

AGREEMENT TO ADMINISTER A SINGLE LOAN

This Agreement to underwrite and administer a single loan ("Agreement"), effective as of _____ ("Effective Date"), is made and entered into by and between Impact Development Fund ("IDF"), a Colorado non-profit corporation with an address at: 200 East 7th Street, Suite 412, Loveland, Colorado 80537, and the City of Fort Collins Urban Renewal Authority ("URA"), with an address at: 222 Laporte Avenue, PO Box 580, Fort Collins, Colorado 80522; each, "Party", and collectively "Parties".

I. Agreement Purpose and Term.

- A.** URA has issued an executed term sheet for the 302 Conifer Project ("Project"), with The Szanton Company ("Borrower"). If approved, URA will allocate three million, two hundred twenty thousand dollars (\$3,220,000) in permanent loan funds for the Project ("Loan"). The Parties acknowledge and incorporate the executed term sheet, attached hereto in Exhibit 3 ("Term Sheet"), as a reference for the general terms and conditions of the Loan.
- A.** URA requests IDF facilitate the underwriting and servicing of the Loan as set forth in this Agreement and the Scope of Services attached as Exhibit 1 ("Services"), and IDF is willing to do so, on the terms and conditions set forth in this Agreement.
- B.** The term of this Agreement shall begin on the Effective Date and continue for a period of two (2) years from the Effective Date ("Initial Term"). After the Initial Term, this Agreement shall automatically renew for successive periods of one (1) year on the anniversary of the Effective Date each calendar year so long as IDF continues to provide the Services, unless and until this Agreement is terminated by either Party in accordance with its terms or the term of the Loan ends and all close-out actions under Section III.P.4 are complete.

II. Service Provisions.

- A.** Services. IDF will perform the Services in accordance with the terms, conditions and other provisions of this Agreement and provide all labor, services, equipment and materials reasonably necessary to do so. Without limiting the foregoing, IDF will expeditiously perform and carry out the Services in compliance with the Term Sheet and all applicable laws. IDF will perform the Services in a manner consistent with the degree of skill and care ordinarily exercised by reputable members of the same profession currently practicing under similar circumstances and to the commercially reasonable satisfaction of IDF.
- B.** Payments for Services. URA shall compensate IDF for performance of the Services in the amounts and at the times set forth on Exhibit 2, Fee Schedule (attached hereto and incorporated herein by reference).
- C.** Control of Funds. URA shall retain exclusive control over the Loan origination approval, including, without limitation, discretion over whether to approve the Loan to originate and the terms of that origination. URA shall provide the funds required to close the Loan to Borrower at the time of closing, or in reimbursement of IDF distributed Loan proceeds if applicable.

- D.** Communication to Borrower. IDF will use commercially reasonable efforts to communicate any instance of delinquency to the Borrower by mail, telephone and electronic mail to the extent reasonably available, in an effort to understand individual circumstances and offer appropriate assistance as reasonably necessary. If it is determined by IDF in good faith that the Borrower is in need of more intensive intervention, IDF will engage URA in a three-way communication process with Borrower to determine and implement a course of action determined by URA in its sole discretion. The decision to foreclose and enter into forbearance or remediation plans with Borrower ultimately remains solely with URA.
- E.** No Legal/Collection Services. IDF does not provide legal and/or collection services for seriously delinquent (ninety (90) or more days past due) loan files.
- F.** No Use of Borrower Data. In the course of administering the Services, IDF will have access to certain information generated by the Borrower, including, without limitation, information included in loan documents, payment history, financial data, and other information related to a Borrower's participation in IDF's servicing program (collectively, "Borrower Data"). IDF will not utilize Borrower Data for any purpose not in connection with the Services and will not contact Borrower for any purpose except as expressly permitted in this Agreement.
- G.** Confidentiality/Protection of Borrower Data.
1. During the Term, a Party ("Recipient") may receive or have access to certain information of the other Party ("Discloser") that is "Confidential Information," including, though not limited to, records, documents, proprietary information, technology, software, trade secrets, financial and business information, or data related to either Party's products, processes, or general business operations (including sales, pricing methods, and organization, employee, or customer lists and process), whether oral, written, or communicated via electronic media or otherwise disclosed or made available to a Party or to which a Party is given access pursuant to this Agreement by the other Party that, if not otherwise described above, is of such a nature a reasonable person would believe to be confidential. Recipient shall protect the disclosed Confidential Information by using the same degree of reasonable care to prevent the unauthorized use, dissemination, or publication of the Confidential Information as Recipient uses to protect its own confidential information of a like nature; further, URA will to the extent legally permissible treat any Confidential Information as proprietary commercial and financial information not subject to disclosure under any applicable law and the Colorado Open Records Act ("CORA") as URA is a quasi-governmental entity. Recipient's obligations shall only extend to:
 - (i) Confidential Information,
 - (ii) Information marked as confidential at the time of disclosure, and
 - (iii) Information unmarked (e.g., orally, visually, or tangibly disclosed), but treated as confidential at the time of disclosure.
 2. This Agreement imposes no obligation upon Recipient with respect to information which:

- (i) Was in Recipient's possession before receipt from Discloser;
 - (ii) Is or becomes a matter of public knowledge through no fault of Recipient, or its employees, consultants, advisors, officers, directors, or affiliates;
 - (iii) Is rightfully received by Recipient from a third party without a duty of confidentiality;
 - (iv) Is provided by Discloser to a third party without a duty of confidentiality on the third party;
 - (v) Is independently developed by Recipient without reference to the Confidential Information; or
 - (vi) Is disclosed by Recipient with Discloser's prior written approval.
3. In the event Recipient is required or requested by law, rule, regulation, or by a judicial or administrative process, including but not limited to CORA, to disclose any Confidential Information, Recipient shall timely notify the Discloser and reasonably cooperate with the Discloser to address any such order.
4. Recipient may disclose Confidential Information to its officers, directors, employees, members, partners, potential and existing financing sources, advisors or representatives (including, without limitation, attorneys, accountants, insurers, rating agencies, consultants, bankers, financial advisors, custodian, and backup servicer, collectively "Representatives") who need to have access to such Confidential Information provided such Representatives have signed a confidentiality agreement at least as restrictive as this Section. Recipient shall be responsible for any breach of this provision by any of its Representatives.
5. In addition to any obligations imposed on them by this Section G the Agreement, IDF will also adhere to the following requirements regarding the confidentiality and security of Borrower Data:
- (i) Protection and Security of Borrower Data.
 - a. IDF will maintain, at all times, an Information Security Program in accordance with applicable laws, rules, and regulations in addition to the reasonable standards URA may set forth, through e-mail notification, from time to time. IDF upon receipt of new standards, will have ten (10) business days to review and seek any clarification before implementation. For purposes hereof, "Information Security Program" means written policies and procedures adopted and maintained to:
 - 1) Ensure the security and confidentiality of Borrower Data;

- 2) Protect against any anticipated threats or hazards to the security or integrity of the Borrower Data;
 - 3) Protect against unauthorized access to or use of the Borrower Data that could result in substantial harm or inconvenience to Borrower; and
 - 4) Fully protect the privacy of Borrower.
 - b. IDF will assess, manage, and control risks relating to the security and confidentiality of Borrower Data, and will implement the standards relating to such risks in a manner consistent with applicable laws, rules, and regulations and such other reasonable standards as URA may set forth, through e-mail notification, from time to time. IDF upon receipt of new standards, will have ten (10) business days to review and seek any clarification before implementation.
 - c. Without limiting the scope of the above, IDF will use at least the same physical and other security measures to protect all Borrower Data in IDF's possession or control as IDF uses for its own confidential and proprietary information.
- (ii) Unauthorized Access to Borrower Data. In the event IDF knows or reasonably believes there has been any unauthorized access to Borrower Data in the possession or control of IDF that compromises (or threatens to compromise) the security, confidentiality, or integrity of such Borrower Data, IDF will take the following actions:
 - a. Promptly notify URA of such unauthorized access;
 - b. Identify to URA what specific Borrower Data may have been accessed, including (if applicable) the name and account number of each affected Borrower;
 - c. Take commercially reasonable steps to remedy the circumstances that permitted any such unauthorized access to occur;
 - d. Take commercially reasonable steps to prohibit further disclosure of Borrower Data; and
 - e. Cooperate with URA as reasonably necessary to facilitate compliance with any applicable laws and regulations regarding unauthorized access of Borrower Data.
6. Remedies for Breach of Privacy and Security Obligations. The Parties agree any breach or threatened breach could cause not only financial harm, but also irreparable harm to either Party, and money damages may not provide an adequate remedy for such harm.

In the event of a breach or threatened breach of this by either Party, the non-breaching Party shall, in addition to any other rights and remedies it may have, be entitled to:

- (i) Terminate this Agreement immediately upon notice to the breaching Party;
- (ii) Seek equitable relief, including, without limitation, an injunction (without the necessity of posting any bond or surety) to restrain such breach; and
- (iii) Pursue all other remedies the non-breaching Party may have at law or in equity.

7. Following the expiration of or earlier termination of this Agreement, each Party agrees to destroy all copies of Confidential Information of the other Party, without retaining any copies thereof, and destroy all copies of any analyses, compilations, studies, or other documents prepared by it or for its use containing or reflecting any Confidential Information; provided, however, each Party may retain such limited copies or materials containing Confidential Information of the other Party solely for customary document retention and audit purposes, as required by such Party's customary internal policies or applicable law. Any Confidential Information retained pursuant to this provision shall remain subject to the terms of this Agreement.

III. General Provisions.

- A. Amendments. No amendment or change to this Agreement shall be binding unless it is mutually agreed upon in a formal writing signed by the Parties to this Agreement. Any amendments shall be fully executed prior to any work being done under such amendment.
- B. Assignment. This Agreement shall not be assigned or transferred by IDF without the prior written consent of URA, which URA shall not unreasonably withhold, delay or condition.
- C. Attorneys Fees. If any action at law or equity, including an action for declaratory relief, is brought to enforce or interpret any provision of this Agreement, the substantially prevailing Party shall be entitled to recover reasonable attorneys' fees and expenses from the other Party, which fees and expenses shall be in addition to any other relief which may be awarded.
- D. Compliance with Local, State, and Federal Laws.
 - 1. IDF will comply, in the performance of the Services, with all of the requirements of local, state and federal ordinances, codes, laws, rules, regulations, orders and guidelines that are applicable to the Services or that become applicable to the Services, including, without limitation, the Truth in Lending Act, the Real Estate Settlement Procedures Act, the Home Mortgage Disclosure Act, the Fair Credit Reporting Act, the Colorado Privacy Act, and the Financial Services Modernization Act (the Gramm-Leach-Bliley Act).
 - 2. Any change in applicable law under which this Agreement is to be performed, and which is required to be applied to this Agreement, and which, by its terms, is intended to be applied to this Services, shall be deemed to be incorporated into this Agreement.

