shall be and remain excludable from the gross income of the owner of the Governmental Lender Note for federal income taxation purposes, and to that end the covenants and agreements of the Borrower in this Section 6.14 are for the benefit of the Bank and the Governmental Lender.



(b) The Borrower covenants and agrees that it will not take or omit to take any action that would cause the Governmental Lender Note to be an “arbitrage bond” within the meaning of Section 148 of the Code or “federally guaranteed” within the meaning of Section 149(b) of the Code and applicable regulations promulgated from time to time thereunder.

(c) In the event that at any time the Borrower is of the opinion or becomes otherwise aware that for purposes of this Section 6.14 it is necessary to restrict or to limit the yield on the investment of any moneys held by the Bank, the Borrower shall determine the limitations and so instruct the Bank in writing and cause the Bank to comply with those limitations.

(d) The Borrower will take such action or actions as may be reasonably necessary in the opinion of Tax Counsel, or of which it otherwise becomes aware, to fully comply with all applicable rules, rulings, policies, procedures, regulations or other official statements promulgated or proposed by the United States Department of the Treasury or the Internal Revenue Service under Section 142 or Section 148 of the Code which are applicable to the Governmental Lender Note.

(e) The Borrower further agrees that it shall not discriminate on the basis of race, creed, color, sex, sexual preference, source of income (e.g. AFDC, SSI), physical disability, national origin or marital status in the lease, use or occupancy of the Project or in connection with the employment or application for employment of persons for the operation and management of the Project, to the extent required by applicable State or federal law.

(f) The Borrower further warrants and covenants that it has not executed and will not execute any other agreement, or any amendment or supplement to any other agreement, with provisions contradictory to, or in opposition to, the provisions of this Borrower Loan Agreement and of the Regulatory Agreement, and that in any event, the requirements of this Borrower Loan Agreement and the Regulatory Agreement are paramount and controlling as to the rights and obligations herein set forth and supersede any other requirements in conflict herewith and therewith.

(g) The Borrower shall not purchase, and shall use its best efforts to prevent any Guarantor from purchasing, pursuant to an arrangement, formal or informal, the Governmental Lender Note or any interest therein.

(h) The Borrower will use due diligence to complete the construction of the Project and reasonably expects to fully expend the full authorized principal of the Borrower Loan within three years of the date of execution of this Borrower Loan Agreement.

(i) The Borrower will take such action or actions as necessary to ensure compliance with the Tax Certificate and Sections 2.2(j), (n), (p), (r) and (s) hereof.

(j) The Borrower will make timely payment of any rebate amount due to the federal government by reason of any investment of the proceeds of the Borrower Note or any moneys pledged to the repayment of the Borrower Note or the Governmental Lender Note, at a yield in excess of the yield on the Governmental Lender Note, or otherwise as required under the Code.

(k) The Borrower has retained or shall retain the services of a qualified rebate analyst to perform any and all calculations required to demonstrate compliance with its covenants herein with respect to the requirements of Section 148 of the Code as applicable to the Governmental Lender Note.

(l) In furtherance of the covenants in this Section 6.14, the Borrower shall execute, deliver and comply with the provisions of the Tax Certificate, which are by this reference incorporated into this Borrower Loan Agreement and made a part of this Borrower Loan Agreement as if set forth in this Borrower Loan Agreement in full. In the event of conflict between the terms of this Borrower Loan Agreement and the Tax Certificate, the terms of the Tax Certificate shall control.

Section 6.15. Regulatory Agreement. In order to maintain the exclusion from gross income under federal tax law of interest on the Governmental Lender Note and to assure compliance with the laws of the State and the Act, the Borrower hereby agrees that it shall, concurrently with or before the execution and delivery of the Governmental Lender Note, execute and deliver and cause to be recorded the Regulatory Agreement.

The Borrower shall comply with every term of the Regulatory Agreement, subject to all applicable notice and cure periods, and the Borrower hereby acknowledges that in the event of a default under the Regulatory Agreement, the Borrower Loan may be accelerated. The Borrower agrees to cause any amendments to the Regulatory Agreement to be recorded in the appropriate official public records. The books and records of the Borrower pertaining to the incomes of the Low-Income Tenants residing in the Project shall be open to inspection by any authorized representative of the Governmental Lender and the Bank.

Section 6.16. Useful Life. The Borrower hereby represents and warrants that, within the meaning of Section 147(a)(14) of the Code, the average maturity of the Governmental Lender Note does not exceed 120 percent of the average reasonably expected remaining economic life of the facilities being financed with the proceeds of the Governmental Lender Note.

Section 6.17. Federal Guarantee Prohibition. The Borrower shall take no action, nor permit nor suffer any action to be taken if the result of the same would be to cause the Governmental Lender Note to be “federally guaranteed” within the meaning of Section 149(b) of the Code.

Section 6.18. Prohibited Facilities. The Borrower represents and warrants that no portion of the proceeds of the Borrower Note shall be used to provide any airplane, skybox or other private luxury box, health club facility, facility primarily used for gambling, or store the principal business of which is the sale of alcoholic beverages for consumption off premises, and no portion of the proceeds of the Borrower Loan shall be used for an office unless (i) the office is located on the premises of the facilities constituting the Project and (ii) not more than a de minimis amount of the functions to be performed at such office is not related to the day-to-day operations of the Project.

Section 6.19. Election of Applicable Income Limit. The Governmental Lender hereby elects to have the Project meet the requirements of Section 142(d)(1)(B) of the Code in that forty percent (40%) or more of the residential units in the Project shall be occupied by Low Income Tenants.

Section 6.20. Loan Agreement. The Borrower agrees to comply with all of the covenants and agreements set forth in the Loan Agreement.

Section 6.21. Removal of General Partner. Notwithstanding anything to the contrary contained in the Loan Documents, removal, or withdrawal in lieu of removal, of the Borrower's general partner(s) for cause in accordance with the Borrower's Partnership Agreement as in effect from time to time, and which comply with the applicable requirements of the Loan Agreement, shall not require the consent of the Governmental Lender or the Bank and shall not constitute a default under any of the Loan Documents or accelerate the maturity of the Borrower Loan. If such general partner is removed, or withdraws in lieu of removal, the Bank shall not unreasonably withhold its consent (no consent of the Governmental Lender being needed in any event) to the admission of a substitute general partner; provided that if the Equity Investor designates itself, or an affiliate of the Equity Investor or of the Governmental Lender, as the substitute general partner, the Bank's consent to or notice of the admission of such substitute general partner shall not be required subject to satisfaction of the conditions in the Loan Agreement. Any amendment to the Partnership Agreement to effectuate such removal and/or withdrawal and such admission of the substitute general partner shall not require consent of or notice to the Governmental Lender or the Bank.

Section 6.22. Assignment of Equity Investor Interests. Notwithstanding anything to the contrary contained in the Loan Documents, the respective interests of any Equity Investor of the Borrower shall be freely transferable and any amendment to the Partnership Agreement to effectuate such transfers shall not require consent of or notice to the Governmental Lender or the Bank.

Section 6.23. Insurance and Condemnation Proceeds. Notwithstanding anything to the contrary contained in the Loan Documents, in the event of any fire or other casualty to the Project or any portion thereof or eminent domain proceedings resulting in condemnation of the Project or any portion thereof, subject to the conditions set forth in the Deed of Trust, the Borrower shall have the right to rebuild the respective portion of the Project, and to use all available insurance or condemnation proceeds therefor, provided that (a) such proceeds are sufficient to keep the Borrower Loan in balance and rebuild the respective portion of the Project in a manner that provides adequate security to the Governmental Lender (as determined by the Bank) for repayment of the Borrower Loan, or if such proceeds are insufficient, then the Borrower shall have funded any deficiency; (b) the Bank shall have the right to approve plans and specifications for any major rebuilding and the right to approve disbursements of insurance or condemnation proceeds for rebuilding under a construction escrow or similar arrangement; and (c) no continuing material default then exists by the Borrower under the Loan Documents. If the casualty or condemnation affects only part of the Project and total rebuilding is infeasible, then, subject to the conditions set forth in the Deed of Trust, proceeds may be used for partial rebuilding and partial repayment of

the Borrower Loan in a manner that provides adequate security to the Governmental Lender (as determined by the Bank) for repayment of the remaining balance of the Borrower Loan.

Section 6.24. Purchase Option/First Refusal Right. Notwithstanding anything to the contrary contained in the Loan Documents, the exercise of the Purchase Option or any right of first refusal provided for in the Partnership Agreement (a “First Refusal Right”) shall, subject to the conditions set forth in the Loan Agreement, not constitute a default under the Loan Documents or accelerate the maturity of the Borrower Loan thereunder. The exercise of the Purchase Option or First Refusal Right and any rights related to either thereof shall not constitute a default or accelerate the maturity of the Borrower Loan.

Section 6.25. Audit by the Internal Revenue Service. The Borrower acknowledges that in the event of an examination of the Governmental Lender Note by the Internal Revenue Service (the “Service”) to determine compliance of the Governmental Lender Note with the provisions of the Code as they relate to tax-exempt obligations, the Governmental Lender is likely to be treated as the “taxpayer” in such examination. The Borrower agrees, upon notification by the Governmental Lender, that the Borrower (a) will respond to any inquiries from the Service in connection with such examination; and (b) upon request of the Governmental Lender, will reimburse the Governmental Lender for all reasonable out of pocket expenses incurred by the Governmental Lender in connection with such examination of the Governmental Lender Note by the Service, or will directly pay the costs of any such examination. The Governmental Lender covenants that it will promptly notify the Borrower of any inquiry or examination by the Service relating to the Governmental Lender Note and will cooperate with the Borrower, at the Borrower’s sole expense, in connection with any such inquiry or examination. The Borrower understands and agrees that the interests of the Governmental Lender and the Borrower in any such examination may differ and that the existence of the examination may be subject to public disclosure by the Governmental Lender under the open records laws of the State.

## ARTICLE VII

### EVENTS OF DEFAULT AND REMEDIES

Section 7.1. Events of Default. Each of the following shall be an “Event of Default”:

(a) The Borrower shall fail to pay when due the amounts required to be paid under this Borrower Loan Agreement, the Loan Agreement, the Deed of Trust, the Borrower Assignments or the Borrower Note when the same shall become due and payable in accordance with the terms of this Borrower Loan Agreement or the Borrower Note, including a failure to repay any amounts which have been previously paid but are recovered, attached or enjoined pursuant to any insolvency, receivership, liquidation or similar proceedings; or

(b) The Borrower shall fail to perform or observe any of its covenants or agreements contained in this Borrower Loan Agreement, the Regulatory Agreement, the Borrower Note, the Loan Agreement or the Deed of Trust, other than as specified in paragraph (a) above, and such failure shall continue during and after the period specified in Section 7.2; or

(c) Any representation or warranty of the Borrower hereunder shall be determined by the Bank or the Governmental Lender to have been false or misleading in any material adverse respect when made; or

(d) If there is a filing of a complaint for receivership against the Borrower, or an Act of Bankruptcy, or if the Borrower becomes insolvent or makes a general assignment for the benefit of creditors or consents to the appointment of a receiver of all or any of its assets, or voluntarily suspends its usual business; or

(e) [Reserved]; or

(f) This Borrower Loan Agreement or any of the other Loan Documents ceases to be in full force and effect (including failure of any collateral document to create a valid and perfected security interest or lien) at any time and for any reason; or

(g) Any of the preceding events occurs with respect to any general partner of the Borrower unless such general partner is replaced in accordance with the Partnership Agreement and the Loan Agreement within the period provided in Section 7.2(b) below; or

(h) The resignation or expulsion of the general partner of the Borrower, unless the general partner is replaced in accordance with the Partnership Agreement within the period provided in Section 7.2(b) below; or

(i) Prior to the completion of construction of the Project, the construction of the Project is abandoned or work thereon ceases for a period of more than thirty (30) consecutive days for any reason except delays caused by Force Majeure, or the construction of the Project is not completed prior to the Completion Date (as defined in the Disbursement Agreement) unless such date has been extended with the written approval of the Bank, regardless of the reason for the delay except delays caused by Force Majeure; or

(j) Other than as permitted by the Loan Documents, any sale, transfer, hypothecation, assignment or conveyance of the Project or any portion thereof or interest therein by the Borrower except in accordance with the requirements set forth in the Regulatory Agreement; or

(k) All or any material portion of the Project is condemned, seized, or appropriated without compensation, and the Borrower does not within thirty (30) days after such condemnation, seizure, or appropriation, initiate and diligently prosecute appropriate action to contest in good faith the validity of such condemnation, seizure, or appropriation; or

(l) The commencement of foreclosure or forfeiture proceedings, whether by judicial proceeding, self-help, repossession or any other method, by any creditor of Borrower or by any governmental agency against any collateral securing the Borrower Loan, including a garnishment of any of the Borrower's accounts, including deposit accounts, with the Bank; however, this Event of Default shall not apply if there is a good faith dispute by the Borrower as to the validity or reasonableness of the claim which is the basis of the creditor or forfeiture proceeding and if the Borrower gives the Bank written notice of the creditor or forfeiture

proceeding and deposits with the Bank moneys or a surety bond for the creditor or forfeiture proceeding, in an amount determined by the Bank, in its sole discretion, as being an adequate reserve or bond for the dispute; or

(m) a material adverse change occurs in the Borrower's financial condition, or the Bank believes the prospect of payment or performance of the Borrower Loan is impaired; or

(n) a default occurs under the Bank Loan Documents, which default is not cured within any applicable notice, cure or grace period(s).

