

**LOAN AGREEMENT BETWEEN TOWN OF JOHNSTOWN AND
HOUSING AUTHORITY OF THE TOWN OF JOHNSTOWN**

THIS LOAN AGREEMENT (“Agreement”) is made and entered into this ___ day of _____, 202__ (“Effective Date”), by and between the TOWN OF JOHNSTOWN, a home rule municipal corporation of the State of Colorado (“Town”), and the HOUSING AUTHORITY OF THE TOWN OF JOHNSTOWN, COLORADO, a non-profit corporation duly existing under the Housing Authorities Law of the State of Colorado (“Housing Authority”), collectively referred to as “the Parties.”

WITNESSETH:

WHEREAS, on or about February 1, 1982, the Town adopted the Resolution Declaring the Need for a Housing Authority to Function in the Town of Johnstown pursuant to the Housing Authorities Law, Section 29-4-201 *et seq.*, C.R.S. (“Housing Authorities Law”), and thus established the Housing Authority; and

WHEREAS, the Housing Authority is the owner of that certain real property located at 202 N. Greeley Avenue, Town of Johnstown, County of Weld, State of Colorado, more particularly described on Exhibit A attached hereto and incorporated herein by reference (“Property”); and

WHEREAS, the Housing Authority operates and manages a senior housing apartment project on the Property, known as the Columbine Complex; and

WHEREAS, on or about September 28, 1982, to acquire funding to construct the Columbine Complex, the Housing Authority obtained a 50-year loan from the United States of America, acting through the Farmers Home Administration, United States Department of Agriculture (“USDA”), pursuant to Section 515 of the Housing Act of 1949, in the amount of \$775,000.00 (“FHA Loan”); and

WHEREAS, the FHA Loan is secured by that certain Deed of Trust dated December 15, 1982, recorded on the same date in the real property records of the County of Weld, State of Colorado, at Reception No. 01911538; and

WHEREAS, the Housing Authority seeks to refinance the FHA Loan and has requested a loan from the Town with an interest rate commensurate with the current market rates to repay the FHA Loan, and the Town desires to provide such a loan on the terms and conditions set forth in this Agreement; and

WHEREAS, the Housing Authority recognizes that, by repaying the FHA Loan, the Housing Authority may be compromising its ability to obtain housing vouchers from the state or federal government and may be precluded from seeking additional funding from the USDA in the future for development of property for affordable and attainable housing for persons in need of such subsidized housing; and

WHEREAS, despite the foregoing, the Housing Authority commits to provide affordable housing to senior citizens in the Town based on a percentage of income as further described in the Housing Authorities Law; and

WHEREAS, pursuant to the provisions of Article XIV, Section 18(2) of the Colorado Constitution and Sections 29-1-201 *et seq.*, C.R.S., political subdivisions of the State of Colorado may cooperate and contract to provide any function, service or facility lawfully authorized to each of the cooperating or contracting entities; and

WHEREAS, pursuant to the Town of Johnstown Home Rule Charter (“Charter”) and Section 29-4-104, C.R.S., the Town has an interest in affordable senior housing in the Town and has the power and authority to do lawful acts in furtherance of such objective; and

WHEREAS, pursuant to Section 24-75-601.1(3), C.R.S., the Town is authorized to invest public funds in any security or other investment permitted by the Charter or an ordinance of the Town; and

WHEREAS, by Ordinance No. 2021-219, the Town Council found that a loan to the Housing Authority is in the best interest of the Town and authorized the use of public funds to provide a loan to the Housing Authority; and

WHEREAS, to effectuate the foregoing, the Parties desire to enter into this Agreement.

NOW, THEREFORE, in consideration of the mutual agreements, covenants, promises, representations, and warranties hereinafter contained and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. **Recitals**. The Recitals are incorporated into the Agreement as if fully set forth herein.
2. **Town Loan**. Based on the terms and conditions set forth herein, the Town hereby approves a twenty (20) year loan from the Town of Johnstown General Fund to the Housing Authority in the amount of Three Hundred Twelve Thousand Dollars (\$312,000.00) (“Town Loan”). The Town Loan shall accrue interest in the amount of two and seventy-five hundredths percent (2.75%) per annum. Upon disbursement of the funds to the Housing Authority, the Housing Authority shall make monthly payments to the Town as set forth in the Promissory Note (defined below).
3. **Promissory Note and Deed of Trust**.
 - a. Promissory Note. The Town Loan shall be evidenced and shall be in accordance with the terms and conditions of a promissory note in substantially the same form that is attached hereto and incorporated herein by reference as Exhibit B (“Promissory Note”). A sample amortization schedule showing the Housing Authority’s repayment obligations to the Town pursuant to the Promissory Note is attached hereto and incorporated herein by reference as Exhibit C.

