

After Recording Return To:  
Colorado Housing and Finance Authority  
1981 Blake Street  
Denver, Colorado 80202-1272  
Attn: Jocelyn Bailey, Paralegal

**SUBORDINATION OF DEED OF TRUST**

THIS SUBORDINATION OF DEED OF TRUST (the “**Agreement**”) is dated as of \_\_\_\_\_, 2022, by \_\_\_\_\_ (“**Borrower**”), the CITY OF PUEBLO, COLORADO, a Municipal Corporation (the “**Subordinate Lender**”) and COLORADO HOUSING AND FINANCE AUTHORITY, a body corporate and political subdivision of the State of Colorado (the “**Senior Lender**”).

**RECITALS:**

A. Subordinate Lender made a loan to Borrower in the original principal amount of \_\_\_\_\_ (the “**Subordinate Loan**”), in connection with the project commonly known as \_\_\_\_\_ located at \_\_\_\_\_ in Pueblo, Colorado, as more particularly described on Exhibit A, attached hereto and made a part hereof by this reference (the “**Property**”). The Subordinate Loan is evidenced by that certain Promissory Note dated \_\_\_\_\_, made by Borrower for the benefit of Subordinate Lender (the “**Subordinate Note**”). The Subordinate Note is secured by that certain Deed of Trust for the benefit of the Subordinate Lender dated \_\_\_\_\_, recorded on \_\_\_\_\_, under Reception No. \_\_\_\_\_ (the “**Subordinate Deed of Trust**”), in the real estate records of the Clerk and Recorder of the County of Pueblo, Colorado (the “**Records**”). The Subordinate Note, Subordinate Deed of Trust and all other documents and agreements related to the Subordinate Loan are collectively referred to herein as the “**Subordinate Loan Documents**”).

B. Borrower has executed, or is about to execute, a Promissory Note payable to the Senior Lender (the “**Senior Note**”) in up to the original principal amount of \_\_\_\_\_ (\$\_\_\_\_) (the “**Senior Loan**”). The Senior Note is secured by a Deed of Trust, Security Agreement, Financing Statement, Fixture Filing and Assignment of Rents and Leases, executed by Borrower and recorded in the Records on \_\_\_\_\_, 2022 at Reception No. \_\_\_\_\_ (the “**Senior Deed of Trust**”), which encumbers Borrower’s interest in the Property. The Senior Note, Senior Deed of Trust and that certain Regulatory Agreement dated \_\_\_\_\_, 2022 between Senior Lender and Borrower (the “**Senior Regulatory Agreement**”), and all other documents and agreements evidencing, securing and/or executed in connection with the Senior Loan are collectively referred to herein as the “**Senior Loan Documents**”).

C. It is a condition precedent to obtaining the Senior Loan, that the Senior Deed of Trust and Senior Regulatory Agreement shall unconditionally be and remain at all times a lien or charge upon the Property prior and superior to the lien or charge of any other lien or encumbrance except the encumbrance of that certain Rental Demonstration Assistance Use Agreement between Borrower and United States Department of Housing and Urban Development dated \_\_\_\_\_ and recorded \_\_\_\_\_ at Reception \_\_\_\_\_ in the Records.

D. The Senior Lender is willing to make the Senior Loan to Borrower provided the Subordinate Lender will specifically and unconditionally subordinate the lien or charge of the Subordinate Deed of Trust to the lien or charge of the Senior Deed of Trust and Senior Regulatory Agreement.

E. It is to the mutual benefit of all parties to this Agreement that the Senior Lender make such loan to Borrower; and Subordinate Lender agrees that the Senior Deed of Trust and Senior Regulatory Agreement, when recorded, will constitute a lien or charge upon the Property, which is unconditionally prior and superior to the lien or charge of the Subordinate Deed of Trust.