Section 7.2. Notice of Default; Opportunity to Cure. If the Borrower has not been given notice of a similar default within the past twelve (12) months, default under Section 7.1(b), (c), (e), (g), (h), (i), (j), (k), (l) or (m) hereof shall not constitute an Event of Default until:

(a) The Governmental Lender or the Bank, by registered or certified mail, shall give notice to the Borrower and Equity Investor of such default specifying the same and stating that such notice is a "Notice of Default"; and

(b) The Borrower and Equity Investor shall have had 30 days after receipt of such notice to correct a non-monetary default and shall not have corrected it; provided, however, that if the default stated in the notice is of such a nature that it cannot be corrected within 30 days, such default shall not constitute an Event of Default hereunder so long as (i) the Borrower and/or Equity Investor institutes corrective action within said 30 days and diligently pursues such action until the default is corrected, but in no event later than 60 days after the occurrence of such Event of Default, and (ii) in the opinion of Tax Counsel to the Governmental Lender, the failure to cure said default within 60 days will not adversely affect the exclusion from gross income for federal income tax purposes of interest on the Governmental Tax-Exempt Lender Note.

Notwithstanding anything to the contrary contained in the Loan Documents, if a monetary default or event of default occurs under the terms of any of the Loan Documents, prior to exercising any remedies thereunder, the Governmental Lender or the Bank shall give the Borrower and the Equity Investor of the Borrower under its Partnership Agreement simultaneous written notice of such default. The Borrower and/or Equity Investor shall have a period of ten (10) days after receipt of such notice, or such longer period of time as may be set forth in the applicable Loan Documents, to cure the default prior to exercise of remedies by the Governmental Lender under the Loan Documents.

Notwithstanding anything to the contrary contained in the Loan Documents, the Governmental Lender and the Bank hereby agree that any cure of any default made or tendered by the one or more of the Borrower's partners shall be deemed to be a cure by the Borrower and shall be accepted or rejected on the same basis as if made or tendered by the Borrower.

Section 7.3. Remedies. Whenever any Event of Default under Section 7.1 hereof shall have happened and be continuing, the Governmental Lender and the Bank may take whatever remedial steps as may be allowed under the law, this Borrower Loan Agreement and the other Loan Documents.

Section 7.4. Attorneys' Fees and Expenses. If an Event of Default occurs and if the Governmental Lender or the Bank should employ attorneys or incur expenses for the enforcement of any obligation or agreement of the Borrower contained herein, the Borrower on demand will pay to the Governmental Lender and/or the Bank the reasonable fees of such attorneys and the reasonable expenses so incurred, including court appeals.

Section 7.5. No Remedy Exclusive. No remedy herein conferred upon or reserved to the Governmental Lender or the Bank is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Borrower Loan Agreement or now or hereafter existing at law or in equity or by statute; provided, that the remedies are subject to the provisions of Section 5.2 of this Borrower Loan Agreement. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the Governmental Lender or the Bank to exercise any remedy reserved to either of them in this Article VII, it shall not be necessary to give any notice, other than such notice as may be herein expressly required. Such rights and remedies as are given the Governmental Lender hereunder shall also extend to the Bank, as assignee of the Governmental Lender's interests in the Borrower Note, the Deed of Trust and this Borrower Loan Agreement, and the Bank, as assignee of the Governmental Lender's interests in the Borrower Note, the Deed of Trust and this Borrower Loan Agreement shall be deemed a third party beneficiary of all covenants and agreements herein contained.

Section 7.6. No Additional Waiver Implied by One Waiver. In the event any agreement or covenant contained in this Borrower Loan Agreement should be breached by the Borrower and thereafter waived by the Governmental Lender, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder including any other breach of the same agreement or covenant.

## ARTICLE VIII

### MISCELLANEOUS

Section 8.1. Entire Agreement. This Borrower Loan Agreement, the Borrower Note, the Regulatory Agreement, the Deed of Trust and the other Loan Documents to which the Borrower is a party constitute the entire agreement and supersede all prior agreements and understandings, both written and oral, between the Governmental Lender and the Borrower with respect to the subject matter hereof.

Section 8.2. Notices. All notices, consents, approvals and requests required or permitted hereunder or under any other Borrower Assignments or Bank Loan Document (a "notice") shall be deemed to be given and made when delivered by hand, by recognized overnight delivery service, confirmed facsimile transmission (provided any facsimile or other electronic transmission received by any party after 4:00 p.m., local time, as evidenced by the time shown on such transmission, shall be deemed to have been received the following Business Day), or five

(5) calendar days after deposited in the United States mail, registered or certified, postage prepaid, with return receipt requested, addressed as follows:

to the Borrower: Forum Apartments LLLP  
c/o Colorado Coalition for the Homeless  
2111 Champa Street  
Denver, CO 80205  
Attention: [\_\_\_\_\_]

with a copy to: Faegre Drinker Biddle & Reath LLP  
1144 15<sup>th</sup> Street, Suite 3400  
Denver, CO 80202  
Attention: William Callison, Esq.  
Email: [william.callison@faegredrinker.com](mailto:william.callison@faegredrinker.com)  
Telephone: 303-607-3770

with copies to: NHT Equity, LLC, its affiliates, successors & assigns  
2245 North Bank Drive, Suite 200  
Columbus, Ohio 43220  
Attention: Asset Management

with a copy to: Kutak Rock LLP  
1650 Farnam Street  
Omaha, NE 68102  
Attention: Jill H. Goldstein, Esq.

to the Governmental Lender: City and County of Denver, Colorado  
Department of Finance  
201 West Colfax Avenue  
Department 1010  
Denver, CO 80202  
Email: [Michael.Kerrigan@denvergov.org](mailto:Michael.Kerrigan@denvergov.org)  
Attention: Chief Financial Officer

with copies to: Office of Department of Housing Stability  
201 West Colfax  
Sixth Floor  
Denver, CO 80202  
Email: [Nicholas.Emenhiser@denvergov.org](mailto:Nicholas.Emenhiser@denvergov.org)  
Attention: Executive Director

Denver City Attorney's Office  
1437 Bannock Street  
Room 353  
Denver, CO 80202  
Email: [Bradley.Neiman@denvergov.org](mailto:Bradley.Neiman@denvergov.org)



Attention: City Attorney

Kutak Rock LLP  
1801 California Street, Suite 3000  
Denver, CO 80202  
Attention: Frederic H. Marienthal, Esq.  
Email: [Frederic.Marienthal@kutakrock.com](mailto:Frederic.Marienthal@kutakrock.com)

to the Bank:

PNC Bank, National Association  
101 South Fifth Street, 7<sup>th</sup> Floor  
Mailstop K1-K201-07-4  
Louisville, Kentucky 40202  
Attention: Loan Administration

with a copy to:

Bateman Seidel  
1000 SW Broadway, Suite 1910  
Portland, OR 97205  
Attention: Stephen Seidel, Esq.  
Telephone: (503) 972-9927  
Email: [sseidel@batemanseidel.com](mailto:sseidel@batemanseidel.com)

to the Equity Investor:

NHT Equity, LLC, its affiliates, successors & assigns  
2245 North Bank Drive, Suite 200  
Columbus, Ohio 43220  
Attention: Asset Management

with a copy to:

NHT 33 Tax Credit Fund, L.P., its affiliates, successors & assigns  
C/O National Affordable Housing Trust, Inc.  
2245 North Bank Drive, Suite 200  
Columbus, Ohio 43220  
Attention: Asset Management

with a copy to:

Kutak Rock LLP  
1650 Farnam Street  
Omaha, NE 68102  
Attention: Jill H. Goldstein, Esq.

Any party may change such party's address for the notice or demands required under this Borrower Loan Agreement by providing written notice of such change of address to the other parties by written notice as provided herein.

Section 8.3. Assignments. This Borrower Loan Agreement may not be assigned by any party without the prior written consent of the other, except that the Governmental Lender shall assign to the Bank its rights under this Borrower Loan Agreement, the Bank may assign its rights hereunder to any transferee of the Governmental Lender Note subject to the requirements of the

Bank Loan Agreement, and except also that the Borrower may assign to any transferee its rights under this Borrower Loan Agreement as provided by Section 6.2.

Section 8.4. Severability. If any provision of this Borrower Loan Agreement shall be held or deemed to be or shall, in fact, be illegal, inoperative or unenforceable, the same shall not affect any other provision or provisions herein contained or render the same invalid, inoperative, or unenforceable to any extent whatever.

Section 8.5. Execution of Counterparts. This Borrower Loan Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Section 8.6. Amendments, Changes and Modifications. Except as otherwise provided in this Borrower Loan Agreement, subsequent to the issuance of the Borrower Note and prior to their payment in full, this Borrower Loan Agreement may not be effectively amended, changed, modified, altered or terminated without the written consent of the parties hereto and the Bank.

Section 8.7. Governing Law and Venue. This Borrower Loan Agreement and the Governmental Lender Note are contracts made under the laws of the State of Colorado and shall be governed by and construed in accordance with the Constitution and laws applicable to contracts made and performed in the State of Colorado. This Borrower Loan Agreement and the Governmental Lender Note shall be enforceable in the State of Colorado, and any action arising out of this Borrower Loan Agreement or the Governmental Lender Note shall be filed and maintained in the City and County of Denver, Colorado, unless the Governmental Lender waives this requirement.

Section 8.8. Waiver of Jury Trial. TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW, EACH OF BORROWER AND THE GOVERNMENTAL LENDER (A) COVENANTS AND AGREES NOT TO ELECT A TRIAL BY JURY WITH RESPECT TO ANY ISSUE ARISING OUT OF THIS BORROWER LOAN AGREEMENT OR THE RELATIONSHIP BETWEEN THE PARTIES THAT IS TRIABLE OF RIGHT BY A JURY, AND (B) WAIVES ANY RIGHT TO TRIAL BY JURY WITH RESPECT TO SUCH ISSUE TO THE EXTENT THAT ANY SUCH RIGHT EXISTS NOW OR IN THE FUTURE. THIS WAIVER OF RIGHT TO TRIAL BY JURY IS SEPARATELY GIVEN BY EACH PARTY, KNOWINGLY AND VOLUNTARILY WITH THE BENEFIT OF COMPETENT LEGAL COUNSEL. IF, FOR ANY REASON, THIS PROVISION IS DETERMINED TO BE UNENFORCEABLE, ALL MATTERS OTHERWISE SUBJECT TO JURY TRIAL SHALL BE SUBJECT TO THE JUDICIAL REFERENCE PROCEDURES SET FORTH IN THE FOLLOWING SECTION 8.9 OF THIS BORROWER LOAN AGREEMENT.

Section 8.9. Governmental Lender Approval. Governmental Lender agrees that, subject to any requirements of the Charter or the Denver Revised Municipal Code, each as amended from time to time, all approvals and consents of the Governmental Lender under the Loan Documents shall not be unreasonably withheld, delayed or conditioned. Term of Agreement. This Borrower Loan Agreement shall be in full force and effect from the date hereof until such time as the

Borrower Note shall have been fully paid or provision made for such payment. Time is of the essence in this Borrower Loan Agreement.

Section 8.11. Survival of Agreement. All agreements, representations and warranties made herein shall survive the making of the Borrower Loan.

Section 8.12. Expenses. The Borrower shall pay and indemnify the Governmental Lender and the Bank against all reasonable fees, costs and charges, including reasonable fees and expenses of attorneys, accountants, consultants and other experts, incurred in good faith (and with respect to the Bank, without gross negligence) and arising out of or in connection with the Loan Documents. These obligations and those in Section 6.7 shall remain valid and in effect notwithstanding repayment of the loan hereunder or the Governmental Lender Note or termination of this Borrower Loan Agreement or the Bank Loan Agreement.

Section 8.13. Waiver of Personal Liability. No obligation, covenant, condition or agreement contained herein or in the Governmental Lender Note shall be deemed to be an obligation, covenant, condition or agreement of any past, present or future officer, member, director, trustee, fiscal agent, counsel, official, employee or agent of the Governmental Lender in their individual capacity. No recourse under or upon any obligation, covenant, or agreement or in the Governmental Lender Note, or under any judgment obtained against the Governmental Lender, or by the enforcement of any assessment or by any legal or equitable proceeding by virtue of any constitution or statute or otherwise or under any circumstances, shall be had against any officer, member, director, trustee, fiscal agent, counsel, official, employee or agent, as such, past, present, or future, of the Governmental Lender, either directly or through the Governmental Lender, or otherwise, for the payment for or to the Governmental Lender or any receiver thereof, or for or to the Bank, of any sum that may be due and unpaid by the Governmental Lender upon the Bank Loan. Any and all personal liability of every nature, whether at common law or in equity, or by statute or by constitution or otherwise, of any such officer, member, director, trustee, fiscal agent, counsel, official, employee or agent, as such, to respond by reason of any act or omission on his or her part or otherwise, for the payment for or to the Governmental Lender or any receiver thereof, or for or to the Bank, of any sum that may remain due and unpaid upon the Bank Loan, is hereby expressly waived and released as a condition of and consideration for the execution of this Borrower Loan Agreement and the issuance of the Governmental Lender Note.