- E.** Counterparts. This Agreement may be executed in counterparts, each of which shall constitute an original and all of which, when taken together, shall constitute one instrument. Copies of signature pages may be delivered by electronic mail, which shall be binding and enforceable to the same effect as if the original signature pages were delivered.
- F.** Indemnities. IDF hereby agrees to indemnify and hold URA, and URA's respective officers, directors, agents, members, and employees harmless from and against any and all claims, liabilities, losses, costs, and expenses (including reasonable attorney's fees) incurred by or asserted against URA as a result, directly or indirectly, of IDF's:
1. Performance of this Agreement due to the intentional or willfully negligent acts, misconduct, or omissions of IDF, its subcontractors, officers, employees, and agents, in the performance of this Agreement;
 2. Disclosure of any Borrower Data or other personal or Confidential Information not permitted by this Agreement; and
 3. Misrepresentation or breach of any of its representations, warranties, or covenants contained in this Agreement.
- G.** Independent Contractor. In performing this Agreement, IDF is an independent contractor for URA and not an employee. URA reserves no control over IDF or any of IDF's employees, agents, subordinates, or associates (if any), as to how the Services should be performed. The manner and means of performing the Services are under IDF's sole control. IDF is responsible for calculating, withholding, and paying all applicable federal and state taxes.
- H.** Integrated Document and Incorporation by Reference. This Agreement including all exhibits embodies the entire understanding between URA and IDF for the Services and their terms and conditions. No verbal agreements or conversation with any officer, agent or employee of URA or IDF prior to or subsequent to the execution of this Agreement shall affect or modify any of the terms or obligations contained in any documents comprising this Agreement. All parts identified above and all applicable federal, state, and local laws, rules, regulations, circulars, and any other documents referenced for incorporation are incorporated herein by this reference as if fully set forth in the Agreement. In the event of any conflict between the terms of this Agreement and any exhibit attached hereto, the terms of the exhibit shall control.
- I.** Insurance. IDF and URA agree to each separately procure and maintain, at their own cost, a policy or policies of insurance as called for in this Agreement. Insurance shall be procured and maintained with forms and insurers separately acceptable to each Party. All coverages shall be continuously maintained during the term of this Agreement. Each shall be primary insurance and any insurance carried by the Parties, their officers, or employees, shall be excess and not contributory insurance to that provided by the other Party. Each Party reserves the right to request and receive a certified copy of any policies. Both Parties shall procure and maintain the minimum insurance coverages listed below.
1. Commercial General Liability coverage, as appropriate, with minimum of two million dollars (\$2,000,000.00) aggregate, one million dollars (\$1,000,000) occurrence.

2. Either Party shall not be relieved of any liability, claims, demands, or other obligations assumed pursuant to this Agreement by reason of their failure to procure or maintain insurance, or by reason of their failure to procure or maintain insurance in sufficient amounts, duration, or types.
 3. Each Party shall be responsible for their own deductibles under any policy required above.
 4. Upon the failure on the part of either Party to procure or maintain their own policies providing the required coverages, conditions, and minimum limits, in addition to any other remedies the abiding Party may have at law or in equity, at its discretion the abiding Party may procure or renew any such policy or any extended reporting period thereto and may pay any and all premiums in connection therewith, and all monies so paid by abiding Party shall be repaid by the non-abiding Party upon demand, or the abiding Party may offset the cost of the premiums against any monies due to the non-abiding Party.
- J.** Jurisdiction; Venue. This Agreement shall be governed by the laws of the State of Colorado. The District Court for City and County of Larimer, State of Colorado, shall have exclusive jurisdiction, including *in personam* jurisdiction, and shall be the exclusive venue for any and all controversies and claims arising out of or relating to this Agreement.
- K.** Performance Reports and Records. IDF will prepare and provide to URA the reports described on Exhibit 4 as part of the Services provided under this Agreement.
- L.** Public Disclosure. Parties acknowledge that certain terms and conditions, in this Agreement, may be subject to public disclosure requirements pursuant to applicable Law or in accordance with a Party's legal organization under Section 501(c)(3) of the Internal Revenue Code and as such may be disclosed to the public through various means. Any Party making such disclosure shall notify the non-disclosing Party in advance and limit the disclosed information to that which is required by applicable law.
- M.** Representatives; Notices. All applicable invoices, statements, notices, inquiries, and replies shall be provided to the other Party in writing and addressed to the other Party's respective representative at the addresses below. The following individuals are designated by each Party as such Party's "Key Representative" under this Agreement:

URA: Andy Smith, Redevelopment Manager
 222 Laporte Avenue, PO Box 580
 Fort Collins, CO 80522
 Phone: (970) 416.2517
 Email: asmith@fcgov.com

IDF: Megan Ferguson, Chief Executive Officer
 200 E. 7th Street, Suite 412
 Loveland, CO 80537
 Phone: (970) 494.2021
 Email: contracts@impactdf.org

The Parties may change their representatives and addresses at any time by written notice in compliance with this Section to the other Party.

- N.** Severability Clause. The declaration by any court or other legal authority that any provision of this Agreement is illegal and void shall not affect the legality and enforceability of any other provision of this Agreement unless said provisions are mutually dependent.
- O.** Successors. Each Party covenants that the provisions of this Agreement shall be binding upon its heirs, successors, assigns, representatives and agents.
- P.** Termination.
1. **Termination for Cause by Parties.** If, for any reason, a Party shall fail to substantially perform the work required of it by this Agreement, or fails to ensure the performance of, by legal means if necessary, the work called for herein with such diligence as will ensure its completion, or materially fails to comply with any of the terms, conditions, or other provisions of this Agreement, which shall constitute a violation or breach of this Agreement, and shall fail to cure the default within fifteen (15) days following written notice thereof by the Performing Party, the Performing Party may terminate this Agreement by giving written notice to the Non-Performing Party. In addition to the other remedies available to it, in the event the Performing Party terminates this Agreement due to Non-Performing Party's failure to cure any default as provided hereinabove or due to the Non-Performing Party's breach or violation of any covenant, agreement, or assurance herein, the Performing Party is entitled to recover all expenses incurred by it as a result of the violation, including reasonable attorney's fees incurred in enforcing its rights under this Agreement. If the Performing Party does not prevail, the Non-Performing Party is entitled to recover its attorney's fees.
 2. **Termination for the Convenience of Parties.** This Agreement may be terminated by a Party at any time for any reason or no reason upon at least one hundred twenty (120) days advance notice to the other Party. Such notice shall set forth the termination date, which date shall not be earlier than the expiration of the one hundred twenty (120) day notice period. The terminating Party will neither be paid nor be considered eligible for payment of termination expenses, incidental, direct or consequential costs or damages or loss of profits due to termination under this Section. The receiving Party shall be entitled to receive payment for all commercially reasonable documented direct and incidental termination expenses due to the termination.
 3. **Return of Records.** Upon any termination of this Agreement in advance of its expiration date, undelivered documents, maps, models, photographs, reports, or copies thereof prepared by IDF or its subcontractors for use in performance under this Agreement, will be delivered immediately to URA in their state of preparation at the time of termination subject to the provisions of any termination agreement or order by URA providing otherwise. IDF will also immediately notify URA of all subcontracts, purchase orders, pending loans, or other commitments of IDF which will be outstanding on the termination date and will take such action with respect thereto as the Parties shall mutually determine. No termination hereunder shall relieve IDF of its responsibilities to maintain Services records in accordance with this Agreement.

4. **Close-outs.** IDF obligations to URA will not end until all close-out requirements are completed. Activities during this close-out period shall include, but are not limited to: making final payments, disposing of program assets (including the return of all unused materials or equipment that is the property of URA, unspent cash advances, notes, deeds of trust, security and copies of transferred records to URA upon close-out or upon URA's request), and determining the custodianship of records, all such that URA may manage the servicing program for itself or transfer the management thereof to another third party without undue delay or complication.

Q. Signatures. The Parties to this Agreement, through their duly authorized representatives, have executed this Agreement on the dates set out below, and certify they have read, understood, and agreed to the terms and conditions of this Agreement. Each person signing this Agreement warrants they have authority to bind URA to IDF.

R. Governmental Immunity. URA, its officers and employees are relying on and do not waive or intend to waive by any provision of this Agreement, the monetary limitations or any other rights, immunities and protections provided by the Colorado Governmental Immunity Act, §§ 24-10-101, *et seq.*, as amended, or otherwise available to URA and its officers and employees.

URA: The City of Fort Collins Urban Renewal Authority

By: _____
Josh Birks, Acting Executive Director

Date: _____

IDF: Impact Development Fund

By: _____
Megan Ferguson, Chief Executive Officer

Date: _____

EXHIBIT 1
SCOPE OF SERVICES

*All capitalized terms set forth below and not otherwise defined herein shall have the meanings set forth in the Agreement.

- A. URA shall assume a leadership role to inform the Borrower of the availability and general guidelines of the Loan, whereas IDF will administer functions related to loan intake, origination, processing, underwriting, servicing, monitoring, and reporting to URA.
 - i. The Standardized Loan Underwriting and Processing Criteria as established in partnership between IDF and URA shall form the basis for the loan origination portion of the Term Sheet (Exhibit 3).
 - ii. The Loan Servicing Policies, as established by IDF, attached hereto in Exhibit 3 and incorporated herein by reference, shall form the basis for the loan servicing portion of the Program.
- B. IDF will receive and review the loan application from, or on behalf of, the intended Borrower of the Loan, utilizing the executed Term Sheet. The Term Sheet is attached hereto as Exhibit 3 and incorporated herein by reference. The Term Sheet may be changed from time-to-time by URA, in its sole discretion, by written notice of such change to IDF, with any such change applied to the loan application if possible, considering the Loan's status.
- C. IDF will prepare all the documents necessary to manifest the Loan, URA's security interest, the conformance of the Loan to the Loan terms issued to Borrower, and compliance with all applicable laws, rules, and regulations.
- D. IDF will be responsible for defining and disclosing Loan terms to the Borrower under prevailing and issued Loan terms under this Agreement. In the instance of Loan denial by URA Board, IDF will deliver written notice (Notice of Credit Denial), specifying the reasons for denial and source(s) of any adverse verification, if applicable, to the Borrower and URA within three (3) business days of such determination. Prior to issuance of a Notice of Credit Denial, IDF will deliver to URA a credit memorandum that demonstrates all relevant application details and reasons for denial. URA reserves the right to accept IDF's determination or approve any such application request through internal policy and procedure and advise IDF of such final credit determination. IDF will abide by any such decision rendered by URA and accept the application as compliant to the Term Sheet. Except giving Notice of Credit Denial, IDF will assume no responsibility with respect to URA Loan approval or Borrower appeal where any appeal process shall be determined solely by URA.
- E. IDF will provide ongoing loan services to URA for the management of the Loan. Such service will include, but not be limited to, managing the escrow account and reviewing and advising Borrower on Borrower draw requests to be approved by Borrower, issuing monthly account statements; collecting and posting Borrower remittances; responding to Borrower and URA inquiries; loan covenant compliance, identifying and proactively responding to non-payment issues; and, engaging URA as necessary to resolve discrete Borrower conditions as they arise.
- F. IDF standard reports are designed to meet URA's objectives and funding source requirements. Data reporting is flexible and can be reported in several ways, including program type, funding source, and

funding year. Such reports may include Lender Report; Loan Amortization Schedule (if applicable); and Payment History with Memos. See attached Exhibit 4 for sample report types.

- G. IDF maintains strict confidentiality of sensitive information though also recognizes circumstances may call for more inclusive intervention. As normal practice, loan servicing activity will not directly involve URA personnel. URA will receive monthly reporting identifying the delinquent status of Borrower, when applicable. Unless aggravating circumstances have been identified, IDF will not typically request intervention from URA until the loan reaches sixty (60) day delinquency status, unless otherwise requested by URA. IDF will promptly notify URA if the Loan is sixty (60) days delinquent.

**EXHIBIT 2
FEE SCHEDULE**

IDF will be compensated for its services by the following:

- A. **Origination Fee:** Borrower will be subject to an origination fee of one percent (1.0%) of the total principal balance of the proposed loan, due at the time of loan settlement and fund disbursement. The origination fee is to be paid at closing by the Borrower, or paid by a third-party.
- B. **Servicing Fee:** Twenty-five (25) basis points (bps) servicing fee will be assessed on each commercial loan retained annually and paid pro rata monthly. This fee is based on the loan's original total principal amount owed by the Borrower.
- C. **Withdrawal/Denial Fee:** In the event of loan withdrawal or denial, a one percent (1.0%) fee based on the total loan balance for which the Borrower applied shall be assessed to compensate for administrative costs incurred during underwriting. This fee may be paid directly by the Borrower or covered by URA.
- D. **Modification Fee:** In the event the Borrower requests a loan document modification after closing, IDF may assess a one-time modification fee. The amount of this fee will be determined based on the scope of the requested changes and must be approved by both IDF and URA.