## **AGREEMENT**

**NOW, THEREFORE**, in consideration of the mutual benefits accruing to the parties hereto and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and in order to induce the Senior Lender to make the Senior Loan to Borrower, it is hereby declared, understood and agreed as follows:

1. **Subordination.** The Subordinate Lender hereby represents to Senior Lender that it is the current beneficiary of the Subordinate Deed of Trust and payee of the Subordinate Note, and the Subordinate Lender does hereby agree that the Subordinate Loan, Subordinate Deed of Trust and other Subordinate Loan Documents, and all of the Subordinate Lender's rights thereunder, shall be in all respects subordinate, secondary, inferior and junior to the liens, terms, covenants, conditions, operations, and effects of the Senior Deed of Trust, the Senior Regulatory Agreement, and the other Senior Loan Documents and all extensions, renewals or modifications thereof, all as executed and delivered by Borrower to the Senior Lender as security for the Senior Note. Further, any and all indebtedness under the Subordinate Loan Documents is and will at all times continue to be subject and subordinate in right of payment to the prior payment in full of the Senior Loan.

2. **Subordinate Lender Acknowledgement.** For the purposes of this Agreement, the Subordinate Lender acknowledges and agrees that all disbursement of loan proceeds and other advances made by the Senior Lender pursuant to the Senior Loan Documents shall be conclusively presumed to have been disbursed in accordance therewith and for the purposes therein provided.

3. **Senior Loan Documents Superior.** No amendment of the documents evidencing or relating to the Subordinate Loan shall directly or indirectly modify the provisions of this Agreement in any manner which might terminate or impair the subordination of the Subordinate Loan to the liens, terms, covenants, conditions, operations, and effects of the Senior Loan Documents. At any time and from time to time, without notice to Subordinate Lender, Senior Lender may take such actions with respect to the Senior Loan as Senior Lender, in its sole discretion, may deem appropriate, including, without limitation, terminating advances to Borrower, increasing the principal amount, extending the time of payment, increasing applicable interest rates, renewing, compromising or otherwise amending the terms of any documents affecting the Senior Loan and any Property securing the Senior Loan, and enforcing or failing to enforce any rights against Borrower or any other person. No such action or inaction shall impair or otherwise affect Senior Lender's rights hereunder.

4. **Subordinate Loan Default; Standstill.** The Subordinate Lender hereby agrees that upon the occurrence of a default by the Borrower under the terms of any of the Subordinate Loan Documents, the Subordinate Lender shall provide written notice to the Senior Lender thereof within ten (10) days of such default. Subordinate Lender may not exercise any of its remedies, including any foreclosure action under the Subordinate Loan Documents, until delivery by Senior Lender to Subordinate Lender of Senior Lender's written consent to such remedial action by Subordinate Lender. Subordinate Lender's exercise of any of its remedies will be subject to the provisions of this Agreement. Subordinate Lender acknowledges that the provisions of this Section 4 are fair and reasonable under the circumstances, that Subordinate Lender has received a substantial benefit from Senior Lender having granted its consent to the Subordinate Deed of Trust, and that Senior Lender would not have granted such consent without the inclusion of these provisions in this Agreement.

5. **Subordinate Lender Rights.** Subordinate Lender agrees that it will not: (a) collect, enforce or receive payment upon, by setoff or in any other manner, all or any portion of the Subordinate Loan now or hereafter existing; (b) enforce or foreclose upon the Subordinate Deed of Trust or enforce or apply any other security now or hereafter existing for the Subordinate Loan; (c) commence, prosecute, or participate in any administrative, legal or equitable action against Borrower with respect to the Subordinate Loan; (d) join in any petition for bankruptcy, assignment for the benefit of creditors or creditor's agreement involving the assets of Borrower, or incur any obligation to or receive any loans, advances or gifts from Borrower with respect to the Subordinate Loan. Notwithstanding the foregoing, Borrower may make payments under the Subordinate Loan to Subordinate Lender as long as all payments under the Senior Loan Documents are current and not delinquent or in arrears, and only so long as at the time of such payment: (x) no default under the Senior Loan Documents exists and no event exists which, with the lapse of time or the giving of notice or both, would be an event of default under the Senior Loan Documents of which Subordinate Lender has received notice; and (y) such payment would not result in a violation of any of Borrower's financial covenants set forth in any of the Senior Loan Documents.