Section 8.14. Binding Effect; Third Party Beneficiary. This Borrower Loan Agreement shall inure to the benefit of and shall be binding upon the Governmental Lender, the Borrower and their respective successors and assigns. The Bank is intended to be a third-party beneficiary of this Borrower Loan Agreement. Borrower's Equity Investor, and its successors and assigns, is a third party beneficiary of the rights of Borrower under the Loan Documents and has the right to directly enforce such rights.

IN WITNESS WHEREOF, the parties hereto have executed this Borrower Loan Agreement, all as of the date first above written.

**ATTEST:**

**CITY AND COUNTY OF DENVER**

By: \_\_\_\_\_  
Paul D. Lopez,  
Clerk and Recorder, Ex-Officio Clerk  
of the City and County of Denver

By: \_\_\_\_\_  
Michael B. Hancock, MAYOR

**APPROVED AS TO FORM:**

**Kristin M. Bronson**

Attorney for the City and County of Denver

**REGISTERED AND COUNTERSIGNED:**

By: \_\_\_\_\_  
City Attorney

By: \_\_\_\_\_  
Brendan J. Hanlon, CFO

By: \_\_\_\_\_  
Timothy O'Brien, Auditor

Forum Apartments LLLP, a Colorado limited liability limited partnership

By: Forum Housing Corporation II ,a Colorado nonprofit corporation, its general partner

By \_\_\_\_\_  
[Name, Title]

[Signature Page to Borrower Loan Agreement – Forum Apartments]

EXHIBIT A  
BORROWER NOTE

[Closing Date]

**FORUM APARTMENTS LLLP**, a Colorado limited liability limited partnership (the “Borrower”), for value received hereby promises to pay to the order of the **CITY AND COUNTY OF DENVER, COLORADO** (the “Governmental Lender”), or its successors and assigns, the sum of [TEN MILLION AND NO/100THS] DOLLARS (\$[10,000,000.00]), or so much thereof as may be advanced from time to time, together with interest on the advanced and unpaid amount of this Borrower Note (the “Borrower Note”), at the interest rates as hereinafter provided, computed from the date of advance until maturity at a per annum rate, calculated on the basis of a 360-day year (determined on a daily basis, the first such determination being made on the date advanced by or on behalf of the Governmental Lender under Section 3.4 of the Borrower Loan Agreement, and other determinations being made on the date upon which a change in such rate occurs) until the Borrower’s obligation to pay the Outstanding Balance (as hereinafter defined) shall be discharged in full.

The Outstanding Balance shall mean the principal balance of the portion of the Borrower Loan evidenced by this Borrower Note which has been advanced by or on behalf of the Governmental Lender under Section 3.4 of the Borrower Loan Agreement described below, and has not been repaid by the Borrower to the Governmental Lender as of the date of calculation of the Outstanding Balance.

This Borrower Note is issued to evidence the Borrower Loan by the Governmental Lender to the Borrower and the obligation of the Borrower to repay the same and shall be governed by and be payable in accordance with the terms and conditions (including the provisions of Section 5.2) of a Loan Agreement (the “Borrower Loan Agreement”), dated as of [\_\_\_\_\_] 1, 2021, between the Governmental Lender and the Borrower pursuant to which the Governmental Lender has made the Borrower Loan. This Borrower Note has been assigned to **PNC BANK, NATIONAL ASSOCIATION** (the “Funding Lender”) pursuant to an Assignment Agreement, dated as of [\_\_\_\_\_] 1, 2021, by and between the Governmental Lender and the Funding Lender. All payments on this Borrower Note shall be made by the Borrower to the Funding Lender, as assignee of the Governmental Lender under said Assignment Agreement.

1. **Definitions.** As used in this Borrower Note, in addition to capitalized terms defined elsewhere in this Borrower Note, the following terms shall have the meanings set forth below:

“**Bank Loan Agreement**” means the Loan Agreement dated as of [\_\_\_\_\_] 1, 2021, by and between the Governmental Lender and Funding Lender.

“**Business Day**” means a day other than a Saturday, Sunday or a day on which Funding Lender is closed for business.

“**Closing Date**” means the date of this Borrower Note.

**“Conditions to Conversion”** shall have the meaning given to such term in the Loan Agreement.

**“Conversion Date”** shall have the meaning given to such term in the Loan Agreement.

**“Determination of Taxability”** has the meaning assigned to such term in the Borrower Loan Agreement.

**“Discount Rate”** means the rate which, when compounded monthly, is equivalent to the Treasury Rate when compounded semi-annually.

**“First Payment Date”** means the first Business Day of the month following the month in which the first disbursement of Loan proceeds is made in accordance with the Borrower Loan Agreement, or, if the first disbursement of Loan proceeds is made after the 20th day of a month, means the first Business Day of the second month following the month in which the first disbursement of Loan proceeds is made in accordance with the Loan Agreement.

**“Interest Rate”** shall have the meaning set forth in Schedule 1 to this Borrower Note.

**“Loan”** has the meaning assigned to such term in the Borrower Loan Agreement.

**“Loan Agreement”** means the Loan Agreement of even date herewith, between Borrower and Funding Lender, as may be modified, amended, supplemented, and restated.

**“Loan Documents”** has the meaning assigned to such term in the Loan Agreement.

**“Loan Payment Date”** and **“Payment Date”** means the first Business Day of each month, commencing on the First Payment Date.

**“Maturity Date”** means the earlier to occur of (i) \_\_\_\_\_ 1, 20\_\_, or (ii) any earlier date on which the unpaid principal balance of this Borrower Note becomes due and payable, by acceleration or otherwise.

**“Maximum Permanent Period Amount”** shall mean \$[2,500,000].00.

**“Maximum Rate”** means the lesser of (i) twelve percent (12%) per annum or (ii) the maximum interest rate that may be paid on the Loan under the laws of the Property Jurisdiction.

**“Borrower Note Interest”** shall have the meaning set forth in Schedule 1 to this Borrower Note.

**“Permanent Period Amount”** shall have the meaning set forth in the Loan Agreement.

**“Prepayment Consideration”** means the greater of: (x) one percent (1%) of the outstanding principal balance of this Note at the time of prepayment; or (y) the Yield Maintenance Amount.

**“Prepayment Date”** has the meaning given such term in Section 9(b).

**“Property Jurisdiction”** shall have the meaning set forth in the Security Instrument.

**“Security Instrument”** means the Construction and Permanent Deed of Trust with Absolute Assignment of Leases and Rents, Security Agreement and Fixture Filing of even date herewith, from Borrower for the benefit of Governmental Lender and assigned by Governmental Lender to Funding Lender, as beneficiary pursuant to the Assignment Agreement, as may be amended, restated, supplemented and modified from time to time.

**“Treasury Rate”** means the yield calculated by the linear interpolation of the yields, as reported in Federal Reserve Statistical Release H.15-Selected Interest Rates under the heading U.S. Government Securities/Treasury Constant Maturities for the week ending before the Prepayment Date, of U.S. Treasury constant maturities with maturity dates (one longer and one shorter) most nearly approximating the Maturity Date. In the event Release H.15 is no longer published, Funding Lender shall select a comparable publication to determine the Treasury Rate.

**“Yield Maintenance Amount”** means the present value, as of the Prepayment Date, of the remaining scheduled payments of principal and interest from the Prepayment Date through the Maturity Date (including any balloon payment) determined by discounting such payments at the Discount Rate, less the amount of principal being prepaid.

All other capitalized terms used but not defined in this Borrower Note shall have the meanings given to such terms in the Loan Agreement

2. **Payment of Principal and Interest.** Principal and interest shall be paid as follows:

(a) Borrower shall pay all amounts due under this Borrower Note at the times and in the amounts set forth herein and in the Loan Agreement. Borrower shall make its payments under this Borrower Note in immediately available funds.

(b) Commencing on the First Payment Date and continuing on each Loan Payment Date thereafter until and including the Conversion Date, Borrower shall pay monthly payments of interest only, at the Interest Rate set forth in Section A(1) on Schedule 1 attached hereto, in successive monthly installments. Such payments shall be made to the Funding Lender by 11:00 a.m., New York City time, on each Loan Payment Date.

(c) Commencing on the first Loan Payment Date following the Conversion Date, and continuing on each Loan Payment Date thereafter until and including the Maturity Date, Borrower shall pay monthly payments of principal and interest as set forth in Section B(1) on Schedule 1 attached hereto, in successive monthly installments. Such payments shall be made to the Funding Lender by 2:00 p.m., New York City time.

(d) Any accrued interest remaining past due may, at Funding Lender’s discretion, be added to and become part of the unpaid principal balance and shall bear interest at the rate or rates specified in this Borrower Note, and any reference



below to “accrued interest” shall refer to accrued interest that has not become part of the unpaid principal balance.

(e) Borrower shall pay all unpaid principal of and interest on this Borrower Note on the Maturity Date and any other amounts due under subsection 2(a) hereof.

(f) Any regularly scheduled monthly installment of principal and interest that is received by Funding Lender before the date it is due shall be deemed to have been received on the due date solely for the purpose of calculating interest due.

(g) Borrower shall make all payments of principal and interest under this Borrower Note without relief from valuation and appraisal laws.

(h) Borrower acknowledges that the calculation of all interest payments shall be made by the Funding Lender and shall be final and conclusive, absent manifest error.

(i) Whenever any payment to be made under this Borrower Note shall be stated to be due on a day which is not a Business Day, such payment may be made on the next succeeding Business Day, and such extension of time may be included in computing interest, if any, in connection with such payment.

3. **Application of Payments.** If at any time Funding Lender receives, from Borrower or otherwise, any amount applicable to the Indebtedness which is less than all amounts due and payable at such time, Funding Lender may apply that payment to amounts then due and payable under this Borrower Note in any manner and in any order determined by Funding Lender, in Funding Lender’s discretion. Borrower agrees that neither Funding Lender’s acceptance of a payment from Borrower in an amount that is less than all amounts then due and payable nor Funding Lender’s application of such payment shall constitute or be deemed to constitute either a waiver of the unpaid amounts or an accord and satisfaction.

4. **Security.** THIS BORROWER NOTE SHALL BE SECURED BY THE CONSTRUCTION AND PERMANENT DEED OF TRUST, SECURITY AGREEMENT, ABSOLUTE ASSIGNMENT OF RENTS AND FIXTURE FILING (THE “DEED OF TRUST”) MADE BY THE BORROWER, AS TRUSTOR, FOR THE BENEFIT OF THE GOVERNMENTAL LENDER, AS BENEFICIARY, NAMING FIDELITY TITLE INSURANCE COMPANY AS TRUSTEE THEREUNDER, AND DATED AS OF [\_\_\_\_\_] 1, 2021. THE GOVERNMENTAL LENDER HAS ASSIGNED ITS INTERESTS UNDER SAID DEED OF TRUST TO THE FUNDING LENDER.

5. **Event of Default and Acceleration.** It is especially agreed that upon the occurrence and continuance of a default by Borrower in the payment and performance of this Borrower Note or an Event of Default under and as defined in the Borrower Loan Agreement or the Loan Agreement, then, in any such event, at the option of Funding Lender or any other holder

hereof at any time thereafter without notice of intent to accelerate, notice of acceleration, or any other demand or notice, all of which are expressly waived by Borrower (except as required in the Borrower Loan Agreement), the unpaid principal balance of this Borrower Note and all accrued interest shall at once become due and payable, and Funding Lender shall have no further obligation to make advances hereunder.

6. **Late Charge.** If any amount payable under this Borrower Note or under the Security Instrument or any other Loan Document is not received by Funding Lender when such amount is due (unless applicable law requires a longer period of time before a late charge may be imposed, in which event, such longer period shall be substituted), Borrower shall pay to Funding Lender, immediately and without demand by Funding Lender, a late charge equal to five percent (5.0%) of such amount (unless applicable law requires a lesser amount be charged, in which event such lesser amount shall be substituted). Notwithstanding the foregoing, with regard to each regularly scheduled monthly installment of principal and/or interest payable pursuant to this Borrower Note, such late charge shall not become due and payable to Funding Lender so long as the Borrower makes such payment on or prior to the tenth (10th) calendar day following the date upon which such payment is due (or the Business Day immediately following such tenth (10th) calendar day if such tenth (10th) calendar day is not a Business Day). Any accrued but unpaid late charges shall be added to and become part of the unpaid principal balance of this Borrower Note, shall bear interest at the rate or rates specified in this Borrower Note, and shall be secured by the Security Instrument and the other applicable Loan Documents. Borrower acknowledges that its failure to make timely payments will cause Funding Lender to incur additional expenses in servicing and processing the Loan, and that it is extremely difficult and impractical to determine those additional expenses. Borrower agrees that the late charge payable pursuant to this Section represents a fair and reasonable estimate, taking into account all circumstances existing on the Closing Date, of the additional expenses Funding Lender will incur by reason of such late payment, and such late charge shall be deemed liquidated damages and not additional interest or a penalty. The late charge is payable in addition to, and not in lieu of, any interest payable at the Default Rate pursuant to Section 7. Any action regarding the collection of a Late Charge will be without prejudice to any other rights, and shall not act as a waiver of any other rights that the Servicer or the Funding Lender may have as provided herein, in the other Loan Documents, or at law or in equity.