Services provided by IDF Servicing Staff in addition to Services above, will be assessed and billed at a rate agreed to in writing by both Parties. Such services could include, but are not limited to: loan modifications, forbearance agreements, and default management in cases not transferred back to URA for further action.

IDF will retain any late payment fees from Borrowers when payment is not made within the grace period, typically five percent (5%) of the payment amount, in accordance with IDF's promissory notes.

As needs arise for specialized software or technology development and implementation, IDF will provide a one-time project specific scope of work for approval. Project pricing will include IDF Consultant Wage billed at one-hundred and twenty-five dollars (\$125.00) per hour in addition to reimbursement for pre-authorized direct cost for technology, software, and third-party developer cost.

Costs associated with IDF mileage and travel expenses will be separately billed. Amounts in excess of one-hundred dollars (\$100.00) will be pre-authorized by URA.

EXHIBIT 3
REFERENCE MATERIALS

Executed Term Sheet
Underwriting Policies & Procedures – Commercial Lending
IDF Loan Servicing Policies and Procedures
IDF Information Protection Policy

EXHIBIT 4
SAMPLE DATA REPORT TYPES

- A. **Monthly Payment Report.** IDF will prepare and submit to URA a detailed report no later than fifteen (15) days after the end of the most recent calendar month. Said report will be in a format approved by URA and will be directly related to the Services as referenced under Exhibit 1, providing data and information to URA to be used for coordinating, monitoring, and evaluating the Services to its completion.
- B. **IDF's Annual Report.** IDF will provide URA with a copy of its annual report with audited financial statements within thirty (30) days after it is completed, but in no event more than one hundred and fifty (150) days after the end of IDF's fiscal year.

IDF will maintain records, correspondence, loan applications, copies of promissory notes, and security instruments, and such other records as may be required by URA and applicable law for the duration of this Agreement. In no event shall such records be destroyed or discarded prior to their being tendered to URA upon the termination of this Agreement or as may be agreed otherwise, in writing, between the Parties. URA and, if applicable, state and federal auditors, shall have access to and be permitted to make copies of such records, with reasonable advance notice, in accordance with this Agreement, other agreements, and applicable law.

CONSTRUCTION LOAN AGREEMENT

Principal Terms

The following Principal Terms and the definitions below are part of this Construction Loan Agreement dated as of _____, 2025 (this “**Agreement**”). In the event of a conflict between these Principal Terms and the body of this Agreement which follows, the Principal Terms shall control.

1. **Borrower:** [x]
2. **Borrower Address:** [x]
3. **Borrower’s Organizational Identification Number:**
4. **Lender:** Impact Development Fund, a Colorado non-profit corporation.
5. **Lender Address:** 200 E. 7th Street, Suite 412, Loveland, CO 80537.
6. **Loan Amount:** \$[x] ([x] and No Cents).
7. **Loan:** The Construction to Permanent Loan described herein. Borrower shall use the loan funds solely for the payment of (i) the costs of constructing or making the improvements in accordance with Plans and Specifications and the Construction Contracts; and (ii) other costs and expenses incurred or to be incurred in connection with the construction of the Project as Lender, in its sole discretion shall approve.
8. **Loan Term:** [x] Months.
9. **Maturity Date:** [x] months from the date of Closing.
10. **Interest Rate:** [x]% fixed.
11. **Loan Payments:**

Construction Phase (Months 1–12):

During the first twelve (12) months following the initial disbursement (the “Construction Phase”), Borrower shall make monthly interest-only payments based on the outstanding principal balance at a rate of [x]% per annum, calculated on a 365-day year. Interest shall be paid monthly in arrears, beginning on the first day of the month following the initial disbursement.

Permanent Phase (Beginning Month 13):

At the end of the Construction Phase, or upon earlier completion of construction as determined by Lender, the Loan shall automatically convert to a permanent loan without the need for refinancing. (“Conversion”) Thereafter, Borrower shall make monthly payments of principal and interest sufficient to fully amortize the outstanding balance over the remaining [x] months. Payments shall commence on the first day of the month

following Conversion and continue until the Maturity Date. All outstanding principal balance of the Loan and all accrued but unpaid interest, together with all other fees, costs and charges, if any, shall be due and payable upon Maturity Date.

12. **Principal Amortization Schedule:** Amortized on a [x]-year schedule
13. **Construction Advance:** An Advance is a disbursement of Loan principal to be applied toward costs incurred in the construction and completion of the Project (“Advance”). The Lender has no obligation to make any Advance that, when combined with all prior Advances, exceeds the total Loan Amount, even if the Borrower has repaid all or part of a previous Advance. All Advances are subject to the Lender’s approval, in its sole and subjective discretion.
14. **Project Property:** The real property to be improved using Loan Proceeds, together with (i) all Improvements; (ii) all equipment, fixtures and other personal property now or subsequently attached or affixed or intended to be attached or affixed to the Project Property, together with all accessories, parts, additions to, replacements of, and substitutions for any of such personal property; and (iii) all proceeds thereof (including insurance proceeds, refunds of premiums, and proceeds from any sale or other disposition of such real or personal property), located at [x] having the legal description set forth on Exhibit A to this Agreement (the “Property”).
15. **Real Property Collateral/Deed of Trust:** A first Deed of Trust interest encumbering the Property.
16. **Project:** The construction and completion in accordance with the Plans and Specifications and the Construction Contracts of all Improvements to the Project Property contemplated by this Agreement, including, without limitation, the installation of equipment and fixtures, paving, landscaping, infrastructure, and all other work necessary to make the Project Property usable and complete for its intended purposes. The scope of the Project includes the following work: Construction of a [x]-unit property and related improvements located at [x] as more particularly described on the certain set of plans titled “[x]” dated [x], prepared by [xyz architects].
17. **Completion Date:** The project shall be substantially complete and have received at minimum, a Temporary Certificate of Occupancy, no later than [x].
18. **Total Project Cost:** The total cost of constructing the Improvements and completing the Project according to the Plans and Specifications and Construction Contract, including any sums required to purchase the Project Property, but not excluding the amounts necessary to pay in full the existing loans secured by the Project Property. Borrower shall take all steps necessary to prevent the actual cost of the Project from exceeding the Total Project Cost. The “Total Project Cost” shall not exceed \$[x].
19. **Commitment Fee:** Earned and non-refundable amount equal to [x]% of the Loan Amount ([x]), is due at Loan Closing or termination by not closing by the Loan Closing Deadline and may be drawn against the Loan.
20. **Prepayment Penalty:** Prepayment can be made in whole or in part, at any time, without notice or penalty.

21. **Closing:** The exchange of all executed Loan Documents (defined below) following the satisfaction by Borrower to Lender's satisfaction (or written waiver by Lender) of all conditions precedent to the making of the Loan to Borrower. Closing shall occur, if at all, on a date determined by Lender and Borrower prior to the Loan Closing Deadline.
22. **Other Closing Conditions:** All customary closing conditions apply.
23. **Guarantor:** [x]
24. **Knowledge Party(ies):** [x]
25. **Affordability Criteria:** As presented within the Loan application submitted by Borrower – [x]
26. **Land Use Restriction Agreement:** Comply with all restrictive covenants and affordability requirements of all loans, tax credits, and grants connected with the Property, including without limitation the Restriction Agreement. In addition to and not in lieu of Borrower's obligation to comply with the requirements of the Restriction Agreement, Borrower agrees that that [x] units will be at or below 120% of the Area Median Income in which the Property are located as published by the United States Department of Housing and Urban Development. Borrower agrees to collect income information from the subsequent renters of the Property to verify compliance with this Section, and to furnish such information to Lender prior to transfer of the Property to subsequent renters and upon Lender's request. Lender shall have the right to enforce the Restriction Agreement against Borrower and the Property until the date (the "**Affordability Date**") that is the later of (i) the date the Loan has been repaid in full and all of Borrower's obligations under the Loan Documents have been satisfied in full, or (ii) the end of the Affordability Period, as defined in the Restriction Agreement.
27. **Loan Documents:** The Note, Deed of Trust, Riders, Assignments, Land Use Restriction Agreements Other Documents and all other incidental documents evidencing or securing the Loan.
28. **Monitoring and Servicing Requirements:**
- a. The Borrower shall furnish to the Lender quarterly written updates regarding the status of the Project, inclusive of a detailed account of all sources and uses of financing associated therewith.
 - b. As a condition precedent to the disbursement of any funds designated for repairs or construction, the Borrower shall provide the Lender with an updated construction cost estimate, acceptable to the Lender.
 - c. The Borrower's sponsor shall annually submit reviewed financial statements, within one hundred twenty (120) days of the end of each fiscal year.
- [x]

29. **Other Documents:** The following documents, in form and substance acceptable to Lender, are required for this Loan:

- a. Certificate of Good Standing from the Secretary of State.
- b. Articles of Incorporation and Bylaws or Operating Agreement of Borrower.
- c. Borrower Resolutions authorizing and approving the Loan and identifying who is authorized to execute all Loan Documents.
- d. Title Insurance Commitment: In accordance with Section 3.1(e).
- e. Insurance: In accordance with Section 3.1(l).
- f. Appraisal: An appraisal with a minimum appraised value of \$[x] in accordance with Section 3.1(m).
- g. Phase 1 Environmental Site Assessment: In accordance with Section 3.1(q).

30. **Exhibits:** The following exhibits are attached to and incorporated in this Agreement by this reference:

Exhibit A – Legal Description of the Property

End of Principal Terms.

CONSTRUCTION LOAN AGREEMENT
(Real Estate Secured Loan)

Capitalized terms in this Construction Loan Agreement (this “**Agreement**”) and not defined below shall have the meanings given to them on the introductory pages to this Agreement titled “**Principal Terms**,” which Principal Terms are incorporated into this Agreement by this reference.

RECITALS

A. Borrower has requested from Lender a loan in the amount of the Loan Amount for the purposes described in the Principal Terms.

B. Lender has agreed to make such Loan to Borrower on the terms and subject to the conditions of this Agreement.

C. The Loan is evidenced by the Note and the Loan Documents.

AGREEMENT

In consideration of the Loan and the mutual and dependent promises contained in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Borrower and Lender agree as follows:

1. THE LOAN

Section 1.1 Loan Terms. Lender shall make the Loan to Borrower on the terms and conditions of this Agreement, including the preceding Principal Terms. The Loan shall be evidenced by the Note, which shall be payable to Lender or its order on the dates and in the manner provided in the Note and the Principal Terms.

Section 1.2 Principal Payment. All outstanding principal balance of the Loan and all accrued but unpaid interest, together with all other fees, costs, and charges, if any, shall be due and payable in full at Maturity Date.

Section 1.3 Purpose and Use of Loan Proceeds. The proceeds of the Loan shall be used only for the purposes described in the Principal Terms, above.

Section 1.4 Payment of Closing Expenses. Upon the Loan Closing, provided Borrower has satisfied all of the conditions contained herein in Lender’s sole, subjective discretion, Lender shall disburse (the “**Initial Disbursement**”) to itself or third parties an amount sufficient to pay: (i) the Loan Commitment Fee; (ii) Lender’s attorneys’ fees; and (iii) Lender-approved closing costs. Regardless of whether the Initial Disbursement is made, Borrower shall pay all closing expenses, including, but not limited to, the loan commitment fee and all Lender-approved closing costs set forth in this Section 1.3, all recording, transfer, and filing fees, taxes, title and other insurance premiums, Borrower’s and Lender’s attorneys’ fees, and appraisal and survey fees, if any (the “**Closing Expenses**”).

Section 1.5 Closing Deadline; Lender's Expenses. If the Closing has not occurred by the Loan Closing Deadline, Lender may, in its sole discretion, terminate this Agreement, in which event Lender shall have no further obligations under this Agreement, and Borrower shall pay Lender's attorneys' fees and any other costs and expenses of every kind or character incurred by Lender in connection with the Loan.