6. **Senior Lender Rights.** The Senior Lender shall have no obligation to the Subordinate Lender with respect to the Property or the Senior Loan. The Senior Lender may in accordance with the Senior Deed of Trust (a) exercise collection rights, (b) take possession of, sell or dispose of, and otherwise deal with, the Property, (c) in the Senior Lender's name, the Subordinate Lender's name or in the Borrower's name, demand, sue for, collect or receive any money or property at any time payable or receivable on account of, the Property; (d) prosecute, settle and receive proceeds on any insurance claims relating to the Property, and (e) exercise and enforce any right or remedy available to the Senior Lender with respect to the Property, whether available before or after the occurrence of any default; all without notice to or consent by anyone except as specifically required by law. The Senior Lender may apply the proceeds of the Property in any order the Senior Lender deems appropriate in its sole discretion, except as required by law.

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

insolvency, receivership or similar law. In such event, any or all of the Senior Loan originally intended to be satisfied will be deemed to be reinstated and outstanding to the extent of any repayment, return, or other action, as if such payment on account of the Senior Loan had not been made.

8. **Subordinate Lender Representations.** All necessary action on the part of the Subordinate Lender, its officers, directors, partners, members and shareholders, as applicable, necessary for the authorization of this Agreement and the performance of all obligations of the Subordinate Lender hereunder has been taken. This Agreement constitutes the legal, valid and binding obligation of Subordinate Lender, enforceable against Subordinate Lender in accordance with its terms. The execution, delivery and performance of and compliance with this Agreement by Subordinate Lender will not (i) result in any material violation or default of any term of any of the Subordinate Lender's charter, formation or other organizational documents (such as Articles or Certificate of Incorporation, bylaws, partnership agreement, operating agreement, etc.) or (ii) violate any material applicable law, rule or regulation. Subordinate Lender further represents and warrants that each of the following is true as of the date of this Agreement: (i) the Subordinate Loan Documents are now in full force and effect; (ii) the Subordinate Loan Documents have not been modified or amended; (iii) no Subordinate Deed of Trust Default has occurred; (iv) Subordinate Lender is the beneficiary of the Subordinate Loan Documents; and (v) none of the rights of Subordinate Lender under any of the Subordinate Loan Documents are subject to the rights of any third parties, by way of subrogation, indemnification or otherwise.

9. **Confirmation of Subordinate Loan Terms.** Within 10 days after request by Senior Lender, Subordinate Lender will furnish Senior Lender with a statement, duly acknowledged and certified setting forth the then-current amount and terms of the Subordinate Loan, confirming that there exists no default under the Subordinate Loan Documents (or describing any default that does exist), and certifying to such other information with respect to the Subordinate Loan as Senior Lender may request.

10. **Notice.** Any notice which any party hereto may desire or may be required to give to any other party under this Agreement shall be in writing, and shall be deemed to have been given (i) one (1) business day after being delivered to a nationally recognized overnight delivery service, (ii) on the day sent by telecopier or other facsimile transmission, answerback requested, or (iii) on the day delivered personally, in each case, to the parties at the addresses set forth as follows: if to Senior Lender, at the address identified in the Senior Deed of Trust; if to Subordinate Lender, at the address identified in the Subordinate Deed of Trust, if to Borrower, at the address identified in the Senior Deed of Trust.

11. **Further Assurances.** Subordinate Lender hereby agrees to execute such documents and/or take such further action as Senior Lender may at any time or times reasonably request in order to carry out the provisions and intent of this Agreement, including, without limitation, ratifications and confirmations of this Agreement from time to time hereafter, as and when requested by Senior Lender.

12. **Attorney-In-Fact.** The Subordinate Lender hereby appoints the Senior Lender, or any person or entity acting upon the directions of the Senior Lender, as its attorney-in-fact for the

sole and limited purpose of inserting information in this Agreement regarding the date and recording of the Senior Deed of Trust.