7. **Default Rate.** So long as (a) any monthly installment under this Borrower Note remains past due, or (b) any other Event of Default has occurred and is continuing, interest under this Borrower Note shall accrue on the unpaid principal balance from the earlier of the due date of the first unpaid monthly installment or the occurrence of such other Event of Default, as applicable, at a rate per annum (the "Default Rate") equal to the lesser of the Maximum Rate or a rate equal to the Interest Rate plus five percent (5%), in each case compounded monthly (computed in accordance with Schedule 1 in the same manner in which Borrower Note Interest is computed). If the unpaid principal balance and all accrued interest are not paid in full on the Maturity Date, the unpaid principal balance and all accrued interest shall bear interest from the Maturity Date at the Default Rate until the unpaid principal balance and all accrued interest is paid in full. Borrower

also acknowledges that its failure to make timely payments will cause Funding Lender to incur additional expenses in servicing and processing the Loan, that, during the time that any monthly installment under this Borrower Note is delinquent, Funding Lender will incur additional costs and expenses arising from its loss of the use of the money due and from the adverse impact on Funding Lender's ability to meet its other obligations and to take advantage of other investment opportunities, and that it is extremely difficult and impractical to determine those additional costs and expenses. Borrower also acknowledges that, during the time that any monthly installment under this Borrower Note is delinquent or any other Event of Default has occurred and is continuing, Funding Lender's risk of nonpayment of this Borrower Note will be materially increased and Funding Lender is entitled to be compensated for such increased risk. Borrower agrees that the increase in the rate of interest payable under this Borrower Note to the Default Rate as provided above represents a fair and reasonable estimate, taking into account all circumstances existing on the Closing Date, of the additional costs and expenses Funding Lender will incur by reason of Borrower's delinquent payment and the additional compensation Funding Lender is entitled to receive for the increased risks of nonpayment associated with a delinquent loan.

8. **Costs and Expenses.** To the fullest extent allowed by applicable law, Borrower shall pay all expenses and costs, including, without limitation, out-of-pocket expenses and reasonable fees of attorneys (including, without limitation, in-house attorneys) and expert witnesses and costs of investigation, incurred by Funding Lender as a result of any default under this Borrower Note or in connection with efforts to collect any amount due under this Borrower Note, or to enforce the provisions of any of the other Loan Documents, including those incurred in post-judgment collection efforts and in any Bankruptcy proceeding (including any action for relief from the automatic stay of any Bankruptcy proceeding) or judicial or non-judicial foreclosure proceeding. For purposes of Section, attorneys' out of pocket expenses shall include, but are not limited to, support staff costs, costs of preparing for litigation, computerized research, telephone and facsimile transmission expenses, mileage, deposition costs, postage, duplicating, process service, videotaping and similar costs and expenses.

9. **Prepayment. Prepayment-When Permitted.** Prior to the Conversion Date, the Borrower shall have the right to prepay all, but not less than all, of the Obligations on a Prepayment Date, without premium or penalty. Amounts prepaid may not be re-borrowed. From and after the Conversion Date, Borrower shall have the right to prepay all, but not less than all, of the Obligations on a Prepayment Date only in strict compliance with the provisions of this Section 9:

(a) Prior to the first day of the month that is three (3) calendar months before the Maturity Date (the “Early Payment Date”), Borrower shall have the right to prepay all or any portion of the Obligations by paying the sum of: (1) the amount of such prepayment, (2) all accrued and unpaid interest, (3) any other sums due under this Note, the Security Instrument or any Other Document, and (4) the Prepayment Consideration (except for any prepayment permitted under the Security Instrument in the event of a casualty or condemnation). Additionally, any such prepayment not actually received by Funding Lender before 5:00 p.m., central time, on the fifth (5<sup>th</sup>) day of any calendar month must also include the interest which would have accrued on the amount of such prepayment during the entire calendar month in which the prepayment is made.

(b) On or after the Early Payment Date, Borrower shall have the right to prepay all or any portion of the Obligations by paying the sum of: (1) the amount of such prepayment, (2) all accrued and unpaid interest, and (3) any other sums due under this Note, the Security Instrument or any Other Document. No Prepayment Consideration will be due from any prepayment of this Note on or after the Early Payment Date. Additionally, any such prepayment not actually received by Funding Lender before 5:00 p.m., central time, on the fifth (5<sup>th</sup>) day of any calendar month must also include the interest which would have accrued on the amount of such prepayment during the entire calendar month in which the prepayment is made.

(c) Notice. Borrower shall give written notice to Funding Lender specifying the date, on which a prepayment of the Obligations is to be made (the date of any prepayment hereunder, whether pursuant to such notice or not, and whether voluntary or involuntary, being herein called the “Prepayment Date”). The Prepayment Date so designated must fall within the first ten (10) calendar days after a month during the term of this Note. Funding Lender shall receive this notice not more than sixty (60) days and not less than thirty (30) days before the Prepayment Date. If any such notice of prepayment is given, the entire Obligations, including any applicable Prepayment Consideration, shall be due and payable on the Prepayment Date.

(d) Prepayment After Event of Default. If, upon an Event of Default, Borrower shall tender payment of an amount sufficient to satisfy the Obligations at any time before or after a sale of the Mortgaged Property, either through foreclosure or the exercise of the other remedies available to Funding Lender under the Security Instrument or the Other Documents, such tender by Borrower shall be deemed to be a voluntary prepayment under this Note in the amount tendered and, in such case, Borrower shall also pay to Funding Lender, with respect to the amount tendered, the applicable Prepayment Consideration set forth in this Note, which Prepayment Consideration shall be immediately due and payable.

(e) Payment Must be Accompanied by Prepayment Consideration. **Funding Lender shall not be obligated to accept any prepayment of the Obligations unless it is accompanied by all Prepayment Consideration then due in connection therewith. Borrower acknowledges that the Prepayment Consideration is a bargained for consideration and not a penalty, and Borrower recognizes that Funding Lender would incur substantial additional costs and expenses in the event of a prepayment of the Obligations and that the Prepayment Consideration compensates Funding Lender for such costs and expenses (including without limitation, the loss of Funding Lender's investment opportunity during the period after the date such tender is accepted until the Maturity Date). Borrower agrees that Funding Lender shall not, as a condition to receiving the Prepayment Consideration, be obligated to actually reinvest the amount prepaid in any treasury obligation or in any other manner whatsoever. Funding Lender shall notify Borrower of the amount and the basis of determination of any required Prepayment Consideration.**

(f) Prepayments Resulting from Casualty or Condemnation. **Except as otherwise set forth in the Security Instrument, no Prepayment Consideration will be due for involuntary prepayments resulting from any Casualty or Condemnation (as such terms are defined in the Security Instrument).**

10. **Accord and Satisfaction.** Borrower agrees not to send Funding Lender payments marked "paid in full," "without recourse," or similar language. If Borrower sends such a payment, Funding Lender may accept it without losing any of Funding Lender's rights under this Borrower Note, and Borrower will remain obligated to pay any further amounts owed or that may become owed to Funding Lender. All written communications concerning disputed amounts, including any check or other payment instrument that indicates that the payment constitutes "payment in full" of the amount owed or that is tendered with other conditions or limitations or as full satisfaction of a disputed amount, must be mailed or delivered to Funding Lender at the address set forth in Section 8.2 of the Borrower Loan Agreement.

11. **Borrower Note.** This Borrower Note is issued pursuant to and in accordance with the terms and provisions of the Borrower Loan Agreement. Borrower shall make all requests for advances pursuant to the requirements of the Borrower Loan Agreement and the Loan Agreement.

12. **Forbearance.** Any forbearance by Funding Lender in exercising any right or remedy under this Borrower Note, the Security Instrument, or any other Loan Document or otherwise afforded by applicable law, shall not be a waiver of or preclude the exercise of that or any other right or remedy. The acceptance by Funding Lender of any payment after the due date of such payment, or in an amount which is less than the required payment, shall not be a waiver of Funding Lender's right to require prompt payment when due of all other payments or to exercise any right or remedy with respect to any failure to make prompt payment. Enforcement by Funding Lender of any security for Borrower's obligations under this Borrower Note shall not constitute an election by Funding Lender of remedies so as to preclude the exercise of any other right or remedy available to Funding Lender.

13. **Waivers.** Borrower and any and all endorsers, guarantors and sureties severally waive all notices, demands for payment, presentment for payment, protest and notice of protest,

notice of intent to accelerate, notice of acceleration, any other notices of any kind, the filing of suit hereon for the purpose of fixing liability and diligence in taking any action to collect amounts called for hereunder and in the handling of securities at any time existing in connection herewith, and consent that the time of payment hereof may be extended and re-extended from time to time without notice to them or any of them.

14. **Loan Charges.** It is the intention of the parties hereto to comply with the usury laws of the State of Colorado and of the United States of America. The parties hereto do not intend to contract for, charge or receive any interest or other charge which is usurious, and by execution of this Borrower Note, Borrower agrees that Funding Lender has no such intent. This Borrower Note, the Loan Agreement, and all other agreements between Borrower and Funding Lender or any other holder hereof in connection herewith or therewith, which are now existing or hereafter arising, whether written or oral, are hereby expressly limited so that in no event whatsoever, whether by reason of acceleration of maturity hereof, or otherwise, shall the amount paid, or agreed to be paid, to Funding Lender or any other holder hereof for the use, forbearance or detention of the money to be due hereunder or otherwise, or for the payment or performance of any covenant or obligation contained herein or in any other document evidencing, securing, or pertaining to the indebtedness evidenced hereby (the “**Indebtedness**”, exceed the Maximum Rate. If from any circumstance whatsoever fulfillment of any provisions hereof or other document, at the time performance of such provisions shall be due, shall involve transcending the valid limits prescribed by law, then, ipso facto, the obligation to be fulfilled shall be reduced to the Maximum Rate, and if from any such circumstance Funding Lender or any other holder shall ever receive as interest or otherwise an amount which will exceed the Maximum Rate, such amount which would be excessive interest shall be applied to the reduction of the principal amount owing hereunder or on account of any other principal indebtedness of Borrower to the holder and not to the payment of interest, or if such excessive interest exceeds the unpaid balance of principal hereof and such other indebtedness, such excess shall be refunded to Borrower. All sums paid and agreed to be paid to Funding Lender or any other holder for the use, forbearance or detention of the indebtedness of Borrower hereunder shall, to the extent permitted by applicable law, be amortized, prorated, allocated, and spread throughout the term of this Borrower Note (and any renewals, extensions and rearrangements hereof) so that the actual rate of interest on account of the indebtedness evidenced by this Borrower Note is uniform throughout the term of this Borrower Note (and all renewals, extensions and rearrangements hereof) and does not exceed the Maximum Rate. The terms and provisions of this paragraph shall control and supersede any other provision of this Borrower Note, the Loan Agreement, and any other document executed in connection herewith or therewith.

15. **Personal Liability.** Prior to the Conversion Date, Borrower shall be personally liable under this Borrower Note, the Security Instrument and the other Loan Documents for (1) the repayment of the indebtedness evidenced by this Borrower Note, including, without limitation, all amounts due under this Borrower Note, and (2) the performance of all other obligations of Borrower under this Borrower Note and the other Loan Documents (collectively, “Indebtedness”).

(a) On and after the Conversion Date, except as otherwise provided in this Section 15, neither Borrower nor any of its partners, members and/or managers shall have any personal liability under this Borrower Note, the Security Instrument or any other Loan Document for the repayment of the Indebtedness or for the performance of any other obligations of Borrower under the Loan Documents, and Funding Lender's only recourse for the satisfaction of the Indebtedness and the performance of such obligations shall be Funding Lender's exercise of its rights and remedies with respect to the Mortgaged Property and any other collateral held by Funding Lender as security for the Indebtedness. This limitation on Borrower's liability shall not limit or impair Funding Lender's enforcement of its rights against any guarantor of the Indebtedness or any guarantor of any obligations of Borrower.

(b) Borrower shall at all times be personally liable to Funding Lender for the repayment of a portion of the Indebtedness equal to any loss or damage suffered by Funding Lender (the "Losses") as a result of (1) failure of Borrower to pay to Funding Lender upon demand after an Event of Default all rents to which Funding Lender is entitled under the Loan Agreement or the Security Instrument and the amount of all security deposits collected by Borrower from tenants then in residence; (2) failure of Borrower to apply all insurance proceeds and condemnation proceeds as required by the Loan Agreement or the Security Instrument; (3) failure of Borrower to comply with the Loan Agreement relating to the delivery of books and records, statements, schedules, and reports; (4) fraud or material misrepresentation by Borrower or Guarantor or any general partner, managing member, manager, officer, director, partner, member, agent or employee of Borrower or Guarantor in connection with the application for or creation of the Indebtedness or any request for any action or consent by or on behalf of Funding Lender; (5) failure to apply rents, first, to the payment of reasonable operating expenses (other than property management fees that are not currently payable pursuant to the terms of an Assignment of Management Agreement or any other Loan Document) and then to amounts ("Debt Service Amounts") payable under this Borrower Note, the Security Instrument or any other Loan Document (except that Borrower will not be personally liable (i) to the extent that Borrower lacks the legal right to direct the disbursement of such sums because of a Bankruptcy, receivership or similar judicial proceeding, or (ii) with respect to rents that are distributed on account of any calendar year if Borrower has paid all operating expenses and Debt Service Amounts for that calendar year); (6) failure of Borrower to comply with the provisions of the Loan Agreement or Security Instrument prohibiting the commission of waste or allowing the impairment or deterioration of the Mortgaged Property; or (7) failure of Borrower to obtain and maintain any local real estate tax abatement or exemption required under the Loan Agreement or Security Instrument, or the reduction, revocation, cancellation or other termination of such abatement or exemption, as a result of any act or omission by or on behalf of Borrower, Guarantor or any of their respective partners, members, managers, directors, officers, agents, employees or representatives.