2. SECURITY INTERESTS

Section 2.1 Security for Loan. To secure the due and punctual payment of any and all liabilities of Borrower to Lender, including, without limitation, the payment of any sums due under the Note, and to secure the performance by Borrower of each and every obligation of Borrower under this Agreement to Lender, its successors and assigns, Borrower hereby grants, conveys and assigns to Lender and Lender's successors and assigns a lien on and security interests in all of Borrower's right, title and interest in and to the Project Property and (i) all of the buildings, structures, and other improvements now standing or at any time hereafter constructed or placed on the Project Property; (ii) all privileges, easements, rights-of-way, licenses, franchises, tenements, and appurtenances belonging or in any way appertaining to the Project Property; (iii) all plans and specifications for the Project Property (the "**Plans**"); (iv) all of Borrower's rights (but not liability for any breach by Borrower) under all commitments, insurance policies, construction contracts, architectural contracts, engineering contracts and other contracts, payment and performance bonds, and general intangibles (including, but not limited to, trademarks, trade names, and symbols) related to the Project Property or the operation or platting and subdivision thereof and all entitlements related thereto; (v) all deposits (including, but not limited to, Borrower's rights in all of the following: tenants' security deposits, deposits with respect to utility services to the Project Property, and any deposits or reserves under this Agreement or under any other Loan Document for taxes, insurance, or otherwise), money, accounts, instruments, documents, notes, and chattel paper arising from or by virtue of any transactions related to the Project Property, including, without limitation, any contracts to sell, or option to buy, any portion of the Project Property, and all payments, earnest money, escrow, and other deposits made or to be made pursuant thereto; (vi) all permits, licenses, franchises, certificates, and other rights and privileges obtained in connection with the Project Property; (vii) all income, leases, rents, royalties, bonuses, issues, profits, revenues, condemnation awards, insurance proceeds, and other benefits of the Project Property; (viii) all engineering, accounting, title, legal, and other technical or business data concerning the Project Property which are in the possession of Borrower or in which Borrower can otherwise grant a security interest, and complete and accurate copies of all books, files, records, magnetic media, and other forms of recording or obtaining access to such data; (ix) all furniture, furnishings, fixtures, equipment, and all other personal property owned by Borrower now or hereafter located in or on, used, or intended to be used in connection with the Project Property (excluding, however, personal property owned by tenants occupying space in the Project Property); (x) all of the estates, rights, and interests of Borrower, whether now owned or later acquired, in the Project Property; and (xi) the proceeds of any of the above. All of the foregoing are collectively referred to as the "**Collateral**".

Section 2.2 Instruments Evidencing Lender's Security Interests. To evidence the security interests of Lender in the Collateral, at Borrower's expense, Borrower shall cause to

be executed and delivered the Deed of Trust satisfactory to Lender in its sole, subjective discretion, encumbering the Project Property.

3. CONDITIONS OF LENDER'S OBLIGATIONS

Section 3.1 Conditions Precedent to Disbursements. Each of the requirements set forth in this Agreement and each of the conditions listed below are precedent to each obligation of Lender under this Agreement, if any, and shall be satisfied or observed, as applicable, before any and all “**Disbursements**” of the Loan (subsequent to and inclusive of the Initial Disbursement) in a manner satisfactory to Lender in its sole, subjective discretion:

a. Borrower shall have duly authorized, executed, and delivered the Loan Documents with all recording fees, filing fees and taxes paid by Borrower. For all Disbursements other than the Initial Disbursement, Lender shall have received proof of such recording and filing so as to encumber the Project Property and perfect a security interest in the personal property described in the Loan Documents, and Lender shall have received evidence that the Security Documents have been properly recorded or filed and have the required priorities.

b. Borrower shall have delivered to Lender copies of Borrower's Organizational Documents duly certified by an appropriate officer as being true, correct, and complete;

c. Borrower shall have delivered to Lender a Borrowing Resolution executed by all of the directors/members/partners (as appropriate) of Borrower approving the Loan and authorizing execution of all Loan Documents by specified officers/managers/partners (as appropriate) on behalf of Borrower and confirming that Lender will have full recourse to Borrower for the Loan;

d. A certification by Flood Data Services, Inc. as to whether the Real Property is located in a flood hazard area. The certification shall be ordered by Lender but paid for by Borrower. Flood insurance will be required if (i) any existing improvement on the Real Property is in a flood hazard area, or (ii) the Improvements are (or will be when they are constructed) located in a flood hazard area;

e. Borrower shall have paid for and caused to be delivered to Lender a commitment from a title company acceptable to Lender (the “**Title Company**”) for a construction American Land Title Association (“**ALTA 32/33**”) mortgagee's title insurance policy with a 102.5 endorsement, in an amount equal to the Loan Amount, with legible and complete copies of all recorded documents listed as exceptions, all of which shall be satisfactory to Lender. The Commitment shall commit to delete or insure over the standard exceptions which relate to parties in possession, unrecorded easements, survey matters, any unrecorded mechanics' liens, gap period, unpaid taxes, assessments, and unredeemed tax sales prior to the year of closing and to issue such additional endorsements as Lender may require. The title commitment shall be subject only to exceptions approved by Lender;

f. If it is required by the Principal Terms, Borrower shall have furnished to Lender an ALTA survey of the Project Property certified to Lender. Borrower shall bear all costs relating to each survey. Each survey must be prepared and certified by a professional

engineer or registered land surveyor satisfactory to Lender. Lender may require that any survey meet the survey requirements of the American Land Title Association. Unless Lender agrees otherwise, the survey must show (i) the boundaries of the Project Property; (ii) the location of any existing improvements within the boundary lines of the Project Property; and (iii) all setback lines, easements, and other matters that may affect the Project Property. In lieu of a current survey, Lender *may*, in its discretion and depending on the circumstances, agree to accept an existing survey or recorded plat showing the Project Property, provided (i) the Project Property as shown on the survey or recorded plat is consistent with the legal description contained in the instrument conveying the Project Property to its current owner and in Lender's mortgage, deed of trust, or security deed; (ii) Lender receives a satisfactory lender's title insurance policy insuring Lender's required lien priority on the Project Property without a general exception as to matters of survey; and (iii) any exceptions in the lender's title insurance policy relating to matters of survey are acceptable to Lender and its counsel.

g. In addition to the survey of the Project Property required by this Agreement in the Section 3.1(f) (the "**Initial Survey**"), two (2) other surveys of the Project Property prepared at different times during the term of the Loan as set forth below. Each survey must be prepared and certified at Borrower's expense by a professional engineer or registered land surveyor satisfactory to Lender. Each such survey must meet the survey requirements of the American Land Title Association.

(1) Foundation Survey. Borrower shall provide a foundation survey when foundation footings are poured. The foundation survey must (i) satisfy all of the requirements for an Initial Survey; (ii) show the location of the foundation of the Improvements being constructed with the Construction Funds; and (iii) show that the Improvements, if constructed in accordance with the Plans and Specifications, will lie wholly within the boundaries of the Project Property without encroaching on any other property and without violating applicable restrictions, zoning provisions, or setback requirements. Lender shall not be obligated to make further Disbursements of Construction Funds if Lender is at any time uncertain as to whether the Improvements, once constructed, will lie wholly within the boundaries of the Project Property without encroaching on any other property and without violating applicable restrictions, zoning provisions, or setback requirements.

(2) "As Built" Survey. Borrower shall provide an "as built" survey when construction of all Improvements is complete. The "as built" survey must (i) satisfy all of the requirements for an Initial Survey, and (ii) show the location of all Improvements to the Project Property, including utility lines and paved areas. The Improvements must be entirely within the boundaries of the Project Property and may not violate applicable restrictions, zoning provisions, or setback requirements. In lieu of an "as built" survey, Lender may agree to accept a satisfactory title insurance loan policy insuring Lender's lien on the Project Property without exception as to matters of survey. Receipt of the "as built" survey is a condition precedent to the making of the final disbursement of Construction Funds.

h. If it is required by the Lender, a soils report for the Real Property prepared by a registered engineer satisfactory to Lender stating that the Real Property is free from soil or other geological conditions that would preclude its use or development as contemplated without extra expense for precautionary, corrective, or remedial measures.

i. Borrower shall have delivered a copy of the final site plan for the Project and evidence of approval from all applicable governmental authorities. Additionally, if applicable, any final, approved subdivision plat and/or final, approved recombination plat required for the Project Property. No changes may be made to the site plan, or to the subdivision plat or recombination plat, as applicable, unless otherwise agreed in writing by Lender, such consent not to be unreasonably withheld, conditioned or delayed. Borrower will be required to record any final approved subdivision plat or recombination plat, as applicable, prior to the closing of Loan unless otherwise agreed in writing by Lender.

j. Borrower shall have delivered a complete set of written Plans and Specifications setting forth all Improvements to be constructed as part of the Project, together with copies of all permits and requisite approvals of any governmental body necessary for the construction and use of the Project. Lender may require an attorney's or architect's opinion that the Project's design and construction is in material compliance with all applicable federal, state, county, and city codes, laws, rules, and regulations and all applicable restrictions affecting the Project Property, or that it is exempt from otherwise applicable laws, rules, regulations, and restrictions with which it does not comply. All requests for changes in the Plans and Specifications, other than changes which do not require Lender's consent as hereinafter provided or minor changes involving no extra cost, must be in writing, signed by Borrower, the Architect, and the Contractor, and delivered to Lender for its approval. Borrower will not perform or permit the performance of any work pursuant to any change order requiring Lender's consent under the terms herein without Lender's prior written approval, which approval will not be unreasonably withheld or delayed. Borrower will obtain any required permits or authorizations from governmental authorities having jurisdiction before approving or requesting a new change order.

k. Copies of (i) the Architect's Contract, (ii) the Construction Contract, (iii) the licenses of the Architect and Contractor, with written evidence of the current license status of each, and (iv) any other information reasonably requested by Lender in regard to any Architect or Contractor. Lender may require an assignment to Lender of the Architect's Contracts and the Construction Contract, with each assignment consented and agreed to by the Architect or Contractor, as appropriate, and by the owner of the Project Property. The assignment and consent shall be on forms provided by Lender. The consent to assignment by the Architect, Contractor, and owner of the Project Property will provide that, upon the occurrence of an Event of Default under the terms of this Agreement or any of the Related Documents, Lender will have the same rights to enforce the performance under each such contract as Borrower has, with no additional compensation payable to the Architect or Contractor other than as provided in the contract. The Architect and Contractor may not assign any portion of, or any obligation or right contained in, their respective contracts to another architect, contractor, or engineer without Lender's prior written approval. No changes other than non-material changes or minor changes involving no extra cost may be made in the Architect's Contract or Construction Contract without Lender's prior written consent, which consent shall not be unreasonably withheld or delayed. Borrower shall not perform or permit the performance of any work pursuant to any change order requiring Lender's consent as hereinafter provided or any material modification of the Architect's Contract or Construction Contract without Lender's written approval, which approval shall not be unreasonably withheld or delayed.

l. If it is required by the Lender, Borrower shall have paid for and delivered to Lender evidence of all insurance required under subparagraphs (1) through (6), below, in the form of an original certificate on ACORD Forms, naming Lender as an Additional Insured and containing other endorsements in favor of, and in form and content acceptable to, Lender. All insurance policies and renewals thereof shall be written by an insurance carrier qualified to write insurance in Colorado and satisfactory to Lender (with the exception of Flood Insurance provided by the National Flood Insurance Program if applicable and acceptable to Lender) and shall contain an agreement that the policy will not be amended, modified, or canceled by either party except after 30 days' prior written notice to Lender. If Lender determines at any time during the term of the Loan that any required insurance is not in force or that the policy is in an amount less than required by Lender and Borrower fails to purchase the required insurance or correct any deficiencies within forty-five (45) days after written notice of the deficiency, Lender may purchase the required insurance on Borrower's behalf and charge Borrower the cost of the premiums and fees incurred in purchasing the insurance. If Lender decides to purchase or replace insurance on Borrower's behalf and Lender or one of Lender's related entities sells the required insurance, the replacement insurance may be purchased by Lender from Lender or Lender's related entity. Such lender-placed coverage may be substantially more expensive than a policy obtained by Borrower, may not cover Borrower as an insured, may not cover Borrower's equity, and may not provide the same scope of coverage as a policy obtained by Borrower. Lender or one of Lender's affiliates may be paid a commission for placement of the lender-placed coverage, if applicable.