13. **Payment of Costs.** Borrower shall pay all costs and expenses, including without limitation, court costs and reasonable attorneys' fees, incurred by Senior Lender in enforcing performance of the obligations of Borrower or in exercising the rights and remedies of Senior Lender hereunder. All such costs and expenses shall be secured by this Agreement and by the Senior Loan Documents. In the event of any court proceedings, court costs and attorneys' fees shall be set by the court and not by jury and shall be included in any judgment obtained by Senior Lender.

14. **Termination.** Upon payment in full of the principal, interest and all other indebtedness evidenced by the Senior Loan Documents, this Agreement shall cease, terminate and be of no further effect; provided, however, that the affidavit, certificate, letter or statement of Senior Lender or any officer, agent or attorney of Senior Lender showing any part of the principal, interest or other indebtedness on the Senior Note being unpaid shall constitute conclusive evidence of the validity, effectiveness, and continuing force of this Agreement and any person may, and is hereby authorized to, rely thereon.

15. **Severability.** If any provision of this Agreement shall be invalid or unenforceable to any extent, the remainder of this Agreement shall not be affected thereby and shall be enforced to the greatest extent permitted by law.

16. **Entire Agreement; Amendment.** This Agreement contains the entire agreement between and among the parties hereto with respect to the subordination of the Subordinate Deed of Trust and the other Subordinate Loan Documents as to the Senior Deed of Trust, the Senior Regulatory Agreement and the Senior Loan Documents. Subordinate Lender is not relying on any representations by Senior Lender or Borrower in entering into this Agreement, and Subordinate Lender has kept and will continue to keep itself fully apprised of the financial and other condition of Borrower. This Agreement may be amended only by written instrument signed by Senior Lender and Subordinate Lender.

17. **Inurement; No Third-Party Beneficiaries.** This Agreement and each and every covenant, agreement and other provisions hereof shall be binding upon the parties hereto and their respective successors and assigns. This Agreement shall remain effective until terminated in writing by Senior Lender. This Agreement is solely for the benefit of Subordinate Lender and Senior Lender and not for the benefit of Borrower or any other party.

18. **Governing Law.** This Agreement is made and executed under and in all respects will be governed and construed by the laws of the State of Colorado.

19. **Remedies.** Each party to this Agreement acknowledges that if any party fails to comply with its obligations under this Agreement, the other parties will have all rights available at law and in equity, including the right to obtain specific performance of the obligations of such defaulting party and injunctive relief.

20. **Counterparts**. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original and all of which, when taken together, shall be deemed one and the same instrument.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK  
SIGNATURE PAGES TO FOLLOW]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date and year first written.

SUBORDINATE LENDER:

CITY OF PUEBLO, COLORADO, a Municipal Corporation

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

Name: \_\_\_\_\_

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

STATE OF COLORADO )  
 ) ss.  
\_\_\_\_\_ COUNTY )

The foregoing instrument was acknowledged before me on \_\_\_\_\_, 2022 by \_\_\_\_\_ as \_\_\_\_\_ of the City of Pueblo, Colorado, a Municipal Corporation.

Witness my hand and official seal.

(S E A L)

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

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

BORROWER:

\_\_\_\_\_

STATE OF COLORADO )  
 ) ss.  
COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_ day of \_\_\_\_\_, 2022, by \_\_\_\_\_, as \_\_\_\_\_ of \_\_\_\_\_.

Witness my hand and official seal.

My Commission expires: \_\_\_\_\_

(SEAL)

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

SENIOR LENDER:

COLORADO HOUSING AND FINANCE  
AUTHORITY, a body corporate and political  
subdivision of the State of Colorado

By: \_\_\_\_\_  
Jaime G. Gomez, Deputy Executive Director and  
Chief Operating Officer

STATE OF COLORADO )  
 ) ss.  
CITY AND COUNTY OF DENVER )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_,  
2022, by Jaime G. Gomez, as Deputy Executive Director and Chief Operating Officer of Colorado  
Housing and Finance Authority, a body corporate and political subdivision of the State of  
Colorado.

Witness my hand and official seal.

(S E A L)

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

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

**EXHIBIT A**  
**LEGAL DESCRIPTION**