(c) For purposes of determining Borrower's personal liability under this Section 15, all payments made by Borrower with respect to the Indebtedness and all amounts received by Funding Lender from the enforcement of its rights under the Loan

Agreement or Security Instrument shall be applied first to the portion of the Indebtedness for which Borrower has no personal liability.

(d) Borrower shall at all times be personally liable to Funding Lender for the repayment of all of the Indebtedness upon the occurrence of any of the following Events of Default: (1) Borrower's acquisition of any property or operation of any business not permitted by the Loan Agreement; (2) a sale, assignment, transfer or encumbrance of the Mortgaged Property that is an Event of Default of the Loan Agreement or the Security Instrument; or (3) a transfer of an interest in the Borrower that is an Event of Default of the Loan Agreement or the Security Instrument, other than a transfer consisting solely of the involuntary removal or involuntary withdrawal of a general partner in a limited partnership or a managing member in a limited liability company or the transfer of a non-managing member interest in the Borrower permitted by the Security Instrument; or (3) a Bankruptcy Event, as defined by the Loan Agreement (but only if the Bankruptcy Event occurs with the consent or active participation of Borrower, its managing members, general partners, Guarantor or any Borrower Affiliate.

(e) In addition to the Borrower's personal liability pursuant to the other provisions of this Borrower Note, Borrower shall at all times be personally liable to Funding Lender for (1) the performance of all of Borrower's obligations under the Agreement of Environmental Indemnification; (2) the costs of any audit under the Loan Agreement; and (3) any costs and expenses incurred by Funding Lender in connection with the collection of all amounts for which Borrower is personally liable under this Section 15, including out of pocket expenses and reasonable fees of attorneys and expert witnesses and the costs of conducting any independent audit of Borrower's books and records to determine the amount for which Borrower has personal liability.

(f) To the extent that Borrower has personal liability under this Section 15, Funding Lender may exercise its rights against Borrower personally without regard to whether Funding Lender has exercised any rights against the Mortgaged Property or any other security, or pursued any rights against any guarantor, or pursued any other rights available to Funding Lender under this Borrower Note, the Security Instrument, any other Loan Document or applicable law. For purposes of this Section 15, the term "Mortgaged Property" shall not include any funds that (1) have been applied by Borrower as required or permitted by the Security Instrument prior to the occurrence of an Event of Default or (2) Borrower was unable to apply as required or permitted by the Security Instrument because of a Bankruptcy, receivership, or similar judicial proceeding. To the fullest extent permitted by applicable law, in any action to enforce Borrower's personal liability under this Section 15, Borrower waives any right to set off the value of the Mortgaged Property against such personal liability.

(g) Nothing herein or in the other Loan Documents shall be deemed to be a waiver of any right which the Funding Lender or the Servicer may have under Sections 506(a), 506(b), 1111(b) or any other provision of the United States Bankruptcy Code, as such sections may be amended, or corresponding or superseding sections of the Bankruptcy Amendments and Federal Judgeship Act of 1984, to file a claim for the full amount due to



the Funding Lender and the Servicer hereunder and under the other Loan Documents or to require that all collateral shall continue to secure the amounts due hereunder and under the other Loan Documents.

16. **Obligations of the Borrower Absolute and Unconditional.** Subject to Section 15, the obligations of the Borrower to make all payments required under this Borrower Note and the other Loan Documents on or before the date the same become due, and to perform all of its other obligations, covenants and agreements hereunder and under the other Loan Documents shall be primary, absolute, unconditional and irrevocable, and shall be paid or performed strictly in accordance with the terms of this Borrower Note and the other Loan Documents under any and all circumstances, without notice or demand, and without abatement, deduction, set-off, counterclaim, recoupment or defense or any right of termination or cancellation arising from any circumstance whatsoever, whether now existing or hereafter arising, and irrespective of whether the Borrower's title to the Mortgaged Property or to any part thereof is defective or nonexistent, and notwithstanding any damage due to loss, theft or destruction of the Mortgaged Property or any part thereof, any failure of consideration or frustration of commercial purpose, the taking by eminent domain of title to or of the right of temporary use of all or any part of the Mortgaged Property, legal curtailment of the Borrower's use thereof, the eviction or constructive eviction of the Borrower, any change in the tax or other laws of the United States of America, the State or any political subdivision thereof, any change in the Funding Lender's legal organization or status, or any default of the Funding Lender hereunder or under any other Loan Document, and regardless of the invalidity of any action of the Funding Lender or the invalidity of any portion of this Borrower Note or the other Loan Documents. Provided further, the obligations of Borrower under this Borrower Note and the other Loan Documents shall not be affected by:

(a) any lack of validity or enforceability of any Loan Document or any of the Related Documents;

(b) any amendment of, or any waiver or consent with respect to, any of the Loan Documents or Related Documents;

(c) the existence of any claim, set-off, defense or other rights which Borrower, its managing members or Guarantor may have at any time against Funding Lender (other than the defense of payment in accordance with the terms of this Borrower Note or the other Loan Documents) or any other Person, whether in connection with this Borrower Note or any other Loan Document, the Related Documents or any transaction contemplated thereby or any unrelated transaction;

(d) any breach of contract or other dispute between Borrower, its general partner or Guarantor, and Funding Lender;

(e) any Requisition or any document presented in connection therewith, proving to be forged, fraudulent, untrue, inaccurate, invalid or insufficient in any respect (except in the event of willful misconduct by Funding Lender with respect to same); or

(f) any exchange, release or nonperfection of any lien or security interest in any collateral pledged or otherwise provided to secure any of the obligations contemplated herein, in any other Loan Document or in any Related Document.

The Borrower hereby waives the application to it of the provisions of any statute or other law now or hereafter in effect contrary to any of its obligations, covenants or agreements under this Borrower Note or the other Loan Documents or which releases or purports to release the Borrower therefrom. Nothing contained herein shall be construed as prohibiting the Borrower from pursuing any rights or remedies it may have against any Person in a separate legal proceeding.

17. **Commercial Purpose.** Borrower represents that the Indebtedness is being incurred by Borrower solely for the purpose of carrying on a business or commercial enterprise, and not for personal, family, household or agricultural purposes.

18. **Counting of Days.** Except where otherwise specifically provided, any reference in this Borrower Note to a period of “days” means calendar days, not Business Days.

19. **Increased Costs; Yield Protection.** On written demand, together with written evidence of the justification therefor, Borrower agrees to pay Funding Lender all direct costs incurred, any losses suffered or payments made by Funding Lender as a result of any Change in Law (hereinafter defined), imposing any reserve, deposit, allocation of capital or similar requirement (including Regulation D of the Board of Governors of the Federal Reserve System) on Funding Lender, its holding company or any of their respective assets relative to the Loan. “Change in Law” means the occurrence, after the date of this Borrower Note, of any of the following: (a) the adoption or taking effect of any law, rule, regulation or treaty, (b) any change in any law, rule, regulation or treaty or in the administration, interpretation, implementation or application thereof by any governmental authority or (c) the making or issuance of any request, rule, guideline or directive (whether or not having the force of law) by any governmental authority; provided that notwithstanding anything herein to the contrary, (x) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines or directives thereunder or issued in connection therewith and (y) all requests, rules, guidelines or directives promulgated by Funding Lender for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States or foreign regulatory authorities, in each case pursuant to Basel III, shall in each case be deemed to be a “Change in Law”, regardless of the date enacted, adopted or issued.

20. **Right of Setoff.** In addition to all liens upon and rights of setoff against Borrower’s money, securities or other property given to Funding Lender by law, Funding Lender shall have, with respect to Borrower’s obligations to Funding Lender under this Borrower Note and to the extent permitted by law, a contractual possessory security interest in and a contractual right of setoff against, and Borrower hereby grants Funding Lender a security interest in, and hereby assigns, conveys, delivers, pledges and transfers to Funding Lender, all of Borrower’s right, title and interest in and to, all of Borrower’s deposits, moneys, securities and other property now or hereafter in the possession of or on deposit with, or in transit to, Funding Lender or each legal entity, if any, who controls, is controlled by or is under common control with Funding Lender,

whether held in a general or special account or deposit, whether held jointly with someone else, or whether held for safekeeping or otherwise, excluding, however, all IRA, Keogh, and trust accounts. Every such security interest and right of setoff may be exercised without demand upon or notice to Borrower. Every such right of setoff shall be deemed to have been exercised immediately upon an Event of Default hereunder without any action of Funding Lender, although Funding Lender may enter such setoff on its books and records at a later time.

21. **Indemnity.** Borrower agrees to indemnify each of Funding Lender, each legal entity, if any, who controls, is controlled by or is under common control with Funding Lender, and each of their respective directors, officers and employees (each, an “**Indemnified Party**”), and to defend and hold each Indemnified Party harmless from and against any and all claims, damages, losses, liabilities and expenses (including all fees and charges of internal or external counsel with whom any Indemnified Party may consult and all expenses of litigation and preparation therefor) which any Indemnified Party may incur or which may be asserted against any Indemnified Party by any person, entity or governmental authority (including any person or entity claiming derivatively on behalf of Borrower), in connection with or arising out of or relating to the matters referred to in this Borrower Note, the Security Instrument or the Other Documents or the use of any advance hereunder, whether (a) arising from or incurred in connection with any breach of a representation, warranty or covenant by Borrower, (b) arising out of the condition or use of any collateral pledged as security for repayment of the Obligations, or (c) arising out of or resulting from any suit, action, claim, proceeding or governmental investigation, pending or threatened, whether based on statute, regulation or order, or tort, or contract or otherwise, before any court or governmental authority; provided, however, that the foregoing indemnity agreement shall not apply to any claims, damages, losses, liabilities and expenses solely attributable to an Indemnified Party’s gross negligence or willful misconduct. The indemnity agreement contained in this Section shall survive the termination of this Borrower Note, payment of any advance hereunder and the assignment of any rights hereunder and shall not be subject to or limited by the exculpation provisions set forth in Section 15. Borrower may participate at its expense in the defense of any such action or claim.

22. **Anti-Money Laundering/International Trade Law Compliance.** Borrower represents, warrants and covenants to Funding Lender, as of the date hereof, the date of each advance of proceeds under this Borrower Note or the Other Documents, the date of any renewal, extension or modification of this Borrower Note, the Security Instrument or the Other Documents, and at all times until this Borrower Note, the Security Instrument and the Other Documents have been terminated and all amounts thereunder have been indefeasibly paid in full, that: (a) no Covered Entity (i) is a Sanctioned Person; (ii) has any of its assets in a Sanctioned Jurisdiction or in the possession, custody or control of a Sanctioned Person; or (iii) does business in or with, or derives any of its operating income from investments in or transactions with, any Sanctioned Jurisdiction or Sanctioned Person; (b) the proceeds of the loan evidenced by this Borrower Note will not be used to fund any operations in, finance any investments or activities in, or, make any payments to, a Sanctioned Jurisdiction or Sanctioned Person; (c) the funds used to repay the obligations evidenced by this Borrower Note are not derived from any unlawful activity; (d) each Covered Entity is in compliance with, and no Covered Entity engages in any dealings or

transactions prohibited by, any laws of the United States, including any Anti-Terrorism Laws; and (e) no Collateral is or will become Embargoed Property. Borrower covenants and agrees that (a) it shall immediately notify Funding Lender in writing upon the occurrence of a Reportable Compliance Event; and (b) if, at any time, any Collateral becomes Embargoed Property, in addition to all other rights and remedies available to Funding Lender, upon request by Funding Lender, Borrower shall provide substitute Collateral acceptable to Funding Lender that is not Embargoed Property.