(1) Evidence of hazard insurance and copy of policy containing the standard mortgagee's endorsement for Causes of Loss Special Form (formerly All-Risk) coverage written on a replacement cost basis.

(2) Evidence of insurance and copy of the policy containing the standard mortgagee's endorsement for Builder's Risk coverage, in form, substance, and amount acceptable to Lender, written on a replacement cost basis value, with no co-insurance clause, plus copies of paid receipts evidencing payment of all of the first year's premiums thereon. If Builder's Risk Insurance is provided, the owner's Cause of Loss Special Form (formerly All-Risk) Insurance may be written so as to take effect at the expiration of the Builder's Risk coverage, provided that no lapse in insurance coverage occurs.

(3) Evidence of insurance for Contractors General Liability, public liability and workers' compensation insurance covering the Project Property, in form, substance, and amount acceptable to Lender.

(4) Evidence of Commercial General Liability Insurance (Occurrence Basis) protecting against claims arising from any accident or occurrence in or upon the property in amounts no less than \$1,000,000.00 per occurrence/\$2,000,000.00 general aggregate.

m. If it is required by the Principal Terms, Lender shall have received an appraisal of the Project Property satisfactory to Lender evidencing that the "as completed" value of the Project Property is at least the Minimum Appraised Value;

n. Borrower shall have paid any and all costs or fees incurred by Lender in the underwriting, documentation, and Closing of the Loan, including, but not limited to, the Closing Expenses;

o. Borrower shall have provided to Lender evidence that all taxes and assessments levied against or affecting the Project Property have been paid;

p. Borrower shall have delivered to Lender a detailed budget and cash flow projections of the Total Project Cost, both of which shall have been approved by Lender;

q. If it is required by the Principal Terms, Borrower shall have delivered to Lender, a Phase 1 Environmental Site Assessment in form and substance acceptable to Lender and Lender shall have received a reliance letter from the environmental engineer preparing such Assessment which shall be satisfactory to Lender;

r. There shall be no defaults then existing, or which would exist with the giving of any applicable notice and the expiration of any applicable grace period, under any of the Loan Documents; and

s. The representations and warranties made herein shall be true and correct on and as of the date of each Draw Request (defined in Section 3.2, below) hereunder with the same effect as if made on such date, and Lender shall have received such assurances in this respect as Lender may require.

(1) Borrower shall have delivered such other documents as Lender may have requested;

4. **PROJECT ADMINISTRATION.** Borrower represents and warrants to lender and covenants and agrees with lender as follows:

Section 4.1 Use of Loan Proceeds. Except to the extent Lender permits the use of Loan Proceeds to purchase the Project Property and/or to pay existing loans secured by the Project Property or for other purposes in accordance with the Budget, Loan Proceeds will be used solely for the payment of (i) the costs of the Project in accordance with the Budget; and (ii) loan fees and interest due under the Note to the extent provided in the Budget.

Section 4.2 Construction of the Project. Upon Borrower's receipt of all required permits and licenses for the Project, but in no event later than [x], Borrower shall promptly commence construction of the Project and cause the Improvements to be constructed and equipped and ready for occupancy and their intended use on or before the designated Completion Date (i) in a diligent, orderly, and good and workmanlike manner; (ii) wholly within the boundaries of the Project Property; (iii) free from all liens or claims of lien for services, labor, materials, and improvements; (iv) in material accordance with the Plans and Specifications approved by Lender and the Construction Contract (subject to modifications as permitted herein); and (v) in compliance with all applicable legal requirements, including Environmental Laws, building restrictions, restrictive covenants, building codes, ordinances, zoning restrictions, setback requirements, and rights of adjoining or concurrent property owners. Borrower agrees to

complete the Project for purposes of final payment to Contractor on or before the Completion Date.

Section 4.3 Cost Overruns. Borrower shall be responsible for paying all cost overruns on the Project as they occur, which may be paid from documented line item cost savings in the Budget or from the Contractor Hard Cost Contingency, the Developer Hard Cost Contingency, or the Developer Soft Cost Contingency, but in each instance, only in accordance with the terms and provisions set forth in the subsection below captioned “Line Item Savings” and “Contingency”.

Section 4.4 Project Claims and Litigation. Borrower shall promptly inform Lender of (i) all material adverse changes in the financial condition of any Contractor; (ii) any litigation and claims, actual or threatened, affecting the Project or any Contractor which could have a material adverse effect on the successful completion of the Project by the Completion Date or the ability of any Contractor to complete the Project as agreed; and (iii) any condition or event which constitutes a breach or default under any of the Related Documents, any Construction Contract, or any other contract related to the Project.

Section 4.5 Purchase of Materials; Conditional Sales Contracts. Unless authorized by Lender in writing, no materials, equipment, fixtures, or articles of personal property placed in or incorporated into the Project may be purchased or installed under any security agreement or other agreement whereby the seller reserves or purports to reserve (i) title or the right of removal or repossession, (ii) the right to consider such items as personal property after their incorporation into the Project, or (iii) a security interest.

Section 4.6 Defects. If Lender or its inspectors reasonably determine that any work or materials do not conform to the Plans and Specifications or the Construction Contract (subject to modifications as permitted herein), or sound building practices or otherwise depart from any of the requirements of this Agreement, Lender may require the work to be stopped and suspend the Disbursement of Construction Funds until the matter is corrected. Borrower will promptly correct the work to Lender’s reasonable satisfaction. No such action by Lender will affect Borrower’s obligation to complete the Improvements on or before the Completion Date.

5. **DISBURSEMENT OF CONSTRUCTION FUNDS**

Section 5.1 Conditions Precedent to Each Disbursement of Construction Funds. Lender’s obligation to make the initial disbursement of construction funds and each subsequent disbursement of construction funds under this agreement shall be subject to the fulfillment to Lender’s satisfaction of all of the requirements and conditions set forth in this agreement and in the related documents, including, but not limited to, the following:

- a. Borrower shall have paid to Lender all fees, charges, and other expenses which are then due and payable as specified in this Agreement or any Related Document.
- b. All work completed at the stage of construction for which a Disbursement of Construction Funds is requested shall have been completed in a good and workmanlike manner and all materials and fixtures furnished and installed at that stage of

construction shall have been furnished and installed, all in material compliance with the Plans and Specifications (subject to modifications as permitted herein). Borrower shall also have furnished to Lender such proofs as Lender may reasonably require (to include, for example, a certification by an engineer, architect, or other qualified inspector acceptable to Lender) to establish the progress of the work, compliance with applicable laws, freedom of the Project Property from liens, and the basis for the requested Disbursement of Construction Funds.

c. Borrower shall have obtained and attached to each request for a Disbursement of Construction Funds such executed receipts, unconditional lien waivers, lien subordination agreements, and indemnifications not already provided, as Lender may reasonably require from any party having potential lien rights, covering all work, labor, equipment, and materials done, supplied, performed, or furnished prior to such application for the Disbursement of Construction Funds.

d. A title date-down shall have been performed and Lender shall have received an endorsement to Lender's title insurance loan policy (or a satisfactory commitment to issue such an endorsement) insuring that, as of the date of the Disbursement of Construction Funds, the lien of Lender's Security Instrument is superior to any liens or potential liens for work performed or materials delivered, there are no changes to the priority of Lender's liens and security interests therein and there are no new liens or encumbrances unless Lender shall have approved the same in writing, in advance.

Section 5.2 Change Orders. Borrower shall not approve or execute any change order (as defined in the Construction Contract), nor authorize any change to the scope of work, construction schedule, or Guaranteed Maximum Price (GMP), without the prior written consent of the Lender for: (i) any individual change order in excess of \$[x] for a single item, (ii) change orders that results in a material change to the design or the structural components of the Improvements, (iii) any Change Order, regardless of amount, that increases the GMP or impacts the construction schedule, and (iv) any Change Order the involves the use of the Project contingency or Owner's contingency.

Section 5.3 Line Item Savings. To the extent that any line item in the Budget shall be completed for less than the amount allocated to such line item, and Borrower documents such cost savings to Lender's reasonable satisfaction, then, at Borrower's discretion any such cost savings are in the Budget may be reallocated to the Project Contingency or to the Owners Contingency.

Section 5.4 Retainage. Borrower and Lender desire to encourage Contractor to work diligently on the Project, remedy any deficient job performance, and complete the Project on schedule in accordance with the Plans and Specifications. In approving and funding any Disbursement of Construction Funds to pay for the cost of materials actually incorporated into the Project and labor actually performed in connection with the Project, Lender may, at its option, hold back from any Disbursement of Construction Funds an amount equal to the retainage amount specified in the Construction Contract in the form approved by Lender (the "**Retainage Amount**") until such time as the Project is completed accordance with the Plans and Specifications (subject to modifications as permitted herein) and all deficiencies have been corrected. If Lender determines such disbursements are warranted, Lender may, in its discretion,

disburse all or any portion or portions of the Retainage Amounts before the Project is completed. Borrower acknowledges and agrees that this retainage provision is for Lender's benefit and protection, not Borrower's.

Section 5.5 Authorized Persons. Unless and until Borrower gives written instructions to Lender to the contrary, Lender may make a Disbursement of Construction Funds upon the request and at the direction of any of the following, each of whom is an "**Authorized Person**": any person designated or authorized by Borrower in writing. Each Authorized Person is authorized and empowered to act on Borrower's behalf to execute any request for a Disbursement of Construction Funds, receive any Disbursement of Construction Funds, execute any written receipt, and acknowledge the status of the Indebtedness and claims. The Authorized Persons as of the date hereof are any one of the following: [x]

Section 5.6 Requests for the Disbursement of Construction Funds. Lender may require as a condition to any Disbursement of Construction Funds the proper execution and delivery to Lender or Lender's agent of such written forms requesting the Disbursement of Construction Funds as Lender may reasonably request (including, for example, a standard AIA payment request form). Lender may, but is not obligated to, accept and honor telephonic or electronic (including email or facsimile) requests for the Disbursement of Construction Funds from any Authorized Person. Borrower shall request a Disbursement of Construction Funds only with respect to work actually completed and for materials and equipment actually incorporated into the Project or stored on the Project Property. Ordinarily, Lender will require at least ten (10) business days' notice prior to making a Disbursement of Construction Funds. If Lender is unable to complete its review within such ten (10) business days period, Lender will endeavor to notify Borrower of the reasons for the delay in responding and a good faith estimate of the date by which Lender will complete its review. Lender's notice to Borrower may be given either in writing or orally. Lender shall not have any liability to Borrower or any other person for Lender's failure to complete Lender's review of a request for a Disbursement of Construction Funds within any specified time or to make a Disbursement of Construction Funds on the date requested by Borrower. Borrower shall not request a Disbursement of Construction Funds more frequently than once each month. Each request for a Disbursement of Construction Funds shall be deemed a certification of Borrower that, as of the date of such request, all representations and warranties contained in this Agreement are true and correct, and that Borrower is in material compliance with all of the provisions of this Agreement and the Related Documents.