b. Deed of Trust. As security for the Town Loan, the Housing Authority shall execute a deed of trust in substantially the same form that is attached hereto and incorporated herein by reference as Exhibit D (“Deed of Trust”), granting to the Public Trustee of the County of Weld, State of Colorado, in trust, the power of sale of the Property to satisfy the repayment of the indebtedness evidenced by the Promissory Note and the performance of the covenants and agreements contained in the Deed of Trust.

c. Escrow Account. On or before February 28, 2022, the Town shall place Three Hundred Twelve Thousand Dollars (\$312,000.00), the amount of the Town Loan, into an escrow account for disbursement to the Housing Authority as set forth below (“Escrow Account”). If the Housing Authority has not executed the Promissory Note and Deed of Trust by December 31, 2022, the funds in the Escrow Account shall revert back to the Town and this Agreement shall be null and void. The Town shall be entitled to all interest that accrues while the funds are in the Escrow Account.

d. Execution of Promissory Note and Deed of Trust. Upon written notice from the Housing Authority to the Town, the Parties shall finalize the Promissory Note and Deed of Trust to evidence, among other matters, the repayment schedule. Upon the execution of the Promissory Note and Deed of Trust, the Town shall disburse the funding for the Town Loan from the Escrow Account to the Housing Authority and shall record the Deed of Trust with the Weld County Clerk and Recorder.

4. **Housing Authority’s Covenants and Commitments.** As material conditions of this Agreement and the Town Loan, during the term of the Town Loan and until the Town Loan is paid in full, the Housing Authority promises, covenants and agrees as follows:

- a. The Housing Authority shall be and remain a “housing authority” as defined in Section 29-4-203, C.R.S., as amended from time to time;
- b. The Housing Authority shall comply with all provisions of the Housing Authorities Law, as amended from time to time. Among the other provisions of the Housing Authorities Law, the Housing Authority shall rent or lease dwelling accommodations and select tenants in a manner consistent and in compliance with Section 29-4-210, C.R.S.;
- c. The Housing Authority shall comply with the provisions of all applicable federal and state laws prohibiting discrimination in housing on the basis of race, color, religion, creed, gender, sexual orientation, national origin, handicap or familial status, including, but not limited to: Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. § 2000d *et seq.*), the Fair Housing Act of 1968, as amended (42 U.S.C. 3601 *et seq.*; 24 CFR 100 *et seq.*), Executive Order 11063, and all requirements of the Secretary of Housing and Urban Development implementing these authorities, including, but not limited to, 24 CFR Parts 1, 100, 107 and 110 and Subparts I and M of Part 20; and

- d. The Housing Authority shall maintain the Property and the Columbine Complex in good repair and condition and shall operate and maintain the dwelling accommodations and facilities in the Columbine Complex in a manner that provides decent, safe and sanitary housing and includes the provision of all services, maintenance and utilities. The Housing Authority shall comply with the lead-based paint regulations contained in 24 CFR Part 35, as amended.

5. **Records and Inspection.** During the term of the Town Loan, the Housing Authority shall keep copies of all records and documents affecting the status of the corporation as a housing authority and evidencing the financial position of the Housing Authority. The Housing Authority shall maintain the books, records and documents relating to the financial condition of the Columbine Complex in accordance with Generally Accepted Accounting Principals. During the term of the Town Loan, the Housing Authority shall keep copies of all records and documents regarding the tenants and potential tenants of the Columbine Complex, including but not limited to, the applications, leases and financial certifications of the tenants residing in, or requesting residence in, the Columbine Complex on the date of this Agreement and on any date subsequent hereto. The Town may, at its discretion and at all reasonable times, inspect and examine the records and documents referenced herein for the purpose of ascertaining compliance with this Agreement.