As used herein: “**Anti-Terrorism Laws**” means any laws relating to terrorism, trade sanctions programs and embargoes, import/export licensing, money laundering, or bribery, all as amended, supplemented or replaced from time to time; “**Collateral**” means any collateral securing any debt, liabilities or other obligations of Borrower to Funding Lender; “**Compliance Authority**” means each and all of the (a) U.S. Treasury Department/Office of Foreign Assets Control, (b) U.S. Treasury Department/Financial Crimes Enforcement Network, (c) U.S. State Department/Directorate of Defense Trade Controls, (d) U.S. Commerce Department/Bureau of Industry and Security, (e) U.S. Internal Revenue Service, (f) U.S. Justice Department, and (g) U.S. Securities and Exchange Commission; “**Covered Entity**” means Borrower, its affiliates and subsidiaries, all guarantors, pledgors of collateral, all owners of the foregoing, and all brokers or other agents of Borrower acting in any capacity in connection with the obligations evidenced by this Borrower Note; “**Embargoed Property**” means any property (a) in which a Sanctioned Person holds an interest; (b) beneficially owned, directly or indirectly, by a Sanctioned Person; (c) that is due to or from a Sanctioned Person; (d) that is located in a Sanctioned Jurisdiction; or (e) that would otherwise cause any actual or possible violation by Funding Lender of any applicable Anti-Terrorism Law if Funding Lender were to obtain an encumbrance on, lien on, pledge of or security interest in such property or provide services in consideration of such property; “**Reportable Compliance Event**” means (1) any Covered Entity becomes a Sanctioned Person, or is indicted, arraigned, investigated or custodially detained, or receives an inquiry from regulatory or law enforcement officials, in connection with any Anti-Terrorism Law or any predicate crime to any Anti-Terrorism Law, or self-discovers facts or circumstances implicating any aspect of its operations with the actual or possible violation of any Anti-Terrorism Law; (2) any Covered Entity engages in a transaction that has caused or may cause Funding Lender to be in violation of any Anti-Terrorism Laws, including a Covered Entity’s use of any proceeds of the loan evidenced by this Borrower Note to fund any operations in, finance any investments or activities in, or, make any payments to, directly or indirectly, a Sanctioned Jurisdiction or Sanctioned Person; or (3) any Collateral becomes Embargoed Property; “**Sanctioned Jurisdiction**” means a country subject to a sanctions program maintained by any Compliance Authority; and “**Sanctioned Person**” means any individual person, group, regime, entity or thing listed or otherwise recognized as a specially designated, prohibited, sanctioned or debarred person or entity, or subject to any limitations or prohibitions (including the blocking of property or rejection of transactions), under any order or directive of any Compliance Authority or otherwise subject to, or specially designated under, any sanctions program maintained by any Compliance Authority.

23. **USA Patriot Act Notice.** To help the government fight the funding of terrorism and money laundering activities, Federal law requires all financial institutions to obtain, verify and record information that identifies each Borrower that opens an account. What this means: when

Borrower opens an account, Funding Lender will ask for the business name, business address, taxpayer identifying number and other information that will allow Funding Lender to identify Borrower, such as organizational documents. For some businesses and organizations, Funding Lender may also need to ask for identifying information and documentation relating to certain individuals associated with the business or organization.

24. **Authorization to Obtain Credit Reports.** By signing below, each Borrower who is an individual provides written authorization to Funding Lender or its designee (and any assignee or potential assignee hereof) to obtain Borrower's personal credit profile from one or more national credit bureaus. Such authorization shall extend to obtaining a credit profile in considering this Borrower Note and subsequently for the purposes of update, renewal or extension of such credit or additional credit and for reviewing or collecting the resulting account.

25. **Investment Company.** Borrower (i) is not an investment company within the meaning of the Investment Company Act of 1940 (the "**Act**") and (ii) is not relying on the exceptions contained in Section 3(c)(1) or Section 3(c)(7) of the Act in making such determination. At all times during the term of this Borrower Note, Borrower (i) will not be an investment company within the meaning of the Act and (ii) will not rely on the exceptions contained in Section 3(c)(1) or Section 3(c)(7) of the Act in making such determination

26. **Illegality.** If any provision contained in this Borrower Note should be invalid, illegal or unenforceable in any respect, it shall not affect or impair the validity, legality and enforceability of the remaining provisions of this Borrower Note.

27. **Entire Agreement.** This Borrower Note (including the documents and instruments referred to herein) constitutes the entire agreement and supersedes all other prior agreements and understandings, both written and oral, between the parties with respect to the subject matter hereof.

28. **Sole Discretion of Funding Lender.** Wherever pursuant to this Borrower Note, Funding Lender makes any judgment or determination (including any judgment of items being satisfactory or acceptable) or exercises any right given to it to approve or disapprove any arrangement, term or condition or decides if any arrangement, term or condition is satisfactory to Funding Lender, the judgment or determination of Funding Lender or decision of Funding Lender to approve or disapprove or to decide that arrangements, terms or conditions are satisfactory or not satisfactory shall be in the sole and absolute discretion of Funding Lender and shall be final and conclusive, except as may be otherwise expressly and specifically provided herein.

29. **Notice.** All notices, demands and other communications required or permitted to be given pursuant to this Borrower Note shall be given in the manner prescribed by Section 8.2 of the Borrower Loan Agreement.

30. **Cure Rights of Tax Credit Investor.** Tax Credit Investor shall have the right, but not the obligation, to remedy or cure such Event of Default within the same timeframe this Borrower Note provides Borrower to effect such remedy or cure, and in no event shall this right

of Tax Credit Investor to cure be construed as expanding the rights or remedies of Borrower upon an Event of Default under this Borrower Note.

31. **Preservation of Rights.** No delay or omission on Funding Lender's part to exercise any right or power arising hereunder will impair any such right or power or be considered a waiver of any such right or power, nor will Funding Lender's action or inaction impair any such right or power. Funding Lender's rights and remedies hereunder are cumulative and not exclusive of any other rights or remedies which Funding Lender may have under other agreements, at law or in equity.

32. **Interpretation.** In this Borrower Note, unless Funding Lender and Borrower otherwise agree in writing, the singular includes the plural and the plural the singular; words importing any gender include the other genders; references to statutes are to be construed as including all statutory provisions consolidating, amending or replacing the statute referred to; the word "or" shall be deemed to include "and/or", the words "including", "includes" and "include" shall be deemed to be followed by the words "without limitation"; references to articles, sections (or subsections of sections) or exhibits are to those of this Borrower Note unless otherwise indicated; and references to agreements and other contractual instruments shall be deemed to include all subsequent amendments and other modifications to such instruments, but only to the extent such amendments and other modifications are not prohibited by the terms of this Borrower Note. Section headings in this Borrower Note are included for convenience of reference only and shall not constitute a part of this Borrower Note for any other purpose. Unless otherwise specified in this Borrower Note, all accounting terms shall be interpreted, and all accounting determinations shall be made in accordance with generally accepted accounting principles consistently applied. If this Borrower Note is executed by more than one party as Borrower, the obligations of such persons or entities will be joint and several. [Time is of the essence in the performance of this Borrower Note.](#) An Event of Default shall continue unless expressly waived in writing by Funding Lender. Funding Lender and Borrower acknowledge and agree that this Borrower Note, Security Instrument and other Loan Documents shall not be interpreted "for" or "against" any party as drafter of such Borrower Note, Security Instrument or Other Documents, given that this Borrower Note, Security Instrument and other Loan Documents have been reviewed and negotiated by sophisticated business persons represented by competent counsel

33. **Remedies Cumulative.** In the event of Borrower's default under this Borrower Note, the Funding Lender may exercise all or any one or more of its rights and remedies available under this Borrower Note, at law or in equity. Such rights and remedies shall be cumulative and concurrent, and may be enforced separately, successively or together, and the exercise of any particular right or remedy shall not in any way prevent the Funding Lender from exercising any other right or remedy available to the Funding Lender. The Funding Lender may exercise any such remedies from time to time as often as may be deemed necessary by the Funding Lender.

34. **No Agency or Partnership.** Nothing contained in this Borrower Note shall constitute Funding Lender as a joint venturer, partner or agent of Borrower, or render Funding Lender liable for any debts, obligations, acts, omissions, representations or contracts of Borrower.

35. **Governing Law.** This Borrower Note is a contract made under the laws of the State of Colorado and shall be governed by and construed in accordance with the Constitution and laws applicable to contracts made and performed in the State of Colorado. This Borrower Note shall be enforceable in the State of Colorado, and any action arising out of this Borrower Note shall be filed and maintained in the City and County of Denver, Colorado, unless the Governmental Lender waives this requirement.

36. **Sale of Government Note and Borrower Note by Funding Lender.** Funding Lender shall have the right (subject to compliance with the Bank Loan Agreement) to transfer, sell or assign the Government Note or its interest in and to this Borrower Note, the Security Instrument and the other Loan Documents entered into between Borrower and Funding Lender, and the obligations of Borrower hereunder upon compliance with the transfer requirements set forth in the Funding Lender Loan Agreement.

37. **Captions, Etc.** The captions of the paragraphs of this Borrower Note are for convenience only and shall be disregarded in construing this Borrower Note. This Borrower Note, together with the Security Instrument and the other Loan Documents between Borrower and Funding Lender, contain the entire agreement between Borrower and Funding Lender relating to the subject matter thereof, and supercede all prior discussions and agreements (oral or written) which are not contained therein. Neither this Borrower Note nor the Security Instrument nor any of the other Loan Documents between Borrower and Funding Lender may be changed, waived, supplemented, discharged or terminated orally or by any act or failure to act on the part of Borrower or Funding Lender, but only by an agreement in writing signed by the party against whom enforcement thereof is sought and then only to the extent expressly set forth in such writing. Any provision of this Borrower Note, the Security Instrument or the other Loan Documents between Borrower and Funding Lender which may be determined by competent authority to be prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective only to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

**THIS BORROWER NOTE REPRESENTS THE FINAL AGREEMENT AMONG THE PARTIES THERETO AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS OR SUBSEQUENT ORAL AGREEMENT OF SUCH PARTIES. THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN THE PARTIES.**

[Remainder of Page Intentionally Blank]

IN WITNESS WHEREOF, Forum Apartments LLLP, a Colorado limited liability limited partnership, has caused this Borrower Note to be executed in its name and on its behalf all as of the date set forth above.

**FORUM APARTMENTS LLLP,**  
a Colorado limited liability limited partnership

By: Forum Housing Corporation II, a Colorado  
nonprofit corporation, its general partner

By \_\_\_\_\_  
John Parvensky, President

[Signature Page to Borrower Tax-Exempt Borrower Note – Forum Apartments]



Endorsement to Funding Lender

Pay to the order of PNC Bank, National Association, without recourse.

Dated: [Closing Date]

**ATTEST:**

**CITY AND COUNTY OF DENVER**

By: \_\_\_\_\_  
Paul D. Lopez,  
Clerk and Recorder, Ex-Officio Clerk  
of the City and County of Denver

By: \_\_\_\_\_  
Michael B. Hancock, MAYOR

**APPROVED AS TO FORM:**

**Kristin M. Bronson**

Attorney for the City and County of Denver

**REGISTERED AND COUNTERSIGNED:**

By: \_\_\_\_\_  
City Attorney

By: \_\_\_\_\_  
Brendan J. Hanlon, CFO

By: \_\_\_\_\_  
Timothy O'Brien, Auditor

[Signature Page to Endorsement to Funding Lender  
for Borrower Tax-Exempt Borrower Note – Forum Apartments]

## SCHEDULE 1 PRINCIPAL AND INTEREST PAYMENTS

Except as provided in Sections 7 and 14 of this Borrower Note, interest (“**Borrower Note Interest**”) shall accrue on the unpaid principal of this Borrower Note from, and including, the Closing Date until paid in full at an annual rate (the “**Interest Rate**”) as follows:

**A. Interest Rate Prior to Conversion Date.** From, and including, the Closing Date, until the Conversion Date, the following provisions shall apply:

1. **Definitions.** For purposes of this Section A of Schedule 1, the following terms shall have the meanings set forth below:

“**Accrual Period**” means the period commencing on the first calendar day of each month and continuing to but excluding the first calendar day of the following month (without adjustment in either case for Business Day payment conventions). The initial Accrual Period shall be the period commencing on the Closing Date and continuing to but excluding the first calendar day of the month in which the First Payment Date occurs.

“**Alternate Rate**” has the meaning given such term in Section 3.

“**Base Rate**” means the sum of the Overnight Bank Funding Rate plus twenty-five (25) basis points (0.25%). If and when the Base Rate (or any component thereof) changes, the rate of interest with respect to any amounts hereunder to which the Base Rate applies will change automatically without notice to Borrower, effective on the date of any such change.

“**Business Day**” means a day other than a Saturday, Sunday or a day on which Funding Lender is closed for business; provided that, for the purposes of determining the LIBOR Rate, the term “Business Day” shall also exclude any day on which commercial Funding Lenders are not open for dealings in U.S. dollar deposits in the London interbank market.

“**Daily LIBOR Rate**” means, for any day, the rate per annum determined by Funding Lender by dividing (A) the Published Rate by (B) a number equal to 1.00 minus the percentage prescribed by the Federal Reserve for determining the maximum reserve requirements with respect to any eurocurrency fundings by Funding Lenders on such day. The rate of interest will be adjusted automatically as of each Business Day based on changes in the Daily LIBOR Rate without notice to Borrower. In the event that the Daily LIBOR Rate at any time is less than one hundred (100) basis points (1.00%), then the Daily LIBOR Rate shall be deemed to be one hundred (100) basis points (1.00%).

“**Overnight Bank Funding Rate**” means, for any day, the rate comprised of both overnight federal funds and overnight Eurocurrency borrowings by U.S.-managed banking offices of depository institutions, as such composite rate shall be determined by the Federal Reserve Funding Lender of New York (“NYFRB”), as set forth on its public website from time to time, and as published on the next succeeding Business Day as the Overnight Bank Funding Rate by the NYFRB (or by such other recognized electronic source (such as Bloomberg) selected by Funding Lender for the purpose of displaying such rate); provided, that if such day is not a Business Day,

the Overnight Bank Funding Rate for such day shall be such rate on the immediately preceding Business Day; provided, further, that if such rate shall at any time, for any reason, no longer exist, a comparable replacement rate determined by Funding Lender at such time (which determination shall be conclusive absent manifest error). If the Overnight Bank Funding Rate determined as above would be less than one hundred (100) basis points (1.00%), then such rate shall be deemed to be one hundred (100) basis points (1.00%). The rate of interest charged shall be adjusted as of each Business Day based on changes in the Overnight Bank Funding Rate without notice to Borrower.