Section 5.7 Final Disbursement of Construction Funds. Lender will be under no obligation to make a final Disbursement of Construction Funds until (i) the construction of all Improvements has been completed to Lender's reasonable satisfaction in material accordance with the Plans and Specifications (subject to modifications as permitted herein), (ii) Contractor has fully performed under the Construction Contract, (iii) any required completion notice has been posted, and (iv) Lender has received appropriate endorsements to Lender's title insurance loan policy insuring that the lien of the Security Instrument encumbering the Project Property is superior to any liens or potential liens for work performed or materials delivered. Construction shall not be deemed complete for purposes of a final Disbursement of Construction Funds unless and until Lender has received all of the following:

a. Evidence reasonably satisfactory to Lender that (a) all work under the Construction Contract requiring inspection by any governmental authority with jurisdiction has been duly inspected and approved by all such authorities, (b) a Certificate of Occupancy for the completed Project has been issued, and (c) all parties performing work or providing materials in connection with the Project have been or will be fully paid;

b. A certification by an engineer, architect, or other qualified inspector acceptable to Lender that (a) the Improvements have been completed substantially in accordance with the Plans and Specifications and the Construction Contract (subject to modifications as permitted herein), (b) direct connection has been made to all utilities set forth in the Plans and Specifications, and (c) the Project is ready for occupancy;

c. Receipt of the final “as-built” survey; and

d. Acceptance of the completed Improvements by Lender and Borrower.

Section 5.8 Suspension/Cessation of Disbursement of Construction Funds. Regardless of any duty Lender has to notify Borrower of a default and any right Borrower has to cure a default, Lender shall have no obligation to make a Disbursement of Construction Funds or Borrower’s Funds at any time Borrower or any other party thereto other than Lender is in default under the terms of this Agreement or any of the Related Documents. Lender’s obligation to make a Disbursement of Construction Funds and/or Borrower’s Funds shall be suspended following the occurrence of an Event of Default until such default is cured. Lender shall have no obligation to make any further Disbursement of Construction Funds (i) after the Completion Date, (ii) after the maturity of the Note, or (iii) if an Event of Default occurs that is not cured during any applicable cure period after the giving of any required notice of default.

6. **REPRESENTATIONS AND WARRANTIES OF BORROWER.**

Borrower represents and warrants to Lender as of the date of this Agreement and the date of Closing as set forth below. The phrase “to the Knowledge of Borrower” (and words of similar import) means the actual or constructive knowledge of the executive officers of Borrower, including, but not limited to, the Knowledge Parties. The “**Knowledge Parties**” are persons employed by or otherwise specifically authorized to conduct business, enter agreements and negotiate terms, conditions and remedies on behalf of the Borrower. The representations and warranties of Borrower are as follows:

Section 6.1 Authority to Enter into Loan Documents. Borrower has full power and authority to enter into, execute and deliver the Loan Documents, to consummate the transactions contemplated in this Agreement, and to perform Borrower’s obligations under this Agreement, and the facts and matters expressed or implied in the written opinions, if any, of Borrower’s legal counsel are true and correct.

Section 6.2 Validity of Loan Documents. The Loan Documents have been duly and validly executed and delivered and are in all respects legal, valid, binding and enforceable against Borrower in accordance with the respective terms of each such Document, subject only

to bankruptcy, insolvency, moratorium and reorganization laws, and other laws affecting the enforcement of creditors' rights generally.

Section 6.3 Collateral. Borrower has or will have at Closing good and marketable title to the Collateral free and clear of any and all liens, security interests, charges, or encumbrances of any sort except as expressly permitted by Lender in writing.

Section 6.4 Insurance. Borrower has or will have at Closing and maintain in full force and effect policies of insurance as required by Lender.

Section 6.5 Conflicting Transactions of Borrower. Borrower's execution and delivery of the Loan Documents, and the consummation of the transactions contemplated thereby do not, and Borrower's performance of its obligations under the Loan Documents will not: (a) conflict with, or result in a violation or breach of, or a default under, (i) the Organizational Documents of Borrower or any affiliate of Borrower; (ii) any agreement, contract, lease, mortgage, indenture, or other document or instrument to which Borrower is a party or by which Borrower or any of its property is bound; or (iii) any law, statute, ordinance, rule or regulation, or any writ, order, judgment or decree, by which Borrower or any of its property is bound; or (b) result in the creation or imposition of any lien, charge or encumbrance of any nature whatsoever upon any of the properties or assets of Borrower (other than the liens and security interests created by the Security Documents).

Section 6.6 Pending Litigation. There are no actions, suits, restraining orders, injunctions, investigations, proceedings or inquiries at law or in equity, pending or, to the Knowledge of Borrower based on reasonable due diligence, threatened, by or before any judicial, quasi-judicial, legislative, executive or administrative court, agency or authority, or any arbitrator, nor any basis for any of the foregoing, in which a determination, ruling or finding could materially adversely affect the use, operation or value of the Project Property, the validity or enforceability of any of the Loan Documents, or any of the transactions contemplated thereby, or the business, financial condition or assets of Borrower.

Section 6.7 Construction and Compliance with Laws. All construction on the Project Property will be performed in accordance with the Plans that have been approved by Lender. Borrower has or will obtain all licenses, permits, and approvals required by all local, state, and federal agencies regulating such construction and use, and Borrower is in compliance with all laws, regulations, ordinances, and orders of all governmental authorities having or asserting jurisdiction over all or any portion of the Project Property.

Section 6.8 Financial Statements. The financial statements of Borrower, and all other documents and information delivered to Lender by or on behalf of Borrower before the date of this Agreement, whether or not otherwise referenced in this Agreement, are true, correct and complete in all material respects. In addition, all such financial statements were prepared in accordance with generally accepted accounting principles consistently applied, and fairly present the financial condition of the subjects as of the date of each such statement. No material adverse change in the financial conditions reflected in such statements has occurred since the respective dates of such statements, and no additional borrowings have been made by Borrower since the date of its financial statement, except such as Lender may have approved in writing.

Section 6.9 Taxes. Borrower has filed all Federal, State, county and municipal income and other tax returns which it was required to file, and has paid all taxes, assessments, fees, and other governmental charges for which it is liable, whether pursuant to such returns or pursuant to any assessments which Borrower received, or otherwise. To the Knowledge of Borrower, there is no basis for any additional assessment with respect to such taxes. In Borrower's reasonable opinion and that of its independent certified public accountants, the provisions for reserves for taxes on Borrower's books are adequate for all unaudited fiscal years and the current fiscal period of Borrower.

Section 6.10 Availability of Utilities. All utility services necessary for the Project Property and the operation thereof are available in appropriate and sufficient quantity and quality, including water supply, storm and sanitary sewer facilities, cable television, electric and telephone facilities, and Borrower has obtained all necessary permits, permissions, approvals, licenses and authorizations and paid all impact fees necessary for unrestricted access to and use of such services and facilities in connection with the use of the Project Property.

Section 6.11 Condition of Project Property. No portion of the Project Property is now damaged or injured as a result of any fire, explosion, accident, flood, or other casualty, and except as disclosed to Lender in writing prior to the date hereof, there are no soil conditions which would interfere with the continued operation of the Project Property to the Knowledge of Borrower based on reasonable due diligence. No portion of the Project Property is subject to any pending or threatened eminent domain or condemnation proceeding to the Knowledge of Borrower based on reasonable due diligence.

Section 6.12 Availability of Roads for Project Property. The Project Property has frontage upon, and adequate permanent access to, one or more paved and dedicated public roads. All roads necessary for the full utilization of the Project Property for their intended purposes have either been completed or the necessary rights of way for such roads have been acquired by the appropriate local authorities or have been dedicated to public use and accepted by such local authorities. All necessary actions have been taken by Borrower and such local authorities to assure the complete construction and installation of such roads.

Section 6.13 Lien Priority. Except as previously disclosed to and approved by Lender in writing, Borrower has not entered into or granted any Security Instruments or permitted the filing or attachment of any Security Interests on or affecting any of the Collateral that would be prior to, or that may in any way be superior to, Lender's Security Interests and rights in and to the Collateral.

Section 6.14 Advertising. Borrower has not used and will not use any promotional, advertising, or other material relating to the Project Property, including the sale or leasing thereof, or relating to the transactions contemplated by this Agreement, which violates any law, ordinance, rule or regulation of any governmental body or court of law.

Section 6.15 Compliance with Land Use. To the Knowledge of Borrower based on reasonable due diligence the current and anticipated use and operation of the Project Property is permitted by all applicable land use, building, environmental and zoning laws, statutes, regulations, resolutions and ordinances.

Section 6.16 No Hazardous Materials. To the Knowledge of Borrower based on reasonable due diligence and except as disclosed in any environmental reports submitted by Borrower to Lender in connection with the Loan, (a) no Hazardous Materials (as hereinafter defined) have been released, buried, or accumulated, or exist in, on, under, or about the Project Property, or in any building, improvement, or structure thereon; (b) neither the Project Property or any part thereof is contaminated by Hazardous Materials; (c) no Hazardous Materials will be stored at or located in, on, under, or about the Project Property; and no claims have been made against any present (or, to the Knowledge of Borrower, after due inquiry and investigation, any former) owner, occupant, or user of the Project Property relating to the use or storage at, or the location at, in, on, or under the Project Property of any Hazardous Materials. For purposes of this Agreement, “**Hazardous Materials**” shall mean and include any explosives, petroleum, or any fraction thereof, radioactive materials, hazardous wastes, toxic substances, or related materials, including, without limitation, any substances defined as or included in the definition of toxic or hazardous substances, wastes, or materials under any federal, state, or local laws, ordinances, or regulations dealing with or otherwise pertaining to toxic or hazardous substances, wastes, or materials.

Section 6.17 No Default. No default or Event of Default (defined in Section 7, below), or event which, with notice or lapse of time or both would constitute a default or an Event of Default, under any Loan Document, or under any other indebtedness or obligation of Borrower to Lender, has occurred. In addition, Borrower is not in default with respect to any order, writ, injunction, decree, or demand of any court or any governmental authority having jurisdiction over Borrower, the Project Property, or under the terms of any mortgage, deed of trust, lease, loan, or credit agreement, partnership, or joint venture agreement, or other instrument to which Borrower is a party or by which Borrower, the Project Property, or the Project Property may be bound or affected.

Section 6.18 Legal Status. Borrower represents and warrants to Lender as follows: (a) Borrower’s exact legal name is that indicated in the preamble hereof; (b) Borrower is an organization of the type and organized in the jurisdiction set forth in the preamble hereof; (c) Borrower’s state issued organizational identification number listed on the Principal Terms is correct; (d) Borrower’s place of business or mailing address is accurately set forth in the preamble to the Deed of Trust; and (e) all other information set forth in the Loan Documents pertaining to Borrower is accurate and complete.

Section 6.19 Material Information. The financial and other information about Borrower that is referred to in this Agreement does not, nor does this Agreement or any other Loan Document or any written statement furnished to Lender by Borrower, contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements contained therein or herein not misleading. To the Knowledge of Borrower, there is no fact which Borrower has not disclosed to Lender in writing which materially adversely affects or, so far as Borrower can now foresee, will materially adversely affect the business, prospects, profits, or condition (financial or otherwise) of Borrower, the Project Property, or the Project Property, or the ability of Borrower to perform all of its obligations under this Agreement, or the ability of any obligor under any Loan Document to perform its obligations under such Document.

All statements contained in any certificate or other document or instrument of any kind whatsoever delivered by or on behalf of Borrower pursuant hereto or any other Loan Document, or in connection with the transactions contemplated hereby or thereby, shall be construed as representations and warranties made by Borrower in this Agreement, and together with all representations and warranties herein or in any other Loan Document, shall survive the execution and delivery thereof and of this Agreement and any other Loan Document, the making of all disbursements of Loan proceeds, and the making of any investigation made by any person at any time by or on behalf of Lender.

Section 6.20 CDFI Debarment, Suspension and Other Responsibility Matters. Pursuant to 31 C.F.R. 19.335, neither the Borrower nor any of its principals (as defined by 31 C.F.R. 19.995): (a) are presently excluded or disqualified from covered transactions by any Federal department or agency; (b) within the three-year period preceding the date of this Agreement, have been convicted of or had a civil judgment rendered against them for any of the offenses listed in 31 C.F.R. 19.800(a); (c) are presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses listed in 31 C.F.R. 19.800(a); or (d) within the three-year period preceding the date of this Agreement, have had one or more public transactions (Federal, State, or local) terminated for cause or default.