6. **Annual Report.** On or before March 1 of each calendar year, the Housing Authority shall provide a report to the Town regarding the financial condition of the Housing Authority, the physical condition of the Columbine Complex and the status of the rental of the dwelling units. The annual report shall contain a certification the Housing Authority is in compliance with this Agreement and with the Housing Authorities Law and that the tenants residing in the Columbine Complex are financially eligible seniors.

7. **Transfer or Conveyance of Property.** The Housing Authority shall not transfer or convey any of the Property without the written approval of the Town Council. Unless otherwise agreed by the Town Council by resolution or ordinance, upon a transfer or conveyance of any of the Property, the Housing Authority shall pay to the Town the full amount of the unpaid principal and interest that remains due and owing on the Town Loan.

8. **Notices.** All notices, demands, or other documents required or desired to be given, made or sent to either Party under this Agreement shall be made in writing, shall be deemed effective upon receipt and shall be personally delivered or mailed postage prepaid, certified mail, return receipt requested as follows:

TO THE HOUSING AUTHORITY:
Housing Authority of the Town of Johnstown
Attn: Chairperson
202 N. Greeley Avenue
Johnstown, CO 80534

TO THE TOWN:
Town of Johnstown
Attn: Town Manager
450 S. Parish Ave.
Johnstown, CO 80534
mlecerf@townofjohnstown.com

The addresses for notices may be changed by written notice given to the other Party in the manner provided above. Notice may also be sent via electronic mail delivery and shall be effective upon confirmation of receipt of the electronic mail.

9. **Injunctive Relief.** If the Town determines that the Housing Authority has violated the promises, covenants and commitments contained in this Agreement, the Town shall notify the Housing Authority of its determination and provide the Housing Authority with thirty (30) days to cure such violation, or such longer period as the Town may, in writing, agree to provide. If the Housing Authority does not cure the violation within the allotted time, in addition to all other legal remedies available to the Town, including but not limited to the remedies provided in the Promissory Note and the Deed of Trust, the Town may pursue an action for specific performance, injunctive relief or any other equitable remedy because the Town's injury arising from a breach of this Agreement would be irreparable and damage would be difficult to ascertain.

10. **Amendment or Modification.** No amendment or modification of this Agreement shall be of any force or effect unless in writing and signed by the Parties hereto.

11. **Waiver.** The waiver of any breach of any of the provisions of this Agreement by the Town shall not constitute a continuing waiver of any subsequent breach by the Housing Authority concerning either the same or any other provision of this Agreement.

12. **Assignment.** This Agreement shall not be assigned without the prior written consent of the Town Council.

13. **Choice of Laws and Venue.** This Agreement and the rights and obligations of the Parties hereto shall be governed by the laws of the State of Colorado. Venue for any claim, proceeding or action shall be in the County of Weld, State of Colorado.

14. **Entire Agreement.** This Agreement constitutes the entire agreement between the Parties related to the subject matter hereof and any prior agreements pertaining thereto whether oral or written have been merged or integrated into this Agreement.

15. **No Presumption.** Each Party acknowledges that it has obtained, or has had the opportunity to obtain, the advice of legal counsel of its own choosing in connection with the negotiation and execution of this Agreement and with respect to all matters set forth herein. In the event of any dispute, disagreement or controversy arising from this Agreement, the Parties shall be considered joint authors and no provision shall be interpreted against any Party because of authorship.

16. **Housing Authority Authorization.** The Housing Authority states and affirms that: (i) it has taken all the requisite action to repay the FHA Loan and (ii) it has taken all the requisite action to authorize and execute this Agreement and that the terms contained herein are, and shall remain during the term of the Town Loan, binding obligations of the Housing Authority. The person executing this Agreement for the Housing Authority represents and warrants that he or she has been duly authorized to execute this Agreement by the Housing Authority and has the authority to bind the Housing Authority to the terms and conditions hereof.

SUBSCRIBED AND SWORN to before me this _____ day of _____, 2021, by
_____ as the _____ of Housing Authority of the Town of
Johnstown.

WITNESS my hand and official seal.

My commission expires: _____

Notary Public

EXHIBIT A

PARCEL NUMBER: 105905300010

JOH 21437-A PT NE4SW4 5 4 67 (GREGG 1ST ANNEX) BEG SE COR NE4SW4 N89D10'W 800' N0D02'W
180' S89D10'E 800' S0D02'E 180' TO POB EXC UPRR RES