“**Published Rate**” means the rate of interest published each Business Day in the Wall Street Journal “Money Rates” listing under the caption “London Interbank Offered Rates” for a one month period (or, if no such rate is published therein for any reason, then the Published Rate shall be the eurodollar rate for a one month period as published in another publication selected by Funding Lender).

“**Regulation D**” means Regulation D of the Board of Governors of the Federal Reserve System from time to time in effect and shall include any successor or other regulation relating to reserve requirements applicable to member Funding Lenders of the Federal Reserve System.

2. **Rate of Interest Prior to Conversion.** Borrower Note Interest shall accrue on the unpaid principal of this Borrower Note from, and including, the Closing Date, until the Conversion Date, at an annual rate, as follows:

(a) Interest shall accrue on the outstanding principal sum of this Borrower Note from and after the date of advance until final payment thereof at a rate per annum which is at all times equal to (A) the Daily LIBOR Rate plus (B) two hundred twenty five (225) basis points (2.25%). Interest hereunder will be calculated based on the actual number of days that principal is outstanding over a year of 360 days. In no event will the rate of interest hereunder exceed the Maximum Rate.

(b) If Funding Lender determines (which determination shall be final and conclusive) that, by reason of circumstances affecting the eurodollar market generally, deposits in dollars (in the applicable amounts) are not being offered to Funding Lenders in the eurodollar market for the selected term, or adequate means do not exist for ascertaining the Published Rate, then Funding Lender shall give notice thereof to Borrower. Thereafter, until Funding Lender notifies Borrower that the circumstances giving rise to such suspension no longer exist, the interest rate for all amounts outstanding under this Borrower Note shall be equal to the Base Rate (the “**Alternate Rate**”).

(c) In addition, if, after the date of this Borrower Note, Funding Lender shall determine (which determination shall be final and conclusive) that any enactment, promulgation or adoption of or any change in any applicable law, rule or regulation, or any change in the interpretation or administration thereof by a governmental authority, central Funding Lender or comparable agency charged with the interpretation or administration thereof, or compliance by Funding Lender with any guideline, request or directive (whether or not having the force of law) of any such authority, central Funding Lender or comparable

agency shall make it unlawful or impossible for Funding Lender to make or maintain or fund loans based on the Published Rate, Funding Lender shall notify Borrower. Thereafter, until Funding Lender notifies Borrower that the circumstances giving rise to such determination no longer apply, the interest rate on all amounts outstanding under this Borrower Note shall be the Alternate Rate.

(d) The LIBOR Replacement Rider attached to this Borrower Note and incorporated herein by this reference provides a mechanism for determining an alternative rate of interest in the event that the London interbank offered rate is no longer available or in certain other circumstances. Funding Lender does not warrant or accept any responsibility for and shall not have any liability with respect to, the administration, submission or any other matter related to the London interbank offered rate or other rates in the definition of “Published Rate” or with respect to any alternative or successor rate thereto, or replacement rate therefor. To the extent that any term or provision of the LIBOR Replacement Rider is or may be inconsistent with any term or provision in the remainder of this Borrower Note or any other Loan Document, the terms and provisions of the LIBOR Replacement Rider shall control.

3. **Monthly Interest Only Payments.** Consecutive monthly installments of interest only, each in the amount of the Required Monthly Payment (defined below), shall be payable on each Loan Payment Date until the Conversion Date. The Required Monthly Payment shall be an amount equal to the Borrower Note Interest that has accrued on the unpaid principal balance of the Loan during the applicable Accrual Period, and shall change on each Payment Date based on the applicable Interest Rate and unpaid principal balance. The entire unpaid principal balance and accrued but unpaid interest, if not sooner paid, shall be due and payable on the Maturity Date.

4. **Notification of Required Monthly Payment.** Before each Payment Date, Funding Lender shall re-calculate the applicable Interest Rate and shall notify Borrower (in the manner specified in Section 8.2 of the Borrower Loan Agreement for giving notices) of any change in the Required Monthly Payment.

5. **Error in Calculation of Required Monthly Payment.** If Funding Lender at any time determines, in its sole but reasonable discretion, that it has miscalculated the amount of the Required Monthly Payment (whether because of a miscalculation of the applicable Interest Rate or otherwise), then Funding Lender shall give notice to Borrower of the corrected amount of the Required Monthly Payment (and the corrected applicable Interest Rate, if applicable) and (a) if the corrected amount of the Required Monthly Payment represents an increase, then Borrower shall, within thirty (30) calendar days thereafter, pay to Funding Lender any sums that Borrower would have otherwise been obligated under this Borrower Note to pay to Funding Lender had the amount of the Required Monthly Payment not been miscalculated, or (b) if the corrected amount of the Required Monthly Payment represents a decrease thereof and Borrower is not otherwise in breach or default under any of the terms and provisions of this Borrower Note, the Security Instrument or any other Loan Document, then Borrower shall thereafter be paid the sums that Borrower would not have otherwise been obligated to pay to Funding Lender had the amount of the Required Monthly Payment not been miscalculated.

6. **Funding Lender Responsibility.** Funding Lender does not warrant or accept any responsibility for, and shall not have any liability with respect to:

(a) the administration, submission or any other matter related to Daily LIBOR Rate or with respect to any alternative or successor rate;

(b) the composition or characteristics of any such alternative or successor rate, including whether it is similar to, or produces the same value or economic equivalence to Daily LIBOR Rate or have the same volume or liquidity as did the “London Interbank Offered Rates”;

(c) any actions or use of its discretion or other decisions to any matters covered by the section on rate replacement, including whether or not a trigger event has occurred, the removal or lack thereof of unavailable or non-representative tenors, the implementation or lack thereof of any conforming changes, the delivery or non-delivery of any notices required; or

(d) the effect of any of the foregoing provisions of this Section A.

**B. Interest Rate and Principal Payments on and after the Conversion Date.** From, and including, the Conversion Date, until the Maturity Date, the following provisions shall apply:

1. **Interest Rate.** Borrower Note Interest shall accrue on the unpaid principal of this Borrower Note from, and including, the Conversion Date, until the Maturity Date, at an annual rate, as follows:

(a) **Fixed Rate.** Interest shall accrue at an annual rate as follows:

_____ percent (____%)	In the event the Conversion Date occurs on or prior to _____ 1, 20__
_____ percent (____%)	In the event the Conversion Date occurs after _____ 1, 20__

(b) **Maximum Rate.** Notwithstanding any other provision of this Borrower Note to the contrary, Borrower Note Interest shall not exceed the Maximum Rate, as the Maximum Rate may change in accordance with this Borrower Note.

(c) **Interest Accrual.** Borrower Note Interest shall be computed on the basis of the actual number of days in the period in respect of which payment is being made divided by 360.

2. **Monthly Payments.** Commencing on the first Payment Date following the Conversion Date and on each Payment Date thereafter until and including the Maturity Date, consecutive monthly installments of principal and interest in the amount set forth below (based upon an amortization schedule of thirty (30) years, assuming, for these purposes only, a 360-day

year comprised of twelve 30-day months) shall be payable on each Loan Payment Date until the entire unpaid principal balance evidenced by this Borrower Note is fully paid. Any remaining principal and interest, if not sooner paid, shall be due and payable on the Maturity Date.

(a) If the Permanent Period Amount is equal to the Maximum Permanent Period Amount and the Conversion Date occurs on or before the initial Outside Conversion Date, equal monthly installments of principal and interest in the amount of \$[\_\_\_\_\_], and a final installment on the Maturity Date in the amount of the remaining principal balance and accrued interest on this Borrower Note.

(b) If the Permanent Period Amount is other than the Maximum Permanent Period Amount, or the Conversion Date occurs after the initial Outside Conversion Date, equal monthly installments of principal and interest in the amount necessary to fully amortize the Permanent Period Amount over a period of thirty (30) years, assuming, for these purposes only, a 360-day year comprised of twelve 30-day months, and a final installment on the Maturity Date in the amount of the remaining principal balance of this Borrower Note, which amortization schedule shall be determined by or on behalf of Funding Lender and which determination shall be final and conclusive absent manifest error. Funding Lender shall provide Borrower with written notice of any revised amortization schedule determined by Funding Lender pursuant to this clause (b).

(c) In the event that the Loan is re-amortized at any time as a result of the application of any insurance proceeds or condemnation award applied to the amount owing on this Borrower Note, equal monthly payments of principal and interest in installments in the amount necessary to fully amortize the remaining principal balance of this Borrower Note over the remainder of the original thirty (30) year amortization period, assuming, for these purposes only, a 360-day year comprised of twelve 30-day months, and a final installment on the Maturity Date in the amount of the remaining principal balance of this Borrower Note, which amortization schedule shall be determined by Funding Lender and which determination shall be final and conclusive absent manifest error. Funding Lender shall provide Borrower with written notice of any revised amortization schedule determined by Funding Lender pursuant to this clause (c).

**C. Loss of Tax Exclusion.** Borrower understands that the interest rates provided under this Borrower Note are based on the assumption that interest income paid on the Loan and received by a holder of this Borrower Note who is not a “substantial user” within the meaning of Section 147(a) of the Internal Revenue Code of 1986, as amended will be excludable from the holder’s gross income under Section 103 of the Internal Revenue Code and applicable state law. In the event that Borrower receives notice from Funding Lender that a Determination of Taxability has occurred, then, notwithstanding any provision to the contrary contained herein, the interest rate on this Borrower Note and on all obligations of Borrower under the Loan Documents (other than those to which the Default Rate applies) shall be increased to a rate equal to the greater of: (i) three and one-half percent (3.50%) in excess of the then current interest rate or (ii) the Default Rate, provided such rate shall not exceed the Maximum Rate.

Borrower shall, in addition, pay to Funding Lender, promptly upon demand, an amount equal to the difference between the amount of interest payable on this Borrower Note from the date on which such loss of tax exemption on the Loan shall be applicable to the date on which the

interest rate on this Borrower Note was increased and the amount of interest that would have been payable on this Borrower Note during such period had this Borrower Note borne interest during such period at such higher rate. The Borrower shall also indemnify, defend and hold Funding Lender harmless from any penalties, interest expense or other costs, including attorneys' fees (including all allocated time and charges of "in-house" and "outside" counsel) and accountants' costs, resulting from any dispute with the Internal Revenue Service concerning the proper tax treatment of the Loan and the interest payable to Funding Lender on the Loan. The obligations of the Borrower under this paragraph shall survive any termination of the Loan Documents, release of the Security Instrument and repayment of the Loan.

## **LIBOR REPLACEMENT RIDER**

(a) **Announcements Related to LIBOR.** On March 5, 2021, the ICE Benchmark Administration, the administrator of LIBOR (the “IBA”) and the U.K. Financial Conduct Authority, the regulatory supervisor for the IBA, announced in a public statement the future cessation or loss of representativeness of overnight/Spot Next, 1-week, 1-month, 2-month, 3-month, 6-month and 12-month USD LIBOR tenor settings (collectively, the “**Cessation Announcements**”). The parties hereto acknowledge that, as a result of the Cessation Announcements, a Benchmark Transition Event occurred on March 5, 2021 with respect to USD LIBOR under clauses (1) and (2) of the definition of Benchmark Transition Event below; provided however, no related Benchmark Replacement Date occurred as of such date.

(b) **Benchmark Replacement.** Notwithstanding anything to the contrary herein or in any other Loan Document, if a Benchmark Transition Event or an Early Opt-in Election, as applicable, and its related Benchmark Replacement Date have occurred in respect of any setting of the then-current Benchmark, then, (x) if the Benchmark Replacement is determined in accordance with clause (1) or (2) of the definition of “Benchmark Replacement” on the Benchmark Replacement Date, such Benchmark Replacement will replace such Benchmark for all purposes hereunder and under any Loan Document in respect of such Benchmark setting and subsequent Benchmark settings without any amendment or further action or consent of any other party hereto or to any other Loan Document; and (y) if a Benchmark Replacement is determined in accordance with clause (3) of the definition of “Benchmark Replacement” on the Benchmark Replacement Date, such Benchmark Replacement will replace such Benchmark for all purposes hereunder and under any Loan Document in respect of any Benchmark setting at or after 5:00 p.m. (Eastern time) on the fifth (5th) Business Day after the date notice of such Benchmark Replacement is provided to Borrower without any amendment hereto or to any other Loan Document, or further action or consent of Borrower.

(c) **Benchmark Replacement Conforming Changes.** In connection with the implementation of a Benchmark Replacement, Funding Lender will have the right to make Benchmark Replacement Conforming Changes from time to time and, notwithstanding anything to the contrary herein or in any other Loan Document, any amendments implementing such Benchmark Replacement Conforming Changes will become effective without any further action or consent of Borrower.

(d) **Notices; Standards for Decisions and Determinations.** Funding Lender will promptly notify Borrower of (i) any occurrence of a Benchmark Transition Event, a Term SOFR Transition Event or an Early Opt-in Election, as applicable, and its related Benchmark Replacement Date, (ii) the implementation of any Benchmark Replacement, (iii) the effectiveness of any Benchmark Replacement Conforming Changes and (iv) the commencement or conclusion of any Benchmark Unavailability Period. Any determination, decision or election that may be made by Funding Lender pursuant to this Rider, including any determination with respect to a rate or adjustment or of the occurrence or non-occurrence of an event, circumstance or date and any decision to take or refrain from taking any action or any selection, will be conclusive and binding absent manifest error and may be made in its sole discretion and without consent from Borrower.