7. COVENANTS

Borrower covenants and agrees with Lender as follows:

Section 7.1 Reports and Additional Information. Borrower shall furnish, or cause to be furnished, to Lender, the following reports and comply with the following:

a. Unaudited quarterly financial statements of Borrower within forty-five (45) days after the end of each fiscal quarter and audited financial statements of Borrower within one hundred twenty (120) days after the end of each fiscal year satisfactory to Lender in its sole, subjective discretion;

b. The Borrower shall furnish to the Lender quarterly written updates regarding the status of the Project, inclusive of a detailed account of all sources and uses of financing associated therewith.

c. The Borrower shall deliver to the Lender, complete copies of the Project's annual federal tax returns, including all schedules and supporting documentation.

d. As a condition precedent to the disbursement of any funds designated for repairs or construction, the Borrower shall provide the Lender with an updated construction cost estimate, acceptable to the Lender.

e. [x], and

f. Such reasonable additional information, reports, statements, certificates and opinions of counsel with respect to the Loan, or the assets, operations or financial condition of Borrower or the Project Property as Lender may request from time to time.

Section 7.2 Right of Lender to Inspect. Lender and its agents shall at all times upon no less than forty-eight hours prior notice to Borrower have the following rights, each of which can be exercised at any reasonable time or times: (i) the right of entry and free access to the Project Property and the right to inspect all work done, labor performed, and materials furnished with respect to the Project; (ii) the right to enter upon the Real Property and to conduct such commercially reasonable investigations, inspections, and tests at Borrower's expense as Lender reasonably deems appropriate to ensure the continued compliance of Borrower, the Improvements, the Project Property, and the Real Property with the requirements of this Agreement and with all applicable legal requirements, including Environmental Laws, building restrictions, restrictive covenants, building codes, ordinances, zoning restrictions, setback requirements, and rights of adjoining or concurrent property owners; (iii) the right to inspect any other Collateral and Borrower's other assets; and (iv) the right to examine or audit Borrower's books, accounts, and records and to make copies and memoranda of Borrower's books, accounts, and records. Lender agrees that prior to an Event of Default, or such other event or conditions as Lender may determine reasonably warrant it doing so, it shall neither contact any subcontractor nor supplier of materials or supplies without prior notice to the Contractor. If Borrower now or hereafter maintains any records (including, without limitation, computer-generated records and computer software programs for the generation of such records) in the possession of a third party, Borrower shall, at Lender's request, notify such party to permit Lender free access to such records at all reasonable times and to provide Lender with copies of any records Lender may request, all at Borrower's expense. Lender shall have unrestricted access to and the right to copy all records, accounting books, contracts, subcontracts, bills, statements, vouchers, and supporting documents of Borrower relating in any way to the Project.

Section 7.3 Compliance. Borrower shall furnish to Lender upon reasonable request such information and documents as may be necessary to demonstrate that Borrower is in compliance with all covenants of Borrower under this Agreement.

Section 7.4 Affordability. The Project Property is intended to satisfy the Affordability Criteria set forth in the Principal Terms. Borrower shall determine the relevant income levels of Project Property users and shall ensure that such income does not exceed any restriction in the Affordability Criteria. Borrower shall maintain all income verification records in one accessible location and shall, upon request, immediately make such records available for Lender's review.

Section 7.5 Further Assurances. At any time, upon Lender's request, Borrower shall, at its own expense, do any act and execute and deliver any document as may be requested by Lender in order to consummate the transaction described in this Agreement and to perfect or give further assurances of any of the rights granted or provided for under the Loan Documents.

Section 7.6 Property Permits and Approvals. Borrower shall obtain all necessary permits, permissions, approvals, licenses, and authorizations and pay all impact fees in connection with the Project Property.

Section 7.7 Public and Private Covenants. Borrower's use and operation of the Project Property shall be permitted by (a) all applicable land use, building, environmental, and

zoning laws, statutes, regulations, resolutions, ordinances; and (b) all applicable private covenants, conditions, restrictions, servitudes, easements, leases, and profits.

Section 7.8 Negative Covenants. No Additional Indebtedness: Without prior written consent of the Lender, which will not be unreasonably withheld, Borrower shall not directly or indirectly incur indebtedness for borrowed money during the term of this Agreement, excluding (i) debts owing by Borrower as of the date of this Agreement that were previously disclosed in writing to Lender (other than those that are being paid substantially concurrently with the funding of the Loan), (ii) other borrowing from the Lender, and (iii) unsecured debt incurred in the normal course of business.

8. INDEMNIFICATION

Borrower shall protect, indemnify, defend, and save harmless Lender, its officers, directors, stockholders, agents, and employees from and against any and all liabilities, obligations, claims, damages, penalties, causes of action, costs, and expenses (including, without limitation, reasonable attorneys' fees and expenses in all trial, bankruptcy, and appellate proceedings, and whether or not legal proceedings are instituted) imposed upon, incurred by, or asserted against Lender or any of such persons by reason of (i) Borrower's ownership of any interest in the Project Property or any part thereof; (ii) any accident, injury to, or death of persons or loss of or damage to property occurring on or about the Project Property or any part thereof or the adjoining sidewalks, curbs, vaults and vault space, if any, streets, or ways; (iii) any use, disuse, or condition of the Project Property or any part thereof, or the adjoining sidewalks, curbs, vaults and vault space, if any, or any streets or ways; (iv) any failure on the part of Borrower to perform or comply with any of the terms hereof, or any inaccuracy in any representation or warranty made by Borrower herein; (v) any defense of the right, title, or interest conveyed by the Deed of Trust; (vi) the performance of any labor or services or the furnishing of any materials or other property in respect of the Project Property or any part thereof; (vii) any subsidence or erosion of any part of the surface of the Project Property, including any shoreline or any bank of any river, stream, creek, canal, lake, ocean, or other water source; (viii) any claim at common law or under any statute, regulation, ordinance or other provision of federal, state or local law pertaining to the protection of the environment or otherwise pertaining to public health or employee safety, including, without limitation, protection from hazardous waste, lead-based paint, asbestos, methane gas, urea formaldehyde insulation, oil, toxic substance, underground storage tanks, polychlorinated biphenyls, and radon; or (ix) any claim related to the design or construction of any improvements to or benefiting the Project Property. If any action, suit, or proceeding is brought against Lender, or any of its officers, directors, agents, or employees for any such reason, Borrower, upon the request of such party, will, at Borrower's expense, cause such action, suit, or proceeding to be resisted and defended by counsel satisfactory to Lender or such person. Any amounts payable to an indemnified party under this provision which are not paid within ten (10) days after written demand therefor shall bear interest at the Default Rate (as defined in the Note) from the date of such demand, and such amounts, together with such interest, shall be secured by the Deed of Trust.

9. DEFAULT

Upon the occurrence of any one or more of the following events (each being an **"Event of Default"**), all of Lender's obligations to make any further Advance shall, at Lender's

sole option, terminate, and Lender may, at its sole option, exercise any one or more of its remedies contained in this Agreement, and any one or more other rights or remedies available to Lender under the Loan Documents or at law or in equity. Notwithstanding the foregoing, Lender, in its sole discretion, may make one or more Advances after the happening of any Event of Default without thereby waiving the right to exercise such remedies and without becoming liable to make any further Advance:

Section 9.1 Failure to Pay. Borrower fails to make any payment of principal or interest on the Note or under any Loan Document within Ten (10) days of the date any such payment is due;

Section 9.2 Failure to Perform. Borrower fails to observe or perform any other term, covenant, or condition contained in this Agreement or the Loan Documents and such failure continues unremedied for a period of thirty (30) days after written notice thereof has been given to Borrower by Lender specifying such default and requiring it to be remedied or, if such failure is not reasonably capable of being remedied within such 30-day period, Borrower has not commenced remedial action and is not proceeding with diligent efforts to remedy such failure, except, however, that no such notice shall be required for any event specifically described elsewhere in this Article 7 and any periods of notice and cure shall run concurrently and not successively;

Section 9.3 False Statements. At any time, Lender discovers that any representation or warranty made by Borrower herein or in the Loan Documents or any statement or representation contained in the application for the Loan, in any financial statements, or in any other material which Borrower furnished to Lender before or after the Closing of the Loan was false, misleading, incorrect, or incomplete in any material respect at the time Borrower made such statement or representation;

Section 9.4 Insolvency. Borrower becomes insolvent; fails or ceases to pay its debts as they mature; makes an assignment for the benefit of creditors; files a petition in bankruptcy; is adjudicated insolvent or bankrupt; petitions or applies to any tribunal for the appointment of any receiver or any trustee; or commences any proceeding relating to Borrower under any reorganization, arrangement, readjustment of debt, dissolution or liquidation law or statute of any jurisdiction, whether now or hereafter in effect, or there is commenced against Borrower any such proceeding which shall not be dismissed within a period of thirty (30) days, or Borrower, by any act, indicates its consent to, approval of, or acquiescence in any such proceeding or the appointment of any receiver of, or any trustee for, it or any substantial part of its property, or suffers any such receivership or trusteeship to continue undischarged for a period of thirty (30) days;

Section 9.5 Default under Loan Documents. If any default occurs under any Loan Document, and the same is not cured within any applicable cure period under such document;

Section 9.6 Default under Other Loans. A default occurs under any other loan made by Lender to Borrower or entity affiliated with Borrower and the same is not cured within any applicable cure period;

Section 9.7 Default under Third-Party Documents. A default occurs under any document entitling a third-party to foreclose that party's interest in the Project Property which is not cured, bonded over, or otherwise released as a recorded interest within thirty (30) days from the commencement of any foreclosure; or

Section 9.8 Assignment. If Borrower assigns this Agreement or the right to receive any disbursements without prior written consent of Lender.

Section 9.9 Default under Transfer of Legal or Beneficial Interests of Borrowing Entity. A default occurs under any transfer of legal or beneficial interests in the Borrowing Entity's membership structure if not previously approved by the Lender prior to execution, which shall not be unduly withheld.

Section 9.10 Default under Failure to Provide a Suitable Guarantor in the Instance of Death. A default occurs under failure by the Borrowing Entity to appoint a suitable guarantor within 120 days of any guarantor's death, which is approved by the Lender, and shall not be unduly withheld.

Section 9.11 Breach of Construction Contract. The Improvements are not constructed in accordance with the Plans and Specifications and in accordance with the terms of any Construction Contract (as the same may be modified pursuant to the terms of this Agreement).

10. **REMEDIES**

Section 10.1 Rights and Remedies upon Default. Upon the occurrence and during the continuation of an Event of Default, Lender may, at its option:

a. Exercise any one or more rights or remedies Lender may have under this Agreement or the Loan Documents, or which may be available by statute, at law, or in equity, against or with respect to Borrower, the Project Property, the Project Property, or any other Collateral for the Loan, either simultaneously or in such order and manner as Lender, in its sole discretion, may elect, in each instance without prejudice to or impairment of any of Lender's other rights or remedies;

b. Exercise its rights as assignee of Borrower with respect to rents and leases related to the Project Property, all permits, licenses, or authorizations issued by a governmental authority or a utility, and any other rights assigned to the Lender in this Agreement or the Loan Documents;

c. Accelerate the payment of the Loan and any other sums due under the Loan Documents and commence any appropriate legal and/or equitable action to foreclose the Deed of Trust or exercise any available power of sale and collect all such amounts due Lender with interest thereon at the Default Rate stated in the Note from the Borrower; and

d. Protect and enforce its rights by appropriate judicial proceedings, including, in appropriate cases, an award of specific performance or other equitable remedy in aid of the exercise of any power granted in or pursuant to this Agreement or the Loan Documents.