(e) **Benchmark Unavailability Period.** Upon Borrower's receipt of notice of the commencement of a Benchmark Unavailability Period, amounts outstanding hereunder automatically will bear interest at the Fallback Rate. During any Benchmark Unavailability Period, the component of the Fallback Rate based upon the then-current Benchmark, if any, will not be used in any determination of the Fallback Rate.

(f) **Secondary Term SOFR Conversion.** Notwithstanding anything to the contrary herein or in any other Loan Document and subject to the proviso below in this paragraph, if a Term SOFR Transition Event and its related Benchmark Replacement Date have occurred in respect of any setting of the then-current Benchmark, then (i) the applicable Benchmark Replacement will replace the then-current Benchmark for all purposes hereunder or under any Loan Document in respect of such Benchmark setting (the "**Secondary Term SOFR Conversion Date**") and subsequent Benchmark settings, without any amendment or further action or consent of any other party hereto or to any other Loan Document; and (ii) loans outstanding on the Secondary Term SOFR Conversion Date bearing interest based on the then-current Benchmark shall be deemed to have been converted to loans bearing interest at the Benchmark Replacement with a tenor approximately the same length as the interest payment period of the then-current Benchmark; provided that, (A) this paragraph (f) shall not be effective unless Funding Lender has delivered to Borrower a Term SOFR Notice and (B) this paragraph (f) shall not be effective with respect to the Loan if (I) Borrower has outstanding an interest rate swap with Funding Lender to hedge, in whole or part, the floating rate risk under the Loan on the Secondary Term SOFR Conversion Date, and (II) such swap incorporates LIBOR fallback provisions with a Daily Simple SOFR rate as the primary alternative fallback rate for USD LIBOR.

(g) **Certain Defined Terms.** As used in this Rider:

"**Available Tenor**" means, as of any date of determination and with respect to the then-current Benchmark, as applicable, one month.

"**Benchmark**" means, initially, USD LIBOR; provided that if a Benchmark Transition Event, a Term SOFR Transition Event or an Early Opt-in Election, as applicable, and its related Benchmark Replacement Date have occurred with respect to USD LIBOR or the then-current Benchmark, then "Benchmark" means the applicable Benchmark Replacement to the extent that such Benchmark Replacement has replaced such prior benchmark rate pursuant to paragraph (a) of this Rider.

"**Benchmark Replacement**" means for the Available Tenor the first alternative set forth in the order below that can be determined by Funding Lender on the applicable Benchmark Replacement Date; provided, however, if (i) Borrower has outstanding an interest rate swap with Funding Lender on the Benchmark Replacement Date to hedge, in whole or part, the floating rate risk under the Loan, and (ii) such swap incorporates LIBOR fallback provisions with a Daily Simple SOFR rate as the primary alternative fallback rate for USD LIBOR, then the Benchmark Replacement alternative set forth in clause (1) below shall not apply to the Loan and the alternative set forth below in clause (2) shall be the first alternative:

- (1) the sum of: (a) Term SOFR and (b) the related Benchmark Replacement Adjustment;
- (2) the sum of: (a) Daily Simple SOFR and (b) the related Benchmark Replacement Adjustment;
- (3) the sum of: (a) the alternate benchmark rate that has been selected by Funding Lender as the replacement for the then-current Benchmark, giving due consideration to (i) any selection or recommendation of a replacement benchmark rate or the mechanism for determining such a rate by the Relevant Governmental Body or (ii) any evolving or then-prevailing market convention for determining a benchmark rate as a replacement for the then-current Benchmark for U.S. dollar-denominated syndicated or bilateral credit facilities at such time, and (b) the related Benchmark Replacement Adjustment;

provided that, in the case of clause (1), such Unadjusted Benchmark Replacement is displayed on a screen or other information service that publishes such rate from time to time as selected by Funding Lender in its reasonable discretion; provided, further, that, with respect to a Term SOFR Transition Event, on the applicable Benchmark Replacement Date, the “Benchmark Replacement” shall revert to and shall be determined as set forth in clause (1) of this definition, all in accordance with paragraph (f) (Secondary Term SOFR Conversion) above. If the Benchmark Replacement as determined pursuant to clause (1), (2) or (3) above would be less than the Floor, the Benchmark Replacement will be deemed to be the Floor for the purposes hereof and of the other Loan Documents.

**“Benchmark Replacement Adjustment”** means, with respect to any replacement of the then-current Benchmark with an Unadjusted Benchmark Replacement for any setting of such Unadjusted Benchmark Replacement:

- (1) for purposes of clauses (1) and (2) of the definition of “Benchmark Replacement,” 0.11448% (11.448 basis points). This value represents the ARRC/ISDA recommended spread adjustment value for the Available Tenor available here: [https://assets.bbhub.io/professional/sites/10/IBOR-Fallbacks-LIBOR-Cessation\\_Announcement\\_20210305.pdf](https://assets.bbhub.io/professional/sites/10/IBOR-Fallbacks-LIBOR-Cessation_Announcement_20210305.pdf); and
- (2) for purposes of clause (3) of the definition of “Benchmark Replacement,” the spread adjustment, or method for calculating or determining such spread adjustment, (which may be a positive or negative value or zero) that has been selected by Funding Lender, giving due consideration to (i) any selection or recommendation of a spread adjustment, or method for calculating or determining such spread adjustment, for the replacement of such Available Tenor of such Benchmark with the applicable Unadjusted Benchmark Replacement by the Relevant Governmental Body on the applicable Benchmark Replacement Date or (ii) any evolving or then-prevailing market convention for determining a spread adjustment, or method for calculating or determining such spread adjustment, for the replacement of such Available Tenor of such Benchmark with the applicable

Unadjusted Benchmark Replacement for U.S. dollar-denominated syndicated or bilateral credit facilities.

**“Benchmark Replacement Conforming Changes”** means, with respect to any Benchmark Replacement, any technical, administrative or operational changes (including changes to the definition of “Base Rate,” the definition of “Business Day,” the timing and frequency of determining rates and making payments of interest, timing of borrowing requests or prepayment, length of lookback periods, the applicability of breakage provisions and other technical, administrative or operational matters) that Funding Lender decides may be appropriate to reflect the adoption and implementation of such Benchmark Replacement and to permit the administration thereof by Funding Lender in a manner substantially consistent with market practice (or, if Funding Lender decides that adoption of any portion of such market practice is not administratively feasible or if Funding Lender determines that no market practice for the administration of such Benchmark Replacement exists, in such other manner of administration as Funding Lender decides is reasonably necessary in connection with the administration of the Loan and the Loan Documents).

**“Benchmark Replacement Date”** means the earliest to occur of the following events with respect to the then-current Benchmark:

- (1) in the case of clause (1) or (2) of the definition of “Benchmark Transition Event,” the later of (a) the date of the public statement or publication of information referenced therein and (b) the date on which the administrator of such Benchmark (or the published component used in the calculation thereof) permanently or indefinitely ceases to provide the Available Tenor of such Benchmark (or such component thereof);
- (2) in the case of clause (3) of the definition of “Benchmark Transition Event,” the date determined by Funding Lender, which date shall promptly follow the date of the public statement or publication of information referenced therein;
- (3) in the case of a Term SOFR Transition Event, the date that is set forth in the Term SOFR Notice provided to Borrower pursuant to this Rider, which date shall be at least 30 days from the date of the Term SOFR Notice; or
- (4) in the case of an Early Opt-in Election, the sixth (6th) Business Day after the date notice of such Early Opt-in Election is provided to Borrower.

**“Benchmark Transition Event”** means the occurrence of one or more of the following events with respect to the then-current Benchmark:

- (1) a public statement or publication of information by or on behalf of the administrator of such Benchmark (or the published component used in the calculation thereof) announcing that such administrator has ceased or will cease to provide the Available Tenor of such Benchmark (or such component thereof), permanently or indefinitely, provided that, at the time of such statement or publication, there is no

successor administrator that will continue to provide the Available Tenor of such Benchmark (or such component thereof);

- (2) a public statement or publication of information by a Governmental Authority having jurisdiction over Funding Lender, the regulatory supervisor for the administrator of such Benchmark (or the published component used in the calculation thereof), the Board of Governors of the Federal Reserve System, the Federal Reserve Funding Lender of New York, an insolvency official with jurisdiction over the administrator for such Benchmark (or such component), a resolution authority with jurisdiction over the administrator for such Benchmark (or such component) or a court or an entity with similar insolvency or resolution authority over the administrator for such Benchmark (or such component), which states that the administrator of such Benchmark (or such component) has ceased or will cease to provide the Available Tenor of such Benchmark (or such component thereof) permanently or indefinitely, provided that, at the time of such statement or publication, there is no successor administrator that will continue to provide such Available Tenor of such Benchmark (or such component thereof); or
- (3) a public statement or publication of information by the regulatory supervisor for the administrator of such Benchmark (or the published component used in the calculation thereof) or a Governmental Authority having jurisdiction over Funding Lender announcing that the Available Tenor of such Benchmark (or such component thereof) is no longer representative.

**“Benchmark Unavailability Period”** means the period (if any) (x) beginning at the time that a Benchmark Replacement Date pursuant to clauses (1) or (2) of that definition has occurred if, at such time, no Benchmark Replacement has replaced the then-current Benchmark for all purposes hereunder and under any Loan Document in accordance with this Rider, and (y) ending at the time that a Benchmark Replacement has replaced the then-current Benchmark for all purposes hereunder and under any Loan Document in accordance with this Rider.

**“Daily Simple SOFR”** means, for any day, SOFR, with the conventions for this rate (which may include a lookback) being established by Funding Lender in accordance with the conventions for this rate selected or recommended by the Relevant Governmental Body for determining “Daily Simple SOFR” for business loans; provided, that if Funding Lender decides that any such convention is not administratively feasible for Funding Lender, then Funding Lender may establish another convention in its reasonable discretion.

**“Early Opt-in Election”** means, if the then-current Benchmark is USD LIBOR, the occurrence of:

- (1) a determination by Funding Lender that at least five (5) currently outstanding U.S. dollar-denominated syndicated or bilateral credit facilities at such time contain (as a result of amendment or as originally executed) a SOFR-based rate (including SOFR, a term SOFR or any other rate based upon SOFR) as a benchmark rate, and

(2) the election by Funding Lender to trigger a fallback from USD LIBOR and the provision by Funding Lender of written notice of such election to Borrower.

**“Fallback Rate”** means the alternative rate of interest that would have been applicable under the terms of the Loan (absent this Rider) if Funding Lender had given notice that USD LIBOR had become unavailable or, if no such alternative rate is specified, the Base Rate.

**“Floor”** means the minimum rate of interest, if any, provided under the terms of the Loan with respect to USD LIBOR or, if no minimum rate of interest is specified, zero.

**“Governmental Authority”** means the government of the United States of America or any other nation, or of any political subdivision thereof, whether state or local, and any agency, authority, instrumentality, regulatory body, court, central Funding Lender or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government (including any supra-national bodies such as the European Union or the European Central Funding Lender).

**“ISDA Definitions”** means the 2006 ISDA Definitions published by the International Swaps and Derivatives Association, Inc. or any successor thereto, as amended or supplemented from time to time, or any successor definitional booklet for interest rate derivatives published from time to time by the International Swaps and Derivatives Association, Inc. or such successor thereto.

**“Relevant Governmental Body”** means the Board of Governors of the Federal Reserve System or the Federal Reserve Funding Lender of New York, or a committee officially endorsed or convened by the Board of Governors of the Federal Reserve System or the Federal Reserve Funding Lender of New York, or any successor thereto.

**“SOFR”** means, with respect to any Business Day, a rate per annum equal to the secured overnight financing rate for such Business Day published by the SOFR Administrator on the SOFR Administrator’s Website on the immediately succeeding Business Day.

**“SOFR Administrator”** means the Federal Reserve Funding Lender of New York (or a successor administrator of the secured overnight financing rate).

**“SOFR Administrator’s Website”** means the website of the Federal Reserve Funding Lender of New York, currently at <http://www.newyorkfed.org>, or any successor source for the secured overnight financing rate identified as such by the SOFR Administrator from time to time.

**“Term SOFR”** means, for the applicable Available Tenor, the forward-looking term rate based on SOFR that has been selected or recommended by the Relevant Governmental Body.

**“Term SOFR Notice”** means a notification by Funding Lender to Borrower of the occurrence of a Term SOFR Transition Event.

**“Term SOFR Transition Event”** means the determination by Funding Lender that (1) Term SOFR has been recommended for use by the Relevant Governmental Body, and is determinable for the Available Tenor, (2) the administration of Term SOFR is administratively

feasible for Funding Lender and (3) a Benchmark Transition Event has previously occurred resulting in a Benchmark Replacement in accordance with this Rider that is not Term SOFR.

**“Unadjusted Benchmark Replacement”** means the applicable Benchmark Replacement excluding the related Benchmark Replacement Adjustment.

**“USD LIBOR”** means, for purposes of this Rider only, any interest rate that is based on the London interbank offered rate for U.S. dollars.