Section 10.2 Remedies Not Exclusive; No Waiver. The remedies described in this Agreement shall be in addition to, and not in substitution for, the rights and remedies otherwise available to Lender at law or in equity, and under the Loan Documents. Lender's delay or omission in exercising, or its failure to exercise, any of its rights or remedies in this Agreement or otherwise shall not preclude or impair Lender's subsequent resort to such right or remedy, or Lender's concurrent or subsequent resort to any other right or remedy, nor shall the exercise or partial exercise of any right or remedy prevent or impair Lender's subsequent or concurrent resort to any other right or remedy. No delay or omission by Lender in exercising any right or remedy shall be construed as a waiver of any Event of Default or any right or remedy. Lender may exercise every right and remedy from time to time and as often as Lender shall deem expedient or advisable. Lender's waiver of any Event of Default shall not extend to or affect any other Event of Default.

Section 10.3 Implied Covenant of Good Faith and Fair Dealing Not Applicable Post-Default. Following an Event of Default, Lender shall have unfettered discretion to exercise available remedies in its exclusive discretion consistent with the terms of this Agreement and the Loan Documents and without regard to any implied covenants or oral statements. Accordingly, the so-called implied covenant of good faith and fair dealing shall not apply to the Lender's enforcement of this Agreement and the Loan Documents or the exercise of any remedies following any Event of Default, and Borrower waives the implied covenant of good faith and fair dealing following any Event of Default.

11. **LENDER'S EXPENDITURES.**

Section 11.1 If (i) any action or proceeding is commenced or any lien or claim of lien is asserted that could materially affect lender's interest in any of the collateral, or (ii) borrower fails to comply in any material respect with any provision of this agreement or any related document, including, but not limited to, borrower's failure to discharge or pay when due any amounts Borrower is required to discharge or pay under this Agreement or any Related Document, then Lender on Borrower's behalf may (but shall not be obligated to) take any action that Lender reasonably deems appropriate, including, but not limited to, discharging or paying all taxes, liens, claims of lien, security interests, encumbrances, and other claims at any time levied or placed on any Collateral and paying all costs for insuring, maintaining, and preserving any Collateral. All such reasonable out-of-pocket expenses actually incurred or paid by Lender will (i) be considered expenses incurred for the preservation of the Collateral, (iii) become part of the Indebtedness, (iii) bear interest at the rate charged under the Note from and including the date incurred or paid by Lender to the date of repayment by Borrower, and (iv) be secured by the Security Instruments. All such expenses incurred or paid by Lender will, at Lender's option, (i) be payable on demand, (ii) be added to the balance of the Note and be apportioned among and be payable with any installment payments to become due over the remaining term of the Note, or (iii) be added to the balance of the Note and be treated as a balloon payment which will be due and payable at the Note's maturity.

12. **COMPLETION OF IMPROVEMENTS BY LENDER.**

Section 12.1 If Lender takes possession of the Project Property following the occurrence of an Event of Default, it may take any and all actions necessary in its judgment to

complete construction of the Improvements, including, but not limited to, making changes in the Plans and Specifications, work, or materials and entering into, modifying, or terminating any contractual arrangements, subject to Lender's right at any time to discontinue any work without liability. If Lender elects to complete the Improvements, it will not assume any liability to Borrower or to any other person for completing the Improvements or for the manner or quality of construction of the Improvements, and Borrower expressly waives any such liability. Following an Event of Default, Borrower irrevocably appoints Lender as its attorney-in-fact, with full power of substitution, to complete the Improvements, at Lender's option, either in Borrower's name or in its own name. In any event, all sums expended by Lender in completing the construction of the Improvements will be considered an expense paid by Lender that is subject to the section of this Agreement entitled "Lender's Expenditures." For these purposes, Borrower assigns to Lender all of its right, title, and interest in and to the Project Documents. However, Lender will not have any obligation under the Project Documents unless Lender expressly hereafter agrees to assume such obligations in writing. Lender will have the right (but is under no obligation) to exercise any of Borrower's rights under the Project Documents following the occurrence of an Event of Default. Except as may be prohibited by applicable law, all of Lender's rights and remedies, whether evidenced by this Agreement or by any other writing, shall be cumulative and may be exercised singularly or concurrently.

13. GENERAL TERMS

Section 13.1 Sale of Note; Change of Loan Servicer. Lender may sell the Note or a partial interest in the Note (together with the Loan Documents) one or more times without the consent of or prior notice to Borrower. Following such a sale, Lender may elect, without the consent of or prior notice to Borrower, to change the entity that collects payments due under the Note and the Loan Documents and performs other servicing obligations under the Note, the Loan Documents, and applicable law.

Section 13.2 Rights of Third Persons. All conditions of Lender hereunder are imposed solely and exclusively for the benefit of Lender and its successors and assigns, and no other person shall have standing to require satisfaction of such conditions or be entitled to assume that Lender will make disbursements or advances either upon or in the absence of strict compliance with any or all thereof, and no other person shall, under any circumstances, be construed to be a beneficiary of this Agreement or of the Loan Documents, any provisions of which may be freely waived, in whole or in part, by Lender at any time in its sole discretion. In particular, Lender makes no representations and assumes no duties or obligations as to third persons concerning the quality of the construction of the Project Property or the absence therefrom of defects.

Section 13.3 Rights of Subcontractors, Laborers, and Materialmen. In no event shall this Agreement be construed to make Lender or any agent of Lender liable to any contractors, laborers, materialmen, craftsmen, or others for labor, materials, or services delivered to the Project Property, or goods specially fabricated for incorporation therein, or for debts or claims accruing or arising to such persons against Borrower or contractor. There is no relation of any type whatsoever, contractual or otherwise, either express or implied, between Lender and any contractor, materialman, subcontractor, craftsman, laborer, or any other person supplying any labor, materials, or services to the Project Property or specially fabricating goods to be

incorporated therein. No such persons are intended to be third party beneficiaries of this Agreement or any document or instrument related to the Loan or to have any claim or claims in or to any undisbursed or retained Loan proceeds or liability in connection therewith.

Section 13.4 Lender Not Obligated to Insure Proper Disbursement of Funds to Third Persons. Nothing contained in this Agreement or any Loan Document shall impose upon Lender any obligation to oversee the proper use or application of any disbursements.

Section 13.5 Borrower not Lender's Agent. Nothing in this Agreement or any other Loan Document shall be construed to make Borrower Lender's agent for any purpose whatsoever, or Borrower and Lender partners, or joint or co-venturers, and the relationship of the parties shall, at all times, be that of debtor and creditor.

Section 13.6 Continuing Liability of Borrower for Underlying Obligations. Anything herein to the contrary notwithstanding, (i) Borrower shall remain liable under its contracts and agreements with respect to the Project Property to the extent set forth therein to perform all of Borrower's duties and obligations thereunder to the same extent as if this Agreement had not been executed; (ii) the exercise by Lender of any of the rights hereunder shall not release Borrower from any of its duties or obligations under its contracts and agreements with respect to the Project Property; and (iii) Lender shall not have any obligation or liability under such contracts and agreements by reason of this Agreement, nor shall Lender be obligated to perform any of the obligations or duties of Borrower thereunder.

Section 13.7 Notices. All notices, requests, consents, waivers, and other communications given under any of the provisions of this Agreement shall be in writing and shall be deemed given when delivered or mailed and if mailed, then first-class postage prepaid, registered or certified mail, return receipt requested, and addressed to Lender or Borrower at their respective addresses set forth in the Principal Terms.

Section 13.8 Entire Agreement; Modifications. This Agreement, the Loan Documents, and the attached exhibits and schedules, contain the entire agreement of the parties with respect to the transactions contemplated by this Agreement, and no change, modification, or waiver of any provision of this Agreement or the Loan Documents shall be valid unless in writing and signed by the party to be bound.

Section 13.9 No Waiver. No delay or failure on the part of Lender in exercising any rights or remedies hereunder or under the Loan Documents and no partial or single exercise thereof, shall constitute a waiver of such rights or of any other rights or remedies hereunder or under any of such instruments.

Section 13.10 Applicable Law. Borrower agrees that this Agreement shall be construed and enforced in accordance with, and the rights of the parties shall be governed by, the laws of the State of Colorado, exclusive of its conflicts of law rules.

Section 13.11 Survival of Representations, Warranties and Agreements. All representations, warranties, and agreements herein shall survive until the expiration of the term of this Agreement and payment of the Note, except with respect to: (a) material information in Section 4.20, above, and the indemnification in Section 6, above; and (b) any representation,

warranty, agreement, or provision that expressly provides otherwise, which shall survive until the passage of any applicable statutes of limitation.

Section 13.12 Severability. If any provision of this Agreement shall for any reason be held to be illegal, invalid, or unenforceable, such illegality, invalidity, or unenforceability shall not affect any other provision of this Agreement, and this Agreement shall be construed as if such illegal, invalid, or unenforceable provision had never been contained herein.

Section 13.13 Successors and Assigns. Whenever in this Agreement either the Lender or the Borrower is referred to, such reference shall be deemed to include the successors and assigns of such party. All covenants, promises, and agreements in this Agreement contained by or on behalf of Borrower shall inure to the benefit of the respective successors and assigns of Lender. Borrower shall not have the right to assign any of its rights, or delegate any of its obligations, under this Agreement. Borrower represents and warrants that will not assign, sell, or otherwise transfer the Loan, or any interests therein, or the Project Property without the prior written consent of Lender.

Section 13.14 Days. When used in this Agreement, the term “days” refers to calendar days. The term “business days” means Monday through Friday except those days that state or national banks are not open for business in Loveland, Colorado.

Section 13.15 Counterparts. The parties may execute two or more counterparts of this Agreement, each of which shall constitute one and the same instrument.

Section 13.16 Joint and Several. The obligations of Borrower under the Loan Documents shall be joint and several.

Section 13.17 Attorneys’ Fees. Borrower agrees to pay all costs and expenses, including reasonable attorneys’ and reasonable paralegals’ fees, incurred by Lender to interpret or enforce this Agreement or any of the Loan Documents.

Section 13.18 Jurisdiction. Borrower hereby consents to personal jurisdiction in any state or federal court in the State of Colorado and to venue in any state or federal court in the County of Chaffee, Colorado in connection with any claim, allegation, cause of action, or legal proceeding relating in any way to this Agreement or any Loan Document or instrument evidencing or securing the Loan or otherwise executed in connection therewith or any security or collateral related thereto.

Section 13.19 Jury Trial Waiver. THE BORROWER WAIVES THE RIGHT TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING BASED UPON, OR RELATED TO, ANY ASPECT OF THE TRANSACTION IN CONNECTION WITH WHICH THIS DOCUMENT IS BEING GIVEN OR ANY DOCUMENT EXECUTED OR DELIVERED IN CONNECTION WITH SUCH TRANSACTION. THIS WAIVER IS KNOWINGLY, INTENTIONALLY AND VOLUNTARILY MADE BY THE BORROWER, AND THE BORROWER ACKNOWLEDGES THAT NO ONE HAS MADE ANY REPRESENTATIONS OF FACT TO INDUCE THIS WAIVER OF TRIAL BY JURY OR IN ANY WAY TO MODIFY OR NULLIFY ITS EFFECT. THE BORROWER FURTHER

ACKNOWLEDGES HAVING BEEN REPRESENTED IN CONNECTION WITH THE TRANSACTION WITH RESPECT TO WHICH THIS DOCUMENT IS BEING GIVEN AND IN THE MAKING OF THIS WAIVER BY INDEPENDENT LEGAL COUNSEL, SELECTED BY THE BORROWER'S OWN FREE WILL, AND THAT THE BORROWER HAS HAD THE OPPORTUNITY TO DISCUSS THIS WAIVER WITH SUCH COUNSEL. THE BORROWER FURTHER ACKNOWLEDGES HAVING READ AND UNDERSTOOD THE MEANING AND RAMIFICATIONS OF THIS WAIVER PROVISION.

[SIGNATURES ON FOLLOWING PAGE]

DRAFT

The parties hereto have duly executed this Agreement, as of the date first above-written.

BORROWER:

[x]

By: _____

[x]

Title: [x]

LENDER:

IMPACT DEVELOPMENT FUND,
a Colorado non-profit corporation

By: _____

Megan Ferguson

Title: Chief Executive Officer

EXHIBIT A
LEGAL DESCRIPTION

DRAFT